

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Common Pleas Case No. 2022-CP-23-01064

Appellate Case No. 2022-000731

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Dec 19 2022

SC Court of Appeals

In the Matter of: Estate of Florence Petrak Mensch

Sterling Raymond Mensch, III, individually, as former 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, ... Appellant,

v.

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

**RECORD ON APPEAL
VOLUME XV**

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Form **8879-F**Department of the Treasury
Internal Revenue Service

Name of estate or trust

IRS e-file Signature Authorization for Form 1041For calendar year 2018, or fiscal year beginning 04/26/18, ending 12/31/18

▶ Don't send to the IRS. Keep for your records.

▶ Go to www.irs.gov/Form8879F for the latest information.

OMB No. 1545-0067

2018

Employer identification number

FLORENCE PETRAK MENSCH ESTATE

Name and title of fiduciary

**SHAUNA MENSCH WADDELL
PERSONAL REPRESENTATIVE****Part I Tax Return Information (Whole Dollars Only)**

1	Total income (Form 1041, line 9)	1	12,018
2	Income distribution deduction (Form 1041, line 18)	2	
3	Taxable income (Form 1041, line 22)	3	-4,965
4	Total tax (Form 1041, line 23)	4	
5	Tax due or overpayment (Form 1041, line 28 or 29)	5	

Part II Declaration and Signature Authorization of Fiduciary (Be sure to get a copy of the estate's or trust's return)

Under penalties of perjury, I declare that I am a fiduciary of the above estate or trust and that I have examined a copy of the estate's or trust's 2018 electronic income tax return and accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts shown on the copy of the estate's or trust's electronic income tax return. I consent to allow my electronic return originator (ERO), transmitter, or intermediate service provider to send the estate's or trust's return to the IRS and to receive from the IRS (a) an acknowledgment of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of the estate's or trust's federal taxes owed on this return, and the financial institution to debit the entry to this account. To revoke a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537 no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I have selected a personal identification number (PIN) as my signature for the estate's or trust's electronic income tax return and, if applicable, the estate's or trust's consent to electronic funds withdrawal.

Fiduciary's PIN: check one box only

☒ I authorize STOKES & COMPANY, CPAS, PC to enter my PIN [REDACTED] as my signature
ERO firm name Don't enter all zeros
on the estate's or trust's 2018 electronically filed income tax return.

☐ As a fiduciary or officer representing the fiduciary of the estate or trust, I will enter my PIN as my signature on the estate's or trust's 2018 electronically filed income tax return.

Signature of
fiduciary or officer
representing
the fiduciary ▶**SHAUNA MENSCH WADDELL**Date ▶ **05/26/20****Part III Certification and Authentication**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN.

Don't enter all zeros

I certify that the above numeric entry is my PIN, which is my signature on the 2018 electronically filed income tax return for the estate or trust indicated above. I confirm that I am submitting this return in accordance with the requirements of Pub. 3112, IRS e-file Application and Participation; and Pub. 4164, Modernized e-file (MeF) Guide for Software Developers and Transmitters, Processing Year 2019.

ERO's signature ▶ **ALLEN A. HODGES, CPA**Date ▶ **05/26/20****ERO Must Retain This Form — See Instructions****Don't Submit This Form to the IRS Unless Requested To Do So**

For Paperwork Reduction Act Notice, see instructions.

Form **8879-F** (2018)

Form **1041** U.S. Income Tax Return for Estates and Trusts**2018**

OMB No. 1545-0092

A Check all that apply:		For calendar year 2018 or fiscal year beginning 04/26/18 , and ending 12/31/18	
☒ Decedent's estate ☐ Simple trust ☐ Complex trust ☐ Qualified disability trust ☐ ESBT (S portion only) ☐ Grantor type trust ☐ Bankruptcy estate—Ch. 7 ☐ Bankruptcy estate—Ch. 11 ☐ Pooled income fund	Name of estate or trust (If a grantor type trust, see the instructions.) FLORENCE PETRAK MENSCH ESTATE Name and title of fiduciary SHAUNA MENSCH WADDELL, PERSONAL REPRESENTATIVE Number, street, and room or suite no. (If a P.O. box, see the instructions.) 402 PLANTERS WALK DRIVE City or town, state or province, country, and ZIP or foreign postal code EASLEY SC 29642	C Employer identification number D Date entity created 04/26/2018 E Nonexempt charitable and split-interest trusts, check applicable box(es), see instructions. ☐ Described in sec. 4947(a)(1). Check here If not a private foundation ☐ ☐ Described in sec. 4947(a)(2)	
B Number of Schedules K-1 attached (see instructions) ▶	F Check applicable boxes:	☒ Initial return ☐ Final return ☐ Amended return ☐ Change in trust's name ☐ Change in fiduciary ☐ Change in fiduciary's name	
G Check here if the estate or filing trust made a section 645 election ▶ ☐ Trust TIN ▶			

Income	1	Interest income		
	2a	Total ordinary dividends		
	b	Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust		
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)		
	4	Capital gain or (loss). Attach Schedule D (Form 1041)		
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)		
	6	Farm income or (loss). Attach Schedule F (Form 1040)		
	7	Ordinary gain or (loss). Attach Form 4797		
	8	Other income. List type and amount SEE STATEMENT 1		12,018
9	Total income. Combine lines 1, 2a, and 3 through 8		12,018	
Deductions	10	Interest. Check if Form 4952 is attached ☐		
	11	Taxes		6,383
	12	Fiduciary fees. If only a portion is deductible under section 67(e), see instructions		10,000
	13	Charitable deduction (from Schedule A, line 7)		
	14	Attorney, accountant, and return preparer fees. If only a portion is deductible under section 67(e), see instructions		
	15a	Other deductions (attach schedule). See instructions for deductions allowable under section 67(e)		
	b	Net operating loss deduction. See instructions		
	16	Add lines 10 through 15b		16,383
	17	Adjusted total income or (loss). Subtract line 16 from line 9	17	-4,365
	18	Income distribution deduction (from Sch. B, line 15). Attach Schedules K-1 (Form 1041)		
	19	Estate tax deduction including certain generation-skipping taxes (attach computation)		
Tax and Payments	20	Exemption		600
	21	Add lines 18 through 20		600
	22	Taxable income. Subtract line 21 from line 17. If a loss, see instructions		-4,965
	23	Total tax (from Schedule G, line 7)		0
	24	2018 net 965 tax liability paid from Form 965-A, Part II, column (k), line 2		
	25	Payments: a 2018 estimated tax payments and amount applied from 2017 return		
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)		
	c	Subtract line 25b from line 25a		
	d	Tax paid with Form 7004. See instructions		
	e	Federal income tax withheld. If any is from Form(s) 1099, check ☐		
	f	2018 net 965 tax liability from Form 965-A, Part I, column (f), line 2		
26	Total payments. Add lines 25c through 25f, and 25i			
27	Estimated tax penalty. See instructions			
28	Tax due. If line 26 is smaller than the total of lines 23, 24, and 27, enter amount owed			
29	Overpayment. If line 26 is larger than the total of lines 23, 24, and 27, enter amount overpaid			
30	Amount of line 29 to be: a Credited to 2019 ; b Refunded			

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			May the IRS discuss this return with the preparer shown below (see instr.)? ☒ Yes ☐ No	
	Signature of fiduciary or officer representing fiduciary		Date	EIN of fiduciary if a financial institution	
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN *****
	ALLEN A. HODGES, CPA	ALLEN A. HODGES, CPA	06/03/20		
	Firm's name STOKES & COMPANY, CPAS, PC	Firm's EIN ██████████			
	Firm's address 15 HALTON GREEN WAY GREENVILLE, SC 29607-6606		Phone no. 864-242-1418		

Schedule A Charitable Deduction. Don't complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income. See instructions	1	
2	Tax-exempt income allocable to charitable contributions. See instructions	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. See instructions	6	
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7	

Schedule B Income Distribution Deduction

1	Adjusted total income. See instructions	1	
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7	
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8	
9	Income required to be distributed currently	9	
10	Other amounts paid, credited, or otherwise required to be distributed	10	
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11	
12	Enter the amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	

Schedule G Tax Computation (see instructions)

1	Tax: a Tax on taxable income. See instructions	1a		0
	b Tax on lump-sum distributions. Attach Form 4972	1b		
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c		
	d Total. Add lines 1a through 1c	1d		0
2a	Foreign tax credit. Attach Form 1116	2a		0
b	General business credit. Attach Form 3800	2b		
c	Credit for prior year minimum tax. Attach Form 8801	2c		
d	Bond credits. Attach Form 8912	2d		
e	Total credits. Add lines 2a through 2d	2e		0
3	Subtract line 2e from line 1d. If zero or less, enter -0-	3		0
4	Net investment income tax from Form 8960, line 21	4		
5	Recapture taxes. Check if from: ☐ Form 4255 ☐ Form 8611	5		
6	Household employment taxes. Attach Schedule H (Form 1040)	6		
7	Total tax. Add lines 3 through 6. Enter here and on page 1, line 23	7		0

Other Information

	Yes	No
1 Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends \$		X
2 Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		X
3 At any time during calendar year 2018, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country		X
4 During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions		X
5 Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see the instructions for required attachment		X
6 If this is an estate or a complex trust making the section 663(b) election, check here. See instructions		
7 To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here. See instructions		
8 If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here		
9 Are any present or future trust beneficiaries skip persons? See instructions		X
10 Was the trust a specified domestic entity required to file Form 8938 for the tax year (see the Instructions for Form 8938)?		X

Federal Statements

FYE: 12/31/2018

Statement 1 - Form 1041, Page 1, Line 8 - Other Income

Description	Amount
G.E. PENSION TRUST	\$ 12,018
TOTAL	\$ 12,018

CLIENT COPY

Form 1041	Accounting Income and Distributable Net Income Detail Information Worksheet	2018
For calendar year 2018, or tax year beginning 04/26/18 , and ending 12/31/18		

Name FLORENCE PETRAK MENSCH ESTATE	Taxpayer Identification Number

Income	Accounting Income	Distributable Net Income
Interest income		
Dividend income		
Business income / loss		
Capital gain / loss		
Rents, royalties, partnerships, other estates and trusts		
Farm income / loss		
Ordinary gain / loss		
Other income	12,018	12,018

Deductions	Accounting Income	Distributable Net Income
Interest expense	6,383	6,383
Less: Allocated to tax-exempt income	()	()
Taxes	10,000	10,000
Less: Allocated to tax-exempt income	()	()
Fiduciary fees		
Less: Allocated to tax-exempt income	()	()
Charitable deduction		
Attorney / Accountant fees		
Less: Allocated to tax-exempt income	()	()
Other deductions		
Less: Allocated to tax-exempt income	()	()
Miscellaneous deductions		
Less: Allocated to tax-exempt income	()	()
Taxable income	-4,365	0
Net gain shown on Schedule D, line 19, column (1)		
Enter amount from Schedule A, line 4		
Long-term capital gain included on Schedule A, line 1		
Short-term capital gain included on Schedule A, line 1		
Capital loss from Form 1041 page 1, line 4		
Less capital gain from Form 1041 page 1, line 4	-4,365	()
Net taxable income	-4,365	

Tax-Exempt Income	Accounting Income	Distributable Net Income
Interest, dividends, and other nontaxable income		
Allocated direct expenses	()	
Allocated indirect expenses	()	
Net tax-exempt income		
Subtotal	-4,365	
Additions: Items not on the return affecting accounting income		
Subtractions: Items on the return not affecting accounting income	()	
Total. Net taxable income plus estate tax deduction and net tax-exempt income	-4,365	

Summary		Accounting Income	Distributable Net Income
Taxable income		-4,365	
Tax-exempt income			
Net accounting income		-4,365	
Taxable income			
Tax-exempt interest and dividends			
Distributable net income			

Form 1041	Allocation of Expenses by Income Type Tax Basis For calendar year 2018, or tax year beginning 04/26/18 , and ending 12/31/18	2018 Use this form to allocate expenses by income type for a trust, estate, or other entity that is a taxpayer for the year. It is used to determine the taxable income of each beneficiary. Do not use this form for a trust, estate, or other entity that is not a taxpayer for the year. Do not use this form for a trust, estate, or other entity that is a taxpayer for the year but is not required to file a return. Do not use this form for a trust, estate, or other entity that is a taxpayer for the year but is not required to file a return.

Name FLORENCE PETRAK MENSCH ESTATE	Taxpayer Identification Number

	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Income					
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions					
Subtotal					
Reclassified losses					
Net income (Calculated)					
Net income (Force)					

	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT / QSST
Income	12,018				
Less deductions:					
Interest	6,383				
Taxes	10,000				
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions	16,383				
Subtotal	-4,365				
Reclassified losses	4,365				
Net income (Calculated)					
Net income (Force)					

	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Other Nontaxable	Tax-Exempt
Income					
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions					
Net income (Calculated)					
Net income (Force)					

Form 1041	Allocation of Expenses by Income Type Accounting Income Basis	2018
For calendar year 2018, or tax year beginning 04/26/18 , and ending 12/31/18		

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Income					
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions					
Additions					
Subtractions					
Subtotal					
Reclassified losses					
Net income (Calculated)					
Net income (Force)					

	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT / QSST
Income	12,018				
Less deductions:					
Interest	6,383				
Taxes	10,000				
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions	16,383				
Additions					
Subtractions					
Subtotal	-4,365				
Reclassified losses	4,365				
Net income (Calculated)					
Net income (Force)					

	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Other Nontaxable	Tax-Exempt
Income					
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions					
Additions					
Subtractions					
Net income (Calculated)					
Net income (Force)					

Net Operating Loss Worksheet 1

2018

Form 1041

For calendar year 2018, or tax year beginning 04/26/18, and ending 12/31/18

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

Regular Tax

AMT

1	Enter taxable income increased by the total of the charitable deduction, income distribution deduction, and exemption amount	1	-4,365	5,635
2	Nonbusiness capital losses before limitation. Enter as a positive number	2		
3	Nonbusiness capital gains (without regard to any section 1202 exclusion)	3		
4	If line 2 is more than line 3, enter the difference; otherwise, enter -0-	4	0	0
5	If line 3 is more than line 2, enter the difference; otherwise, enter -0-	5	0	0
6	Nonbusiness deductions (see page 6 of the instructions)	6	16,383	
7	Nonbusiness income other than capital gains. (see page 6 of the instructions)	7	12,018	
8	Add lines 5 and 7	8	12,018	
9	If line 6 is more than line 8, enter the difference; otherwise, enter -0-	9	4,365	0
10	If line 8 is more than line 6, enter the difference; otherwise, enter -0-. But do not enter more than line 5	10	0	0
11	Business capital losses before limitation. Enter as a positive number	11		
12	Business capital gains (without regard to any section 1202 exclusion)	12		
13	Add lines 10 and 12	13		
14	Subtract line 13 from line 11. If zero or less, enter -0-	14	0	0
15	Add lines 4 and 14	15		
16	Enter the loss, if any, from line 20 of Schedule D (Form 1040). (Estates and trusts, enter the loss, if any, from line 19, column (3), of Schedule D (Form 1041).) Enter as a positive number. If you do not have a loss on that line (and do not have a section 1202 exclusion), skip lines 16 through 21 and enter on line 22 the amount from line 15	16		
17	Section 1202 exclusion. Enter as a positive number	17		
18	Subtract line 17 from line 16. If zero or less, enter -0-	18		
19	Enter the loss, if any, from line 21 of Schedule D (Form 1040). (Estates and trusts, enter the loss, if any, from line 20 of Schedule D (Form 1041).) Enter as a positive number	19		
20	If line 18 is more than line 19, enter the difference; otherwise, enter -0-	20		
21	If line 19 is more than line 18, enter the difference; otherwise, enter -0-	21		
22	Subtract line 20 from line 15. If zero or less, enter -0-	22	0	
23	Domestic production activities deduction and qualified business income deduction included on Form 1041, line 15a	23		
24	NOL deduction for losses from other years. Enter as a positive number	24		
25	NOL. Combine lines 1, 9, 17, and 21 through 24. If the result is zero or more, you do not have an NOL	25	0	

Federal Statements

FYE: 12/31/2018

Form 1041, Page 1, Line 10 - Interest

Description	Amount
MORTG INT - 512 NEW TARLETON	\$ 6,383
SUBTOTAL	\$ 6,383
PAGE 1 - INTEREST EXPENSE	\$ 6,383

Form 1041, Page 1, Line 11 - Taxes

Description	Amount
DECEDENT'S 2016 SC1040	\$ 3,203
512 NEW TARLETON WAY	6,797
SUBTOTAL	\$ 10,000
PAGE 1 - TAX EXPENSE	\$ 10,000

CLIENT COPY

Form SC1041 Return Summary

For calendar year 2018, or tax year beginning 04/26/18 , and ending 12/31/18

FLORENCE PETRAK MENSCH ESTATE

Income

Federal taxable income	-4,965
Federal exemption	600
Modifications related to gains allocated to principal	

Additions:

State and local interest	
State / local taxes on fed. return	3,203
Federal net operating loss	
Out-of state losses	
Other additions	
Total additions	3,203

Subtractions

Interest on U.S. obligations	
State / local refunds on fed. return	
SC net operating loss	
Active trade / business inc. ded.	
Other subtractions	
Total subtractions	3,203

Fiduciary adjustment from pass-through entities

Beneficiary portion of fiduciary adjustment

Fiduciary share of fiduciary adjustment	3,203

South Carolina exemption	600

Taxable income

-1,762

Tax Computation

Tax on taxable income	
Tax on electing small business trust inc	
Other taxes	
Nonrefundable credits	
Nonresident beneficiary withholding	

Total tax

Extension payment and other credits	
Estimated tax payments	
Estimated tax penalty	
Applied to next year's estimated tax	

Total payments / application

Net tax

Additions to Tax

Interest on late payments	
Penalties	

Total additions

Balance due

Refund

Next Year's Estimates

1st quarter	
2nd quarter	
3rd quarter	
4th quarter	
Total	

Miscellaneous Information

Amended return	
Estimated payments allocated to beneficiaries	
Number of beneficiaries	
Number of Schedule(s) K-1	
Return / extended due date	04/15/19
Form 41, Balance due	

1022



dor.sc.gov

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
FIDUCIARY INCOME TAX RETURN

SC1041
(Rev. 10/12/18)
3084

For the calendar year 2018 or Fiscal Taxable Year Beginning **04/26/18** and ending **12/31/18** **2018**

Name of Estate or Trust FLORENCE PETRAK MENSCH ESTATE		FEIN [REDACTED]	
Name and Title of Fiduciary SHAUNA MENSCH WADDELL PERSONAL REPRESENTATIVE	Mailing Address 402 PLANTERS WALK DRIVE	City EASLEY	State SC
	ZIP Code 29642	County Code PICKENS	

ATTACH COPY OF FEDERAL FORM 1041 AND ALL ITS SCHEDULES, INCLUDING SCHEDULES K-1. Extension Requested: ☐ Yes ☒ No

A. Check if: ☐ Address change ☐ Simple trust ☐ Amended return ☐ Complex trust ☐ Final return ☒ Estate ☐ Grantor Trust ☐ Electing Small Business Trust		B. If trust, check whether: ☐ Testamentary ☐ Inter vivos		C. Also check if: ☒ Resident estate or trust ☐ Nonresident estate or trust		D. Has final distribution of assets been made during the year? ☐ Yes ☒ No	

E. During this taxable year, was this estate or trust notified of any federal change for any prior years? ☐ YES or ☒ NO If YES, attach copy.
 F. Is a federal Schedule K-1 attached for each beneficiary? ☐ YES or ☐ NO If YES, how many? **N/A** If NO, attach explanation.

If a NONRESIDENT estate or trust with income from both South Carolina and Non-South Carolina sources - complete and attach Part III, page 3 of SC1041.

1. FEDERAL TAXABLE INCOME (Residents: Federal Form 1041; Nonresidents: line 22, column D, Part III)	1	-4,965	00
2. Federal fiduciary exemption included in line 1 above	2	600	00
3. South Carolina Modifications relating to gains allocated to principal or relating to other items not affecting federal distributable net income (attach explanation)	3		00
4. Fiduciary's Share of SC Fiduciary Adjustment (from line 1i, Part II) ☒ Addition ☐ Subtraction	4	3,203	00
5. NET (combine lines 1 to 4)	5	-1,162	00
6. South Carolina fiduciary exemption (see instructions)	6	600	00
7. SOUTH CAROLINA TAXABLE INCOME (line 5 less line 6)	7	-1,762	00
8. SOUTH CAROLINA TAX (see instructions for tax computation schedule)	8	0	00
9. TAX on Lump Sum Distribution (SC4972) and/or Active Trade or Business Income (I-335)	9		00
10. Less NON-REFUNDABLE CREDITS (attach SC1040TC)	10		00
11. Combine lines 8 - 10 and enter the results here BUT NOT LESS THAN ZERO	11		00
12. South Carolina income tax withheld for nonresident beneficiaries (From Part IV)	12		00
13. TOTAL TAX (add lines 11 and 12 and enter here)	13		00
14. Amount paid with: (a) ext. ☐ 00 (b) SC Withholding ☐ 00 Enter total	14		00
15. Estimated Tax Payments and Refundable Tax Credit			
a) Estimated Tax Payments	15a		00
b) Amount applied from 2017 return	15b		00
c) Motor Fuel Income Tax Credit	15c		00
Total of line 15	15		00
16. Total Payments (add lines 14 and 15)	16		00
17. Overpayment (line 16 less line 13)	17		00
18. Late Filing and/or late payment: Penalties ☐ 00 Interest ☐ 00 Enter total here	18		00
19. Penalty for Underpayment of Estimated Tax (Attach SC2210)	19		00
20. Balance Due (line 13 less line 16 plus line 18 and 19, if applicable) Pay in full to SC Department of Revenue	20		00
21. Amount of line 17 to be credited to 2019 Estimated Tax	21		00
22. Net Refund (subtract line 21 from line 17 and enter the amount to be refunded)	22		00

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

Sign Here	Signature of fiduciary or officer representing fiduciary	Date	Taxpayer's Email	
	I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer.		Yes ☒ No ☐	Preparer's Printed Name ALLEN A. HODGES, CPA
Paid	Preparer's signature ALLEN A. HODGES, CPA	Date 06/03/20	Check if self-employed ☐	Preparer's telephone number 864-242-1418
Preparer's Use Only	Firm's name (or yours if self-employed) and address STOKES & COMPANY, CPAS, PC 15 HALTON GREEN WAY GREENVILLE, SC	PTIN or FEIN *****		ZIP Code 29607-6606

30841183

MENSCH01016

Name and FEIN on page 1 **FLORENCE PETRAK MENSCH ESTATE****Part I - SOUTH CAROLINA FIDUCIARY ADJUSTMENT**

		Adjustments to amount included in federal distributable net income	
1. Additions to federal taxable income:			
a. State and local interest	1a		
b. State or local taxes measured by income deducted on the federal return	1b	3,203	
c. Federal net operating loss carryover	1c		
d. Out-of state losses	1d		
e. Other additions to income (see instr.) - ATT. AN EXPLANATION	1e		
f. Total additions to federal income (add lines 1a through 1e)	1f	3,203	
2. Subtractions from federal taxable income			
a. Interest on US Government obligations	2a		
b. State income tax refunds reported as income on federal return	2b		
c. South Carolina net operating loss carryover (attach schedule)	2c		
d. Active Trade or Business Income Deduction (I-335, line 5)	2d		
e. Other subtractions from inc. (see instr.) - ATT. AN EXPLANATION	2e		
f. Total subtractions from federal taxable income (add lines 2a through 2e)	2f		
3. Total (subtract line 2f from line 1f)	3	3,203	
4. Fiduciary adjustment from other estates or trusts and partnership adjustment (attach schedule)	4		
5. South Carolina fiduciary adjustment (add lines 3 and 4) Addition ☒ or Subtraction	5	3,203	

Part II - ALLOCATION OF SOUTH CAROLINA FIDUCIARY ADJUSTMENT

Complete ONLY if Part I indicates a South Carolina Fiduciary Adjustment. It is allocated among all beneficiaries and fiduciary in the same ratio as their relative shares of Federal Distributable Net Income. Nonresident beneficiaries see parts III and IV for computation of income.

1. Name of each beneficiary. Check box if beneficiary is a nonresident. All beneficiaries receiving federal K-1 must be listed. Use attachment if more than eight beneficiaries.	Shares of Federal Distributable Net Income		4. Shares of South Carolina Fiduciary Adjustment Addition or Subtraction ☒
	2. Amount	3. Percent	
a. ☒ Social Security Number		%	
b.		%	
c.		%	
d.		%	
e.		%	
f.		%	
g.		%	
h.		%	
i. Fiduciary		100.0000%	3,203
Totals		100%	3,203

COLUMN 2 - Total federal distributable net income must be the same as line 7, Schedule B Form 1041.

COLUMN 3 - Indicate percentages with two numbers, such as 32%, 3.2% and .32%.

COLUMN 4 - Enter South Carolina Fiduciary Adjustment from line 5, Part I as the total of Column 4. Multiply each percentage in Column 3 times the total in Column 4. Indicate at the top of Column 4, whether the adjustments are additions or subtractions. If the adjustment is a subtraction, it may not offset more than the amount reportable from the fiduciary for federal tax purposes (except in the final or termination year).

COLUMNS 2, 3, AND 4 - Attach a detailed explanation of the allocation method used if there is no federal distributable net income, or, if the percentages do not agree with the relative shares indicated on Form 1041, Schedules B and K-1.

COLUMN 4 - The amount after each name is reported as a modification, either an addition to or subtraction from federal taxable income. Each resident beneficiary should add the explanation: "fiduciary adjustment - (name of estate or trust)". A copy of this schedule (or its information) must be provided to each resident beneficiary. The fiduciary's share of the adjustment is entered on line 4 of page 1.

30842181

MENSCH01017

Tax Return Summary

For calendar year 2019, or tax year beginning

, and ending

FLORENCE PETRAK MENSCH ESTATE

Income

Interest		
Dividends	62	
Schedule C - business income / loss		
Schedule D - capital gains / losses	314	
Schedule E - rents / royalties / partnerships		
Schedule F - farm income / loss		
Form 4797 - ordinary income		
Other income	18,027	
Total income		18,403

Deductions

Interest (* includes investment interest)	11,149	
Charitable deduction		
Other deductions	6,947	
Income distribution deduction		
Estate tax deduction		
Qualified business income deduction		
Exemption	600	
Total deductions		18,696
Taxable income		-293

Taxes / Credits

Tax on taxable income		
Alternative minimum tax		
Foreign tax credit		
Other credits		
Other taxes	12	
Total tax		12

Payments

Estimated tax payments		
Tax withheld	205	
Other payments		
Total payments		205

Adjustments

Estimated tax penalty		
Applied to next year's estimated tax		
Interest on late payments		
Failure to file penalty		
Failure to pay penalty		
Total adjustments		

Balance due

Refund

193

Next Year's Estimates

1st quarter	
2nd quarter	
3rd quarter	
4th quarter	
Total	

Qualified dividends to:

Beneficiaries	
Estate or trust	47
Accounting income	-7
Distributable net income	

Miscellaneous Information

Amended return	
Estimated payments allocated to beneficiaries	
Number of beneficiaries	
Number of Schedule(s) K-1	
Return due date	07/15/20

Form **8879-F**Department of the Treasury
Internal Revenue Service

Name of estate or trust

IRS e-file Signature Authorization for Form 1041

For calendar year 2019, or fiscal year beginning _____, ending _____

▶ Don't send to the IRS. Keep for your records.

▶ Go to www.irs.gov/Form8879F for the latest information.

OMB No. 1545-0087

2019

Employer identification number

FLORENCE PETRAK MENSCH ESTATE

Name and title of fiduciary

**SHAUNA MENSCH WADDELL
PERSONAL REPRESENTATIVE****Part I Tax Return Information (Whole Dollars Only)**

1	Total income (Form 1041, line 9)	1	18,403
2	Income distribution deduction (Form 1041, line 18)	2	
3	Taxable income (Form 1041, line 23)	3	-293
4	Total tax (Form 1041, line 24)	4	12
5	Tax due or overpayment (Form 1041, line 28 or 29)	5	-193

Part II Declaration and Signature Authorization of Fiduciary (Be sure to get a copy of the estate's or trust's return)

Under penalties of perjury, I declare that I am a fiduciary of the above estate or trust and that I have examined a copy of the estate's or trust's 2019 electronic income tax return and accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts shown on the copy of the estate's or trust's electronic income tax return. I consent to allow my electronic return originator (ERO), transmitter, or intermediate service provider to send the estate's or trust's return to the IRS and to receive from the IRS (a) an acknowledgment of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of the estate's or trust's federal taxes owed on this return, and the financial institution to debit the entry to this account. To revoke a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537 no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I have selected a personal identification number (PIN) as my signature for the estate's or trust's electronic income tax return and, if applicable, the estate's or trust's consent to electronic funds withdrawal.

Fiduciary's PIN: check one box only

☒ I authorize **STOKES & COMPANY, CPAS, PC** to enter my PIN [REDACTED] as my signature
ERO firm name Don't enter all zeros
on the estate's or trust's 2019 electronically filed income tax return.

☐ As a fiduciary or officer representing the fiduciary of the estate or trust, I will enter my PIN as my signature on the estate's or trust's 2019 electronically filed income tax return.

Signature of
fiduciary or officer
representing
the fiduciary ▶**SHAUNA MENSCH WADDELL**Date ▶ **05/26/20****Part III Certification and Authentication**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN.

Don't enter all zeros

I certify that the above numeric entry is my PIN, which is my signature on the 2019 electronically filed income tax return for the estate or trust indicated above. I confirm that I am submitting this return in accordance with the requirements of Pub. 3112, IRS e-file Application and Participation; and Pub. 4164, Modernized e-file (MeF) Guide for Software Developers and Transmitters, Processing Year 2020.

ERO's signature ▶ **ALLEN A. HODGES, CPA**Date ▶ **05/26/20**

ERO Must Retain This Form — See Instructions
Don't Submit This Form to the IRS Unless Requested To Do So

For Paperwork Reduction Act Notice, see instructions.

Form **8879-F** (2019)

Department of the Treasury—Internal Revenue Service

Form **1041** U.S. Income Tax Return for Estates and Trusts

2019

OMB No. 1545-0092

Go to www.irs.gov/Form1041 for instructions and the latest information.

A Check all that apply: ☒ Decedent's estate ☐ Simple trust ☐ Complex trust ☐ Qualified disability trust ☐ ESBT (S portion only) ☐ Grantor type trust ☐ Bankruptcy estate—Ch. 7 ☐ Bankruptcy estate—Ch. 11 ☐ Pooled income fund		For calendar year 2019 or fiscal year beginning _____, and ending _____ Name of estate or trust (If a grantor type trust, see the instructions.) FLORENCE PETRAK MENSCH ESTATE Name and title of fiduciary SHAUNA MENSCH WADDELL, PERSONAL REPRESENTATIVE Number, street, and room or suite no. (If a P.O. box, see the instructions.) 402 PLANTERS WALK DRIVE City or town, state or province, country, and ZIP or foreign postal code EASLEY SC 29642		C Employer identification number D Date entity created 04/26/2018 E Nonexempt charitable and split-interest trusts, check applicable box(es). See instructions. ☐ Described in sec. 4947(a)(1). Check here if not a private foundation ☐ ☐ Described in sec. 4947(a)(2)	
B Number of Schedules K-1 attached (see instructions) 1		F Check applicable boxes: ☐ Initial return ☐ Final return ☐ Amended return ☐ Change in trust's name ☐ Change in fiduciary ☐ Change in fiduciary's name		☐ Net operating loss carryback ☐ Change in fiduciary's address	
G Check here if the estate or filing trust made a section 645 election ☐ Trust TIN 1					
Income	1 Interest income				1
	2a Total ordinary dividends				2a 62
	b Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust 47				
	3 Business income or (loss). Attach Schedule C (Form 1040 or 1040-SR)				3
	4 Capital gain or (loss). Attach Schedule D (Form 1041)				4 314
	5 Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040 or 1040-SR)				5
	6 Farm income or (loss). Attach Schedule F (Form 1040 or 1040-SR)				6
	7 Ordinary gain or (loss). Attach Form 4797				7
	8 Other income. List type and amount SEE STATEMENT 1				8 18,027
9 Total income. Combine lines 1, 2a, and 3 through 8				9 18,403	
Deductions	10 Interest. Check if Form 4952 is attached ☐				10 11,149
	11 Taxes				11 6,947
	12 Fiduciary fees. If only a portion is deductible under section 67(e), see instructions				12
	13 Charitable deduction (from Schedule A, line 7)				13
	14 Attorney, accountant, and return preparer fees. If only a portion is deductible under section 67(e), see instructions				14
	15a Other deductions (attach schedule). See instructions for deductions allowable under section 67(e)				15a
	b Net operating loss deduction. See instructions				15b
	16 Add lines 10 through 15b				16 18,096
	17 Adjusted total income or (loss). Subtract line 16 from line 9				17 307
	18 Income distribution deduction (from Sch. B, line 15). Attach Schedules K-1 (Form 1041)				18
	19 Estate tax deduction including certain generation-skipping taxes (attach computation)				19
	20 Qualified business income deduction. Attach Form 8995 or 8995-A				20
21 Exemption				21 600	
22 Add lines 18 through 21				22 600	
Tax and Payments	23 Taxable income. Subtract line 22 from line 17. If a loss, see instructions				23 -293
	24 Total tax (from Schedule G, Part I, line 9)				24 12
	25 2019 net 965 tax liability paid from Form 965-A, Part II, column (k), line 3				25
	26 Total payments (from Schedule G, Part II, line 17)				26 205
	27 Estimated tax penalty. See instructions				27
	28 Tax due. If line 26 is smaller than the total of lines 24, 25, and 27, enter amount owed				28
	29 Overpayment. If line 26 is larger than the total of lines 24, 25, and 27, enter amount overpaid				29 193
	30 Amount of line 29 to be: a Credited to 2020 ; b Refunded				30 193
Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.					
Signature of fiduciary or officer representing fiduciary _____ Date _____ EIN of fiduciary if a financial institution ☒ Yes ☐ No					
Print/Type preparer's name _____ Preparer's signature _____ Date _____ Check ☐ if self-employed PTIN _____ ALLEN A. HODGES, CPA ALLEN A. HODGES, CPA 06/03/20 *****					
Preparer Use Only Firm's name STOKES & COMPANY, CPAS, PC Firm's EIN 15 HALTON GREEN WAY GREENVILLE, SC 29607-6606 Phone no. 864-242-1418					

For Paperwork Reduction Act Notice, see the separate instructions.

Form 1041 (2019)

Schedule A Charitable Deduction. Don't complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income. See instructions	1	
2	Tax-exempt income allocable to charitable contributions. See instructions	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. See instructions	6	
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7	

Schedule B Income Distribution Deduction

1	Adjusted total income. See instructions	1	
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	
7	Distributable net income. Combine lines 1-6. If zero or less, enter -0-	7	
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8	
9	Income required to be distributed currently	9	
10	Other amounts paid, credited, or otherwise required to be distributed	10	
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11	
12	Enter the amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	

Schedule G Tax Computation and Payments (see instructions)**Part I — Tax Computation**

1	Tax:		
a	Tax on taxable income. See instructions	1a	
b	Tax on lump-sum distributions. Attach Form 4972	1b	
c	Alternative minimum tax (from Schedule I (Form 1041), line 54)	1c	0
d	Total. Add lines 1a through 1c	1d	0
2a	Foreign tax credit. Attach Form 1116	2a	
b	General business credit. Attach Form 3800	2b	
c	Credit for prior year minimum tax. Attach Form 8801	2c	
d	Bond credits. Attach Form 8912	2d	
e	Total credits. Add lines 2a through 2d	2e	0
3	Subtract line 2e from line 1d. If zero or less, enter -0-	3	0
4	Tax on the ESBT portion of the trust (from ESBT Tax Worksheet, line 17). See instructions	4	
5	Net investment income tax from Form 8960, line 21	5	12
6	Recapture taxes. Check if from: ☐ Form 4255 ☐ Form 8611	6	
7	Household employment taxes. Attach Schedule H (Form 1040 or 1040-SR)	7	
8	Other taxes and amounts due	8	
9	Total tax. Add lines 3 through 8. Enter here and on page 1, line 24	9	12

Part II — Payments

10	2019 estimated tax payments and amount applied from 2018 return	10	
11	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	11	
12	Subtract line 11 from line 10	12	
13	Tax paid with Form 7004. See instructions	13	0
14	Federal income tax withheld. If any is from Form(s) 1099, check here ☒	14	205
15	2019 net 965 tax liability from Form 965-A, Part I, column (f), line 3	15	
16	Other payments: a Form 2439 ; b Form 4136 ; Total	16c	
17	Total payments. Add lines 12 through 15 and 16c. Enter here and on page 1, line 26	17	205

Other Information

	Yes	No
1 Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends ► \$		X
2 Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		X
3 At any time during calendar year 2019, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country ►		X
4 During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions		X
5 Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see the instructions for the required attachment		X
6 If this is an estate or a complex trust making the section 663(b) election, check here. See instructions	☐	
7 To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here. See instructions	☐	
8 If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here	☐	
9 Are any present or future trust beneficiaries skip persons? See instructions		X
10 Was the trust a specified domestic entity required to file Form 8938 for the tax year (see the instructions for Form 8938)?		X
11a Did the estate or trust distribute S corporation stock for which it made a section 965(i) election?		X
b If "Yes," did each beneficiary enter into an agreement to be liable for the net tax liability? See instructions		
12 Did the estate or trust make a section 965(i) election for S corporation stock held on the last day of the tax year? See instructions		X
13 ESBTs only. Does the ESBT have a nonresident alien grantor? If "Yes," see instructions		
14 ESBTs only. Did the S portion of the trust claim a qualified business income deduction? If "Yes," see instructions		

Form **1041** (2019)

**SCHEDULE D
(Form 1041)**Department of the Treasury
Internal Revenue Service

Name of estate or trust

Capital Gains and Losses

▶ Attach to Form 1041, Form 5227, or Form 990-T.

▶ Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9 and 10.

▶ Go to www.irs.gov/F1041 for instructions and the latest information.

OMB No. 1545-0092

2019

Employer identification number

FLORENCE PETRAK MENSCH ESTATE

Did you dispose of any investment(s) in a qualified opportunity fund during the tax year?

☐ Yes☒ No

If "Yes," attach Form 8949 and see its instructions for additional requirements for reporting your gain or loss.

Note: Form 5227 filers need to complete *only* Parts I and II.**Part I Short-Term Capital Gains and Losses - Generally Assets Held One Year or Less (See instructions)**See instructions for how to figure the amounts to enter on the lines below.
This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked				
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				
4 Short-term capital gain or (loss) from Forms 4684, 6252, 6781, and 8824				4
5 Net short-term gain or (loss) from partnerships, S corporations, and other estates or trusts				5
6 Short-term capital loss carryover. Enter the amount, if any, from line 9 of the 2018 Capital Loss Carryover Worksheet				6 ()
7 Net short-term capital gain or (loss). Combine lines 1a through 6 in column (h). Enter here and on line 17, column (3) on the back				7

Part II Long-Term Capital Gains and Losses - Generally Assets Held More Than One Year (See instructions)See instructions for how to figure the amounts to enter on the lines below.
This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked				
9 Totals for all transactions reported on Form(s) 8949 with Box E checked				
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				
11 Long-term capital gain or (loss) from Forms 2439, 4684, 6252, 6781, and 8824				11
12 Net long-term gain or (loss) from partnerships, S corporations, and other estates or trusts				12
13 Capital gain distributions SEE STATEMENT 2				13 314
14 Gain from Form 4797, Part I				14
15 Long-term capital loss carryover. Enter the amount, if any, from line 14 of the 2018 Capital Loss Carryover Worksheet				15 ()
16 Net long-term capital gain or (loss). Combine lines 8a through 15 in column (h). Enter here and on line 18a, column (3) on the back				16 314

For Paperwork Reduction Act Notice, see the Instructions for Form 1041.

Schedule D (Form 1041) 2019

Schedule D (Form 1041) 2019 **FLORENCE PETRAK MENSCH ESTATE**Page **2**

Part III Summary of Parts I and II Caution: Read the instructions before completing this part.		(1) Beneficiaries' (see instr.)	(2) Estate's or trust's	(3) Total
17	Net short-term gain or (loss)	17		
18	Net long-term gain or (loss):			
a	Total for year	18a	314	314
b	Unrecaptured section 1250 gain (see line 18 of the worksheet.)	18b		
c	28% rate gain	18c		
19	Total net gain or (loss). Combine lines 17 and 18a	19	314	314

Note: If line 19, column (3), is a net gain, enter the gain on Form 1041, line 4 (or Form 990-T, Part I, line 4a). If lines 18a and 19, column (2), are net gains, go to Part V, and don't complete Part IV. If line 19, column (3), is a net loss, complete Part IV and the **Capital Loss Carryover Worksheet**, as necessary.

Part IV Capital Loss Limitation		
20	Enter here and enter as a (loss) on Form 1041, line 4 (or Form 990-T, Part I, line 4c, if a trust), the smaller of:	20
a	The loss on line 19, column (3) or b \$3,000	

Note: If the loss on line 19, column (3), is more than \$3,000, or if Form 1041, page 1, line 23 (or Form 990-T, line 39), is a loss, complete the **Capital Loss Carryover Worksheet** in the instructions to figure your capital loss carryover.

Part V Tax Computation Using Maximum Capital Gains Rates	

Form 1041 filers. Complete this part **only** if both lines 18a and 19 in column (2) are gains, or an amount is entered in Part I or Part II and there is an entry on Form 1041, line 2b(2), and Form 1041, line 23, is more than zero.

Caution: Skip this part and complete the **Schedule D Tax Worksheet** in the instructions if:

- Either line 18b, col. (2) or line 18c, col. (2) is more than zero, or
- Both Form 1041, line 2b(1), and Form 4952, line 4g are more than zero.

Form 990-T trusts. Complete this part **only** if both lines 18a and 19 are gains, or qualified dividends are included in income in Part I of Form 990-T, and Form 990-T, line 39, is more than zero. Skip this part and complete the **Schedule D Tax Worksheet** in the instructions if either line 18b, col. (2) or line 18c, col. (2) is more than zero.

21	Enter taxable income from Form 1041, line 23 (or Form 990-T, line 39)	21	
22	Enter the smaller of line 18a or 19 in column (2) but not less than zero	22	
23	Enter the estate's or trust's qualified dividends from Form 1041, line 2b(2) (or enter the qualified dividends included in income in Part I of Form 990-T)	23	
24	Add lines 22 and 23	24	
25	If the estate or trust is filing Form 4952, enter the amount from line 4g; otherwise, enter -0-	25	
26	Subtract line 25 from line 24. If zero or less, enter -0-	26	
27	Subtract line 26 from line 21. If zero or less, enter -0-	27	
28	Enter the smaller of the amount on line 21 or \$2,650	28	
29	Enter the smaller of the amount on line 27 or line 28	29	
30	Subtract line 29 from line 28. If zero or less, enter -0-. This amount is taxed at 0%	30	
31	Enter the smaller of line 21 or line 26	31	
32	Subtract line 30 from line 26	32	
33	Enter the smaller of line 21 or \$12,950	33	
34	Add lines 27 and 30	34	
35	Subtract line 34 from line 33. If zero or less, enter -0-	35	
36	Enter the smaller of line 32 or line 35	36	
37	Multiply line 36 by 15% (0.15)	37	
38	Enter the amount from line 31	38	
39	Add lines 30 and 36	39	
40	Subtract line 39 from line 38. If zero or less, enter -0-	40	
41	Multiply line 40 by 20% (0.20)	41	
42	Figure the tax on the amount on line 27. Use the 2019 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the instructions for Form 1041)	42	
43	Add lines 37, 41, and 42	43	
44	Figure the tax on the amount on line 21. Use the 2019 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the instructions for Form 1041)	44	
45	Tax on all taxable income. Enter the smaller of line 43 or line 44 here and on Form 1041, Schedule G, Part I, line 1a (or Form 990-T, line 41)	45	

Schedule D (Form 1041) 2019

Form **8960**Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on your tax return

**Net Investment Income Tax—
Individuals, Estates, and Trusts**

▶ Attach to your tax return.

▶ Go to www.irs.gov/Form8960 for instructions and the latest information.

OMB No. 1545-2227

2019Attachment
Sequence No. **72**

Your social security number or EIN

FLORENCE PETRAK MENSCH ESTATE**Part I Investment Income**

- ☐ Section 6013(g) election (see instructions)
- ☐ Section 6013(h) election (see instructions)
- ☐ Regulations section 1.1411-10(g) election (see instructions)

1	Taxable interest (see instructions)	1	
2	Ordinary dividends (see instructions)	2	62
3	Annuities (see instructions)	3	
4a	Rental real estate, royalties, partnerships, S corporations, trusts, etc. (see instructions)	4a	
b	Adjustment for net income or loss derived in the ordinary course of a non-section 1411 trade or business (see instructions)	4b	
c	Combine lines 4a and 4b	4c	
5a	Net gain or loss from disposition of property (see instructions)	5a	314
b	Net gain or loss from disposition of property that is not subject to net investment income tax (see instructions)	5b	
c	Adjustment from disposition of partnership interest or S corporation stock (see instructions)	5c	
d	Combine lines 5a through 5c	5d	314
6	Adjustments to investment income for certain CFCs and PFICs (see instructions)	6	
7	Other modifications to investment income (see instructions)	7	
8	Total investment income. Combine lines 1, 2, 3, 4c, 5d, 6, and 7	8	376

Part II Investment Expenses Allocable to Investment Income and Modifications

9a	Investment interest expenses (see instructions)	9a	
b	State, local, and foreign income tax (see instructions)	9b	
c	Miscellaneous investment expenses (see instructions)	9c	
d	Add lines 9a, 9b, and 9c	9d	
10	Additional modifications (see instructions)	10	62
11	Total deductions and modifications. Add lines 9d and 10	11	62

Part III Tax Computation

12	Net investment income. Subtract Part II, line 11, from Part I, line 8. Individuals, complete lines 13-17. Estates and trusts, complete lines 18a-21. If zero or less, enter -0-	12	314
Individuals:			
13	Modified adjusted gross income (see instructions)	13	
14	Threshold based on filing status (see instructions)	14	
15	Subtract line 14 from line 13. If zero or less, enter -0-	15	
16	Enter the smaller of line 12 or line 15	16	
17	Net investment income tax for individuals. Multiply line 16 by 3.8% (0.038). Enter here and include on your tax return (see instructions)	17	
Estates and Trusts:			
18a	Net investment income (line 12 above)	18a	314
b	Deductions for distributions of net investment income and deductions under section 642(c) (see instructions)	18b	
c	Undistributed net investment income. Subtract line 18b from 18a (see instructions). If zero or less, enter -0-	18c	314
19a	Adjusted gross income (see instructions)	19a	17,803
b	Highest tax bracket for estates and trusts for the year (see instructions)	19b	12,750
c	Subtract line 19b from line 19a. If zero or less, enter -0-	19c	5,053
20	Enter the smaller of line 18c or line 19c	20	314
21	Net investment income tax for estates and trusts. Multiply line 20 by 3.8% (0.038). Enter here and include on your tax return (see instructions)	21	12

For Paperwork Reduction Act Notice, see your tax return instructions.

Form **8960** (2019)

Federal Statements

FYE: 12/31/2019

Statement 1 - Form 1041, Page 1, Line 8 - Other Income

Description	Amount
G.E. PENSION TRUST	\$ 18,027
TOTAL	\$ 18,027

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Federal Statements

FYE: 12/31/2019

Statement 2 - Schedule D, Part II, Line 13 - Capital Gain Distributions

Description	Amount
ELFUN TRUSTS FUND	\$ 314
TOTAL	\$ 314

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Form 1041	Accounting Income and Distributable Net Income Detail Information Worksheet	2019
For calendar year 2019, or tax year beginning _____, and ending _____		

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

Income	Accounting Income	Distributable Net Income
Interest income	62	62
Dividend income	62	62
Business income / loss	314	314
Capital gain / loss	18,027	18,027
Rents, royalties, partnerships, other estates and trusts	18,027	18,027
Farm income / loss	18,027	18,027
Ordinary gain / loss	18,027	18,027
Other income	18,027	18,027
Deductions		
Interest expense	11,149	11,149
Less: Allocated to tax-exempt income	()	()
Taxes	6,947	6,947
Less: Allocated to tax-exempt income	()	()
Fiduciary fees	()	()
Less: Allocated to tax-exempt income	()	()
Charitable deduction	()	()
Attorney / Accountant fees	()	()
Less: Allocated to tax-exempt income	()	()
Other deductions	()	()
Less: Allocated to tax-exempt income	()	()
Miscellaneous deductions	()	()
Less: Allocated to tax-exempt income	()	()
Taxable income	-7	307
Net gain shown on Schedule D, line 19, column (1)	-7	307
Enter amount from Schedule A, line 4	-7	307
Long-term capital gain included on Schedule A, line 1	-7	307
Short-term capital gain included on Schedule A, line 1	-7	307
Capital loss from Form 1041 page 1, line 4	-7	307
Less capital gain from Form 1041 page 1, line 4	-7	307
Net taxable income	-7	307
Tax-Exempt Income		
Interest, dividends, and other nontaxable income	()	()
Allocated direct expenses	()	()
Allocated indirect expenses	()	()
Net tax-exempt income	()	()
Subtotal	-7	307
Additions: Items not on the return affecting accounting income	()	()
Subtractions: Items on the return not affecting accounting income	()	()
Total. Net taxable income plus estate tax deduction and net tax-exempt income	-7	307

Summary

Accounting Income		Distributable Net Income	
Taxable income	-7	Taxable income	307
Tax-exempt income	-7	Tax-exempt interest and dividends	()
Net accounting income	-7	Distributable net income	307

Form 1041	Allocation of Expenses by Income Type Tax Basis	2019
For calendar year 2019, or tax year beginning _____, and ending _____		

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Income			15	47	
Less deductions:					
Interest			9	29	
Taxes			6	18	
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions			15	47	
Subtotal					
Reclassified losses					
Net income (Calculated)					
Net income (Force)					

	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT / QSST
Income	18,027				
Less deductions:					
Interest	11,111				
Taxes	6,923				
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions	18,034				
Subtotal	-7				
Reclassified losses	7				
Net income (Calculated)					
Net income (Force)					

	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Other Nontaxable	Tax-Exempt
Income		314			
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions					
Net income (Calculated)		314			
Net income (Force)					

Form 1041	Allocation of Expenses by Income Type Accounting Income Basis	2019
For calendar year 2019, or tax year beginning _____, and ending _____		

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Income			15	47	
Less deductions:					
Interest			9	29	
Taxes			6	18	
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions			15	47	
Additions					
Subtractions					
Subtotal					
Reclassified losses					
Net income (Calculated)					

Net income (Force)

	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT / QSST
Income	18,027				
Less deductions:					
Interest	11,111				
Taxes	6,923				
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions	18,034				
Additions					
Subtractions					
Subtotal	-7				
Reclassified losses	7				
Net income (Calculated)					

Net income (Force)

	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Other Nontaxable	Tax-Exempt
Income					
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions					
Additions					
Subtractions					
Net income (Calculated)					

Net income (Force)

Form 8960	Net Investment Income Distributions Worksheet	2019
For calendar year 2019, or tax year beginning _____, and ending _____		

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

Income:	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Investment income			15	47	
Adjustments					
Total investment income			15	47	
Less deductions:					
Investment interest					
State taxes					
Charitable deduction					
Other deductions			15	47	
Total deductions			15	47	
Net investment income					
Distributed to beneficiaries					
Undistributed					

Income:	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT
Investment income					
Adjustments					
Total investment income					
Less deductions:					
Investment interest					
State taxes					
Charitable deduction					
Other deductions					
Total deductions					
Net investment income					
Distributed to beneficiaries					
Undistributed					

Income:	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Total
Investment income		314		
Adjustments				
Total investment income		314		376
Less deductions:				
Investment interest				
State taxes				
Charitable deduction				
Other deductions				62
Total deductions				62
Net investment income		314		314
Distributed to beneficiaries				
Undistributed		314		314

Form 1041	Two Year Comparison Worksheet For 2018 and 2019	2019

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

		2018	2019	Differences
Income	Interest income			
	Ordinary dividends		62	62
	Business income / loss			
	Capital gain / loss		314	314
	Rent, royalty, farm rental			
	Partnerships, S corporations			
	Trust, estate			
	Farm income / loss			
	Ordinary gain / loss			
	Other income	12,018	18,027	6,009
	Total income	12,018	18,403	6,385
Deductions	Interest	6,383	11,149	4,766
	Taxes	10,000	6,947	-3,053
	Fiduciary fees			
	Charitable deduction			
	Attorney, accountant			
	Other deductions, qualified business income deduction			
	Reserved			
	Income distribution deduction			
	Estate tax deduction			
	Exemption	600	600	
	Total deductions	16,983	18,696	1,713
Taxes and Payments	Taxable income	-4,965	-293	4,672
	Tax on taxable income			
	Alternative minimum tax			
	Foreign tax credit			
	Other taxes		12	12
	Other credits			
	Estimated tax payments			
	Tax withheld		205	205
	Other payments			
	Estimated tax penalty			
	Other penalties			
	Tax due			
Other Information	Overpayment		193	193
	Qualified dividends		47	47
	Adjusted tax-exempt interest			
	Distributable net income			
Form 5227	Accounting income	-25,397	-7	25,390
	Distributions			
	Undistributed ordinary income			
	Undistributed capital gain / loss			
	Undistributed nontaxable income			

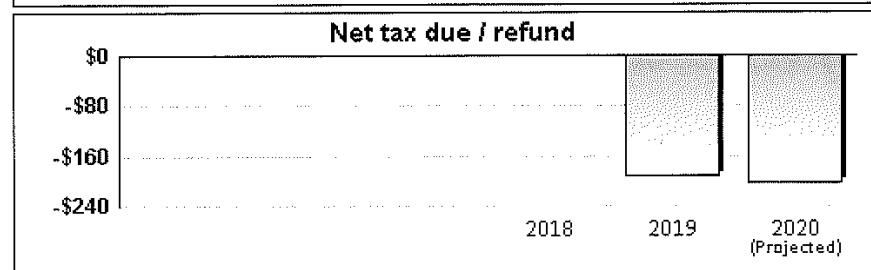
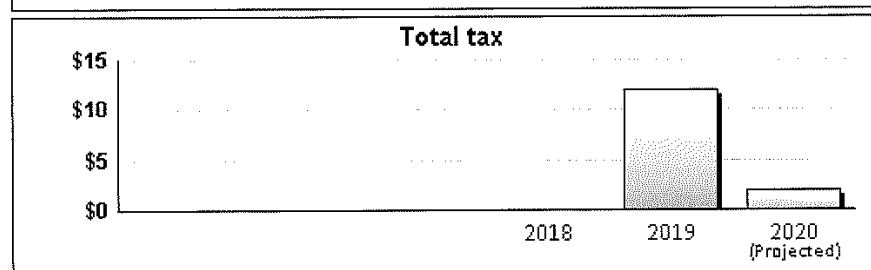
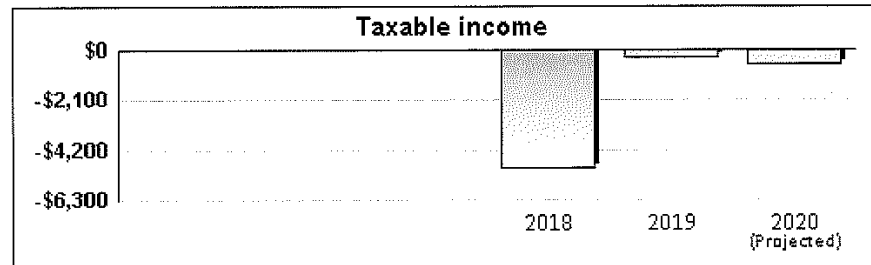
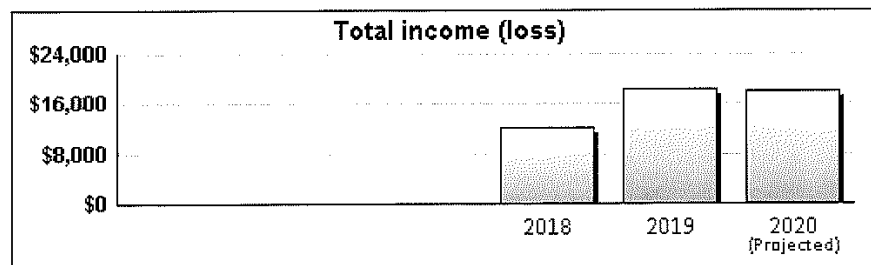
Form 1041	Tax Return History Report For calendar year 2019, or tax year beginning _____, and ending _____	2019

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

	2018	2019	2020 PROJECTED
Interest			
Dividends		62	62
Capital gain / loss		314	
Schedule E income / loss			
Other income / loss	12,018	18,027	18,027
Total income (loss)	12,018	18,403	18,089
Income distribution deduction			
Other deductions	16,383	18,096	18,096
Exemption	600	600	600
Total deductions	16,983	18,696	18,696
Taxable income	-4,965	-293	-607
Tax on taxable income		12	2
Other taxes			
Credits		12	2
Total tax		205	205
Payments			
Penalties			
Net tax due / refund		-193	-203
Marginal tax rate	%	%	%
Effective tax rate	%	%	%



Federal Statements

FYE: 12/31/2019

MENSCH01035

Dividend Income

Description	Total Dividends	Qualified Dividends
ELFUN TRUSTS FUND	\$ 62	\$ 47
TOTAL	\$ 62	\$ 47

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Federal Statements

FYE: 12/31/2019

Form 1041, Page 1, Line 10 - Interest

<u>Description</u>	<u>Amount</u>
MORTG INT - 512 NEW TARLETON	\$ <u>11,149</u>
SUBTOTAL	\$ <u>11,149</u>
PAGE 1 - INTEREST EXPENSE	\$ <u><u>11,149</u></u>

Form 1041, Page 1, Line 11 - Taxes

<u>Description</u>	<u>Amount</u>
512 NEW TARLETON WAY	\$ <u>6,947</u>
SUBTOTAL	\$ <u>6,947</u>
PAGE 1 - TAX EXPENSE	\$ <u><u>6,947</u></u>

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Form SC1041 Return Summary

For calendar year 2019, or tax year beginning

, and ending

FLORENCE PETRAK MENSCH ESTATE**Income**

Federal taxable income

Federal exemption

Modifications related to gains allocated to principal

Additions:

State and local interest

State / local taxes on fed. return

Federal net operating loss

Out-of state losses

Other additions

Total additions**Subtractions**

Interest on U.S. obligations

State / local refunds on fed. return

SC net operating loss

Active trade / business inc. ded.

Other subtractions

Total subtractions**Total adjustment**

Fiduciary adjustment from pass-through entities

Beneficiary portion of fiduciary adjustment

Fiduciary share of fiduciary adjustment

South Carolina exemption

Taxable income**Tax Computation**

Tax on taxable income

Tax on electing small business trust inc

Other taxes

Nonrefundable credits

Nonresident beneficiary withholding

Total tax

Extension payment and other credits

Estimated tax payments

Estimated tax penalty

Applied to next year's estimated tax

Total payments / application**Net tax****Additions to Tax**

Interest on late payments

Penalties

Total additions**Balance due****Refund****Next Year's Estimates**

1st quarter

2nd quarter

3rd quarter

4th quarter

Total**Miscellaneous Information**

Amended return

Estimated payments allocated to beneficiaries

Number of beneficiaries

Number of Schedule(s) K-1

Return / extended due date

Form 41, Balance due

07/15/20

1022



dor.sc.gov

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
FIDUCIARY INCOME TAX RETURN

SC1041
(Rev. 7/16/19)
3084

For the calendar year 2019 or Fiscal Taxable Year Beginning and ending **2019**

Name of estate or trust FLORENCE PETRAK MENSCH ESTATE		FEIN ▶ [REDACTED]	
Name and title of fiduciary SHAUNA MENSCH WADDELL PERSONAL REPRESENTATIVE	Mailing address 402 PLANTERS WALK DRIVE	City EASLEY	State SC
		ZIP 29642	County Code PICKENS

ATTACH COPY OF FEDERAL FORM 1041 AND ALL SCHEDULES, INCLUDING SCHEDULES K-1. Extension Requested: ☐ Yes ☐ No

A. Check all that apply: ☐ Address change ☐ Simple trust ☐ Amended return ☐ Complex trust ☐ Final return ☒ Estate ☐ Grantor trust ☐ Electing small business trust		B. Trusts - check if: ☐ Testamentary ☐ Inter vivos	C. Check if: ☒ Resident estate or trust ☐ Nonresident estate or trust	D. Was the final distribution of assets made during the year? ☐ Yes ☒ No

E. During this taxable year, was this estate or trust notified of any federal change for any prior years? ☐ Yes or ☒ No If yes, attach copy.
 F. Is a federal Schedule K-1 attached for each beneficiary? ☐ Yes or ☐ No If yes, how many? **N/A** If no, attach explanation.

If a nonresident estate or trust with income from both South Carolina and non South Carolina sources, complete and attach Part III, page 3 of SC1041.

1. Federal Taxable Income (Residents: Federal 1041; Nonresidents: Part III, line 22, column D)	1	00
2. Federal fiduciary exemption included in line 1 above	2	00
3. South Carolina modifications relating to gains allocated to principal or relating to other items not affecting federal distributable net income (attach explanation)	3	00
4. Fiduciary's share of SC fiduciary adjustment (from Part II, line 1i) ☐ Addition ☐ Subtraction	4	00
5. Net (add lines 1 through 4)	5	00
6. South Carolina fiduciary exemption (see instructions)	6	00
7. South Carolina taxable income (subtract line 6 from line 5)	7	00
8. South Carolina tax (see instructions for tax computation schedule)	8	00
9. Tax on Lump Sum Distribution (SC4972) and/or Active Trade or Business Income (I-335)	9	00
10. Less nonrefundable credits (attach SC1040TC)	10	00
11. Add lines 8-10 and enter the results but not less than zero	11	00
12. South Carolina income tax withheld for nonresident beneficiaries (from Part IV)	12	00
13. Total tax (add lines 11 and 12)	13	00
14. Amount paid with: (a) Extension ☐ 00 (b) SC withholding ☐ 00 Enter total	14	00
15. Estimated Tax Payments and Refundable Tax Credit		
(a) Estimated Tax payments	15a	00
(b) Amount applied from 2018 return	15b	00
(c) Motor Fuel Income Tax Credit	15c	00
Total (add lines 15a through 15c)	15	00
16. Total payments (add lines 14 and 15)	16	00
17. Overpayment (subtract line 13 from line 16)	17	00
18. Late filing and/or late payment: penalties ☐ 00 interest ☐ 00 Enter total here	18	00
19. Penalty for underpayment of Estimated Tax (Attach SC2210)	19	00
20. Balance (subtract line 16 from line 13. Add lines 18 and 19, if applicable) Pay in full to SCDOR BALANCE DUE	20	00
21. Amount of line 17 to be credited to 2020 Estimated Tax	21	00
22. Net refund (subtract line 21 from line 17 and enter the amount to be refunded) REFUND	22	00

I declare that this return and all attachments are true, correct, and complete to the best of my knowledge and belief.

Sign Here	Signature of fiduciary or officer representing fiduciary		Date	Taxpayer's email	
	I authorize the Director of the SCDOR or delegate to discuss this return, attachments, and related tax matters with the preparer.		Yes ☒ No ☐	Preparer's printed name ALLEN A. HODGES, CPA	
Paid Preparer's	Preparer's signature ALLEN A. HODGES, CPA	Date 06/03/20	Check if self-employed ☐	Preparer's phone number 864-242-1418	
	Firm's name (or yours if self-employed) and address STOKES & COMPANY, CPAS, PC 15 HALTON GREEN WAY GREENVILLE, SC	PTIN or FEIN *****	ZIP 29607-6606		

30841191

MENSCH01038

Name and FEIN on page 1 **FLORENCE PETRAK MENSCH ESTATE****Part I - SOUTH CAROLINA FIDUCIARY ADJUSTMENT**

		Adjustments to amount included in federal distributable net income	
1. Additions to federal taxable income:			
a. State and local interest	1a		
b. State or local taxes measured by income deducted on the federal return	1b		
c. Federal net operating loss carryover	1c		
d. Out-of state losses	1d		
e. Other additions to income (see instr.) - Attach an explanation	1e		
f. Total additions to federal income (add lines 1a through 1e)	1f		
2. Subtractions from federal taxable income			
a. Interest on US obligations	2a		
b. State Income Tax refunds reported as income on federal return	2b		
c. South Carolina net operating loss carryover (attach schedule)	2c		
d. Active Trade or Business Income Deduction (I-335, line 5)	2d		
e. Other subtractions from income (see instr.) - Attach an explanation	2e		
f. Total subtractions from federal taxable income (add lines 2a through 2e)	2f		
3. Total (subtract line 2f from line 1f)	3		
4. Fiduciary adjustment from other estates or trusts and partnership adjustment (attach schedule)	4		
5. South Carolina fiduciary adjustment (add lines 3 and 4) Addition ☐ or Subtraction ☐	5		0

Part II - ALLOCATION OF SOUTH CAROLINA FIDUCIARY ADJUSTMENT

Complete ONLY if Part I indicates a South Carolina fiduciary adjustment. It is allocated among all beneficiaries and the fiduciary in the same ratio as their relative shares of federal distributable net income. Nonresident beneficiaries see parts III and IV for computation of income.

1. Name of each beneficiary. Check box if beneficiary is a nonresident. All beneficiaries receiving federal K-1 must be listed. Use attachment if more than eight beneficiaries.	Social Security Number	Shares of Federal Distributable Net Income		4. Shares of South Carolina Fiduciary Adjustment Addition or Subtraction ☐ ☐ ☐
		2. Amount	3. Percent	
a.	☐		%	
b.	☐		%	
c.	☐		%	
d.	☐		%	
e.	☐		%	
f.	☐		%	
g.	☐		%	
h.	☐		%	
i. Fiduciary			%	
Totals			100%	

COLUMN 2 - Total federal distributable net income must be equal to the federal 1041, Schedule B, line 7.

COLUMN 3 - Indicate percentages with two numbers, such as 32%, 3.2% and .32%.

COLUMN 4 - Enter South Carolina fiduciary adjustment from Part I, line 5 as the total of Column 4. Multiply each percentage in Column 3 times the total in Column 4. Indicate at the top of Column 4 whether the adjustments are additions or subtractions. If the adjustment is a subtraction, it may not offset more than the amount reportable from the fiduciary for federal tax purposes (except in the final or termination year).

COLUMNS 2, 3, AND 4 - Attach a detailed explanation of the allocation method used if there is no federal distributable net income or if the percentages do not agree with the relative shares indicated on the federal 1041, Schedules B and K-1.

COLUMN 4 - The amount after each name is reported as a modification, either an addition to or subtraction from federal taxable income. Each resident beneficiary should add the explanation: "fiduciary adjustment - (name of estate or trust)". A copy of this schedule (or its information) must be provided to each resident beneficiary. The fiduciary's share of the adjustment is entered on page 1, line 4.

30842199

Form SC1041	SC Allocation of Expenses by Income Type	2019
For calendar year 2019, or tax year beginning _____, and ending _____		

Name FLORENCE PETRAK MENSCH ESTATE	Taxpayer Identification Number

	Interest	Dividends	Other
Total income		62	
Interest		38	
Taxes		24	
Fiduciary fees			
Charitable deduction			
Attorney and accountant fees			
Other deductions			
Reserved			
Total deductions		62	
Net income before loss reclassification			
Reclassified losses			
Net income			
Net income (Force)			

	Business	Rental Real Estate	Other Rental
Total income			
Interest			
Taxes			
Fiduciary fees			
Charitable deduction			
Attorney and accountant fees			
Other deductions			
Reserved			
Total deductions			
Net income before loss reclassification			
Reclassified losses			
Net income			
Net income (Force)			

	Short-Term Gains	Long-Term Gains
Total income		314
Interest		
Taxes		
Fiduciary fees		
Charitable deduction		
Attorney and accountant fees		
Other deductions		
Reserved		
Total deductions		
Net income		314
Net income (Force)		

Form SC1041	South Carolina Two Year Comparison Worksheet For 2018 and 2019	2019

Name

Taxpayer Identification Number

FLORENCE PETRAK MENSCH ESTATE

		2018	2019	Differences
Income	Federal taxable income	-4,965		4,965
	Federal exemption	600		-600
	Modifications related to gains allocated to principal			
	State and local interest			
	State / local taxes on federal return	7,810		-7,810
	Federal net operating loss			
	Out of state losses			
	Other additions			
	Total additions	7,810		-7,810
	Interest on U.S. obligations			
	State / local refunds on federal return			
	South Carolina net operating loss			
	Active trade / business income deduction			
	Other subtractions			
	Total subtractions			
	Total adjustments	7,810		-7,810
	Fiduciary adjustment from pass-through entity			
	Beneficiary portion of fiduciary adjustment			
	Fiduciary share of fiduciary adjustment	7,810		-7,810
Tax Computation	South Carolina exemption	600		-600
	Taxable income	2,845		-2,845
	Tax on taxable income			
	Tax on electing small business income			
	Lump sum distribution taxes			
	Active trade taxes			
	Nonrefundable credits			
	Nonresident beneficiary withholding			
	Total tax			
	Extension payment and other credits			
Additions to tax	Estimated tax payments			
	Estimated tax penalty			
	Applied to next year's estimated tax			
	Total payments			
	Interest on late payments			
	Late penalties			
	Total additions			
	Balance Due			
	Refund			

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Notice of Tax LienW-131
(Rev. 03/15/18)
2047SSN: [REDACTED]
Letter ID: L0006623950
Date Issued: May 18, 2018

2018041362

SC/TLIEN Book: MI 0138 Page: 0436 - 0437 2 Pgs

June 5, 2018 11:24:34 AM

Rec: \$10.00

FILED IN GREENVILLE COUNTY, SC *Timothy J. Ramsey***Lien Information:**

County:	GREENVILLE	Tax:	\$24,235.00
Tax Lien Number:	519199	Penalty:	\$1,944.31
Account ID:	[REDACTED] 9761	Interest:	\$1,105.35
Tax Type:	Individual	Court Costs:	\$1,374.23
Periods Covered:	12/31/16	Total:	\$28,658.89

Legal Name: MENSCH, FLORENCE
DBA/Second Name:
Transmit Address: 512 NEW TARLETON WAY GREER SC 29650-3253 USA
SSN: [REDACTED]

To: Any authorized representative of the SC Department of Revenue

The party named in this tax lien is liable for the assessed taxes set out above, along with any penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property, or chooses in action of the party necessary to satisfy the tax, penalty, and interest owed by the party, plus the fees, cost, and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.

Dated and signed under the seal of the SC Department of Revenue 05/18/2018

JP:221E:00104S:010IN:0A#:A0909116185J:0000056415

Taxpayers' Bill Of Rights

C-367 (Rev. 3/2/18) 6318

The Taxpayers' Bill of Rights outlines the rights of South Carolina taxpayers. Find the full text in Title 12, Chapter 58 of the South Carolina Code of Laws.

- You have the right to apply for assistance from the South Carolina Department of Revenue Taxpayers' Rights Advocate to facilitate a resolution for complaints and problems.
- You have the right to request and receive forms, instructions, information guides, and other written materials in plain and simple language.
- You have the right to receive notices with descriptions of the basis for and identification of any tax, interest and penalties due.

Contacting the South Carolina Department of Revenue

For the fastest service, use the phone number and mailing address on the front of this notice (if available).

- **Find general information, location information, and tax forms at .**
- **Manage your tax accounts online using our secure tax portal, MyDORWAY, at MyDORWAY.dor.sc.gov.**
- **Call toll-free 1-844-898-8542 for phone assistance and location information.**
- **If mailing information is not provided on your notice or form, for the fastest service:**
 - Mail payments to: SCDOR, PO Box 2535, Columbia, SC 29202-2535
 - Mail correspondence to: SCDOR, PO Box 125, Columbia, SC 29214-0400

Return Item	Amount as Adjusted
Federal Taxable Income	\$251,423.00
Total Additions to Federal Taxable Income	\$0.00
Total Subtractions to Federal Taxable Income	\$21,009.00
South Carolina Income Subject to Tax	\$230,414.00
Total South Carolina Tax	\$15,624.00
Child and Dependent Care	\$0.00
Two Wage Earner Credit	\$0.00
Other Non-Refundable Tax Credits (SC1040TC)	\$0.00
Total Non-Refundable Tax Credits	\$0.00
Total South Carolina Tax Less Non-Refundable Tax Credits	\$15,624.00
Withholding (W-2, 1099, I-290, SC41)	\$0.00
Declaration of Estimated Tax / Credit Carry Forward	\$0.00
Payment with Extension	\$0.00
Payment with Return	\$0.00
Tuition Tax Credit	\$0.00
Other Refundable Credits	\$0.00
Total Refundable Credits	\$0.00
Total Payments	\$0.00
Tax Due	\$15,624.00
Penalty	\$5,334.04
Interest	\$1,115.35
Overpayment	\$0.00
Use Tax	\$0.00
Credit to Estimated Tax	\$0.00
Refund	\$0.00

Specific Reasons for Adjustment

- Penalty was applied for failure to pay tax by the due date. The penalty is 1/2 of 1% of the tax due per month, not to exceed 25%. See SC Code Section 12-54-43(D) & (E) for more information.
- Penalty was applied for failure to file return by the due date. The penalty is 5% of the tax due per month, or part of a month, not to exceed 25%. See SC Code Section 12-54-43(C) for more information.
- Interest was applied at the prevailing federal rates.

MENSCH01044

Payment Credit History				
Credit Type	DLN	Effective Date	Amount	Total
Credit Carry Forward In				\$0.00
Payments	No payments on record.			\$0.00
Other Payments				\$0.00
Total				\$0.00

Payment Options

If you agree with the charges detailed on this notice and any enclosed explanations, the balance should be remitted to the SCDOR by 09/15/2020 to avoid additional penalties and interest, if applicable.

You have 2 payment options:

1. Pay online by credit card or electronic check using our free tax portal, MyDORWAY, at dor.sc.gov/pay. Select Bill Payment to get started.
2. Mail check or money order, along with the voucher from page 1 of this notice, to the address on the voucher.

Appeals

If you disagree with part or all of the proposed assessment, you may make an appeal by submitting a written protest within 90 days from the date of this proposed assessment. You have three options for submitting your appeal:

1. Complete a protest form (C-245) online using our free tax portal at MyDORWAY.dor.sc.gov. Sign in to your existing account or create an account to get started.
2. Download form C-245 at dor.sc.gov/forms and mail to the address below.
3. Mail a letter to the SCDOR with the following information:
 - Taxpayer's name (individual, corporation, etc.)
 - Taxpayer's identification number (Social Security, Federal Employer Identification, License, etc.)
 - Period for which the tax is proposed.
 - Type of tax in dispute (individual income, sales, etc.)
 - All of the reasons you disagree with the proposed adjustment.

Mail protest forms, along with any supporting documentation, to:

South Carolina Department of Revenue
PO Box 125
Columbia, SC 29214-0400

MENSCH01045

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Notice of Proposed Adjustment

I-266
(Rev. 04/06/20)
3048

SSN: [REDACTED]
Letter ID: L0015544109
Date Issued: August 07, 2020

FLORENCE MENSCH
402 PLANTERS WALK DR
EASLEY SC 29642-7840



The South Carolina Department of Revenue (SCDOR) has received your Individual Income Tax return for the tax year ending 12/31/2018. Compare the information included in this notice to the return you filed.

If you owe an additional amount, it must be paid by 09/15/2020 to avoid additional penalties and interest.

If there is a balance due, penalty and interest will continue to accrue each month, increasing your overall liability.

The following summarizes the status of this tax year.

Account Period Analysis	
Tax	\$15,624.00
Penalty	\$5,334.04
Interest	\$1,115.35
Credits/Payments	\$0.00
Balance	\$22,073.39

If you have questions, call 1-844-898-8542. See page 2 for additional SCDOR resources.

This demand for payment is not applicable if you are currently in bankruptcy proceedings under Title 11 of the U.S. Code. Any monies due will be sought in accordance with the provisions of Title 11.

cut along dotted line

1350



SC DEPARTMENT OF REVENUE
Bill Payment

C-370
(Rev. 06/14/18)
6370

Pay online for free at MyDORWAY.dor.sc.gov.

Vouchers and payments may also be mailed to:

South Carolina Department of Revenue
P.O. Box 2535
Columbia, SC 29202-2535

MENSCH, FLORENCE

Media 355961650
SSN [REDACTED]
Pay By 09/15/2020
Amount Due \$22,073.39

Balance Remitted

63701023 01 000355961650 00 00 00000000 00002207339

5



MENSCH01046

Exhibit C

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE MATTER OF THE ESTATE)
OF FLORENCE PETRAK MENSCH)

John R. Mensch and Shauna M. Waddell,)

Petitioner,)

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

AFFIDAVIT OF JOHN R. MENSCH

Personally appeared before me, John R. Mensch, who, after being duly sworn, states as follows:

1. I am familiar with the facts and circumstances of this case and I am competent to testify as to the following matters.
2. I live in West Linn, Oregon and work at Shea Wine Cellars in Newberg, Oregon.
3. I am the biological son of Florence Petrak Mensch ("Decedent") and a beneficiary under her Will.
4. I have two siblings, who are also the biological children of Florence Petrak Mensch and their names are Shauna Waddell ("Shauna") and Sterling Raymond Mensch, III ("Sterling").

5. Shauna and I have incurred attorneys fees in excess of \$15,000.00, all of which have been and will continue to be incurred as a result of Sterling's refusal to provide information related to my mother's estate.
6. The Court issued an Order, attached to this Affidavit as **Exhibit A**, which required Sterling to produce an accounting of all receipts, disbursements and transactions conducted on behalf of the principal from May 17, 2010 until my mother's death on April 26, 2018, along with supporting documentation for such.
7. Sterling produced some information after such Order was issued, but has failed to produce all of the information, and has intentionally withheld key information that may prove that Sterling Mensch took money from Florence Mensch in violation of the Power of Attorney, specifically account statements for an account ending in 3259. Upon review of the transfers to this account from the bank statements that were provided, it appears that Sterling transferred at least \$700,000.00 from my mother's Bank of America checking account to this account ending in 3259.
8. On April 23, 2019, three days before my mother passed away and when it was obvious that my mother was very close to death, Sterling transferred \$259,000.00 from my mother's retirement account, which would have passed to the three children, to her checking account on which he is listed as POA and possibly as an owner. He did not include the checking account on the inventory of the estate or on the "non-probate property inventory." From the time of her death until February 18, 2019, he proceeded to transfer funds to this mysterious checking account ending in 3259, in the amount of

\$149,048.64. A risk of loss to the estate continues to exist as long as the Court allows Sterling to maintain control of the assets of the Estate.

9. The following is a list of information and transactions that Sterling has failed to account for or provide the necessary documentation for:

- a. 157 online account transfers were made from the Bank of America account of Florence Mensch, account number ending in 7059, to an account "CHK 3259". The net amount transferred from Florence Mensch's checking account 7059 into "CHK 3259" between August 6, 2013 and February 2, 2019 was \$706,274.12. Sterling has failed to account for these amounts or provide statements for checking account 3259.
- b. Florence Mensch's Bank of America Account checking account (ending in 7059) statements for the period May 7, 2010 through July 2, 2012.
- c. 108 checks were written from 7/13/12 – 5/22/15 for which there were no copies in the Bank of America statements. The total amount of these checks was \$263,555.45. It is impossible to know what these transactions were for since Sterling did not include an explanation or accounting of these amounts.
- d. Five online banking payments were made to account "CRD 8295" between December 11, 2013 and June 12, 2015 for a total amount of \$7,377.40. Sterling has failed to account for these transactions and failed to disclose the identity of owner of "CRD 8295" and has failed to provide an explanation of these five payments made to "CRD 8295."
- e. An online transfer was made to account "CHK 7581" on February 5, 2014 for \$700. Sterling has failed to identify the owner of account CHK 7581 and the purpose of the payment to account "CHK 7581."
- f. The identity of the recipient of Online banking transfer Conf# 1mtzp9zar Mensch in the amount of \$1,000 made on May 1, 2014. Sterling has also failed to provide an explanation for this transfer.
- g. The identity of the recipient Online banking transfer Conf# o1mgv7pt4; Mensch in the amount of \$800 made on July 11, 2014. Sterling has also failed to provide an explanation for this transfer.

- h. The identity of the recipient Online banking transfer Conf# 18605b3yq; Mensch in the amount of \$1,000 made on January 9, 2015. Sterling has also failed to provide an explanation for this transfer.
- i. The identity of the recipient Online banking transfer Conf# d8sqblio; Mensch in the amount of \$1,000 made on January 12, 2015. Sterling has also failed to provide an explanation for this transfer.
- j. The identity of the recipient Online banking transfer Conf# 1d9o9iio2; Mensch in the amount of \$1,000 made on January 28, 2015. Sterling has also failed to provide an explanation for this transfer.
- k. The identity of the recipient Online banking transfer Conf# my2iydzi5; Mensch in the amount of \$1,000 made on February 24, 2015. Sterling has also failed to provide an explanation for this transfer.
- l. The identity of the recipient Online banking transfer Conf# 2uj0vd3l0; Mensch in the amount of \$500 made on June 3, 2015. Sterling has also failed to provide an explanation for this transfer.
- m. The identity of the recipient Online banking transfer Conf# f82fdac7c; Mensch in the amount of \$1,000 made on November 13, 2017. Sterling has also failed to provide an explanation for this transfer.
- n. The identity of the recipient Online banking transfer Conf# 2d2a6f654; Mensch in the amount of \$700 made on February 26, 2018. Sterling has also failed to provide an explanation for this transfer.
- o. A "Customer Withdrawal Image" in the amount of \$2,580 made on 9/9/13. Sterling has failed to provide an explanation for this withdrawal.
- p. A SC TLR cash withdrawal from CHK 7059 in the amount of \$300 was made on 9/13/13. Sterling has failed to provide an explanation for this withdrawal.
- q. A SC TLR cash withdrawal from CHK 7059 in the amount of \$500 made on 10/15/13. Sterling has failed to provide an explanation for this withdrawal.
- r. A SC TLR cash withdrawal from CHK 7059 in the amount of \$1,600 made on 11/4/13. Sterling has failed to provide an explanation for this withdrawal.
- s. A SC TLR Transfer for \$2,310 was made on 11/6/13. Sterling has failed to provide an explanation for this withdrawal.

- t. A deposit in the amount of \$102,282.15 into the account with account number [REDACTED] 7059 on 6/29/15. Sterling has failed to identify the source of these funds.
- u. A deposit in the amount of \$63,000 into the account with account number [REDACTED] 7059 on 1/24/14. Sterling has failed to identify the source of these funds.
- v. 33 counter credit and teller withdrawals in the total amount of \$20,834.92 made from December 7, 2012 through December 11, 2015. Sterling has failed to provide an explanation for these 33 withdrawals.
- w. Federal and S.C. State tax returns for 2010, 2017 and 2018.
- x. The location of funds resulting from the sale of the home at 207 W. Silverleaf Street Greer, SC. Sterling failed to provide an explanation of where the proceeds of the sale went.
- y. Documentation of the purchase and sale of an apartment at Rolling Green that was owned by the principal.
- z. Documentation of the sale of a car (Acura TL) owned by principal.
- aa. Sterling was given POA on May 7, 2010. Sterling has failed to provide account statements/information for the period May 7, 2010 – January 2011.
- bb. Documentation of where the proceeds of the following distributions of GE stock were deposited or transferred:
 - April 5, 2011: \$41,630.25
 - September 8, 2011: \$51,065.63
 - December 30, 2011: \$49,874.80
 - April 16, 2012: \$49,241.08

10. Sterling is refusing to provide a complete accounting because he used my mother's assets inappropriately during his time as power of attorney for my mother, and after she died he

has continued to misappropriate assets for his own benefit to the detriment of her Estate. As long as he is allowed to be in control of her estate, there is a risk of loss to her estate.

11. I am requesting the Court impose sanctions upon Respondent, to hold Respondent in contempt of court and order Respondent to pay all of Petitioners' attorney's fees and costs due to his failure to comply with the Court's Order and due to Petitioners having to incur further attorneys fees and costs to enforce such Order and seek the relief requested herein.

FURTHER AFFIANT SAYETH NAUGHT.



John R. Mensch

Dated this 11th day of October, 2019.

Sworn to me this 11th day of
October, 2019.


Notary Public for Yamhill County, OR
My Commission Expires: January 10, 2022

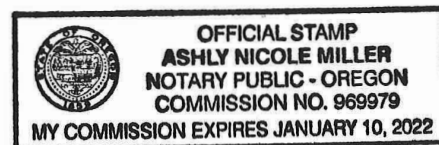


Exhibit D

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
IN THE MATTER OF THE ESTATE	)	C.A. No.: 2018-ES-2302854
OF FLORENCE PETRAK MENSCH	)	
	)	
John R. Mensch and Shauna M. Waddell,	)	
	)	
	)	
Petitioner,	)	
	)	AFFIDAVIT OF SHAUNA M. WADDELL
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.	)	

Personally appeared before me, Shauna M. Waddell, who, after being duly sworn, states as follows:

1. I am familiar with the facts and circumstances of this case and I am competent to testify as to the following matters.
2. I live in Easley, South Carolina and work as Director of Corporate Cost Accounting at Mount Vernon Mills, Inc.
3. I am the biological daughter of Florence Petrak Mensch ("Decedent") and a beneficiary under her Will.
4. I have two siblings, who are also the biological children of Florence Petrak Mensch and their names are John R. Mensch ("John") and Sterling Raymond Mensch, III ("Sterling").

5. John and I have paid attorney's fees in excess of \$15,000.00, all of which have been and will continue to be incurred as a result of Sterling's refusal to provide information related to my mother's estate.
6. The Court issued an Order, attached to this Affidavit as **Exhibit A**, which required Sterling to produce an accounting of all receipts, disbursements and transactions conducted on behalf of the principal from May 17, 2010 until my mother's death on April 26, 2018, along with supporting documentation for such, along with an accounting of all probate and non-probate assets of the Estate.
7. Sterling produced some information after such Order, but has failed to produce all of the information, and intentionally withheld key information that may prove that Sterling Mensch took money from Florence Mensch in violation of the Power of Attorney, specifically account statements for an account ending in 3259. Upon review of the transfers to this account from the bank statements that were provided, it appears that Sterling transferred at least \$700,000.00 from my mother's Bank of America checking account to this account ending in 3259.
8. On April 23, 2019, three days before my mother passed away and when it was obvious that my mother was very close to death, Sterling transferred \$259,000.00 from my mother's retirement account, which would have passed to the three children, to her checking account on which he is listed as POA and possibly as an owner. He did not include the checking account on the inventory of the estate or on the "non-probate property inventory." From the time of her death until February 18, 2019, he proceeded to transfer funds to this mysterious checking account ending in 3259, in the amount of

\$149,048.64. A risk of loss to the estate continues to exist as long as the Court allows Sterling to maintain control of the assets of the Estate.

9. The following is a list of information and transactions that Sterling has failed to account for or provide the necessary documentation for:

- a. 157 online account transfers were made from the Bank of America account of Florence Mensch, account number ending in 7059, to an account "CHK 3259". The net amount transferred from Florence Mensch's checking account 7059 into "CHK 3259" between August 6, 2013 and February 2, 2019 was \$706,274.12. Sterling has failed to account for these amounts or provide statements for checking account 3259.
- b. Florence Mensch's Bank of America Account checking account (ending in 7059) statements for the period May 7, 2010 through July 2, 2012.
- c. 108 checks were written from 7/13/12 – 5/22/15 for which there were no copies in the Bank of America statements. The total amount of these checks was \$263,555.45. It is impossible to know what these transactions were for since Sterling did not include an explanation or accounting of these amounts.
- d. Five online banking payments were made to account "CRD 8295" between December 11, 2013 and June 12, 2015 for a total amount of \$7,377.40. Sterling has failed to account for these transactions and failed to disclose the identity of owner of "CRD 8295" and has failed to provide an explanation of these five payments made to "CRD 8295."
- e. An online transfer was made to account "CHK 7581" on February 5, 2014 for \$700. Sterling has failed to identify the owner of account CHK 7581 and the purpose of the payment to account "CHK 7581."
- f. The identity of the recipient of Online banking transfer Conf# 1mtzp9zar Mensch in the amount of \$1,000 made on May 1, 2014. Sterling has also failed to provide an explanation for this transfer.
- g. The identity of the recipient Online banking transfer Conf# o1mgv7pt4; Mensch in the amount of \$800 made on July 11, 2014. Sterling has also failed to provide an explanation for this transfer.

- h. The identity of the recipient Online banking transfer Conf# 18605b3yq; Mensch in the amount of \$1,000 made on January 9, 2015. Sterling has also failed to provide an explanation for this transfer.
- i. The identity of the recipient Online banking transfer Conf# d8sqblio; Mensch in the amount of \$1,000 made on January 12, 2015. Sterling has also failed to provide an explanation for this transfer.
- j. The identity of the recipient Online banking transfer Conf# 1d9o9iio2; Mensch in the amount of \$1,000 made on January 28, 2015. Sterling has also failed to provide an explanation for this transfer.
- k. The identity of the recipient Online banking transfer Conf# my2iydzi5; Mensch in the amount of \$1,000 made on February 24, 2015. Sterling has also failed to provide an explanation for this transfer.
- l. The identity of the recipient Online banking transfer Conf# 2uj0vd3l0; Mensch in the amount of \$500 made on June 3, 2015. Sterling has also failed to provide an explanation for this transfer.
- m. The identity of the recipient Online banking transfer Conf# f82fdac7c; Mensch in the amount of \$1,000 made on November 13, 2017. Sterling has also failed to provide an explanation for this transfer.
- n. The identity of the recipient Online banking transfer Conf# 2d2a6f654; Mensch in the amount of \$700 made on February 26, 2018. Sterling has also failed to provide an explanation for this transfer.
- o. A "Customer Withdrawal Image" in the amount of \$2,580 made on 9/9/13 go. Sterling has failed to provide an explanation for this withdrawal.
- p. A SC TLR cash withdrawal from CHK 7059 in the amount of \$300 was made on 9/13/13 go. Sterling has failed to provide an explanation for this withdrawal.
- q. A SC TLR cash withdrawal from CHK 7059 in the amount of \$500 made on 10/15/13. Sterling has failed to provide an explanation for this withdrawal.
- r. A SC TLR cash withdrawal from CHK 7059 in the amount of \$1,600 made on 11/4/13. Sterling has failed to provide an explanation for this withdrawal.
- s. A SC TLR Transfer for \$2,310 was made on 11/6/13. Sterling has failed to provide an explanation for this withdrawal.

- t. A deposit in the amount of \$102,282.15 into the account with account number [REDACTED] 7059 on 6/29/15. Sterling has failed to identify the source of these funds.
- u. A deposit in the amount of \$63,000 into the account with account number [REDACTED] 7059 on 1/24/14. Sterling has failed to identify the source of these funds.
- v. 33 counter credit and teller withdrawals in the total amount of \$20,834.92 made from December 7, 2012 through December 11, 2015. Sterling has failed to provide an explanation for these 33 withdrawals.
- w. Federal and S.C. State tax returns for 2010, 2017 and 2018.
- x. The location of funds resulting from the sale of the home at 207 W. Silverleaf Street Greer, SC. Sterling failed to provide an explanation of where the proceeds of the sale went.
- y. Documentation of the purchase and sale of an apartment at Rolling Green that was owned by the principal.
- z. Documentation of the sale of a car (Acura TL) owned by principal.
- aa. Sterling was given POA on May 7, 2010. Sterling has failed to provide account statements/information for the period May 7, 2010 – January 2011.
- bb. Documentation of where the proceeds of the following distributions of GE stock were deposited or transferred:
 - April 5, 2011: \$41,630.25
 - September 8, 2011: \$51,065.63
 - December 30, 2011: \$49,874.80
 - April 16, 2012: \$49,241.08

10. I believe that Sterling is refusing to provide a complete accounting because he used my mother's assets inappropriately during his time as power of attorney for my mother and after

she died he has continued to misappropriate assets for his own benefit to the detriment of her Estate. As long as he is allowed to be in control of her Estate, there is a risk of loss to the Estate.

11. I am requesting the Court impose sanctions upon Respondent, to hold Respondent in contempt of court and order Respondent to pay all of Petitioners' attorney's fees and costs due to his failure to comply with the Court's Order and due to Petitioners having to incur further attorneys fees and costs to enforce such Order and seek the relief requested herein.

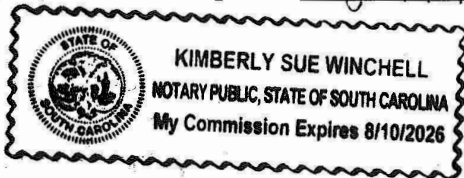
FURTHER AFFIANT SAYETH NAUGHT.

Shauna M. Waddell
Shauna M. Waddell

Dated this 11 day of October, 2019.

Sworn to me this 11 day of
October, 2019.

Kimberly Sue Winchell
Notary Public for State of South Carolina
My Commission Expires: August 10, 2026



THE STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GREENVILLE	)	C/A No.: 2018-ES-23-02854
	)	
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,	)	EXPERT REPORT OF
	)	JOHN R. MARKEL, CPA
-vs-	)	
	)	
Sterling Raymond Mensch, III (Individually and	)	
in the former Capacity of 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.	)	
	)	

OVERVIEW

1. In April 2020, I was engaged to provide investigative accounting services by Shauna M Waddell, Personal Representative of the estate of her mother, Florence Petrak Mensch. Mrs. Mensch died on April 28, 2018.
2. My professional qualifications are detailed in Appendix A to this report. A summary of my appearances to provide expert testimony from 2015 to the present is annexed at Appendix B to this report. This report is submitted to the Court pursuant to the *South Carolina Court Rules*, Article VII, Rules 702-705.
3. In connection with this Probate Court legal action, the Petitioners allege that Sterling Mensch III misappropriated significant assets from his mother (that is, Mrs. Mensch) before her death, and from Mrs. Mensch's estate after her death.
4. The purpose of my investigative accounting procedures in this engagement was to ascertain the detailed facts about the substance of the alleged misappropriations of Sterling Mensch III, as well as to quantify the aggregate dollar magnitude of his misappropriations.
5. In my opinion, based on the investigative accounting procedures I applied, the Estate of Florence Petrak Mensch suffered real monetary losses totaling \$1,489,489 as a direct result of the actions of Sterling Mensch III. Also in my opinion, pre-judgment interest associated with the losses of \$1,489,489 (computed from the various dates of original misappropriation through December 1, 2020) would total \$420,433. The procedures and computations upon which my findings were premised are described in more detail in paragraphs 11 through 21 of this report, and in the appendices to this report.

THE ASSIGNMENT

6. Throughout this report, shortened names and acronyms are used to indicate the following:
 - a. The "Subject Legal Action" refers to C/A No.:2018-ES-23-02854 in the Greenville County Probate Court. The Subject Legal Action is titled as: *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 and in the former Capacity of 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.*
 - b. "Estate" refers to the Estate of Florence Petrak Mensch.
 - c. "Mrs. Mensch" refers to Florence Petrak Mensch.

- d. “BOA” refers to the Bank of America.
 - e. “IRS” refers to the Internal Revenue Service.
 - f. “SCDR” refers to the South Carolina Department of Revenue.
 - g. “IRA” refers to Individual Retirement Account.
7. As background, it should be noted that Mrs. Mensch suffered from severe dementia, dating from the early 2000s until her death in April 2018. Under the terms of a durable power of attorney dated and recorded on May 18, 2010, Sterling Mensch III officially handled all of Mrs. Mensch’s financial affairs as her agent. Also under the terms of that May 2010 durable power of attorney, Sterling Mensch III was named as Personal Representative of Mrs. Mensch’s estate upon her death in April 2018.
8. To briefly summarize, by order of the Greenville County Probate Court, Sterling Mensch III was removed as the Estate’s Personal Representative on December 4, 2019. The order named Shauna Waddell (Mrs. Mensch’s daughter) as successor Personal Representative. In that order, as the reason for removing Sterling Mensch III as Personal Representative, the judge cited the willful failure of Sterling Mensch III (a) to provide a full accounting of the Estate’s assets, and (b) to provide a full accounting of receipts, disbursements, and transactions conducted by him as agent for Mrs. Mensch under the May 2010 durable power of attorney.
9. Prior to my engagement in this assignment, Shauna Waddell and John Mensch had obtained, through the discovery process, certain third-party source documents concerning (a) the financial transactions of Mrs. Mensch prior to her death in April 2018, and (b) the financial transactions of her estate after her death. Those source documents are detailed in Appendix C to this report.
10. In the process of applying my investigative accounting procedures, I scrutinized those source documents. I also devised a plan to extract specific pieces of data from the source documents, and to summarize that data on spreadsheets in a specific format, so that the data could be analyzed efficiently and sufficiently. Under my direction, Shauna Waddell and John Mensch took on the clerical task of assembling and entering the data onto the formatted spreadsheets. Working together, we also devised a protocol for labeling each source document with a sequential Bates number, so that each source document listed on a particular formatted spreadsheet could ultimately be traced and verified.

11. After Shauna Waddell and John Mensch had completed the clerical task of assembling the data onto my format-specific spreadsheets, I began a preliminary analysis of the data. From the results of my preliminary analysis, I determined that the Estate's monetary losses resulting from the actions of Sterling Mensch III would naturally fall into eight separate categories.
12. I then began to compute the monetary losses for each category, along with the associated pre-judgment interest. The summarized results of those computations are shown in Appendix D to this report.
13. The South Carolina statutory rate of pre-judgment interest is set each January on a year-by-year basis by order of the South Carolina Supreme Court. Simply stated, the rate is based on the earliest-published January prime rate plus four percentage points. For the timeframe January 15, 2011 through January 14, 2016, the statutory pre-judgment interest rate was constant at 7.25%. For the timeframe January 15, 2016 through the year 2020, the prime rate was more volatile, so the statutory rate varied somewhat in each of those years; however, the statutory rate did stay within a fairly narrow range of 7.50% to 9.50%. In order to significantly simplify my computational process and to meet deadlines, I used the 7.25% rate throughout the 2011-2020 timeframe for this report. Obviously, this has resulted in some understatement of the aggregate pre-judgment interest figure that I have computed. If necessary, at the final disposition of this case, the pre-judgment interest can be re-computed more precisely, using the statutory pre-judgment rates that were actually in force after January 14, 2016.
14. Row #1 of Appendix D comprises aggregate unexplained cash transfers out of Mrs. Mensch's bank accounts for the benefit of Sterling Mensch III, occurring during the timeframe 2013 through 2019. There were 241 separate cash transfers out of Mrs. Mensch's two BOA accounts for Sterling Mensch III's benefit, totaling \$822,538. The details of each of those 241 outgoing cash transfers is shown in Appendix E to this report. On Appendix E, it should be noted that the frequently-appearing acronym "CHK 3259" refers to the BOA account # [REDACTED]-3259 that is registered in the name of Sterling Mensch III. As previously noted, monthly statements for BOA account # [REDACTED]-3259 during the timeframe 2013-2019 were made available to me upon accepting this assignment. On the receiving end of the cash transfers, my scrutiny of disbursements from BOA account # [REDACTED]-3259 revealed that routine, ongoing, personal expenditures of Sterling Mensch III were effectively funded by cash transfers out of Mrs. Mensch's BOA accounts. Appendix E also shows how the associated pre-judgment interest figure of \$272,101 was computed.

15. Row #2 of Appendix D comprises aggregate unexplained transfers out of Mrs. Mensch's bank accounts to pay credit card balances of Sterling Mensch III; the subject cash transfers occurred during the timeframe 2016 through 2018. There were five cash transfers out of Mrs. Mensch's two BOA accounts totaling \$2,551. The details of each of those five outgoing cash transfers is shown in Appendix F to this report. Appendix F also shows how the associated pre-judgment interest figure of \$521 was computed.
16. Row #3 of Appendix D comprises the current value (as of October 16, 2020) of 27,683 shares of General Electric common stock that would still be in the Estate's portfolio, but for the prior unnecessary liquidation of those particular shares by Sterling Mensch III. As described further in paragraph #18 following, Sterling Mensch III unnecessarily liquidated (in several blocks, and on several different dates) a total of 27,683 shares of General Electric common stock that, but for his actions, could still be a part of the Estate's assets. For purposes of valuing those 27,683 shares as if they were still in the Estate's portfolio, I used the quoted per-share closing market price of \$7.29 as of October 16, 2020. ($\$7.29 \times 27,683 \text{ shares} = \$201,809$) No pre-judgment interest is associated with this particular line item.
17. Row #4 of Appendix D comprises the lost value of dividends that would have been collected over time on the 27,683 shares of General Electric common stock dissipated by Sterling Mensch III. To compute the lost dividends, I obtained the published dividend declaration history of the General Electric Company, and matched the sale dates of the various blocks of shares dissipated by Sterling Mensch III. I then multiplied the number of shares in each of those blocks by the dollar amount of the declared dividend. Appendix G of this report summarizes the dividends lost, categorized by each block of dissipated shares. Appendix G also contains the computation of the pre-judgment interest associated with the lost dividends. As shown in Appendix G, the aggregated lost value of dividends was \$45,315; the associated pre-judgment interest would be \$12,433.
18. Row #5 of Appendix D comprises the unnecessary income taxes resulting from liquidation of General Electric shares by Sterling Mensch III, in excess of that specified for minimum required IRA distributions. Under Treasury Regulation §1.408-8, Mrs. Mensch, like all other taxpayers, was obligated to make a "required minimum distribution" of the aggregate beginning-of-year balances in all of her IRAs. The amount of the "required minimum distribution" would be based on a formula tied to her actuarial remaining life expectancy. However, in the years 2011, 2012, 2015, 2016, and 2018, Sterling Mensch III liquidated many more General Electric shares than were needed for Mrs. Mensch's "required minimum

distribution” in those years. It should also be noted that other liquid assets in Mrs. Mensch’s portfolio could have been used to satisfy the specified “required minimum distribution.” As an unfortunate consequence, Mrs. Mensch incurred state and federal income taxes during those years for which she otherwise would not have been obligated, but for the actions of Sterling Mensch III in liquidating the blocks of General Electric common stock (and siphoning off the proceeds for his own benefit). Appendix H of this report shows how I derived Mrs. Mensch’s “excess” (and avoidable) income taxes of \$164,897 along with the associated pre-judgment interest of \$38,222.

19. Row #6 of Appendix D comprises avoidable penalties and interest that were assessed as a result of late payments by Sterling Mensch III of Mrs. Mensch’s income tax liabilities. During the 2010-2018 timeframe, as agent under the May 2010 durable power of attorney, Sterling Mensch III was responsible for filing Mrs. Mensch’s state and federal income tax returns and for ensuring that her tax liabilities were timely paid. However, as shown on Appendix I of this report, penalties and interest were assessed on 17 occasions by the IRS and the SCDR, as a result of the failure of Sterling Mensch III to timely remit payment of Mrs. Mensch’s tax liabilities. Those avoidable penalties and interest totaled \$13,820, and the associated pre-judgment interest would be \$3,404.
20. Row #7 of Appendix D comprises excessive income taxes incurred by Mrs. Mensch, resulting from the prior failure of Sterling Mensch III to properly itemize Mrs. Mensch’s deductions for property tax and mortgage interest in each of the years 2011 through 2016. During the 2010-2018 timeframe, as agent under the May 2010 durable power of attorney, Sterling Mensch III was responsible for filing Mrs. Mensch’s state and federal income tax returns and for ensuring that her tax liabilities were timely paid. However, in Mrs. Mensch’s state and federal income tax returns for each of the years 2011 through 2016, Sterling Mensch III failed to include itemized deductions for mortgage interest and property tax. Based on my scrutiny of Mrs. Mensch’s state and federal tax returns for those years, she was clearly entitled to claim those itemized deductions, and thereby proportionately reduce her tax liability for each respective year. In other words, her tax liability would have been decreased proportionately in each of those years, but for the failure of Sterling Mensch III to ensure that those itemized deductions were properly claimed. Appendix J of this report summarizes the effect of the omitted itemized deductions and Mrs. Mensch’s resulting aggregate tax overpayment of \$24,559. The pre-judgment interest associated with that tax overpayment would be \$9,836.

21. Row #8 of Appendix D comprises accrued unpaid rent by Sterling Mensch III for his occupancy of Mrs. Mensch's house at 512 New Tarleton Way from January 2009 to August 2020. It was represented to me by Shauna Waddell that Sterling Mensch III lived in Mrs. Mensch's house from sometime in 2008 until August 2020. During the timeframe 2008 until her death in April 2018, Mrs. Mensch (because of her dementia) was confined to "memory care" units, which provided her with lodging, meals, and personal care. Based on the BOA bank account records provided to me of both Mrs. Mensch and Sterling Mensch III, no rent was paid by Sterling Mensch III to Mrs. Mensch during the 2013-2019 timeframe. Moreover, Mrs. Mensch's tax returns for each of the years made available to me (that is, the years 2011 through 2016) show no rental income. Therefore, for the purpose of this exercise, I assumed that Sterling Mensch III paid no rent to occupy the house at 512 New Tarleton Way in any of the years 2009 through 2019, nor for the timeframe January through August 2020. I also determined, by reference to published rental rates of similar properties in the area, as well as to the market value of the property (per the Greenville County property tax records), that a current monthly rental rate of \$2,000 for the house would be reasonable. Working backward, I then assigned a monthly rental rate to each of the years in question, as follows: 2020 (\$2,000); 2019 (\$2,000); 2018 (\$1,900); 2017 (\$1,800); 2016 (\$1,700); 2015 (\$1,600); 2014 (\$1,500); 2013 (\$1,400); 2012 (\$1,300); 2011 (\$1,200); 2010 (\$1,100); and 2009 (\$1,000). As shown in Appendix K to this report, I then computed the accrued unpaid rent owed by Sterling Mensch III for the timeframe of January 2009 through August 2020 to be \$214,000. Also, as shown in Appendix K, the associated pre-judgment interest was computed to be \$83,945.

SUMMARY OF EXPERT OPINIONS

22. In my opinion, based on the investigative accounting procedures I applied, the Estate of Florence Petrak Mensch suffered real monetary losses totaling \$1,511,953 as a direct result of the actions of Sterling Mensch III. Those losses are summarized by category in Appendix D to this report.
23. In my opinion, the aggregate pre-judgment interest (computed through December 1, 2020) associated with the Estate's monetary losses of \$1,511,953 would be \$427,000. That pre-judgment interest figure is summarized by category in Appendix D to this report.

OTHER ASSUMPTIONS AND LIMITING CONDITIONS

24. I was compensated for the first phase of this assignment by a flat fee of \$3,000. For the second phase of this assignment I am being compensated by a flat fee of \$8,300. None of my compensation was contingent on the outcome of the Subject Legal Action. In fact, I have already been paid in full for all my services completed to date.
25. Other services pertaining to this matter that I have contemplated, but not yet started, would include preparation of possible demonstrative exhibits, preparation to testify at deposition or trial, and attendance at mediation proceedings, depositions, hearings, and trial. If, in the future, I am required to perform any such services, my understanding is that I am to be compensated at my regular hourly rate of \$250.
26. I reserve the right to make changes to this report, should additional pertinent information come to light.
27. I reserve the right to offer rebuttal opinions if the Respondent in the Subject Legal Action should offer additional evidence.

A handwritten signature in black ink, appearing to read "Markel", with a long horizontal flourish extending to the right.

John R. Markel
Markel Valuation, P.C.
104 Moultrie Street
Greenville, South Carolina 29605
November 3, 2020

Appendix A - Professional Qualifications

John R. Markel

Markel Valuation, P.C.

Contact Information

(864) 277-9921 office

(864) 201-5684 mobile

jmarkel@markelvaluation.com

104 Moultrie Street, Greenville, SC 29605

Education

1969 Bachelor of Arts, Duke University.

1973 Master of Accountancy, University of South Carolina.

Professional Designations

CPA, Certified Public Accountant licensed in South Carolina and North Carolina.

ASA, Accredited Senior Appraiser™ (in the *business valuation* specialty) from the American Society of Appraisers.

ABV, Accredited in Business Valuation™ from the American Institute of Certified Public Accountants.

ABAR, Accredited in Business Appraisal Review™ from the National Association of Certified Valuators and Analysts.

MAFF, Master Analyst in Financial Forensics™ from the National Association of Certified Valuators and Analysts.

CFF, Certified in Financial Forensics™ from the American Institute of Certified Public Accountants.

CGMA, Chartered Global Management Accountant™ from the American Institute of Certified Public Accountants.

Work and Academic History

2003 - 2020, managing director of Markel Valuation, P.C.

1995 - 2003, shareholder-in-charge of the forensic and valuation services division of Elliott Davis, LLC

1985 - 1995, audit shareholder at Elliott Davis, LLC.

1977 - 1985, senior auditor and audit manager at Elliott Davis, LLC, Greenville South Carolina.

1975 - 1977, staff accountant at Koonce, Wooten & Haywood CPAs, Raleigh, North Carolina.

1974 - 1975, staff accountant at Deloitte Haskins & Sells, Raleigh, North Carolina.

1973 - 1974, graduate student, School of Business, University of South Carolina, Columbia.

1969 - 1973, active duty, United States Air Force, Texas, Mississippi, South Carolina, and Thailand.

1965 - 1969, undergraduate student, Duke University, Durham, North Carolina.

1963 - 1965, LaSalle High School, Niagara Falls, New York.

1961 - 1963, Antelope Valley High School, Lancaster, California.

Appendix B – Summary of Prior Expert Testimony

JOHN R. MARKEL
SUMMARY OF SWORN EXPERT TESTIMONY JANUARY 2015 THROUGH JUNE 2020
DEPOSITION, ADR, AND TRIAL

Name of Case	Legal Issue/Economic Issue	Retaining Attorney	Jurisdiction	Testimony
Beattie B. Ashmore, in his capacity as court-appointed receiver for Ronnie Gene Wilson and Atlantic Bullion & Coin, Inc., v. William R. Fowler and Colleen Fowler (2015)	Fraudulent transfer and unjust enrichment related to Ponzi scheme proceeds/investigative accounting	L. Walter Tollison, III and Lauren S. Price of The Tollison Law Firm, P.A., Greenville, SC	US District Court (SC District)	Deposition
Ragsdale v. Ragsdale (2016)	Division of marital property in divorce/business valuation	Kenneth C. Porter of Porter & Rosenfeld, Attorneys at Law, Greenville, SC	SC Family Court, 13 th Circuit	Trial
Beattie B. Ashmore, in his capacity as court-appointed receiver for Ronnie Gene Wilson and Atlantic Bullion & Coin, Inc., v. Brigitte Owens (2017)	Fraudulent transfer and unjust enrichment related to Ponzi scheme proceeds/investigative accounting	L. Walter Tollison, III and Lauren S. Price of The Tollison Law Firm, P.A., Greenville, SC	US District Court (SC District)	Deposition
Janet B. Haigler, Chapter 7 Trustee, v. Michael A. Dozier, <i>et al.</i> (2020)	Recovery of losses by bankruptcy trustee that allegedly resulted from improper marketing and sale of securities/investigative accounting	Richard R. Gleissner of the Gleissner Law Firm, L.L.C., Columbia, SC	US District Court (SC District)	Deposition

Appendix C- Sources Consulted

Proprietary source documents consulted:

Bank of America, checking account [REDACTED]-3259; in the name of Sterling R. Mensch III POD [payable on death] Macy Shea Mensch; bank statements for the timeframe December 2012-January 2020.

Bank of America, checking account # [REDACTED]-7059; in the name of Florence P. Mensch and Sterling R. Mensch III; bank statements for the timeframe December 2012-January 2020.

Bank of America, money market savings account [REDACTED]-2007; in the name of Florence P. Mensch and Sterling R. Mensch III; bank statements for the timeframe December 2012-January 2020.

Bank of America, BankAmericard account # [REDACTED]-9935; in the name of Sterling R. Mensch; monthly credit card statements for the timeframe March 2016-January 2017.

Bank of America, BankAmericard account # [REDACTED]-7061; in the name of Sterling R. Mensch; monthly credit card statements for the timeframe February 2017-December 2019.

Digital file containing 13 pages of photocopies of deposit tickets, representing deposits to Bank of America account # [REDACTED]-3259 and deposits to Bank of America account [REDACTED]-7059.

Digital file containing 67 pages of photocopies of checks written by various payors, showing Sterling Mensch III as payee for the timeframe 2013-2019.

First Amended Petition in the Subject Legal Action, dated May 12, 2020

Florence P. Mensch, United States individual income tax returns for each of the years 2011, 2012, 2013, 2014, 2015, and 2016.

Florence P. Mensch, South Carolina individual income tax returns for each of the years 2011, 2012, 2013, 2014, 2015, and 2016.

GE Mutual Funds, account #095/[REDACTED]2563, account #095/[REDACTED]2571, account #095/[REDACTED]2589, and account #095/[REDACTED]2597; in the name of Florence Mensch; yearly investment statements for each of the years 2009 through 2015.

Respondent's First Set of Interrogatories in the Subject Legal Action, dated September 11, 2020.

State Street Global Advisors, account #095/[REDACTED]2563, account #095/[REDACTED]2571, and account #095/2[REDACTED]2589; in the name of Florence Mensch; yearly investment statements for each of the years 2016 through 2018, and for the three months ended March 29, 2019.

UBS Financial Services Inc., account # [REDACTED]1480 JG; in the name of Florence Mensch; statements of account activity covering each of the months during the timeframe June 2016 through March 2020, except that statements of account activity for July 2016, October 2016, October 2017, and April 2018 were not provided.

Sources consulted that were available in the public domain:

Crain, Michael A., *et al. Essentials of Forensic Accounting, Second Edition*. Durham, North Carolina: Association of International Certified Professional Accountants, 2019, pp. 228-232; 254-256.

Dobbs, Dan B. *Dobbs Law of Remedies, Second Edition, Volume 1*. St. Paul: West Publishing Co. 1993, pp. 4-5; 333-339; 566-567.

Duffus, David; Scott Boucher; Jeffrey Klein; and Cynthia Tregillis. *Attaining Reasonable Certainty in Economic Damages Calculations (Forensic & Valuation Services Practice Aid)*. Durham, North Carolina: Association of International Certified Professional Accountants, 2019, pp. 59-63; 90-95.

Forensic and Valuation Services Executive Committee. *Statement on Standards for Forensic Services*. Durham, North Carolina: Association of International Certified Professional Accountants, 2019.

Frank, Peter B. *et al.* "The Role of the Financial Expert in Litigation Services," in Weil, Roman L., *et al.*, editor, *Litigation Services Handbook, Fourth Edition*. Hoboken, New Jersey: John Wiley & Sons, Inc., 2001, pp.1.1-1.31.

Golden, Thomas W.; Stephen L. Skalak; and Mona M. Clayton. *A Guide to Forensic Accounting Investigation*. Hoboken, New Jersey: John Wiley & Sons & Sons, Inc., 2006, pp.297-303.

Knoll, Michael S. and Jeffrey M. Colón. "Prejudgment Interest." in Weil, Roman L., *et al.*, editor, *Litigation Services Handbook, Fourth Edition*. Hoboken, New Jersey: John Wiley & Sons & Sons, Inc., 2006, pp.9.1-9.17.

Management Consulting Services Executive Committee. *Statement on Standards for Consulting Services*. New York: American Institute of Certified Public Accountants, 2015.

South Carolina Code of Laws, § 34-31-20(B) (2020) (Legal rate of interest) *South Carolina Legislature 2020*. [Online] Available: scstatehouse.gov/code/title/34.php. (Accessed October 2020).

South Carolina Court Rules, Article VII, Rules 702-705.

The Supreme Court of South Carolina. *Order 2020-01-06-01*. (Re: interest rate on money decrees and judgments). (January 6, 2020).

The Supreme Court of South Carolina. *Order 2019-01-04-01*. (Re: interest rate on money decrees and judgments). (January 4, 2019).

The Supreme Court of South Carolina. *Order 2018-01-04-02*. (Re: interest rate on money decrees and judgments). (January 4, 2018).

The Supreme Court of South Carolina. *Order 2017-01-04-01*. (Re: interest rate on money decrees and judgments). (January 4, 2017).

The Supreme Court of South Carolina. *Order 2016-01-04-01*. (Re: interest rate on money decrees and judgments). (January 4, 2016).

The Supreme Court of South Carolina. *Order 2015-01-02-01*. (Re: interest rate on money decrees and judgments). (January 2, 2015).

The Supreme Court of South Carolina. *Order 2014-01-03-01*. (Re: interest rate on money decrees and judgments). (January 3, 2014).

The Supreme Court of South Carolina. *Order 2013-01-03-01*. (Re: interest rate on money decrees and judgments). (January 3, 2013).

The Supreme Court of South Carolina. *Order 2012-01-04-01*. (Re: interest rate on money decrees and judgments). (January 4, 2012).

The Supreme Court of South Carolina. *Order 2011-01-06-01*. (Re: interest rate on money decrees and judgments). (January 6, 2011).

The Supreme Court of South Carolina. *Order 2010-01-04-01*. (Re: interest rate on money decrees and judgments). (January 4, 2010).

The Supreme Court of South Carolina. *Order 2009-01-05-01*. (Re: interest rate on money decrees and judgments). (January 5, 2009).

Thompson, Robert S., *et al.* *Remedies: Damages, Equity and Restitution, Third Edition*. Newark, New Jersey: LexisNexis, 2003, pp. 14; 524-525.

U.S. Master Tax Guide 2019. Riverwoods, Illinois: CCH Incorporated, 2018, ¶12163.

APPENDIX D – SUMMARY OF LOSSES

Row#	Timeframe	Description	Losses	Pre-judgment interest from original transaction date through 12/01/20	Report paragraph #	Appendix reference
1	2013-2019	Aggregate unexplained cash transfers out of Mrs. Mensch's bank account for the benefit of Sterling Mensch III	\$822,538	\$272,101	14	E
2	2016-2018	Aggregate unexplained transfers out of Mrs. Mensch's bank account to pay credit card balances of Sterling Mensch III	\$2,551	\$492	15	F
3	2011-2018	Current value (as of 10/16/20) of 27,683 shares of General Electric stock that would still be in the Estate's portfolio, but for the prior unnecessary liquidation of those shares by Sterling Mensch III	\$201,809	\$0	16	-
4	2011-2018	Lost value of dividends that would have been collected over time on the 27,683 shares of General Electric stock dissipated by Sterling Mensch III	\$45,315	\$12,433	17	G
5	2011-2018	Unnecessary income taxes resulting from liquidation of General Electric shares by Sterling Mensch III, in excess of that specified for minimum required IRA distributions	\$164,897	\$38,222	18	H
6	2013-2017	Avoidable penalties and interest that were assessed as a result of late payments by Sterling Mensch III of Mrs. Mensch's income tax liabilities	\$13,820	\$3,404	19	I
7	2012-2017	Excessive income taxes for Mrs. Mensch, resulting from the prior failure of Sterling Mensch III to properly itemize deductions for property tax and mortgage interest in each of the years 2011 through 2016	\$24,559	\$9,836	20	J
8	2009-2020	Accrued unpaid rent owed by Sterling Mensch III for his occupancy of 512 New Tarleton Way from January 2009 to August 2020	\$214,000	\$83,945	21	K
Total			<u>\$1,489,489</u>	<u>\$420,433</u>		

APPENDIX E

Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
1	Florence Mensch	7059	2/25/2013	\$300.00	SC Teller withdrawal	EX 4 P 0024	2,836	\$168.99
2	Florence Mensch	7059	2/26/2013	\$349.54	Check #5215 written to "Chase"	EX 4 P 0024	2,835	\$196.83
3	Florence Mensch	7059	6/10/2013	\$2,580.00	SC Teller withdrawal	EX 4 P 0028	2,731	\$1,399.54
4	Florence Mensch	7059	7/5/2013	\$200.00	SC Teller withdrawal	EX 4 P 0028	2,706	\$107.50
5	Florence Mensch	7059	3/28/2013	\$300.00	Check #5223 to Cash	EX 4 P 0045 and EX 3 P 118	2,805	\$167.15
6	Florence Mensch	7059	4/2/2013	\$2,722.00	Check #5224 to Sterling Mensch	EX 4 P 0045 and EX 3 P 119	2,800	\$1,513.88
7	Florence Mensch	7059	3/20/2013	\$1,767.89	Check #5220 written to "Chase"	EX 4 P 0045	2,813	\$987.80
8	Florence Mensch	7059	4/17/2013	\$1,351.68	Check #5226 Park Sterling Bank	EX 4 P 0065 and EX 3 P 122	2,785	\$747.73
9	Florence Mensch	7059	4/15/2013	\$150.00	Check #5228 written to Cash	EX 4 P 0065 and EX 3 P 121	2,787	\$83.04
10	Florence Mensch	7059	4/15/2013	\$100.00	SC Teller withdrawal	EX 4 P 0065	2,787	\$55.36
11	Florence Mensch	7059	5/29/2013	\$1,486.84	Check #5238 Park Sterling Bank	EX 4 P 0082	2,743	\$810.09
12	Florence Mensch	7059	5/28/2013	\$3,294.00	Check #5243 SR Mensch III (Sterling)	EX 4 P 0082 and EX 3 P 128	2,744	\$1,795.36
13	Florence Mensch	7059	5/9/2013	\$1,406.56	Check #5232 written to "Chase"	EX 4 P 0083	2,763	\$771.94
14	Florence Mensch	7059	5/15/2013	\$200.00	SC Teller withdrawal	EX 4 P 0083	2,757	\$109.52
15	Florence Mensch	7059	5/28/2013	\$300.00	SC Teller withdrawal	EX 4 P 0083	2,744	\$163.51
16	Florence Mensch	7059	7/23/2013	\$500.00	SC Teller withdrawal	EX 4 P 0114	2,688	\$266.96
17	Florence Mensch	7059	8/6/2013	\$2,800.00	Online Transfer to CHK 3259	EX 4 P 0114	2,674	\$1,487.18
18	Florence Mensch	7059	8/6/2013	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0114	2,674	\$531.14
19	Florence Mensch	7059	7/25/2013	\$1,419.02	Online Transfer to CHK 3259	EX 4 P 0114 and EX 4 P 0117	2,686	\$757.08
20	Florence Mensch	7059	8/12/2013	\$3,850.00	Online Transfer to CHK 3259	EX 4 P 0138	2,668	\$2,040.29
21	Florence Mensch	7059	8/12/2013	\$2,200.00	Online Transfer to CHK 3259	EX 4 P 0138	2,668	\$1,165.88
22	Florence Mensch	7059	8/13/2013	\$2,299.43	Online Transfer to CHK 3259	EX 4 P 0138	2,667	\$1,218.11
23	Florence Mensch	7059	8/26/2013	\$1,945.00	Online Transfer to CHK 3259	EX 4 P 0138	2,654	\$1,025.33
24	Florence Mensch	7059	8/28/2013	\$2,850.00	Online Transfer to CHK 3259	EX 4 P 0138	2,652	\$1,501.29
25	Florence Mensch	7059	9/3/2013	\$71.85	Online Transfer to CHK 3259	EX 4 P 0138	2,646	\$37.76
26	Florence Mensch	7059	9/3/2013	\$50.71	Online Transfer to CHK 3259	EX 4 P 0138	2,646	\$26.65
27	Florence Mensch	7059	9/6/2013	\$5,167.90	Check #5251 written to "Chase"	EX 4 P 0158	2,643	\$2,713.04
28	Florence Mensch	7059	9/9/2018	\$2,580.00	Customer withdrawal image	EX 4 P 0158	814	\$417.15
29	Florence Mensch	7059	9/9/2013	\$6,068.00	Online Transfer to CHK 3259	EX 4 P 0158	2,640	\$3,181.96
30	Florence Mensch	7059	9/12/2013	\$1,517.00	Online Transfer to CHK 3259	EX 4 P 0158	2,637	\$794.59
31	Florence Mensch	7059	9/13/2013	\$300.00	SC Teller withdrawal	EX 4 P 0158	2,636	\$157.08
32	Florence Mensch	7059	9/23/2013	\$2,850.00	Online Transfer to CHK 3259	EX 4 P 0158	2,626	\$1,486.57

APPENDIX E

Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
33	Florence Mensch	7059	10/15/2013	\$500.00	SC Teller withdrawal	EX 4 P 0184	2,604	\$258.62
34	Florence Mensch	7059	11/4/2013	\$2,850.00	Online Transfer to CHK 3259	EX 4 P 0184	2,584	\$1,462.79
35	Florence Mensch	7059	11/4/2013	\$1,600.00	SC Teller withdrawal	EX 4 P 0184	2,584	\$821.22
36	Florence Mensch	7059	11/19/2013	\$300.00	SC Teller withdrawal	EX 4 P 0208	2,569	\$153.08
37	Florence Mensch	7059	12/2/2013	\$625.54	Online Transfer to CHK 3259	EX 4 P 0208	2,556	\$317.59
38	Florence Mensch	7059	12/2/2013	\$200.00	Online Transfer to CHK 3259	EX 4 P 0208	2,556	\$101.54
39	Florence Mensch	2007	11/25/2013	\$1,314.04	Online Transfer to CRD 8295	EX 4 P 0209	2,563	\$668.96
40	Florence Mensch	2007	11/27/2013	\$2,850.00	Online Transfer to CHK 3259	EX 4 P 0209	2,561	\$1,449.77
41	Florence Mensch	2007	12/2/2013	\$1,527.38	Online Transfer to CHK 3259	EX 4 P 0209	2,556	\$775.45
42	Florence Mensch	2007	12/11/2013	\$1,130.15	Online Transfer to CRD 8295	EX 4 P 0230	2,547	\$571.75
43	Florence Mensch	7059	12/11/2013	\$100.00	SC Teller withdrawal	EX 4 P 0230	2,547	\$50.59
44	Florence Mensch	7059	12/11/2013	\$100.00	SC Teller withdrawal	EX 4 P 0230	2,547	\$50.59
45	Florence Mensch	7059	1/6/2014	\$3,442.83	Check #5261 written to "Chase"	EX 4 P 0230	2,521	\$1,723.98
46	Florence Mensch	2007	12/26/2013	\$2,001.94	Online Transfer to CHK 3259	EX 4 P 0231	2,532	\$1,006.84
47	Florence Mensch	2007	12/30/2013	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0231	2,528	\$1,004.27
48	Florence Mensch	7059	1/8/2014	\$300.00	SC Teller withdrawal	EX 4 P 0250	2,519	\$150.10
49	Florence Mensch	2007	1/21/2014	\$2,580.00	Online Transfer to CHK 3259	EX 4 P 0251	2,506	\$1,284.24
50	Florence Mensch	2007	1/23/2014	\$1,979.07	Online Transfer to CHK 3259	EX 4 P 0251	2,504	\$984.33
51	Florence Mensch	2007	1/29/2014	\$2,580.00	Online Transfer to CHK 3259	EX 4 P 0251	2,498	\$1,280.14
52	Florence Mensch	7059	2/5/2014	\$700.00	Online Transfer to CHK 7581	EX 4 P 0274	2,491	\$346.35
53	Florence Mensch	7059	2/19/2014	\$2,850.00	Online Transfer to CHK 3259	EX 4 P 0274	2,477	\$1,402.22
54	Florence Mensch	7059	2/19/2014	\$2,294.12	Online Transfer to CRD 8295	EX 4 P 0274	2,477	\$1,128.72
55	Florence Mensch	2007	2/10/2014	\$8,434.97	Online Transfer to CHK 3259	EX 4 P 0275	2,486	\$4,165.14
56	Florence Mensch	2007	2/24/2014	\$2,580.00	Online Transfer to CHK 3259	EX 4 P 0275	2,472	\$1,266.81
57	Florence Mensch	7059	3/10/2014	\$2,944.65	Online Transfer to CHK 3259	EX 4 P 0294	2,458	\$1,437.67
58	Florence Mensch	7059	3/13/2014	\$968.71	Check #5262 written to "Chase"	EX 4 P 0294	2,455	\$472.38
59	Florence Mensch	2007	3/31/2014	\$5,810.12	Online Transfer to CHK 3259	EX 4 P 0297	2,437	\$2,812.45
60	Florence Mensch	2007	3/31/2014	\$2,309.96	Online Transfer to CHK 3259	EX 4 P 0297	2,437	\$1,118.16
61	Florence Mensch	7059	4/30/2014	\$2,850.00	Online Transfer to CHK 3259	EX 4 P 0322	2,407	\$1,362.59
62	Florence Mensch	7059	5/1/2014	\$1,000.00	SC Teller withdrawal	EX 4 P 0322	2,406	\$477.90
63	Florence Mensch	7059	5/1/2014	\$1,000.00	Online Banking Transfer to "Mensch"	EX 4 P 0322	2,406	\$477.90
64	Florence Mensch	2007	4/15/2014	\$4,252.15	Online Transfer to CRD 8295	EX 4 P 0323	2,422	\$2,045.63

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Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
65	Florence Mensch	7059	5/19/2014	\$1,822.30	Online Transfer to CHK 3259	EX 4 P 0346	2,388	\$864.37
66	Florence Mensch	7059	5/28/2014	\$1,362.00	Online Transfer to CHK 3259	EX 4 P 0346	2,379	\$643.60
67	Florence Mensch	7059	5/28/2014	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0346	2,379	\$472.54
68	Florence Mensch	7059	5/29/2014	\$1,500.00	SC Teller withdrawal	EX 4 P 0346	2,378	\$708.51
69	Florence Mensch	7059	6/2/2014	\$750.00	Online Transfer to CHK 3259	EX 4 P 0346	2,374	\$353.66
70	Florence Mensch	2007	5/23/2014	\$2,051.39	Online Transfer to CHK 3259	EX 4 P 0347	2,384	\$971.40
71	Florence Mensch	2007	5/28/2014	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0347	2,379	\$1,417.62
72	Florence Mensch	2007	6/4/2014	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0347	2,372	\$942.30
73	Florence Mensch	2007	6/23/2014	\$5,190.00	Online Transfer to CHK 3259	EX 4 P 0369	2,353	\$2,425.68
74	Florence Mensch	2007	6/30/2014	\$811.05	Online Transfer to CHK 3259	EX 4 P 0369	2,346	\$377.94
75	Florence Mensch	7059	7/9/2014	\$1,538.65	Online Transfer to CHK 3259	EX 4 P 0390	2,337	\$714.24
76	Florence Mensch	7059	7/11/2014	\$800.00	Online Transfer to "Mensch"	EX 4 P 0390	2,335	\$371.04
77	Florence Mensch	2007	7/11/2014	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0391	2,335	\$463.80
78	Florence Mensch	2007	7/28/2014	\$4,000.00	Online Transfer to CHK 3259	EX 4 P 0391	2,318	\$1,841.70
79	Florence Mensch	2007	8/6/2014	\$2,200.00	Online Transfer to CHK 3259	EX 4 P 0391	2,309	\$1,009.00
80	Florence Mensch	2007	8/6/2014	\$693.82	Online Transfer to CRD 8295	EX 4 P 0391	2,309	\$318.21
81	Florence Mensch	2007	8/25/2014	\$1,107.59	Online Transfer to CHK 3259	EX 4 P 0411	2,290	\$503.80
82	Florence Mensch	2007	9/2/2014	\$1,000.00	Online Transfer to "Mensch"	EX 4 P 0411	2,282	\$453.27
83	Florence Mensch	2007	9/9/2014	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0429	2,275	\$903.77
84	Florence Mensch	2007	9/10/2014	\$700.00	Online Transfer to CHK 3259	EX 4 P 0429	2,274	\$316.18
85	Florence Mensch	2007	9/18/2014	\$3,300.00	Online Transfer to CHK 3259	EX 4 P 0429	2,266	\$1,485.32
86	Florence Mensch	2007	10/28/2014	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0453	2,226	\$884.30
87	Florence Mensch	7059	11/10/2014	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0464	2,213	\$879.14
88	Florence Mensch	2007	11/17/2014	\$700.00	Online Transfer to CHK 3259	EX 4 P 0465	2,206	\$306.72
89	Florence Mensch	2007	11/28/2014	\$2,301.25	Online Transfer to CHK 3259	EX 4 P 0465	2,195	\$1,003.33
90	Florence Mensch	7059	12/31/2014	\$846.04	Online Transfer to CRD 8295	EX 4 P 0490	2,162	\$363.32
91	Florence Mensch	2007	12/15/2014	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0493	2,178	\$432.62
92	Florence Mensch	2007	12/16/2014	\$1,500.00	Online Transfer to CHK 3259	EX 4 P 0493	2,177	\$648.63
93	Florence Mensch	2007	12/23/2014	\$1,500.00	Online Transfer to CHK 3259	EX 4 P 0493	2,170	\$646.54
94	Florence Mensch	2007	12/24/2014	\$2,000.31	Online Transfer to CHK 3259	EX 4 P 0493	2,169	\$861.79
95	Florence Mensch	7059	1/9/2015	\$1,000.00	Online Transfer to "Mensch"	EX 4 P 0518	2,153	\$427.65
96	Florence Mensch	7059	1/12/2015	\$1,000.00	Online Transfer to "Mensch"	EX 4 P 0518	2,150	\$427.05

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Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
97	Florence Mensch	7059	1/14/2015	\$2,759.00	Online Transfer to CHK 3259	EX 4 P 0518	2,148	\$1,177.15
98	Florence Mensch	7059	1/20/2015	\$2,500.00	Online Transfer to CHK 3259	EX 4 P 0518	2,142	\$1,063.66
99	Florence Mensch	7059	1/23/2015	\$4,360.71	Online Transfer to CHK 3259	EX 4 P 0518	2,139	\$1,852.73
100	Florence Mensch	7059	1/28/2015	\$1,000.00	Online Transfer to "Mensch"	EX 4 P 0518	2,134	\$423.88
101	Florence Mensch	7059	1/13/2015	\$252.00	Check #5277 written to Denise Kirk	EX 4 P 0518 and 0521	2,149	\$107.57
102	Florence Mensch	7059	1/13/2015	\$105.00	Check #5278 written to Denise Kirk	EX 4 P 0518 and 0521	2,149	\$44.82
103	Florence Mensch	7059	2/10/2015	\$1,107.09	Online banking payment to CRD 8295	EX 4 P 0542	2,121	\$466.41
104	Florence Mensch	7059	2/24/2015	\$1,000.00	Online Transfer to "Mensch"	EX 4 P 0542	2,107	\$418.51
105	Florence Mensch	7059	2/25/2015	\$11,167.43	Online Transfer to CHK 3259	EX 4 P 0542	2,106	\$4,671.50
106	Florence Mensch	7059	2/26/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0542	2,105	\$836.23
107	Florence Mensch	7059	3/2/2015	\$2,272.11	Online Transfer to CHK 3259	EX 4 P 0542	2,101	\$948.20
108	Florence Mensch	7059	3/5/2015	\$4,500.00	Online Transfer to CHK 3259	EX 4 P 0542	2,098	\$1,875.27
109	Florence Mensch	7059	3/16/2015	\$2,000.29	Online Transfer to CHK 3259	EX 4 P 0564	2,087	\$829.20
110	Florence Mensch	7059	3/24/2015	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0564	2,079	\$1,238.86
111	Florence Mensch	7059	4/3/2015	\$4,626.91	Online Transfer to CHK 3259	EX 4 P 0564	2,069	\$1,901.50
112	Florence Mensch	7059	4/14/2015	\$2,300.79	Online Transfer to CHK 3259	EX 4 P 0586	2,058	\$940.52
113	Florence Mensch	7059	4/17/2015	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0586	2,055	\$1,224.55
114	Florence Mensch	7059	4/21/2015	\$2,700.00	Online Transfer to CHK 3259	EX 4 P 0586	2,051	\$1,099.95
115	Florence Mensch	7059	4/27/2015	\$4,688.00	Online Transfer to CHK 3259	EX 4 P 0586	2,045	\$1,904.26
116	Florence Mensch	7059	5/7/2015	\$3,245.76	Online Transfer to CHK 3259	EX 4 P 0612	2,035	\$1,311.98
117	Florence Mensch	7059	5/11/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0612	2,031	\$806.84
118	Florence Mensch	7059	5/11/2015	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0612	2,031	\$403.42
119	Florence Mensch	7059	5/18/2015	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0612	2,024	\$1,206.08
120	Florence Mensch	7059	5/20/2015	\$3,465.00	Online Transfer to CHK 3259	EX 4 P 0612	2,022	\$1,391.65
121	Florence Mensch	7059	5/21/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0612	2,021	\$802.86
122	Florence Mensch	7059	5/27/2015	\$3,800.00	Online Transfer to CHK 3259	EX 4 P 0612	2,015	\$1,520.91
123	Florence Mensch	7059	6/3/2015	\$500.00	Online Transfer to "Mensch"	EX 4 P 0612	2,008	\$199.42
124	Florence Mensch	7059	6/10/2015	\$1,803.49	Online Transfer to CHK 3259	EX 4 P 0638	2,001	\$716.81
125	Florence Mensch	7059	6/12/2015	\$2,000.00	Online banking payment to CRD 8295	EX 4 P 0638	1,999	\$794.12
126	Florence Mensch	7059	6/16/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0638	1,995	\$792.53
127	Florence Mensch	7059	6/22/2015	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0638	1,989	\$395.08
128	Florence Mensch	7059	6/22/2015	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0638	1,989	\$395.08

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Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
129	Florence Mensch	7059	6/29/2015	\$700.00	Online Transfer to CHK 3259	EX 4 P 0638	1,982	\$275.58
130	Florence Mensch	7059	7/7/2015	\$7,485.42	Online Transfer to CHK 3259	EX 4 P 0638	1,974	\$2,935.00
131	Florence Mensch	7059	7/17/2015	\$4,485.35	Online Transfer to CHK 3259	EX 4 P 0664	1,964	\$1,749.78
132	Florence Mensch	7059	7/20/2015	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0664	1,961	\$1,168.54
133	Florence Mensch	7059	7/27/2015	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0664	1,954	\$388.12
134	Florence Mensch	7059	8/10/2015	\$7,000.00	Online Transfer to CHK 3259	EX 4 P 0690	1,940	\$2,697.40
135	Florence Mensch	7059	8/12/2015	\$3,349.03	Online Transfer to CHK 3259	EX 4 P 0690	1,938	\$1,289.19
136	Florence Mensch	7059	8/20/2015	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0690	1,930	\$383.36
137	Florence Mensch	7059	8/26/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0690	1,924	\$764.33
138	Florence Mensch	7059	9/18/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0718	1,901	\$755.19
139	Florence Mensch	7059	9/23/2015	\$3,349.39	Online Transfer to CHK 3259	EX 4 P 0718	1,896	\$1,261.39
140	Florence Mensch	7059	10/13/2015	\$904.56	Online Transfer to CHK 3259	EX 4 P 0742	1,876	\$337.07
141	Florence Mensch	7059	10/16/2015	\$2,485.00	Online Transfer to CHK 3259	EX 4 P 0742	1,873	\$924.50
142	Florence Mensch	7059	10/19/2015	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0742	1,870	\$1,114.31
143	Florence Mensch	7059	10/29/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0742	1,860	\$738.90
144	Florence Mensch	7059	11/9/2015	\$2,904.27	Online Transfer to CHK 3259	EX 4 P 0764	1,849	\$1,066.64
145	Florence Mensch	7059	11/18/2015	\$3,485.00	Online Transfer to CHK 3259	EX 4 P 0764	1,840	\$1,273.70
146	Florence Mensch	7059	11/19/2015	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0764	1,839	\$730.56
147	Florence Mensch	7059	11/23/2015	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0764	1,835	\$364.49
148	Florence Mensch	7059	11/24/2015	\$9,000.00	Online Transfer to CHK 3259	EX 4 P 0764	1,834	\$3,278.59
149	Florence Mensch	7059	12/4/2015	\$2,916.77	Online Transfer to CHK 3259	EX 4 P 0764	1,824	\$1,056.75
150	Florence Mensch	7059	12/14/2015	\$4,167.27	Online Transfer to CHK 3259	EX 4 P 0790	1,814	\$1,501.53
151	Florence Mensch	7059	12/21/2015	\$800.00	SC Teller withdrawal	EX 4 P 0790	1,807	\$287.14
152	Florence Mensch	7059	12/21/2015	\$2,200.00	Online Transfer to CHK 3259	EX 4 P 0790	1,807	\$789.63
153	Florence Mensch	7059	1/8/2016	\$5,284.88	Online Transfer to CHK 3259	EX 4 P 0820	1,789	\$1,877.98
154	Florence Mensch	7059	1/15/2016	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0820	1,782	\$1,061.88
155	Florence Mensch	7059	1/19/2016	\$4,000.00	Online Transfer to CHK 3259	EX 4 P 0820	1,778	\$1,412.66
156	Florence Mensch	7059	2/5/2016	\$6,819.13	Online Transfer to CHK 3259	EX 4 P 0840	1,761	\$2,385.25
157	Florence Mensch	7059	2/10/2016	\$2,450.00	Online Transfer to CHK 3259	EX 4 P 0840	1,756	\$854.55
158	Florence Mensch	7059	2/18/2016	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 0840	1,748	\$1,041.62
159	Florence Mensch	7059	2/22/2016	\$14,000.00	Online Transfer to CHK 3259	EX 4 P 0840	1,744	\$4,849.75
160	Florence Mensch	7059	3/7/2016	\$4,000.00	Online Transfer to CHK 3259	EX 4 P 0840	1,730	\$1,374.52

APPENDIX E

Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
161	Florence Mensch	7059	3/14/2016	\$9,849.26	Online Transfer to CHK 3259	EX 4 P 0864	1,723	\$3,370.81
162	Florence Mensch	7059	3/24/2016	\$4,200.00	Online Transfer to CHK 3259	EX 4 P 0864	1,713	\$1,429.06
163	Florence Mensch	7059	4/5/2016	\$5,618.55	Online Transfer to CHK 3259	EX 4 P 0864	1,701	\$1,898.34
164	Florence Mensch	7059	4/11/2016	\$3,350.90	Online Transfer to CHK 3259	EX 4 P 0884	1,695	\$1,128.17
165	Florence Mensch	7059	4/14/2016	\$12,000.00	Online Transfer to CHK 3259	EX 4 P 0884	1,692	\$4,032.98
166	Florence Mensch	7059	5/6/2016	\$3,819.03	Online Transfer to CHK 3259	EX 4 P 0908	1,670	\$1,266.82
167	Florence Mensch	7059	5/23/2016	\$2,350.00	Online Transfer to CHK 3259	EX 4 P 0908	1,653	\$771.59
168	Florence Mensch	7059	5/23/2016	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 0908	1,653	\$328.34
169	Florence Mensch	7059	5/26/2016	\$4,000.00	Online Transfer to CHK 3259	EX 4 P 0908	1,650	\$1,310.96
170	Florence Mensch	7059	6/9/2016	\$3,168.87	Online Transfer to CHK 3259	EX 4 P 0928	1,636	\$1,029.75
171	Florence Mensch	7059	6/20/2016	\$4,000.00	Online Transfer to CHK 3259	EX 4 P 0928	1,625	\$1,291.10
172	Florence Mensch	7059	6/21/2016	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0928	1,624	\$645.15
173	Florence Mensch	7059	6/24/2016	\$3,325.51	Online Transfer to CHK 3259	EX 4 P 0928	1,621	\$1,070.75
174	Florence Mensch	7059	6/27/2016	\$4,500.00	Online Transfer to CHK 3259	EX 4 P 0928	1,618	\$1,446.23
175	Florence Mensch	7059	7/5/2016	\$8,318.55	Online Transfer to CHK 3259	EX 4 P 0928	1,610	\$2,660.22
176	Florence Mensch	7059	7/11/2016	\$2,315.78	Online Transfer to CHK 3259	EX 4 P 0952	1,604	\$737.81
177	Florence Mensch	7059	7/25/2016	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 0952	1,590	\$631.64
178	Florence Mensch	7059	8/4/2016	\$75,000.00	Online Transfer to CHK 3259	EX 4 P 0952	1,580	\$23,537.66
179	Florence Mensch	2007	8/29/2016	\$300.00	Online banking payment to CRD 9935	EX 4 P 0981	1,555	\$92.66
180	Florence Mensch	7059	11/7/2016	\$50.88	Online banking payment to CRD 9935	EX 4 P 1048	1,485	\$15.01
181	Florence Mensch	7059	11/28/2016	\$5,025.25	Online Transfer to CHK 3259	EX 4 P 1048	1,464	\$1,461.31
182	Florence Mensch	7059	12/19/2016	\$6,433.92	Online Transfer to CHK 3259	EX 4 P 1074	1,443	\$1,844.11
183	Florence Mensch	7059	12/19/2016	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 1074	1,443	\$286.62
184	Florence Mensch	7059	1/17/2017	\$7,414.30	Online Transfer to CHK 3259	EX 4 P 1100	1,414	\$2,082.40
185	Florence Mensch	7059	1/24/2017	\$11,000.00	Online Transfer to CHK 3259	EX 4 P 1100	1,407	\$3,074.20
186	Florence Mensch	7059	1/30/2017	\$5,000.00	Online Transfer to CHK 3259	EX 4 P 1100	1,401	\$1,391.40
187	Florence Mensch	7059	1/30/2017	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1100	1,401	\$556.56
188	Florence Mensch	7059	2/6/2017	\$1,637.42	Online Transfer to CHK 3259	EX 4 P 1126	1,394	\$453.39
189	Florence Mensch	7059	2/8/2017	\$12,996.03	Online Transfer to CHK 3259	EX 4 P 1126	1,392	\$3,593.31
190	Florence Mensch	7059	2/21/2017	\$4,925.69	Online Transfer to CHK 3259	EX 4 P 1126	1,379	\$1,349.20
191	Florence Mensch	7059	3/9/2017	\$2,813.36	Online Transfer to CHK 3259	EX 4 P 1141	1,363	\$761.67
192	Florence Mensch	7059	3/9/2017	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 1141	1,363	\$270.73

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Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
193	Florence Mensch	7059	3/31/2017	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1141	1,341	\$799.09
194	Florence Mensch	7059	5/2/2017	\$35,271.43	Online Transfer to CHK 3259	EX 4 P 1156	1,309	\$9,170.81
195	Florence Mensch	2007	6/27/2017	\$400.00	Online banking payment to CRD 7061	EX 4 P 1185	1,253	\$99.55
196	Florence Mensch	7059	7/7/2017	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 1203	1,243	\$246.90
197	Florence Mensch	7059	7/11/2017	\$12,641.63	Online Transfer to CHK 3259	EX 4 P 1203	1,239	\$3,111.14
198	Florence Mensch	7059	7/18/2017	\$1,000.00	Online Transfer to CHK 3259	EX 4 P 1203	1,232	\$244.71
199	Florence Mensch	7059	8/7/2017	\$1,413.18	Online Transfer to CHK 3259	EX 4 P 1203	1,212	\$340.21
200	Florence Mensch	7059	10/10/2017	\$5,682.45	Online Transfer to CHK 3259	EX 4 P 1253	1,148	\$1,295.75
201	Florence Mensch	7059	10/30/2017	\$28,000.00	Online Transfer to CHK 3259	EX 4 P 1253	1,128	\$6,273.53
202	Florence Mensch	7059	11/13/2017	\$1,000.00	Online Transfer to "Mensch"	EX 4 P 1271	1,114	\$221.27
203	Florence Mensch	7059	12/11/2017	\$400.00	Online banking payment to CRD 7061	EX 4 P 1291	1,086	\$86.28
204	Florence Mensch	7059	2/26/2018	\$700.00	Online Transfer to "Mensch"	EX 4 P 1321	1,009	\$140.29
205	Florence Mensch	7059	5/18/2018	\$7,385.00	Online Transfer to CHK 3259	EX 4 P 1363	928	\$1,361.27
206	Florence Mensch	7059	6/19/2018	\$5,500.00	Online Transfer to CHK 3259	EX 4 P 1375	896	\$978.85
207	Florence Mensch	7059	7/6/2018	\$6,206.71	Online Transfer to CHK 3259	EX 4 P 1375	879	\$1,083.67
208	Florence Mensch	7059	7/13/2018	\$3,002.40	Online Transfer to CHK 3259	EX 4 P 1391	872	\$520.03
209	Florence Mensch	7059	7/16/2018	\$5,000.00	Online Transfer to CHK 3259	EX 4 P 1391	869	\$863.05
210	Florence Mensch	7059	7/17/2018	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1391	868	\$344.82
211	Florence Mensch	7059	7/23/2018	\$12,000.00	Online Transfer to CHK 3259	EX 4 P 1391	862	\$2,054.63
212	Florence Mensch	7059	7/27/2018	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1391	858	\$511.27
213	Florence Mensch	7059	8/16/2018	\$3,437.85	Online Transfer to CHK 3259	EX 4 P 1415	838	\$572.24
214	Florence Mensch	7059	8/20/2018	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1415	834	\$496.97
215	Florence Mensch	7059	8/20/2018	\$8,500.00	Online Transfer to CHK 3259	EX 4 P 1415	834	\$1,408.09
216	Florence Mensch	7059	8/23/2018	\$500.00	Online Transfer to CHK 3259	EX 4 P 1415	831	\$82.53
217	Florence Mensch	7059	8/27/2018	\$6,000.00	Online Transfer to CHK 3259	EX 4 P 1415	827	\$985.60
218	Florence Mensch	7059	9/4/2018	\$1,400.00	Online banking payment to CRD 7061	EX 4 P 1415	819	\$227.75
219	Florence Mensch	7059	9/7/2018	\$5,037.24	Online Transfer to CHK 3259	EX 4 P 1429	816	\$816.45
220	Florence Mensch	7059	9/14/2018	\$4,000.00	Online Transfer to CHK 3259	EX 4 P 1429	809	\$642.77
221	Florence Mensch	7059	9/25/2018	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1429	798	\$475.52
222	Florence Mensch	7059	10/3/2018	\$4,435.94	Online Transfer to CHK 3259	EX 4 P 1429	790	\$696.08
223	Florence Mensch	7059	10/12/2018	\$3,400.00	Online Transfer to CHK 3259	EX 4 P 1445	781	\$527.44
224	Florence Mensch	7059	10/15/2018	\$1,606.08	Online Transfer to CHK 3259	EX 4 P 1445	778	\$248.19

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Line #	BOA Account Name	BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre-judgment Interest
225	Florence Mensch	7059	10/22/2018	\$4,995.00	Online Transfer to CHK 3259	EX 4 P 1445	771	\$764.95
226	Florence Mensch	7059	10/23/2018	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1445	770	\$305.89
227	Florence Mensch	7059	10/30/2018	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1445	763	\$454.66
228	Florence Mensch	7059	11/13/2018	\$1,436.65	Online Transfer to CHK 3259	EX 4 P 1459	749	\$213.74
229	Florence Mensch	7059	11/13/2018	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1459	749	\$446.32
230	Florence Mensch	7059	11/19/2018	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1459	743	\$295.16
231	Florence Mensch	7059	11/21/2018	\$3,000.00	Online Transfer to CHK 3259	EX 4 P 1459	741	\$441.55
232	Florence Mensch	7059	11/26/2018	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1459	736	\$292.38
233	Florence Mensch	7059	12/12/2018	\$6,436.27	Online Transfer to CHK 3259	EX 4 P 1473	720	\$920.47
234	Florence Mensch	7059	12/18/2018	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1473	714	\$283.64
235	Florence Mensch	7059	12/24/2018	\$5,000.00	Online Transfer to CHK 3259	EX 4 P 1473	708	\$703.15
236	Florence Mensch	7059	12/27/2018	\$2,000.00	Online Transfer to CHK 3259	EX 4 P 1473	705	\$280.07
237	Florence Mensch	7059	12/31/2018	\$5,000.00	Online Transfer to CHK 3259	EX 4 P 1473	701	\$696.20
238	Florence Mensch	7059	1/7/2019	\$3,433.74	Online Transfer to CHK 3259	EX 4 P 1473	694	\$473.34
239	Florence Mensch	7059	1/16/2019	\$13,500.00	Online Transfer to CHK 3259	EX 4 P 1487	685	\$1,836.83
240	Florence Mensch	7059	2/13/2019	\$1,436.50	Online Transfer to CHK 3259	EX 4 P 1501	657	\$187.46
241	Florence Mensch	7059	2/19/2019	\$400.00	Online Transfer to CHK 3259	EX 4 P 1501	651	\$51.72
			Total	\$822,538.47				\$272,100.81

APPENDIX F - Aggregate transfers out of Mrs. Mensch's bank account to pay credit card balances of Sterling Mensch III

Line #	Florence Mensch BOA Account #	Date of Entry	Amount of Debit	Description	Bates #	Elapsed Days to 12/1/2020	Pre- judgment Interest
1	████████ 2007	8/29/2016	\$300.00	Online Transfer to BOA Credit Card Account # ██████████- ████████-9935 of Sterling Mensch III	EX 4 P 0981	1,556	\$92.66
2	████████ 7059	11/7/2016	\$50.88	Online Transfer to BOA Credit Card Account # ██████████- ████████-9935 of Sterling Mensch III	EX 4 P 1056	1,487	\$15.03
3	████████ 2007	6/27/2017	\$400.00	Online Transfer to BOA Credit Card Account # ██████████ ████████-7061 of Sterling Mensch III	EX 4 P 1185	1,253	\$99.55
4	████████ 7059	12/11/2017	\$400.00	Online Transfer to BOA Credit Card Account # ██████████ ████████-9935 of Sterling Mensch III	EX 4 P 1291	1,086	\$86.28
5	████████ 7059	9/4/2018	\$1,400.00	Online Transfer to BOA Credit Card Account # ██████████- ████████-9935 of Sterling Mensch III	EX 4 P 1415	819	\$227.75
		Total	\$2,550.88				\$521.28

APPENDIX G - Lost dividends from the 27,683 shares of General Electric stock dissipated by Sterling Mensch III

Date of share dissipation	Number of shares dissipated	Dividends lost	Pre-judgment interest on lost dividends
9/8/2011	64	\$364	\$144
4/16/2012	538	\$2,873	\$1,091
12/31/2013	2,507	\$10,078	\$3,266
12/31/2014	3,500	\$10,955	\$3,153
12/4/2015	2,591	\$5,726	\$1,431
1/1/2016	4,976	\$10,997	\$2,747
3/20/2018	13,507	\$4,322	\$602
Totals	27,683	\$45,315	\$12,433

APPENDIX H - Unnecessary income taxes resulting from liquidation of General Electric shares by Sterling Mensch III, in excess of that specified for minimum required IRA distributions

Date of share dissipation	Number of shares dissipated	Income tax on IRA distributions in excess of “required minimum distribution”	Date of payment of excess income tax	Days elapsed to December 1, 2020	Pre-judgment interest on excess income tax
9/8/2011	64	\$330	4/15/2012	3152	\$207
4/16/2012	538	\$3,380	4/15/2013	2787	\$1,871
12/4/2015	2,591	\$26,002	4/15/2016	1691	\$8,734
1/1/2016	4,976	\$78,670	4/15/2017	1326	\$20,720
3/20/2018	13,507	\$56,515	4/15/2019	596	\$6,690
Totals		<u>\$164,897</u>			<u>\$38,222</u>

APPENDIX I - Avoidable penalties and interest that were assessed as a result of late payments by Sterling Mensch III of Mrs. Mensch's income tax liabilities

Line #	Description	Amount	Bates Page #	Due Date	Elapsed Days	Pre-judgment interest
1	2012 Federal Income Tax Penalty	\$250.00	EX 17 P 007	4/24/2013	2,778	137.95
2	2012 S.C. State income tax, underpayment of estimates penalty	\$46.00	EX 17 P 025	4/24/2013	2,778	25.38
3	2013 Federal Income Tax Penalty	\$57.00	EX 18 P 024	4/9/2014	2,428	27.49
4	2013 S.C. State income tax, underpayment of estimates penalty	\$36.00	EX 18 P 044	4/9/2014	2,428	17.36
5	2014 Federal Income Tax Form 2210 Penalty	\$382.00	EX 19 P 035	10/18/2016	1,505	114.19
6	2014 S.C. State income tax, underpayment of estimates penalty	\$79.00	EX 19 P 023	4/14/2015	2,058	32.29
7	2015 Federal Income Tax Form 2210 Penalty	\$38.00	EX 20 P 022	10/15/2016	1,508	11.38
8	2015 S.C. State income tax, underpayment of estimates penalty	\$105.00	EX 20 P 001	10/15/2016	1,508	31.45
9	2015 Federal Income Tax Interest Penalty	\$677.87	EX 21 P 018	11/14/2016	1,478	199.01
10	2015 S.C. State Income Tax Penalty	\$483.42	EX 21 P 013	10/26/2016	1,497	143.74
11	2015 S.C. State Income Tax Interest penalty	\$250.88	EX 21 P 013	10/26/2016	1,497	74.60
12	2016 Federal Income Tax Failure to Pay Penalty	\$2,280.00	EX 21 P 026 and 034	10/16/2017	1,142	517.18
13	2016 Federal Income Tax Late Filing Interest Penalty	\$1,327.00	EX 21 P 026 and 034	10/16/2017	1,142	301.01
14	2016 Federal Income Tax Form 2210 Penalty	\$418.00	EX 21 P 026 and 034	10/16/2017	1,142	94.82
15	2016 S.C. State Income Tax Failure to Pay Penalty	\$727.00	EX 21 P 067 and 60	10/16/2017	1,142	164.91
16	2016 S.C. State Income Tax Failure to Pay Penalty	\$6,059.00	EX 21 P 067 and 60	10/16/2017	1,142	1,374.40
17	2016 S.C. State Income Tax Interest penalty	\$604.00	EX 21 P 067 and 60	10/16/2017	1,142	137.01
		<u>\$13,820.17</u>				<u>\$3,404.18</u>

APPENDIX J - Excessive income taxes for Mrs. Mensch, resulting from the prior failure of Sterling Mensch III to properly itemize deductions for property tax and mortgage interest in each of the years 2011 through 2016

Tax return year	2011	2012	2013	2014	2015	2016	Total
Date of overpayment	4/17/2012	4/15/2013	4/15/2014	4/15/2015	10/15/2016	10/16/2017	
Days elapsed to 12/1/2020	3,150	2,787	2,422	2,057	1,508	1,142	
Tax overpayment amount	\$5,130	\$2,030	\$490	\$5,636	\$5,597	\$5,676	<u>\$24,559</u>
Pre-judgment interest	\$3,210	\$1,124	\$236	\$2,303	\$1,676	\$1,288	<u>\$9,836</u>

APPENDIX K - Accrued unpaid rent owed by Sterling Mensch III for his occupancy of 512 New Tarleton Way from January 2009 to August 2020

Rent Due Date	Amount	Days Elapsed to 12/1/2020	Pre-judgment Interest
1/1/2009	\$1,000	4,352	\$864.44
2/1/2009	\$1,000	4,321	\$858.28
3/1/2009	\$1,000	4,293	\$852.72
4/1/2009	\$1,000	4,262	\$846.56
5/1/2009	\$1,000	4,232	\$840.60
6/1/2009	\$1,000	4,201	\$834.44
7/1/2009	\$1,000	4,171	\$828.49
8/1/2009	\$1,000	4,140	\$822.33
9/1/2009	\$1,000	4,109	\$816.17
10/1/2009	\$1,000	4,079	\$810.21
11/1/2009	\$1,000	4,048	\$804.05
12/1/2009	\$1,000	4,018	\$798.10
1/1/2010	\$1,100	3,987	\$871.13
2/1/2010	\$1,100	3,956	\$864.36
3/1/2010	\$1,100	3,928	\$858.24
4/1/2010	\$1,100	3,897	\$851.47
5/1/2010	\$1,100	3,867	\$844.91
6/1/2010	\$1,100	3,836	\$838.14
7/1/2010	\$1,100	3,806	\$831.58
8/1/2010	\$1,100	3,775	\$824.81
9/1/2010	\$1,100	3,744	\$818.04
10/1/2010	\$1,100	3,714	\$811.48
11/1/2010	\$1,100	3,683	\$804.71
12/1/2010	\$1,100	3,653	\$798.15
1/1/2011	\$1,200	3,622	\$863.33
2/1/2011	\$1,200	3,591	\$855.94
3/1/2011	\$1,200	3,563	\$849.26
4/1/2011	\$1,200	3,532	\$841.87
5/1/2011	\$1,200	3,502	\$834.72
6/1/2011	\$1,200	3,471	\$827.33
7/1/2011	\$1,200	3,441	\$820.18
8/1/2011	\$1,200	3,410	\$812.79
9/1/2011	\$1,200	3,379	\$805.40
10/1/2011	\$1,200	3,349	\$798.25
11/1/2011	\$1,200	3,318	\$790.87
12/1/2011	\$1,200	3,288	\$783.71
1/1/2012	\$1,300	3,257	\$841.02
2/1/2012	\$1,300	3,226	\$833.01
3/1/2012	\$1,300	3,197	\$825.53
4/1/2012	\$1,300	3,166	\$817.52
5/1/2012	\$1,300	3,136	\$809.77
6/1/2012	\$1,300	3,105	\$801.77
7/1/2012	\$1,300	3,075	\$794.02
8/1/2012	\$1,300	3,044	\$786.02
9/1/2012	\$1,300	3,013	\$778.01
10/1/2012	\$1,300	2,983	\$770.27
11/1/2012	\$1,300	2,952	\$762.26
12/1/2012	\$1,300	2,922	\$754.52
1/1/2013	\$1,400	2,891	\$803.94
2/1/2013	\$1,400	2,860	\$795.31
3/1/2013	\$1,400	2,832	\$787.53
4/1/2013	\$1,400	2,801	\$778.91
5/1/2013	\$1,400	2,771	\$770.57

6/1/2013	\$1,400	2,740	\$761.94
7/1/2013	\$1,400	2,710	\$753.60
8/1/2013	\$1,400	2,679	\$744.98
9/1/2013	\$1,400	2,648	\$736.36
10/1/2013	\$1,400	2,618	\$728.02
11/1/2013	\$1,400	2,587	\$719.40
12/1/2013	\$1,400	2,557	\$711.06
1/1/2014	\$1,500	2,526	\$752.61
2/1/2014	\$1,500	2,495	\$743.37
3/1/2014	\$1,500	2,467	\$735.03
4/1/2014	\$1,500	2,436	\$725.79
5/1/2014	\$1,500	2,406	\$716.86
6/1/2014	\$1,500	2,375	\$707.62
7/1/2014	\$1,500	2,345	\$698.68
8/1/2014	\$1,500	2,314	\$689.44
9/1/2014	\$1,500	2,283	\$680.21
10/1/2014	\$1,500	2,253	\$671.27
11/1/2014	\$1,500	2,222	\$662.03
12/1/2014	\$1,500	2,192	\$653.10
1/1/2015	\$1,600	2,161	\$686.78
2/1/2015	\$1,600	2,130	\$676.93
3/1/2015	\$1,600	2,102	\$668.03
4/1/2015	\$1,600	2,071	\$658.18
5/1/2015	\$1,600	2,041	\$648.65
6/1/2015	\$1,600	2,010	\$638.79
7/1/2015	\$1,600	1,980	\$629.26
8/1/2015	\$1,600	1,949	\$619.41
9/1/2015	\$1,600	1,918	\$609.56
10/1/2015	\$1,600	1,888	\$600.02
11/1/2015	\$1,600	1,857	\$590.17
12/1/2015	\$1,600	1,827	\$580.64
1/1/2016	\$1,700	1,796	\$606.46
2/1/2016	\$1,700	1,765	\$595.99
3/1/2016	\$1,700	1,736	\$586.20
4/1/2016	\$1,700	1,705	\$575.73
5/1/2016	\$1,700	1,675	\$565.60
6/1/2016	\$1,700	1,644	\$555.13
7/1/2016	\$1,700	1,614	\$545.00
8/1/2016	\$1,700	1,583	\$534.53
9/1/2016	\$1,700	1,552	\$524.07
10/1/2016	\$1,700	1,522	\$513.94
11/1/2016	\$1,700	1,491	\$503.47
12/1/2016	\$1,700	1,461	\$493.34
1/1/2017	\$1,800	1,430	\$511.27
2/1/2017	\$1,800	1,399	\$500.19
3/1/2017	\$1,800	1,371	\$490.18
4/1/2017	\$1,800	1,340	\$479.10
5/1/2017	\$1,800	1,310	\$468.37
6/1/2017	\$1,800	1,279	\$457.29
7/1/2017	\$1,800	1,249	\$446.56
8/1/2017	\$1,800	1,218	\$435.48
9/1/2017	\$1,800	1,187	\$424.39
10/1/2017	\$1,800	1,157	\$413.67
11/1/2017	\$1,800	1,126	\$402.58
12/1/2017	\$1,800	1,096	\$391.86
1/1/2018	\$1,900	1,065	\$401.93
2/1/2018	\$1,900	1,034	\$390.23
3/1/2018	\$1,900	1,006	\$379.66
4/1/2018	\$1,900	975	\$367.96
5/1/2018	\$1,900	945	\$356.64

6/1/2018	\$1,900	914	\$344.94
7/1/2018	\$1,900	884	\$333.62
8/1/2018	\$1,900	853	\$321.92
9/1/2018	\$1,900	822	\$310.22
10/1/2018	\$1,900	792	\$298.90
11/1/2018	\$1,900	761	\$287.20
12/1/2018	\$1,900	731	\$275.88
1/1/2019	\$2,000	700	\$278.08
2/1/2019	\$2,000	669	\$265.77
3/1/2019	\$2,000	641	\$254.64
4/1/2019	\$2,000	610	\$242.33
5/1/2019	\$2,000	580	\$230.41
6/1/2019	\$2,000	549	\$218.10
7/1/2019	\$2,000	519	\$206.18
8/1/2019	\$2,000	488	\$193.86
9/1/2019	\$2,000	457	\$181.55
10/1/2019	\$2,000	427	\$169.63
11/1/2019	\$2,000	396	\$157.31
12/1/2019	\$2,000	366	\$145.40
1/1/2020	\$2,000	335	\$133.08
2/1/2020	\$2,000	304	\$120.77
3/1/2020	\$2,000	275	\$109.25
4/1/2020	\$2,000	244	\$96.93
5/1/2020	\$2,000	214	\$85.01
6/1/2020	\$2,000	183	\$72.70
7/1/2020	\$2,000	153	\$60.78
8/1/2020	\$2,000	122	\$48.47
Total	<u>\$214,000</u>		<u>\$83,945</u>

R. David Massey
F. Douglas P. Evans
Stanley E. McLeod
Knox L. Haynsworth, III
Tyler E. McLeod

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC
ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 271-7424
FAX (864) 242-6469
WEBSITE: bmemhlaw.com
OF COUNSEL
Suzanne Massey Schemm

August 5, 2021

Via Hand Delivery

Kim Thomason &
Devon Puriefoy
Truluck Thomason, LLC
3 Boyce Avenue
Greenville, SC 29601

**RE: Estate of Florence Petrak Mensch
Case Number: 2018ES2302854**

Dear Ms. Thomason and Mr. Puriefoy,

Enclosed, please find a copy of the filed Notice of Motion and Motion for Attorney's Fees and Costs with the attached Affidavit of Attorney's Fees and Costs and Total Attorney Fees & Costs Incurred to Date on behalf of Tyler E. McLeod, counsel for Petitioners, John R. Mensch and Shauna M. Waddell for service.

If you have any questions, please contact Tyler McLeod at (864) 271-7424 or by email at tmcleod@bmemhlaw.com.

Respectfully,



Erin Callahan
Paralegal to Tyler E. McLeod
**Brown, Massey, Evans, McLeod
& Haynsworth, LLC**
106 Williams St.
Greenville, SC 29601
(864) 271-7424 ext. 109
ecallahan@bmemhlaw.com

RECEIVED

STATE OF SOUTH CAROLINA AUG 05 2021 IN THE PROBATE COURT

COUNTY OF GREENVILLE GREENVILLE COUNTY CASE NO: 2018ES2302854
PROBATE COURT

IN THE MATTER 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.

**NOTICE OF MOTION AND MOTION
FOR ATTORNEY'S FEES AND COSTS
PURSUANT TO S.C. CODE §62-1-111**

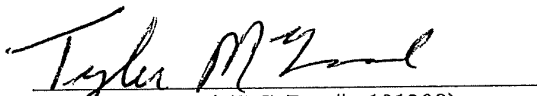
**TO: KIMBERLY T. THOMASON AND DEVIN PURIEFOY OF THE LAW OFFICES OF
TRULUCK THOMASON, ATTORNEYS FOR THE RESPONDENT STERLING RAYMOND
MENSCH III, INDIVIDUALLY, AS FORMER PERSONAL REPRESENTATIVE OF THE
ESTATE OF FLORENCE PETRAK MENSCH AND IN HIS FORMER CAPACITY AS AGENT
UNDER POWER OF ATTORNEY FOR FLORENCE PETRAK MENSCH:**

You will please take notice that Petitioners will move on the tenth day following service
hereof or as soon thereafter as counsel may be heard for an Order pursuant to the Court's authority
granted in S.C. Code Ann. §62-1-111 requesting the Court to Order Sterling Mensch to pay the
Estate of Florence Mensch's attorney's fees, accountant's fees and costs incurred in prosecuting
claims of the Estate of Florence Petrak Mensch and seeking damages for Respondent's Breach of
Fiduciary Duty as Agent under Power of Attorney for Florence Petrak Mensch, Violation of the
South Carolina Power of Attorney Act and Conversion.

This Motion is supported by the pleadings on file with the Court, the previous Orders of the Court, the Petitioners' Motion for Summary Judgment and supporting Memorandum of Law previously filed with the Court, a Memorandum of Law which may be filed with the Court prior to the hearing, attorney's fees affidavits submitted with this Motion as Exhibit A, the Court's file and such other and further materials as the Court may consider.

Respectfully Submitted,

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



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

tmcleod@bmemlaw.com

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

davidmassey@bmemhlaw.com

Knox Haynsworth (S.C. Bar #10275)

Knoxhaynsworth@bmemhlaw.com

106 Williams St.

Greenville, South Carolina 29601

(864) 271-7424

Attorneys for Petitioners,

John R. Mensch and Shauna M. Waddell

August 5, 2021
Greenville, South Carolina



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

C.A. No.: 2018-ES-23-02854

**AFFIDAVIT OF
ATTORNEY'S FEES AND COSTS**

Personally appeared before me, Tyler E. McLeod, who, after being duly sworn states as follows:

1. David Massey, Knox Haynsworth and I of the firm Brown, Massey, Evans, McLeod & Haynsworth LLC are attorneys for Petitioners in the above captioned case.

2. Petitioners are requesting the Court to order Respondent to pay the Estate of Florence Mensch's attorney fees, accountant fees and costs incurred to prosecute certain claims of the Estate for Respondent's Breach of Fiduciary Duty as Agent under Power of Attorney for Florence Petrak Mensch, Violation of the South Carolina Power of Attorney Act and Conversion.

3. David Massey is an attorney licensed in South Carolina who has practiced in South Carolina for over 40 years, with much of his practice devoted to probate litigation. David Massey's hourly rate is \$400.00 per hour.

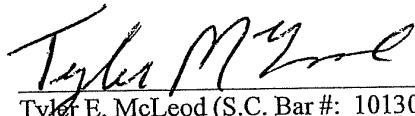
4. Knox Haynsworth is an attorney licensed in South Carolina who has practiced in South Carolina for over 33 years, with much of his practice devoted to civil litigation. Knox Haynsworth's hourly rate is \$400.00 per hour.

4. I am an attorney licensed in South Carolina who has practiced in South Carolina for over 8 years, with the majority of my practice involving estate planning, probate administration and probate litigation. My hourly rate for this matter is \$250.00 per hour.

5. Our firm is billing on an hourly basis in this matter. I affirm that the hourly rates specified herein are reasonable given the attorney's professional qualifications and the fees customarily charged in South Carolina for similar legal services.

6. I have set forth an itemized list of actual fees and costs on Exhibit A of this Affidavit, and I assert that these fees and costs are reasonable pursuant to Rule 1.5 of the S.C. Rules of Professional Conduct. The total unpaid attorney's fees, accountant's fees and costs to date in this matter total One Hundred Thousand Seven Hundred Thirty-Four and 00/100 (\$100,734.00) Dollars.

7. Further attorney's fees and costs will be incurred prior to the trial on damages which is set for August 17 and 18, 2021. Petitioners will update this affidavit to reflect the total fees and costs incurred as of the date of the hearing on the Motion for Attorney's Fees and Costs. Petitioner's also requested attorney's fees and costs in their Amended Petition.


Tyler E. McLeod (S.C. Bar #: 101309)
tmcleod@bmemlaw.com
106 Williams St.
Greenville, South Carolina 29601
(864) 271-7424

Greenville, South Carolina
August 5, 2021

SWORN to before me
this 5th day of August 2021.


Notary Public, State of South Carolina
My commission expires: 12/02/2030

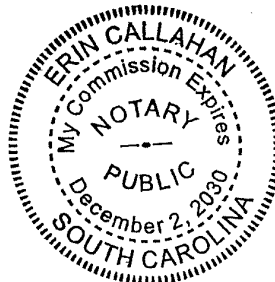


EXHIBIT A
Total Attorney Fees & Costs Incurred to
Date

Attorney Billing

Date	Atty	Billing Rate \$/hr	Hour(s)	Description	Total (\$)
3/5/2019	RDM	\$400.00	2.00	Multiple telephone conferences, in-office conference with John Mensch.	\$800.00
3/18/2019	TEM	\$250.00	2.30	Telephone call with John Mensch followed by drafting of Demand for Notice, Demand for Non-Probate Inventory and Letter to Sterling Mensch.	\$575.00
5/6/2019	TEM	\$250.00	3.70	Begin drafting Petition to Probate Court.	\$925.00
5/7/2019	TEM	\$250.00	2.30	Continue work on Petition to Probate Court.	\$575.00
5/13/2019	RDM	\$400.00	0.50	Review, analysis of pleadings. Conduct legal research; meet with John Mensch.	\$200.00
5/15/2019	TEM	\$250.00	2.70	Finalize Petition for submission to Court. Draft Application for Appointment.	\$675.00
5/15/2019	TEM	\$250.00	0.50	Meeting with Shauna Waddell in-office; Signing of Petition.	\$125.00
7/4/2019	TEM	\$250.00	0.50	Email communications with opposing counsel.	\$125.00
7/8/2019	TEM	\$250.00	0.70	Email communications to and from Shauna Waddell and John Mensch	\$175.00
7/19/2019	TEM	\$250.00	2.30	Begin drafting Motion for Partial Summary Judgment and Witness Affidavits.	\$575.00
7/22/2019	TEM	\$250.00	4.70	Work on Motion for Partial Summary Judgment and Affidavits.	\$1,175.00
7/29/2019	TEM	\$250.00	0.10	Telephone call with John Mensch.	\$25.00
7/29/2019	TEM	\$250.00	1.30	Reviewed and Edited Motion for Summary Judgment/ Compel	\$325.00
8/1/2019	TEM	\$250.00	1.70	Prepared Affidavit of Shauna Waddell; appointment to execute Affidavit and Conference	\$425.00
8/19/2019	TEM	\$250.00	2.30	Preparation for Hearing on Motion for Summary Judgment.	\$575.00
8/19/2019	TEM	\$250.00	0.10	Telephone call with Shauna M. Waddell.	\$25.00
8/20/2019	RDM	\$0.00	1.70	Meeting with Tyler McLeod to Prepare for Hearing	\$0.00
8/20/2019	TEM	\$250.00	1.70	Preparation for Hearing on Motion for Summary Judgment.	\$425.00
8/21/2019	TEM	\$250.00	1.30	Begin drafting Order for Probate Court.	\$325.00
8/21/2019	TEM	\$250.00	5.40	Preparation for Probate Court Hearing.	\$1,350.00
8/22/2019	TEM	\$250.00	3.30	Continued work drafting Order.	\$825.00
8/23/2019	RDM	\$0.00	1.50	Reviewed Order	\$0.00
9/16/2019	TEM	\$250.00	0.70	Telephone call with Shauna and John.	\$175.00
9/16/2019	TEM	\$250.00	1.20	Email to opposing counsel.	\$300.00
9/24/2019	TEM	\$250.00	2.30	Review of John and Shauna's Summary; Email to John and Shauna.	\$575.00
9/26/2019	KLH	\$400.00	1.00	Discussion re: Order and Motion with Knox Haynsworth.	\$400.00
9/26/2019	TEM	\$250.00	2.30	Work on 2nd Motion to Compel and Summary Judgment; Call with Shauna Waddell.	\$575.00
9/27/2019	TEM	\$250.00	0.30	Telephone call with John and Shauna; worked on Motion.	\$75.00
10/1/2019	TEM	\$250.00	1.30	Drafting Second Motion.	\$325.00
10/9/2019	TEM	\$250.00	1.70	Research and drafting of Motion for SJ and Compel; Affidavit for John Mensch.	\$425.00
10/9/2019	RDM	\$400.00	0.70	Review and revise Second Motion.	\$280.00
10/10/2019	TEM	\$250.00	1.30	Worked on Affidavit for Shauna Waddell	\$325.00
11/1/2019	TEM	\$250.00	0.10	Email to Probate Court.	\$25.00
11/18/2019	TEM	\$250.00	2.70	Preparation for 11/20/19 Hearing on Summary Judgment & Motion to Dismiss.	\$675.00
11/18/2019	TEM	\$250.00	0.10	Email to John Mensch and Shauna Waddell.	\$25.00
11/20/2019	TEM	\$250.00	3.20	Preparation for Hearing	\$800.00
11/20/2019	TEM	\$250.00	1.70	Hearing on 11/20/2019	\$425.00
11/22/2019	TEM	\$250.00	1.70	Worked on Order	\$425.00
11/27/2019	TEM	\$250.00	3.30	Worked on Proposed Order	\$825.00
11/27/2019	RDM	\$400.00	1.00	Reviewed Order	\$400.00
11/27/2019	TEM	\$250.00	0.30	E-mail to Judge Jennings	\$75.00
11/27/2019	TEM	\$250.00	0.30	E-mail to Shauna M. Waddell & John Mensch	\$75.00
1/2/2020	TEM	\$250.00	1.30	Subpoena to BOA	\$325.00
1/15/2020	TEM	\$250.00	4.30	Worked on Motion to Amend; e-mails to John Mensch and Shauna M. Waddell	\$1,075.00
1/17/2020	TEM	\$250.00	3.30	Review of BOA Documents; Upload to Dropbox for John Mensch and Shauna M. Waddell	\$825.00
1/23/2020	RDM	\$400.00	0.50	Office Conference with Tyler McLeod Re: various issues of case	\$200.00
2/1/2020	TEM	\$250.00	1.50	Telephone Call with John Mensch and Shauna Waddell; Plan for moving forward with motion to amend and rule to show cause; determination of what to do with house	\$375.00
2/1/2020	TEM	\$250.00	0.70	Worked on Motion to Amend	\$175.00
2/4/2020	TEM	\$250.00	2.90	Worked on Rule to Show Cause and Affidavit	\$725.00
2/4/2020	TEM	\$250.00	1.30	Review of E-mails with transactions performed by Sterling Raymond Mensch III	\$325.00
2/5/2020	RDM	\$400.00	0.70	Reviewed Engagement Letter	\$280.00
2/6/2020	TEM	\$250.00	3.70	Worked on Updated Engagement Letter; Rule to Show Cause	\$925.00
2/7/2020	TEM	\$250.00	0.70	Reviewed Subpoena to T. Rowe Price	\$175.00
2/7/2020	TEM	\$125.00	1.00	Subpoena for Production of Documents to T. Rowe Price, Notice of Issuance of Subpoena and Letters to T. Rowe Price and Ben Leaphart	\$125.00
2/10/2020	TEM	\$250.00	1.10	E-mail responses to John Mensch and Shauna M. Waddell	\$275.00
2/12/2020	TEM	\$250.00	1.30	Worked on Updated Engagement Letter	\$325.00
2/12/2020	TEM	\$250.00	1.20	Finalized Rule and Order to Show Cause and Affidavit	\$300.00
2/14/2020	TEM	\$125.00	0.50	Preparation of Exhibits to Motion to Amend for filing with Probate Court	\$62.50
2/14/2020	TEM	\$250.00	1.30	E-mails to Probate Court; Telephone Call with Kim; E-mails to John Mensch and Shauna M. Waddell	\$325.00
2/17/2020	TEM	\$125.00	1.50	Revision to Petitioners' Rule and Order to Show Cause with Affidavit of Tyler E. McLeod and preparation of Exhibits A-D; Revision of Exhibits 1-2 to Petitioners' Motion to Amend Petition: prepare Notice of Hearing and Proof of Delivery to Ben Leaphart; Revision to Letter to Judge Jennings on behalf of Tyler E. McLeod; Cover Letter to Kimberly Watford	\$187.50
2/18/2020	TEM	\$125.00	0.20	Establish new, secure DropBox link for use by John Mensch in downloading documents from BOA; E-mail link to John Mensch	\$25.00
2/18/2020	TEM	\$250.00	0.50	Review of Documents from T. Rowe Price	\$125.00
2/19/2020	TEM	\$250.00	0.30	Email to Probate Court, Shauna and John.	\$75.00
2/21/2020	TEM	\$125.00	0.45	Analysis, Preparation, Upload of new T. Rowe Price document production.	\$56.25
2/26/2020	TEM	\$125.00	0.50	Processing and Preparation of Bates Series Petitioners_000001-002437.	\$62.50
3/9/2020	TEM	\$250.00	1.30	Review of John Mensch Email regarding expenditures.	\$325.00
3/9/2020	TEM	\$250.00	0.70	Review of Motion to Withdraw as Counsel; Emails to John and Shauna.	\$175.00
3/13/2020	TEM	\$250.00	0.50	Review of Email from Shauna Waddell regarding Bank of America.	\$125.00
3/17/2020	TEM	\$250.00	0.50	Email to John and Shauna regarding hearing and Covid-19 impact.	\$125.00
3/23/2020	TEM	\$250.00	1.20	Telephone call with Ben Leaphart; Review Probate Order re: Hearing; Emails to Shauna and John; Email to Probate Court.	\$300.00
3/23/2020	TEM	\$250.00	0.10	Telephone call to Amela at Bank of America.	\$25.00
3/23/2020	TEM	\$250.00	0.20	Email to John and Shauna regarding hearing.	\$50.00
3/25/2020	TEM	\$250.00	0.90	Preparation for call with Judge Jennings and Ben Leaphart.	\$225.00
3/25/2020	TEM	\$250.00	0.70	Telephone call with Judge Jennings and Ben Leaphart.	\$175.00
3/25/2020	TEM	\$250.00	0.70	Telephone call with John and Shauna.	\$175.00
3/26/2020	TEM	\$250.00	4.30	Preparation for Motion to Amend Hearing and Ben Leaphart's Motion to be relieved as Counsel; Review of new information to present at Hearing on Motion to Amend; Preparation of Argument.	\$1,075.00

3/26/2020	TEM	\$250.00	1.30	Telephone call to to Bank of America Legal Counsel regarding their compliance with the Order dated December 4, 2019.	\$325.00
3/30/2020	TEM	\$250.00	1.30	Work on Order for Motion to Amend	\$325.00
3/30/2020	TEM	\$250.00	1.70	Reviewed Order to be relieved as counsel and made revisions; email to Judge Jennings and Ben Leaphart	\$425.00
3/31/2020	TEM	\$250.00	0.70	E-Mail to John Mensch regarding Motion to Amend	\$175.00
3/31/2020	TEM	\$250.00	2.30	Worked on Order for Motion to Amend	\$575.00
4/8/2020	TEM	\$0.00	1.30	Telephone Call with Peter Tiffany; Telephone call with John Markel regarding forensic accounting services	\$0.00
4/8/2020	TEM	\$250.00	0.70	Telephone Call with John Markel regarding accounting	\$175.00
4/14/2020	TEM	\$250.00	1.50	Telephone Call with Bank of America; Telephone Call with John Mensch and Shauna Waddell regarding accounting and other issues	\$375.00
4/23/2020	TEM	\$250.00	0.70	E-mail to John Markel regarding accounting	\$175.00
4/27/2020	TEM	\$250.00	3.40	Worked on Complaint	\$850.00
4/29/2020	TEM	\$250.00	1.80	Telephone Call with John Mensch and Shauna Waddell; Telephone Call with Accountant	\$450.00
5/1/2020	TEM	\$250.00	0.70	Telephone Call with Kim Thomason	\$175.00
5/6/2020	TEM	\$250.00	5.50	Worked on Complaint; Added Causes of Action	\$1,375.00
5/7/2020	TEM	\$250.00	1.50	E-mails to Rachael Hardin (attorney for Sterling Mensch III)	\$375.00
5/8/2020	TEM	\$250.00	4.30	Worked on Complaint; Incorporated changes from John Mensch and Shauna Waddell	\$1,075.00
5/11/2020	TEM	\$250.00	0.70	E-mail to John Markel regarding accounting	\$175.00
5/11/2020	TEM	\$250.00	1.80	Telephone Call with John Mensch and Shauna Waddell; Telephone Call with Accountant	\$450.00
5/11/2020	TEM	\$250.00	4.70	Finalized Complaint; added Motion for Eviction and Motion for TRO; e-mails with Shauna Waddell and John Mensch; Prepared to file Complaint	\$1,175.00
5/11/2020	TEM	\$250.00	0.50	Review of Information from John Mensch	\$125.00
5/12/2020	TEM	\$250.00	0.70	Various e-mails with John Mensch and Shauna Waddell	\$175.00
5/12/2020	TEM	\$250.00	0.20	E-mail correspondence with Rachael Hardin	\$50.00
5/13/2020	TEM	\$250.00	1.20	Telephone Call with Rachael Hardin	\$300.00
5/13/2020	TEM	\$250.00	0.90	Telephone Call with John Mensch and Shauna Waddell	\$225.00
5/13/2020	TEM	\$250.00	0.70	E-mail to Rachael Hardin regarding pension repayment	\$175.00
5/16/2020	TEM	\$250.00	1.70	E-mails to Counsel for Sterling Mensch III; John Mensch and Shauna Waddell	\$425.00
6/1/2020	TEM	\$250.00	0.30	Review of Information regarding filing tax returns from Shauna Waddell	\$75.00
6/19/2020	TEM	\$250.00	3.70	E-mail to Rachael Hardin; Review of eviction issue, Attorney's Fees, GE Repayment	\$925.00
				E-mail Correspondence with Shauna Waddell and John Mensch; reviewed e-mails from Rachael Hardin	\$175.00
6/30/2020	TEM	\$250.00	0.70	Telephone Call with Shauna Waddell and John Mensch	\$175.00
7/1/2020	TEM	\$250.00	2.80	Worked on Interrogatories and RFP	\$700.00
7/8/2020	TEM	\$250.00	1.20	Telephone Call with John Mensch and Shauna Waddell; E-mail to Rachael Hardin	\$300.00
7/8/2020	TEM	\$250.00	2.00	Visited house at New Tarleton with Shauna Waddell	\$500.00
7/9/2020	TEM	\$250.00	2.70	E-mails to Rachael Hardin; telephone call with rachael Hardin; e-mails to John Mensch and Shauna Waddell; all regarding negotiation of Sterling Mensch III vacating 512 New Tarleton	\$675.00
7/10/2020	TEM	\$250.00	2.30	E-mails to Rachael Hardin	\$575.00
7/13/2020	TEM	\$250.00	1.40	E-mail to Rachael Hardin; Worked on Interrogatories and RFP; Emails to John Mensch and Shauna Waddell	\$350.00
7/17/2020	TEM	\$250.00	0.70	E-mails to John Mensch and Shauna Waddell regarding Interrogatories and RFP	\$175.00
7/20/2020	TEM	\$250.00	2.70	Updates to Interrogatories and RFP based on questions-input from John Mensch; worked on Requests for Admission	\$675.00
7/22/2020	TEM	\$250.00	0.30	Research on Requests for Admission; E-mail response to John Mensch	\$75.00
8/11/2020	TEM	\$250.00	1.20	Email to John Mensch concerning account and discovery	\$300.00
8/11/2020	RDM	\$0.00	1.70	Consultation with Tyler McLeod regarding potential accountant and options for moving forward	\$0.00
8/11/2020	TEM	\$250.00	0.70	E-mail correspondence with John Mensch and Shauna Waddell	\$175.00
8/12/2020	TEM	\$250.00	1.30	Answered questions in e-mail form John Mensch concerning discovery	\$325.00
8/12/2020	TEM	\$295.00	1.70	Review of restrictions; E-mail to seller's attorney regarding right of first refusal	\$501.50
8/12/2020	TEM	\$250.00	1.70	Worked on requests for admission; Interrogatories and requests for production	\$425.00
8/13/2020	TEM	\$250.00	0.30	Telephone Call with Kim Campos Ivy to set hearing for rule to show cause	\$75.00
8/13/2020	TEM	\$250.00	3.20	Worked on revised rule to show cause; incorporated language for zoom hearing; emails with John Mensch concern concerning requests for admission and Interrogatories	\$800.00
8/14/2020	TEM	\$250.00	1.70	Worked on Rule to Show Cause and Affidavit	\$425.00
8/17/2020	TEM	\$250.00	0.70	E-mail to John Markel	\$175.00
8/21/2020	TEM	\$250.00	0.30	E-mails to Rachael Hardin; Telephone Call with Process Server	\$75.00
8/31/2020	TEM	\$250.00	5.50	Preparation for Rule to Show Cause Hearing	\$1,375.00
9/1/2020	TEM	\$250.00	3.70	Preparation for Rule to Show Cause Hearing	\$925.00
9/2/2020	TEM	\$250.00	3.00	Preparation for Rule to Show Cause Hearing	\$750.00
9/3/2020	TEM	\$250.00	1.20	Worked on Discovery Request ; E-mails to John and Shauna	\$300.00
9/3/2020	TEM	\$250.00	1.30	Discussion with david Massey on Hearing for Rule to Show Cause	\$325.00
9/15/2020	TEM	\$250.00	3.70	Worked on proposed Order for Rule to Show Cause; Review of Transcripts from Hearing	\$925.00
9/18/2020	TEM	\$250.00	0.80	Telephone Call with John and Shauna regarding answering discovery	\$200.00
9/24/2020	TEM	\$250.00	1.20	Worked on Discovery Requests	\$300.00
9/25/2020	TEM	\$250.00	2.30	Worked on proposed Order	\$575.00
10/2/2020	TEM	\$250.00	0.70	Review of Judge Jennings' Order and Rule to Show Cause	\$175.00
10/6/2020	TEM	\$250.00	1.70	Review of Discovery Documents from John Mensch	\$425.00
10/7/2020	TEM	\$250.00	1.20	Review of Requests for Admission; Research on denials from devon Puriefoy	\$300.00
10/13/2020	TEM	\$125.00	1.67	Work on Answers to Interrogatories	\$208.75
10/14/2020	TEM	\$125.00	2.25	Work on Answers and Responses to Interrogatories and Requests for Production	\$281.25
10/15/2020	TEM	\$250.00	0.20	Telephone Call with John Mensch	\$50.00
10/15/2020	TEM	\$250.00	1.20	Worked on Discovery Responses	\$300.00
10/21/2020	TEM	\$250.00	0.80	Telephone Call with John and Shauna	\$200.00
10/21/2020	TEM	\$250.00	0.90	Review of Discovery Production	\$225.00
10/23/2020	TEM	\$250.00	1.20	Review of Markel Report	\$300.00
11/6/2020	TEM	\$250.00	2.30	Worked on discovery responses	\$575.00
11/6/2020	TEM	\$125.00	1.00	Reviewed/Prepared Discovery Production	\$125.00
11/17/2020	TEM	\$250.00	1.30	E-mails to Truluck Thomason regarding production/Order	\$325.00
11/17/2020	TEM	\$250.00	1.30	E-mails to John Mensch regarding deposition questions, failure of Sterling to comply with Order; Motion to Determine Sufficiency of Answers to Requests for Admission	\$325.00
11/23/2020	TEM	\$250.00	0.30	E-mail to Court; response to attorney's fee question	\$75.00
11/30/2020	TEM	\$250.00	1.50	Review of Deposition Questions from John Mensch; e-mail to John Mensch	\$375.00
11/30/2020	TEM	\$250.00	0.70	E-mails to John Mensch	\$175.00
12/3/2020	TEM	\$250.00	2.70	Worked on Second Rule to Show Cause; Affidavit; letter to Judge Jennings	\$675.00
12/3/2020	TEM	\$250.00	1.30	Worked on Motion to Determine Sufficiency and Motion to Compel	\$325.00
12/14/2020	TEM	\$125.00	0.50	Worked on Affidavit for Rule to Show Cause	\$62.50
12/14/2020	TEM	\$250.00	5.70	Worked on Third Rule and Order to Show Cause - delivered to Court; Affidavit; Motion to Determine Sufficiency and to Compel	\$1,425.00

12/14/2020	TEM	\$250.00	1.50	Worked on TRO/ Injunction	\$375.00
12/14/2020	TEM	\$250.00	1.20	E-mail to Court and opposing party regarding Rule to Show Cause	\$300.00
12/15/2020	TEM	\$250.00	0.90	Worked on Motion to Compel and Determine Sufficiency; Filed with Court; Sent to opposing Counsel	\$225.00
12/15/2020	TEM	\$250.00	2.50	Worked on/Prepared Subpoenas for financial information from BOA accounts and T. Rowe Price	\$625.00
12/17/2020	TEM	\$250.00	1.70	E-mails to John and Shauna; Preparation for Motion to Compel and to Determine Sufficiency and Rule to Show Cause	\$425.00
12/18/2020	TEM	\$250.00	0.90	Telephone Call with John & Shauna regarding Rule to Show Cause; Motion to Compel and Motion to Determine Sufficiency	\$225.00
12/21/2020	TEM	\$250.00	4.80	Worked on Memorandum for Motion to Deem Admitted/Compel	\$1,200.00
12/21/2020	KLH	\$350.00	1.20	Research on Motion to Determine Sufficiency of Requests for Admission	\$420.00
12/21/2020	TEM	\$250.00	4.30	Preparation for Hearing on Rule to Show Cause and Motion to Compel	\$1,075.00
12/22/2020	TEM	\$250.00	2.30	Review of John Mensch Comments, E-mails regarding Requests for Admlssion to John Mensch; Worked on Memorandum In Support of Motion to Determine Sufficiency and to Compel	\$575.00
12/22/2020	TEM	\$250.00	1.70	Prepared Exhibits and Memorandum for filing; final edits to Memorandum	\$425.00
12/29/2020	TEM	\$250.00	2.30	Preparation for Hearing, Review of Transactions, T/C to Jeff Lynch Appliances	\$575.00
12/30/2020	TEM	\$250.00	4.30	Preparation for and Hearing on Petition; T/C with Home Depot	\$1,075.00
1/19/2021	TEM	\$250.00	1.20	Review of Discovery Production from Respondent	\$300.00
1/20/2021	TEM	\$250.00	6.20	T/C with John Markel; John and Shauna Mensch; discussion on production, accounting, summary Judgment motion; review of production and expert report to determine amount for summary judgment motion; worked on summary Judgment motion	\$1,550.00
1/22/2021	TEM	\$250.00	0.90	Review of Requests to Admit Answers; email to John/Shaua - Email to John Markel	\$225.00
1/25/2021	TEM	\$250.00	0.90	Review of Affidavits from John Markel	\$225.00
1/27/2021	TEM	\$250.00	4.20	Worked on Motion for Summary Judgment; review of accountant's affidavit	\$1,050.00
1/28/2021	TEM	\$250.00	1.70	Work on Subpoenas for UBS and State Street Global Advisors Financial Records and Prepare Documents for Service	\$425.00
1/29/2021	TEM	\$250.00	0.70	Review of Subpoenas	\$175.00
1/29/2021	TEM	\$250.00	4.20	Worked on Summary Judgment Motion; review of cases regarding transfers	\$1,050.00
1/29/2021	TEM	\$250.00	2.10	Worked on Motion for Summary Judgment	\$525.00
2/1/2021	TEM	\$250.00	2.30	Worked on Summary Judgment; email discussion on damages	\$575.00
2/2/2021	TEM	\$250.00	0.70	Emails with John Mensch regarding Summary Judgment Motion; email to John Markel	\$175.00
2/2/2021	TEM	\$250.00	0.70	T/C with UBS and Shauna Waddell	\$175.00
2/3/2021	TEM	\$250.00	0.30	Email to Court regarding Sterling complying with Order	\$75.00
2/3/2021	TEM	\$250.00	1.70	Worked on Summary Judgment Motion; T/C with John Markel	\$425.00
2/3/2021	TEM	\$250.00	3.70	Worked on Motion for Summary Judgment and Memorandum	\$925.00
2/11/2021	TEM	\$250.00	1.30	Review of John Markel Affidavit and Amended Report	\$325.00
2/17/2021	TEM	\$250.00	3.70	Worked on Summary Judgment Motion; Prepared for filing; filed with the Court	\$925.00
2/22/2021	TEM	\$250.00	0.70	Review of documents related to accounts of Sterling Mensch; Email to John Mensch and Shauna Waddell	\$175.00
2/22/2021	TEM	\$250.00	1.20	Review of Email from John Mensch	\$300.00
3/1/2021	TEM	\$250.00	1.70	Worked on Settlement Proposal; Emails to John and Shauna	\$425.00
3/2/2021	TEM	\$250.00	1.20	Worked on Settlement Agreement	\$300.00
3/4/2021	RDM	\$400.00	0.70	Reviewed Settlement Offer	\$280.00
3/4/2021	TEM	\$250.00	3.70	Worked on Settlement Offer; various emails to John and Shauna; email to Kim Thomason	\$925.00
3/9/2021	TEM	\$250.00	7.50	Worked on Motion for Summary Judgment Memorandum; review of case file an all production	\$1,875.00
3/10/2021	KLH	\$250.00	0.50	Conversation with Tyler on punitive damages	\$125.00
3/10/2021	TEM	\$250.00	4.70	Worked on Motion for Summary Judgment	\$1,175.00
3/12/2021	TEM	\$250.00	3.90	Worked on Memorandum for Motion for Summary Judgment; Worked on Exhibits for the Motion; Emails the Court and Devon Purlefoy regarding Respondent's request for Judge Jennings to recuse himself	\$975.00
3/15/2021	TEM	\$250.00	6.90	Worked on Memorandum and Exhibits for Motion for Summary Judgment	\$1,725.00
3/16/2021	TEM	\$250.00	8.20	Preparation for Summary Judgment Hearing	\$2,050.00
3/17/2021	TEM	\$250.00	3.90	Sumamry Judgment Hearing; research on cases regarding punitives	\$975.00
3/22/2021	TEM	\$250.00	0.70	Email to John Mensch regarding false affidavit	\$175.00
4/22/2021	TEM	\$250.00	1.30	Review of Ruling from Judge Faulkner; various emails to John & Shauna	\$325.00
4/27/2021	TEM	\$250.00	1.70	Worked on Order for Summary Judgment	\$425.00
4/28/2021	TEM	\$250.00	0.70	T/C with John and Shauna	\$175.00
4/30/2021	TEM	\$250.00	2.70	Review of file in prep for hearing on damages; emails	\$675.00
5/5/2021	TEM	\$250.00	1.90	Worked on Order; determined relevant facts to client	\$475.00
5/10/2021	TEM	\$250.00	0.90	Responses to John Mensch comments relating to mitigation of damages	\$225.00
5/12/2021	TEM	\$250.00	1.20	Worked on Order for Summary Judgment	\$300.00
5/14/2021	TEM	\$250.00	3.20	Review of Memo in Opp. to MST filed by Respondent; Worked on Order	\$800.00
5/17/2021	TEM	\$250.00	0.90	Worked on Order	\$225.00
5/17/2021	KLH	\$350.00	1.00	Drafting of Order	\$350.00
5/18/2021	KLH	\$350.00	1.10	Work on order; review elements of cause of action to plug into order	\$385.00
5/19/2021	KLH	\$350.00	0.60	Worked on Order	\$210.00
5/24/2021	TEM	\$250.00	2.70	Drafted Attorney Fee Affidavit; Review of File	\$675.00
5/26/2021	KLH	\$350.00	1.50	T/C with Tyler regarding damages hearing	\$525.00
5/26/2021	TEM	\$250.00	2.70	Preparation for Damages Hearings	\$675.00
5/27/2021	TEM	\$250.00	0.30	Final Review of Order	\$75.00
6/15/2021	TEM	\$250.00	1.30	Various email correspondence to the Court; correction to proposed Order; emails to John and Shauna	\$325.00
6/17/2021	TEM	\$250.00	1.70	Responses to Devon's Comments to Proposed Order	\$425.00
7/20/2021	TEM	\$250.00	3.70	Work on attorney fee motion and affidavit; prep. for meeting with John Markel; emails to John and Shauna	\$925.00
7/22/2021	TEM	\$250.00	5.70	Preparation for damages hearing	\$1,425.00
7/23/2021	TEM	\$250.00	0.50	Emails to court regarding moving trial; email to Kim Thomason; research on motion and 106	\$125.00
7/26/2021	TEM	\$250.00	1.70	Research on cases on Damage hearing	\$425.00
8/1/2021	TEM	\$250.00	2.30	Worked on Reply to Motion for Continuance	\$575.00
8/4/2021	TEM	\$250.00	0.90	Prep for and Hearing on Motion for Continuance	\$225.00
8/4/2021	TEM	\$250.00	4.20	Prep. for trial; prep. of exhibits for trial; review of file; email to Kim Thomason regarding stipulations	\$1,050.00
8/5/2021	TEM	\$250.00	1.30	Preparation of Exhibits for trial; review of bank account statements	\$325.00
SUBTOTAL - Attorney Billing					394.77
					\$99,402.75
Expenses					
1/17/2020				Check BOA Legal Order Processing for document production	\$88.07
1/27/2020				Check for Transcript Order from Legal Eagle for Probate Court Hearings held 8/21/2019 and 11/20/2019	\$340.50
3/22/2019				Probate Court filing fee for Demand Notice.	\$5.00
5/13/2019				Probate Court filing fee for Petition.	\$150.00

5/28/2019	Service of Process for Sterling Raymond Mensch, III.	\$65.00
3/6/2020	Service of Process for Sterling Raymond Mensch.	\$65.00
4/30/2020	Accounting Fee Retainer to John Markel to evaluate accounts of Florence Mensch	\$3,000.00
5/26/2020	Priority Overnight Check to John Mensch	\$59.24
6/29/2020	Interrogatories and Requests for Production - Paralegal Services	\$120.00
8/26/2020	Process Server Fee for Service of Rule and Order to Show Cause	\$115.00
8/31/2020	Accounting Fees to prepare 2017 and 2018 tax returns which Sterling Raymond Mensch III failed to file	\$2,900.00
9/15/2020	Legal Eagle Fees (Invoice# 93067) for Transcription and Exhibit Pages for Probate Hearing	\$356.78
10/2/2020	John Markel Expert Accounting Fees (Invoice #20137)	\$8,300.00
12/4/2020	FedEx Expense for Reimbursement Check to John R. Mensch	\$24.02
12/15/2020	Mailing of Subpoenas	\$25.00
12/16/2020	Certified Mail Notice of Hearing, Rule and Order to Show Cause, and Motion to Compel	\$9.40
12/23/2020	Certified Mail Memorandum and Affidavit of Attorney Fees for Service	\$14.65
1/25/2021	BOA Fee for Subpoena of Financial Records	\$73.50
1/27/2021	FedEx John R. Mensch - Reimbursement of Attorney's Fees	\$26.69
1/28/2021	Mailing Fees for Service of UBS and State Street Global Advisors Subpoenas	\$23.95
2/17/2021	UBS Subpoena Production - Invoice #2102161216SK	\$152.25
2/27/2021	John Markel Expert Accounting Fees (Invoice #21106)	\$5,375.00
3/15/2021	BOA Fees - Subpoena for Document Production (Invoice #688522)	\$42.20
7/15/2021	John Markel Expert Accounting Fees (Invoice #21127)	\$9,000.00
SUBTOTAL - Expenses		\$30,331.25
Less Amount Previously Awarded by Court		
	Amount awarded per Order of Probate Court dated August 28, 2019	\$1,500.00
	Amount awarded per Order of Probate Court dated December 4, 2019	\$10,000.00
	Amount awarded per Order of Probate Court dated September 30, 2020	\$10,000.00
	Amount awarded per Order of Probate Court dated January 13, 2021	\$7,500.00
SUBTOTAL - Amounts Previously Awarded by Court		\$29,000.00
GRAND TOTAL - Attorney Fees and Costs (Attorney Billing + Expenses) - (Previously Awarded)		\$100,734.00

Attorney Billing Rates
R. David Massey (RDM) @ \$400.00/hr
Knox L. Haynsworth (KLH) @ \$400.00/hr
Tyler E. McLeod (TEM) @ \$250.00/hr

FILED

STATE OF SOUTH CAROLINA

SEP 15 2021

IN THE PROBATE COURT

COUNTY OF GREENVILLE

GREENVILLE COUNTY
PROBATE COURT

C.A. No.: 2018-ES-23-02854

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.

**AMENDED
AFFIDAVIT OF
ATTORNEY'S FEES AND COSTS**

Personally appeared before me, Tyler E. McLeod, who, after being duly sworn states as follows:

1. David Massey, Knox Haynsworth and I of the firm Brown, Massey, Evans, McLeod & Haynsworth LLC are attorneys for Petitioners in the above captioned case.

2. Petitioners are requesting the Court to order Respondent to pay the Estate of Florence Mensch's attorney's fees, accountant fees and costs incurred to prosecute certain claims of the Estate for Respondent's Breach of Fiduciary Duty as Agent under Power of Attorney for Florence Petrak Mensch, Violation of the South Carolina Power of Attorney Act and Conversion.

3. David Massey is an attorney licensed in South Carolina who has practiced in South Carolina for over 40 years, with much of his practice devoted to probate litigation. David Massey's hourly rate is \$400.00 per hour.

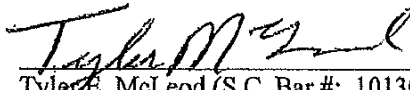
4. Knox Haynsworth is an attorney licensed in South Carolina who has practiced in South Carolina for over 33 years, with much of his practice devoted to civil litigation. Knox Haynsworth's hourly rate is \$400.00 per hour.

4. I am an attorney licensed in South Carolina who has practiced in South Carolina for over 8 years, with the majority of my practice involving estate planning, probate administration and probate litigation. My hourly rate for this matter is \$250.00 per hour.

5. Our firm is billing on an hourly basis in this matter. I affirm that the hourly rates specified herein are reasonable given the attorney's professional qualifications and the fees customarily charged in South Carolina for similar legal services.

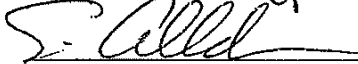
6. I have set forth an itemized list of actual fees and costs on Exhibit A of this Affidavit, and I assert that these fees and costs are reasonable pursuant to Rule 1.5 of the S.C. Rules of Professional Conduct. The total unpaid attorney's fees, accountant's fees and costs to date in this matter total One Hundred Thirty-Three Thousand Nine Hundred Fifty-Two and 95/100 (\$133,952.95) Dollars.

7. This Amended Affidavit of Attorney's Fees and Costs is an update to the Affidavit of Attorney's Fees and Costs dated August 5, 2021 which was submitted as Exhibit A to Petitioner's Motion for Attorney's Fees and Costs. The update is submitted to include the attorney's fees and accountant fees incurred since August 5, 2021. Petitioner's also requested attorney's fees and costs in their Amended Petition.


Tyler E. McLeod (S.C. Bar #: 101309)
tmcleod@bmemlaw.com
106 Williams St.
Greenville, South Carolina 29601
(864) 271-7424

Greenville, South Carolina
September 15, 2021

SWORN to before me
this 15th day of September 2021.



Notary Public, State of South Carolina
My commission expires:

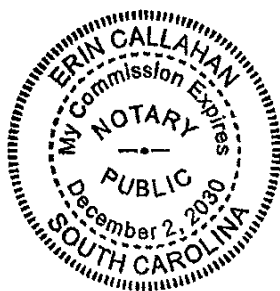


EXHIBIT A
Total Attorney Fees & Costs Incurred to
Date

Attorney Billing

Date	Atty	Billing Rate \$/hr	Hour(s)	Description	Total (\$)
3/5/2019	RDM	\$400.00	2.00	Multiple telephone conferences, in-office conference with John Mensch,	\$800.00
3/18/2019	TEM	\$250.00	2.30	Telephone call with John Mensch followed by drafting of Demand for Notice, Demand for Non-Probate Inventory and Letter to Sterling Mensch.	\$575.00
5/6/2019	TEM	\$250.00	3.70	Begin drafting Petition to Probate Court.	\$925.00
5/7/2019	TEM	\$250.00	2.30	Continue work on Petition to Probate Court.	\$575.00
5/13/2019	RDM	\$400.00	0.50	Review, analysis of pleadings. Conduct legal research; meet with John Mensch.	\$200.00
5/15/2019	TEM	\$250.00	2.70	Finalize Petition for submission to Court. Draft Application for Appointment.	\$675.00
5/15/2019	TEM	\$250.00	0.50	Meeting with Shauna Waddell in-office; Signing of Petition.	\$125.00
7/4/2019	TEM	\$250.00	0.50	Email communications with opposing counsel.	\$125.00
7/8/2019	TEM	\$250.00	0.70	Email communications to and from Shauna Waddell and John Mensch	\$175.00
7/19/2019	TEM	\$250.00	2.30	Begin drafting Motion for Partial Summary Judgment and Witness Affidavits.	\$575.00
7/22/2019	TEM	\$250.00	4.70	Work on Motion for Partial Summary Judgment and Affidavits.	\$1,175.00
7/29/2019	TEM	\$250.00	0.10	Telephone call with John Mensch.	\$25.00
7/29/2019	TEM	\$250.00	1.30	Reviewed and Edited Motion for Summary Judgment/ Compel	\$325.00
8/1/2019	TEM	\$250.00	1.70	Prepared Affidavit of Shauna Waddell; appointment to execute Affidavit and Conference	\$425.00
8/19/2019	TEM	\$250.00	2.30	Preparation for Hearing on Motion for Summary Judgment.	\$575.00
8/19/2019	TEM	\$250.00	0.10	Telephone call with Shauna M. Waddell.	\$25.00
8/20/2019	RDM	\$0.00	1.70	Meeting with Tyler McLeod to Prepare for Hearing	\$0.00
8/20/2019	TEM	\$250.00	1.70	Preparation for Hearing on Motion for Summary Judgment.	\$425.00
8/21/2019	TEM	\$250.00	1.30	Begin drafting Order for Probate Court.	\$325.00
8/21/2019	TEM	\$250.00	5.40	Preparation for Probate Court Hearing.	\$1,350.00
8/22/2019	TEM	\$250.00	3.30	Continued work drafting Order.	\$825.00
8/23/2019	RDM	\$0.00	1.50	Reviewed Order	\$0.00
9/16/2019	TEM	\$250.00	0.70	Telephone call with Shauna and John.	\$175.00
9/16/2019	TEM	\$250.00	1.20	Email to opposing counsel.	\$300.00
9/24/2019	TEM	\$250.00	2.30	Review of John and Shauna's Summary; Email to John and Shauna.	\$575.00
9/25/2019	KIH	\$400.00	1.00	Discussion re: Order and Motion with Knox Haynsworth.	\$400.00
9/26/2019	TEM	\$250.00	2.30	Work on 2nd Motion to Compel and Summary Judgment; Call with Shauna Waddell.	\$575.00
9/27/2019	TEM	\$250.00	0.30	Telephone call with John and Shauna; worked on Motion.	\$75.00
10/1/2019	TEM	\$250.00	1.30	Drafting Second Motion.	\$325.00
10/9/2019	TEM	\$250.00	1.70	Research and drafting of Motion for SJ and Compel; Affidavit for John Mensch.	\$425.00
10/9/2019	RDM	\$400.00	0.70	Review and revise Second Motion.	\$280.00
10/10/2019	TEM	\$250.00	1.30	Worked on Affidavit for Shauna Waddell	\$325.00
11/1/2019	TEM	\$250.00	0.10	Email to Probate Court.	\$25.00
11/18/2019	TEM	\$250.00	2.70	Preparation for 11/20/19 Hearing on Summary Judgment & Motion to Dismiss.	\$675.00
11/18/2019	TEM	\$250.00	0.10	Email to John Mensch and Shauna Waddell.	\$25.00
11/20/2019	TEM	\$250.00	3.20	Preparation for Hearing	\$800.00
11/20/2019	TEM	\$250.00	1.70	Hearing on 11/20/2019	\$425.00
11/22/2019	TEM	\$250.00	1.70	Worked on Order	\$425.00
11/27/2019	TEM	\$250.00	3.30	Worked on Proposed Order	\$825.00
11/27/2019	RDM	\$400.00	1.00	Reviewed Order	\$400.00
11/27/2019	TEM	\$250.00	0.30	E-mail to Judge Jennings	\$75.00
11/27/2019	TEM	\$250.00	0.30	E-mail to Shauna M. Waddell & John Mensch	\$75.00
1/2/2020	TEM	\$250.00	1.30	Subpoena to BOA	\$325.00
1/15/2020	TEM	\$250.00	4.30	Worked on Motion to Amend; e-mails to John Mensch and Shauna M. Waddell	\$1,075.00
1/17/2020	TEM	\$250.00	3.30	Review of BOA Documents; Upload to Dropbox for John Mensch and Shauna M. Waddell	\$825.00
1/23/2020	RDM	\$400.00	0.50	Office Conference with Tyler McLeod Re: various issues of case	\$200.00
2/1/2020	TEM	\$250.00	1.50	Telephone Call with John Mensch and Shauna Waddell; Plan for moving forward with motion to amend and rule to show cause; determination of what to do with house	\$375.00
2/1/2020	TEM	\$250.00	0.70	Worked on Motion to Amend	\$175.00
2/4/2020	TEM	\$250.00	2.90	Worked on Rule to Show Cause and Affidavit	\$725.00
2/4/2020	TEM	\$250.00	1.30	Review of E-mails with transactions performed by Sterling Raymond Mensch III	\$325.00
2/5/2020	RDM	\$400.00	0.70	Reviewed Engagement Letter	\$280.00
2/6/2020	TEM	\$250.00	3.70	Worked on Updated Engagement Letter; Rule to Show Cause	\$925.00
2/7/2020	TEM	\$250.00	0.70	Reviewed Subpoena to T. Rowe Price	\$175.00
2/7/2020	TEM	\$125.00	1.00	Subpoena for Production of Documents to T. Rowe Price, Notice of Issuance of Subpoena and Letters to T. Rowe Price and Ben Leaphart	\$125.00
2/10/2020	TEM	\$250.00	1.10	E-mail responses to John Mensch and Shauna M. Waddell	\$275.00
2/12/2020	TEM	\$250.00	1.30	Worked on Updated Engagement Letter	\$325.00
2/12/2020	TEM	\$250.00	1.20	Finalized Rule and Order to Show Cause and Affidavit	\$300.00
2/14/2020	TEM	\$125.00	0.50	Preparation of Exhibits to Motion to Amend for filing with Probate Court	\$62.50
2/14/2020	TEM	\$250.00	1.30	E-mails to Probate Court; Telephone Call with Kim; E-mails to John Mensch and Shauna M. Waddell	\$325.00
2/17/2020	TEM	\$125.00	1.50	Revision to Petitioners' Rule and Order to Show Cause with Affidavit of Tyler E. McLeod and preparation of Exhibits A-D; Revision of Exhibits 1-2 to Petitioners' Motion to Amend Petition; prepare Notice of Hearing and Proof of Delivery to Ben Leaphart; Revision to Letter to Judge Jennings on behalf of Tyler E. McLeod; Cover Letter to Kimberly Watford	\$187.50
2/18/2020	TEM	\$125.00	0.20	Establish new, secure DropBox link for use by John Mensch in downloading documents from BOA; E-mail link to John Mensch	\$25.00
2/18/2020	TEM	\$250.00	0.50	Review of Documents from T. Rowe Price	\$125.00
2/19/2020	TEM	\$250.00	0.30	Email to Probate Court, Shauna and John.	\$75.00
2/21/2020	TEM	\$125.00	0.45	Analysis, Preparation, Upload of new T. Rowe Price document production.	\$56.25
2/26/2020	TEM	\$125.00	0.50	Processing and Preparation of Bates Series Petitioners_000001-002437.	\$62.50
3/9/2020	TEM	\$250.00	1.30	Review of John Mensch Email regarding expenditures.	\$325.00
3/9/2020	TEM	\$250.00	0.70	Review of Motion to Withdraw as Counsel; Emails to John and Shauna.	\$175.00
3/13/2020	TEM	\$250.00	0.50	Review of Email from Shauna Waddell regarding Bank of America.	\$125.00
3/17/2020	TEM	\$250.00	0.50	Email to John and Shauna regarding hearing and Covid-19 Impact.	\$125.00
3/23/2020	TEM	\$250.00	1.20	Telephone call with Ben Leaphart; Review Probate Order re: Hearing; Emails to Shauna and John; Email to Probate Court.	\$300.00
3/23/2020	TEM	\$250.00	0.10	Telephone call to Amela at Bank of America.	\$25.00
3/23/2020	TEM	\$250.00	0.20	Email to John and Shauna regarding hearing.	\$50.00
3/25/2020	TEM	\$250.00	0.90	Preparation for call with Judge Jennings and Ben Leaphart.	\$225.00
3/25/2020	TEM	\$250.00	0.70	Telephone call with Judge Jennings and Ben Leaphart.	\$175.00
3/25/2020	TEM	\$250.00	0.70	Telephone call with John and Shauna.	\$175.00
3/26/2020	TEM	\$250.00	4.30	Preparation for Motion to Amend Hearing and Ben Leaphart's Motion to be relieved as Counsel; Review of new information to present at Hearing on Motion to Amend; Preparation of Argument.	\$1,075.00

3/26/2020	TEM	\$250.00	1.30	Telephone call to Bank of America Legal Counsel regarding their compliance with the Order dated December 4, 2019.	\$325.00
3/30/2020	TEM	\$250.00	1.30	Work on Order for Motion to Amend	\$325.00
3/30/2020	TEM	\$250.00	1.70	Reviewed Order to be relieved as counsel and made revisions; email to Judge Jennings and Ben Leaphart	\$425.00
3/31/2020	TEM	\$250.00	0.70	E-Mail to John Mensch regarding Motion to Amend	\$175.00
3/31/2020	TEM	\$250.00	2.30	Worked on Order for Motion to Amend	\$575.00
4/8/2020	TEM	\$0.00	1.30	Telephone Call with Peter Tiffany; Telephone call with John Markel regarding forensic accounting services	\$0.00
4/8/2020	TEM	\$250.00	0.70	Telephone Call with John Markel regarding accounting	\$175.00
4/14/2020	TEM	\$250.00	1.50	Telephone Call with Bank of America; Telephone Call with John Mensch and Shauna Waddell regarding accounting and other issues	\$375.00
4/23/2020	TEM	\$250.00	0.70	E-mail to John Markel regarding accounting	\$175.00
4/27/2020	TEM	\$250.00	3.40	Worked on Complaint	\$850.00
4/29/2020	TEM	\$250.00	1.80	Telephone Call with John Mensch and Shauna Waddell; Telephone Call with Accountant	\$450.00
5/1/2020	TEM	\$250.00	0.70	Telephone Call with Kim Thomason	\$175.00
5/6/2020	TEM	\$250.00	5.50	Worked on Complaint; Added Causes of Action	\$1,375.00
5/7/2020	TEM	\$250.00	1.50	E-mails to Rachael Hardin (attorney for Sterling Mensch III)	\$375.00
5/8/2020	TEM	\$250.00	4.30	Worked on Complaint; incorporated changes from John Mensch and Shauna Waddell	\$1,075.00
5/11/2020	TEM	\$250.00	0.70	E-mail to John Markel regarding accounting	\$175.00
5/11/2020	TEM	\$250.00	1.80	Telephone Call with John Mensch and Shauna Waddell; Telephone Call with Accountant	\$450.00
5/11/2020	TEM	\$250.00	4.70	Finalized Complaint; added Motion for Eviction and Motion for TRO; e-mails with Shauna Waddell and John Mensch; Prepared to file Complaint	\$1,175.00
5/11/2020	TEM	\$250.00	0.50	Review of Information from John Mensch	\$125.00
5/12/2020	TEM	\$250.00	0.70	Various e-mails with John Mensch and Shauna Waddell	\$175.00
5/12/2020	TEM	\$250.00	0.20	E-mail correspondence with Rachael Hardin	\$50.00
5/13/2020	TEM	\$250.00	1.20	Telephone Call with Rachael Hardin	\$300.00
5/13/2020	TEM	\$250.00	0.90	Telephone Call with John Mensch and Shauna Waddell	\$225.00
5/13/2020	TEM	\$250.00	0.70	E-mail to Rachael Hardin regarding pension repayment	\$175.00
5/16/2020	TEM	\$250.00	1.70	E-mails to Counsel for Sterling Mensch III; John Mensch and Shauna Waddell	\$425.00
6/1/2020	TEM	\$250.00	0.30	Review of Information regarding filing tax returns from Shauna Waddell	\$75.00
6/19/2020	TEM	\$250.00	3.70	E-mail to Rachael Hardin; Review of eviction issue, Attorney's Fees, GE Repayment	\$925.00
6/30/2020	TEM	\$250.00	0.70	E-mail Correspondence with Shauna Waddell and John Mensch; reviewed e-mails from Rachael Hardin	\$175.00
7/1/2020	TEM	\$250.00	2.80	Telephone Call with Shauna Waddell and John Mensch	\$700.00
7/8/2020	TEM	\$250.00	1.20	Worked on Interrogatories and RFP	\$300.00
7/8/2020	TEM	\$250.00	2.00	Telephone Call with John Mensch and Shauna Waddell; E-mail to Rachael Hardin	\$500.00
7/9/2020	TEM	\$250.00	2.70	Visited house at New Tarleton with Shauna Waddell	\$675.00
7/10/2020	TEM	\$250.00	2.30	E-mails to Rachael Hardin; telephone call with rachael Hardin; e-mails to John Mensch and Shauna Waddell; all regarding negotiation of Sterling Mensch III vacating 512 New Tarleton	\$575.00
7/13/2020	TEM	\$250.00	1.40	E-mails to Rachael Hardin; Worked on Interrogatories and RFP; E-mails to John Mensch and Shauna Waddell	\$350.00
7/17/2020	TEM	\$250.00	0.70	E-mails to John Mensch and Shauna Waddell regarding Interrogatories and RFP	\$175.00
7/20/2020	TEM	\$250.00	2.70	Updates to Interrogatories and RFP based on questions-input from John Mensch; worked on Requests for Admission	\$675.00
7/22/2020	TEM	\$250.00	0.30	Research on Requests for Admission; E-mail response to John Mensch	\$75.00
8/11/2020	TEM	\$250.00	1.20	Email to John Mensch concerning account and discovery	\$300.00
8/11/2020	RDM	\$0.00	1.70	Consultation with Tyler McLeod regarding potential accountant and options for moving forward	\$0.00
8/11/2020	TEM	\$250.00	0.70	E-mail correspondence with John Mensch and Shauna Waddell	\$175.00
8/12/2020	TEM	\$250.00	1.30	Answered questions in e-mail from John Mensch concerning discovery	\$325.00
8/12/2020	TEM	\$295.00	1.70	Review of restrictions; E-mail to seller's attorney regarding right of first refusal	\$501.50
8/12/2020	TEM	\$250.00	1.70	Worked on requests for admission; interrogatories and requests for production	\$425.00
8/13/2020	TEM	\$250.00	0.30	Telephone Call with Kim Campos Ivy to set hearing for rule to show cause	\$75.00
8/19/2020	TEM	\$250.00	9.20	Worked on revised rule to show cause; incorporated language for zoom hearing; emails with John Mensch concerning requests for admission and interrogatories	\$800.00
8/14/2020	TEM	\$250.00	1.70	Worked on Rule to Show Cause and Affidavit	\$425.00
8/17/2020	TEM	\$250.00	0.70	E-mail to John Markel	\$175.00
8/21/2020	TEM	\$250.00	0.30	E-mails to Rachael Hardin; Telephone Call with Process Server	\$75.00
8/31/2020	TEM	\$250.00	5.50	Preparation for Rule to Show Cause Hearing	\$1,375.00
9/1/2020	TEM	\$250.00	3.70	Preparation for Rule to Show Cause Hearing	\$925.00
9/2/2020	TEM	\$250.00	3.00	Preparation for Rule to Show Cause Hearing	\$750.00
9/3/2020	TEM	\$250.00	1.20	Worked on Discovery Request; E-mails to John and Shauna	\$300.00
9/3/2020	TEM	\$250.00	1.30	Discussion with David Massey on Hearing for Rule to Show Cause	\$325.00
9/15/2020	TEM	\$250.00	3.70	Worked on proposed Order for Rule to Show Cause; Review of Transcripts from Hearing	\$925.00
9/18/2020	TEM	\$250.00	0.80	Telephone Call with John and Shauna regarding answering discovery	\$200.00
9/24/2020	TEM	\$250.00	1.20	Worked on Discovery Requests	\$300.00
9/25/2020	TEM	\$250.00	2.30	Worked on proposed Order	\$575.00
10/2/2020	TEM	\$250.00	0.70	Review of Judge Jennings' Order and Rule to Show Cause	\$175.00
10/6/2020	TEM	\$250.00	1.70	Review of Discovery Documents from John Mensch	\$425.00
10/7/2020	TEM	\$250.00	1.20	Review of Requests for Admission; Research on denials from Devon Purlefoy	\$300.00
10/13/2020	TEM	\$125.00	1.67	Work on Answers to Interrogatories	\$208.75
10/14/2020	TEM	\$125.00	2.25	Work on Answers and Responses to Interrogatories and Requests for Production	\$281.25
10/15/2020	TEM	\$250.00	0.20	Telephone Call with John Mensch	\$50.00
10/15/2020	TEM	\$250.00	1.20	Worked on Discovery Responses	\$300.00
10/21/2020	TEM	\$250.00	0.80	Telephone Call with John and Shauna	\$200.00
10/21/2020	TEM	\$250.00	0.90	Review of Discovery Production	\$225.00
10/23/2020	TEM	\$250.00	1.20	Review of Markel Report	\$300.00
11/6/2020	TEM	\$250.00	2.30	Worked on discovery responses	\$575.00
11/6/2020	TEM	\$125.00	1.00	Reviewed/Prepared Discovery Production	\$125.00
11/17/2020	TEM	\$250.00	1.30	E-mails to Truluck Thomason regarding production/Order	\$325.00
11/17/2020	TEM	\$250.00	1.30	E-mails to John Mensch regarding deposition questions, failure of Sterling to comply with Order; Motion to Determine Sufficiency of Answers to Requests for Admission	\$325.00
11/23/2020	TEM	\$250.00	0.30	E-mail to Court; response to attorney's fee question	\$75.00
11/30/2020	TEM	\$250.00	1.50	Review of Deposition Questions from John Mensch; e-mail to John Mensch	\$375.00
11/30/2020	TEM	\$250.00	0.70	E-mails to John Mensch	\$175.00
12/3/2020	TEM	\$250.00	2.70	Worked on Second Rule to Show Cause; Affidavit; letter to Judge Jennings	\$675.00
12/3/2020	TEM	\$250.00	1.30	Worked on Motion to Determine Sufficiency and Motion to Compel	\$325.00
12/14/2020	TEM	\$125.00	0.50	Worked on Affidavit for Rule to Show Cause	\$62.50
12/14/2020	TEM	\$250.00	5.70	Worked on Third Rule and Order to Show Cause - delivered to Court; Affidavit; Motion to Determine Sufficiency and to Compel	\$1,425.00

12/14/2020	TEM	\$250.00	1.50	Worked on TRO/ Injunction	\$375.00
12/14/2020	TEM	\$250.00	1.20	E-mail to Court and opposing party regarding Rule to Show Cause	\$300.00
12/15/2020	TEM	\$250.00	0.90	Worked on Motion to Compel and Determine Sufficiency; Filed with Court; Sent to opposing Counsel	\$225.00
12/15/2020	TEM	\$250.00	2.50	Worked on/Prepared Subpoenas for financial information from BOA accounts and T. Rowe Price	\$625.00
12/17/2020	TEM	\$250.00	1.70	E-mails to John and Shauna; Preparation for Motion to Compel and to Determine Sufficiency and Rule to Show Cause	\$425.00
12/18/2020	TEM	\$250.00	0.90	Telephone Call with John & Shauna regarding Rule to Show Cause; Motion to Compel and Motion to Determine Sufficiency	\$225.00
12/21/2020	TEM	\$250.00	4.80	Worked on Memorandum for Motion to Deem Admitted/Compel	\$1,200.00
12/21/2020	KLH	\$350.00	1.20	Research on Motion to Determine Sufficiency of Requests for Admission	\$420.00
12/21/2020	TEM	\$250.00	4.30	Preparation for Hearing on Rule to Show Cause and Motion to Compel	\$1,075.00
12/22/2020	TEM	\$250.00	2.30	Review of John Mensch Comments, E-mails regarding Requests for Admission to John Mensch; Worked on Memorandum in Support of Motion to Determine Sufficiency and to Compel	\$575.00
12/22/2020	TEM	\$250.00	1.70	Prepared Exhibits and Memorandum for filing; final edits to Memorandum	\$425.00
12/29/2020	TEM	\$250.00	2.30	Preparation for Hearing, Review of Transactions, T/C to Jeff Lynch Appliances	\$575.00
12/30/2020	TEM	\$250.00	4.30	Preparation for and Hearing on Petition; T/C with Home Depot	\$1,075.00
1/19/2021	TEM	\$250.00	1.20	Review of Discovery Production from Respondent	\$300.00
1/20/2021	TEM	\$250.00	6.20	T/C with John Markel; John and Shauna Mensch; discussion on production, accounting, summary judgment motion; review of production and expert report to determine amount for summary judgment motion; worked on summary judgment motion	\$1,550.00
1/22/2021	TEM	\$250.00	0.90	Review of Requests to Admit Answers; email to John/Shaua - Email to John Markel	\$225.00
1/25/2021	TEM	\$250.00	0.90	Review of Affidavits from John Markel	\$225.00
1/27/2021	TEM	\$250.00	4.20	Worked on Motion for Summary Judgment; review of accountant's affidavit	\$1,050.00
1/28/2021	TEM	\$250.00	1.70	Work on Subpoenas for UBS and State Street Global Advisors Financial Records and Prepare Documents for Service	\$425.00
1/29/2021	TEM	\$250.00	0.70	Review of Subpoenas	\$175.00
1/29/2021	TEM	\$250.00	4.20	Worked on Summary Judgment Motion; review of cases regarding transfers	\$1,050.00
1/29/2021	TEM	\$250.00	2.10	Worked on Motion for Summary Judgment	\$525.00
2/1/2021	TEM	\$250.00	2.30	Worked on Summary Judgment; email discussion on damages	\$575.00
2/2/2021	TEM	\$250.00	0.70	Emails with John Mensch regarding Summary Judgment Motion; email to John Markel	\$175.00
2/2/2021	TEM	\$250.00	0.70	T/C with UBS and Shauna Waddell	\$175.00
2/3/2021	TEM	\$250.00	0.30	Email to Court regarding Sterling complying with Order	\$75.00
2/3/2021	TEM	\$250.00	1.70	Worked on Summary Judgment Motion; T/C with John Markel	\$425.00
2/11/2021	TEM	\$250.00	3.70	Worked on Motion for Summary Judgment and Memorandum	\$925.00
2/12/2021	TEM	\$250.00	1.30	Review of John Markel Affidavit and Amended Report	\$325.00
2/17/2021	TEM	\$250.00	3.70	Worked on Summary Judgment Motion; Prepared for filing; filed with the Court	\$925.00
2/22/2021	TEM	\$250.00	0.70	Review of documents related to accounts of Sterling Mensch; Email to John Mensch and Shauna Waddell	\$175.00
2/22/2021	TEM	\$250.00	1.20	Review of Email from John Mensch	\$300.00
3/1/2021	TEM	\$250.00	1.70	Worked on Settlement Proposal; Emails to John and Shauna	\$425.00
3/2/2021	TEM	\$250.00	1.20	Worked on Settlement Agreement	\$300.00
3/4/2021	RDM	\$400.00	0.70	Reviewed Settlement Offer	\$280.00
3/4/2021	TEM	\$250.00	3.70	Worked on Settlement Offer; various emails to John and Shauna; email to Kim Thomason	\$925.00
3/9/2021	TEM	\$250.00	7.50	Worked on Motion for Summary Judgment Memorandum; review of case file an all production	\$1,875.00
3/10/2021	KLH	\$250.00	0.50	Conversation with Tyler on punitive damages	\$125.00
3/10/2021	TEM	\$250.00	4.70	Worked on Motion for Summary Judgment	\$1,175.00
3/12/2021	TEM	\$250.00	3.90	Worked on Memorandum for Motion for Summary Judgment; Worked on Exhibits for the Motion; Emails the Court and Devon Purifoy regarding Respondent's request for Judge Jennings to recuse himself	\$975.00
3/15/2021	TEM	\$250.00	6.90	Worked on Memorandum and Exhibits for Motion for Summary Judgment	\$1,725.00
3/16/2021	TEM	\$250.00	8.20	Preparation for Summary Judgment Hearing	\$2,050.00
3/17/2021	TEM	\$250.00	8.90	Summary Judgment Hearing; research on cases regarding punitives	\$975.00
3/22/2021	TEM	\$250.00	0.70	Email to John Mensch regarding false affidavit	\$175.00
4/22/2021	TEM	\$250.00	1.30	Review of Ruling from Judge Faulkner; various emails to John & Shauna	\$325.00
4/27/2021	TEM	\$250.00	1.70	Worked on Order for Summary Judgment	\$425.00
4/28/2021	TEM	\$250.00	0.70	T/C with John and Shauna	\$175.00
4/30/2021	TEM	\$250.00	2.70	Review of file in prep for hearing on damages; emails	\$675.00
5/5/2021	TEM	\$250.00	1.90	Worked on Order; determined relevant facts to client	\$475.00
5/10/2021	TEM	\$250.00	0.90	Responses to John Mensch comments relating to mitigation of damages	\$225.00
5/12/2021	TEM	\$250.00	1.20	Worked on Order for Summary Judgment	\$300.00
5/14/2021	TEM	\$250.00	3.20	Review of Memo in Opp. to MST filed by Respondent; Worked on Order	\$800.00
5/17/2021	TEM	\$250.00	0.90	Worked on Order	\$225.00
5/17/2021	KLH	\$350.00	1.00	Drafting of Order	\$350.00
5/18/2021	KLH	\$350.00	1.10	Work on order; review elements of cause of action to plug into order	\$385.00
5/19/2021	KLH	\$350.00	0.60	Worked on Order	\$210.00
5/24/2021	TEM	\$250.00	2.70	Drafted Attorney Fee Affidavit; Review of File	\$675.00
5/26/2021	KLH	\$350.00	1.50	T/C with Tyler regarding damages hearing	\$525.00
5/26/2021	TEM	\$250.00	2.70	Preparation for Damages Hearings	\$675.00
5/27/2021	TEM	\$250.00	0.30	Final Review of Order	\$75.00
6/15/2021	TEM	\$250.00	1.30	Various email correspondence to the Court; correction to proposed Order; emails to John and Shauna	\$325.00
6/17/2021	TEM	\$250.00	1.70	Responses to Devon's Comments to Proposed Order	\$425.00
7/20/2021	TEM	\$250.00	3.70	Work on attorney fee motion and affidavit; prep. for meeting with John Markel; emails to John and Shauna	\$925.00
7/22/2021	TEM	\$250.00	5.70	Preparation for damages hearing	\$1,425.00
7/23/2021	TEM	\$250.00	0.50	Emails to court regarding moving trial; email to Kim Thomason; research on motion and 106	\$125.00
7/26/2021	TEM	\$250.00	1.70	Research on cases on Damage hearing	\$425.00
8/1/2021	TEM	\$250.00	2.30	Worked on Reply to Motion for Continuance	\$575.00
8/4/2021	TEM	\$250.00	0.90	Prep for and Hearing on Motion for Continuance	\$225.00
8/4/2021	TEM	\$250.00	4.20	Prep. for trial; prep. of exhibits for trial; review of file; email to Kim Thomason regarding stipulations	\$1,050.00
8/5/2021	TEM	\$250.00	1.30	Preparation of Exhibits for trial; review of bank account statements	\$325.00
8/9/2021	TEM	\$250.00	7.80	Preparation for Trial; Worked on pre-trial brief; Worked on complying with SJ order; prep of Exhibits; Questions for Witnesses	\$1,950.00
8/11/2021	TEM	\$250.00	5.70	Preparation for Meeting with Kim Thomason and Devon Purifoy; Various emails to John Markel; Email correspondence with Truluck Thomason; T/C with Shauna and John Mensch	\$1,425.00
8/13/2021	TEM	\$250.00	8.50	Meeting with Kim Thomason and accountants; Worked on accounting for the court; prep for trial	\$2,125.00
8/13/2021	KLH	\$350.00	1.30	Discussion with Tyler on trial issues	\$455.00
8/15/2021	TEM	\$250.00	9.70	Preparation for Trial	\$2,425.00
8/16/2021	TEM	\$250.00	13.80	Preparation for Trial	\$3,325.00
8/17/2021	TEM	\$250.00	11.90	Trial	\$2,825.00
8/18/2021	TEM	\$250.00	9.30	Trial	\$2,325.00
8/23/2021	TEM	\$250.00	0.30	Email to Judge Faulkner concerning subpoenas	\$75.00

8/27/2021	TEM	\$250.00	0.90	Motion for TRO; discussion with Tyler	\$225.00
8/30/2021	KLH	\$350.00	0.40	Discussion with Tyler on Subpoena	\$140.00
9/13/2021	TEM	\$250.00	7.30	Preparation for trial; cross-examination of expert witness and Sterling Mensch; Closing Argument	\$1,825.00
9/15/2021	TEM	\$250.00	3.70	Preparation for final damages hearing; update to attorney's fee affidavit	\$925.00
SUBTOTAL - Attorney Billing				394.77	\$119,447.75

Expenses

1/17/2020	Check BOA Legal Order Processing for document production	\$88.07
1/27/2020	Check for Transcript Order from Legal Eagle for Probate Court Hearings held 8/21/2019 and 11/20/2019	\$340.50
3/22/2019	Probate Court filing fee for Demand Notice.	\$5.00
5/13/2019	Probate Court filing fee for Petition.	\$150.00
5/28/2019	Service of Process for Sterling Raymond Mensch, III.	\$65.00
3/6/2020	Service of Process for Sterling Raymond Mensch.	\$65.00
4/30/2020	Accounting Fee Retainer to John Markel to evaluate accounts of Florence Mensch	\$3,000.00
5/26/2020	Priority Overnight Check to John Mensch	\$59.24
6/29/2020	Interrogatories and Requests for Production - Paralegal Services	\$120.00
8/26/2020	Process Server Fee for Service of Rule and Order to Show Cause	\$115.00
8/31/2020	Accounting Fees to prepare 2017 and 2018 tax returns which Sterling Raymond Mensch III failed to file	\$2,900.00
9/15/2020	Legal Eagle Fees (Invoice# 93067) for Transcription and Exhibit Pages for Probate Hearing	\$356.78
10/2/2020	John Markel Expert Accounting Fees (Invoice #20137)	\$8,300.00
12/4/2020	FedEx Expense for Reimbursement Check to John R. Mensch	\$24.02
12/15/2020	Mailing of Subpoenas	\$25.00
12/16/2020	Certified Mail Notice of Hearing, Rule and Order to Show Cause, and Motion to Compel	\$9.40
12/23/2020	Certified Mail Memorandum and Affidavit of Attorney Fees for Service	\$14.65
1/25/2021	BOA Fee for Subpoena of Financial Records	\$73.50
1/27/2021	FedEx John R. Mensch - Reimbursement of Attorney's Fees	\$26.69
1/28/2021	Mailing Fees for Service of UBS and State Street Global Advisors Subpoenas	\$23.95
2/17/2021	UBS Subpoena Production - Invoice #2102161216SK	\$152.25
2/27/2021	John Markel Expert Accounting Fees (Invoice #21106)	\$5,375.00
3/15/2021	BOA Fees - Subpoena for Document Production (Invoice #688522)	\$42.20
7/15/2021	John Markel Expert Accounting Fees (Invoice #21127)	\$9,000.00
8/11/2021	Legal Eagle Fee - Copy of Transcription from 03/17/2021 Hearing	\$173.95
8/25/2021	John Markel Expert Accounting Fees (Invoice #21133)	\$13,000.00
SUBTOTAL - Expenses		\$43,505.20

Less Amount Previously Awarded by Court

Amount awarded per Order of Probate Court dated August 28, 2019	\$1,500.00
Amount awarded per Order of Probate Court dated December 4, 2019	\$10,000.00
Amount awarded per Order of Probate Court dated September 30, 2020	\$10,000.00
Amount awarded per Order of Probate Court dated January 13, 2021	\$7,500.00

SUBTOTAL - Amounts Previously Awarded by Court	\$29,000.00

GRAND TOTAL - Attorney Fees and Costs (Attorney Billing + Expenses) - (Previously Awarded)	\$133,952.95

Attorney Billing Rates

R. David Massey (RDM) @ \$400.00/hr

Knox L. Hoynsworth (KLH) @ \$400.00/hr

Tyler E. McLeod (TEM) @ \$250.00/hr

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

**MEMORANDUM IN OPPOSITION
TO PETITIONERS MOTION
FOR ATTORNEY’S FEES**

TO PETITIONERS AND THEIR ATTORNEY OF COUNSEL:

Respondent, Sterling Raymond Mensch (“Respondent”), by and through his undersigned counsel, hereby submits this Memorandum in Opposition to Petitioners, John R. Mensch and Shauna M. Wadell (“Petitioners”), Attorney’s Fee Affidavit. Respondent requests the Court deny Petitioners’ Attorney’s Fee Affidavit. S.C. Code Ann. § 62-1-111 provides that reasonable attorney’s fees and costs may be awarded to a prevailing party; however, the statute is not mandatory. (emphasis added). In this case, attorney’s fees are not appropriate for the reasons detailed herein, Respondent requests that the Court in its discretion, decline to award attorney’s fees to Petitioners. Petitioners have failed to satisfy their burden of establishing the six factors set forth by the Supreme Court in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), to warrant

fees. Petitioners have also not provided any supporting evidence detailing the “costs” that they seek to recover. Therefore, the Court should also refuse to award any costs absent sufficient proof.

I. Petitioner has not provided sufficient evidence justifying an award of attorney’s fees.

The Supreme Court has stated that the Court should consider the following six factors when determining a reasonable attorney’s fee:

“(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.”

Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

Pursuant to Rule 6(d), SCRCF Petitioners were required to serve any supporting affidavits along with their motion. *See Id.* Petitioners have not submitted any evidence supporting any of the *Jackson* factors beyond a cursory affidavit from trial counsel which does not assert whether each element has been satisfied. This affidavit is not sufficient to satisfy Petitioners burden under South Carolina Law. *See, e.g., Abbott v. Gore*, 304 S.C. 116, 119, 403 S.E.2d 154, 157 (Ct. App. 1991) (“A party who seeks attorney’s fees has the burden to show that request is well-founded and failure to offer any evidence on the issue of attorney’s fees precludes an award.”); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493-94, 427 S.E.2d 659, 660-61 (1993) (noting that the courts have reversed fee awards and remanded the issue “when there was a lack of evidence”). The affidavit from Petitioners’ Counsel states, “their firm is billing on an hourly basis in this matter.” (McLeod Aff. ¶ 5.). However, Petitioners’ own attorney’s fee affidavit supporting exhibit states that it has billed 5.7 hours on reviewing and updating the engagement letter with Petitioners. The updated engagement agreement was completed almost a year after Petitioners’ Counsel was retained. This

begs the question as to why the engagement agreement was changed and what the engagement was changed to or from. South Carolina law is clear, that an award of attorney's fees is to the party, not his or her lawyer. *Jackson*, 326 S.C. at 307, 486 S.E.2d at 759. Therefore, if the agreement was changed to a contingency fee contract it is not dispositive evidence of the appropriate amount of fees. See, e.g., *S.C. Dep't of Transp. v. Revels*, 411 S.C. 1, 11-12, 766 S.E.2d 700, 705 (2014) (examining claim for attorney's fees under the condemnation statutes, noting that "[t]he court may, in fact, conclude that the contingency fee agreement yields a reasonable fee," but "the court is not bound by the terms of the agreement"); *Jackson*, 326 S.C. at 308, 486 S.E.2d at 759 ("When determining the reasonableness of attorney's fees under a statute mandating the award of attorney fees, the contract between the client and his counsel does not control the determination of a reasonable hourly rate.").

Petitioners must provide evidence of the reasonableness of the fees sought. That has not been done in this case. Petitioners conclusory affidavit does not meet this standard, and this alone warrants denying Petitioners' request for attorney's fees. Additionally, the assessment of the six factors demonstrates that Petitioners are either not entitled to attorney's fees or, at a minimum, the total amount of fees should be considerably less than what the Petitioners have requested.

The first factor concerns the nature, extent, and difficulty of the case. Petitioners do not allege that this case was complex and the facts do not support that this was a particularly complex case. Second, the time devoted to the case also weighs against awarding attorney's fees. In fact, the Court should question how much time was spent by Plaintiffs' counsel based on the lack of documentation that was offered supporting the attorney's fee affidavit. For example, Petitioners Counsel billed 1.5 hours for a TRO and an injunction, however, no such document has been filed with Court and/or produced to Respondent's Counsel. This is not sufficient to meet Petitioners

evidentiary burden under South Carolina law. Petitioners also fault Respondent for failing to settle the case. However, Respondent should not be faulted for failing to settle where there was a good faith dispute of fact concerning damages and Respondent made numerous attempts and actual offers. It would be fundamentally unfair to punish a party for exercising his rights to have a claim tried at a damages hearing.

The third factor is the professional standing of counsel. The only evidence provided by Petitioner on this element is counsel's affidavit that states that a majority of his practice involves probate litigation. This conclusory statement is not sufficient to meet Petitioners burden on this element.

As to the fourth factor, Petitioners' Counsel's compensation was clearly changed at some point during the litigation. However, as detailed above, it is not sufficient to merely assert that since the case was brought on a billable hourly basis, Petitioners are entitled to recover the full amount of the fees provided by the fee agreement if the fee agreement was changed. Petitioners have failed to provide the engagement agreement. This is not appropriate or sufficient under South Carolina law. *See Revels*, 411 S.C. at 11- 12, 766 S.E.2d at 705 (2014); *Jackson*, 326 S.C. at 308, 486 S.E.2d at 759.

Lastly, Petitioners have not established that their fee is a customary legal fee for similar services. Without any example or explanation, Petitioners' counsel's affidavit summarily states that this is a customary fee percentage for this type of case. Petitioners, however, have not provided any evidence or testimony detailing the customary rate or time spent on such a matter. Therefore, Petitioners have not satisfied this element either.

II. Petitioners have not provided any sufficient evidence of costs.

Petitioners motion and supporting affidavit state without any evidentiary support that they have incurred “litigation costs in the amount of \$30,331.25.” S.C. Code Ann. § 62-1-111 provides that a party who violates the probate code may be liable for “court costs.” *Id.* However, the statute does not delineate the types of costs that are recoverable and, as South Carolina Jurisprudence explains, recoverable costs are not a well-developed issue in South Carolina. See 7 S.C. Jur. Costs §§ 27. Regardless, the traditional costs recoverable in this type of action might include filing fees, fees relating to serving process, deposition fees, printing costs, and witness fees. See generally 7 S.C. Jur. Costs §§ 27-33. Again, however, Petitioners have not provided any supporting bills and have made no effort to establish that the costs they seek are, in fact, recoverable costs under South Carolina law. For example, Petitioner incurred costs for “interrogatories and Request for Production – paralegal services.” This expense likely resulted from Petitioners’ Counsel seeking outside help from his office to obtain interrogatories and request for production. Not only does this support Respondent’s position as to the third element in the *Jackson* factors, but Respondent should not be burdened for a cost that was done because of particular discovery that was outsourced by his firm.

Additionally, most of the costs were incurred by Petitioners in connection with claims for which Respondent was not found liable. Petitioners have asserted Fourteen (14) causes of action and Respondent has only been found liable for three (3) causes of action. This is not sufficient to warrant an award of costs. See, e.g., *Black v. Roche Biomedical Lab’ys, a Div. of Hoffman-LaRoche, Inc.*, 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993) (reversing award of certain costs where there was insufficient supporting documentation). Therefore, the Court should also reject Petitioners request for costs.

Conclusion

For these reasons stated herein and in Respondents Response in Opposition to Petitioners Motion for Attorney's Fees, Respondent respectfully requests that this Court deny Petitioners' motion for attorney's fees and costs.

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Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE PROBATE COURT

Estate of Florence Petrak Mensch,)
John R. Mench and Shauna M. Waddell)
Individually and as Personal Representative)
Of the Estate Florence Petrak Mensch)
And John R. Mensch)

Petitioner,

v.

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.

C.A. No.: 2018-ES-02854

FILED

FEB 02 2022

**GREENVILLE COUNTY
PROBATE COURT**

MOTION TO ALTER OR AMEND

Respondent, 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"), through his undersigned counsel, move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure to alter or amend the Order granting Petitioner damages.

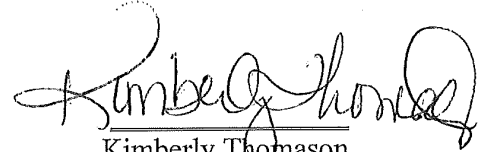
WHEREFORE, Respondent respectfully requests this Court to alter or amend its January 26, 2022, Order.

[signature page to follow]

COPY

Respectfully Submitted this
2nd day of February, 2022

TRULUCK THOMASON, LLC

A handwritten signature in black ink, appearing to read "Kimberly Thomason", written over a horizontal line.

Kimberly Thomason

Bar No.: 79179

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Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Estate of Florence Petra Mensch

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

Petitioner,

v.

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.

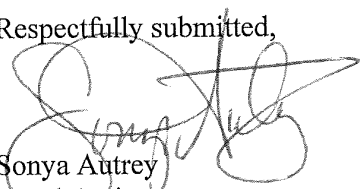
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL DISTRICT
C.A. FILE NO. 2018-ES-23-02854

CERTIFICATE OF SERVICE

I, Sonya Autrey, certify on this date, **February 2, 2022** I served a copy of the *Motion to Alter or Amend* on Tyler McLeod by personal delivery to:

Tyler McLeod
106 Williams St
Greenville, SC 29601

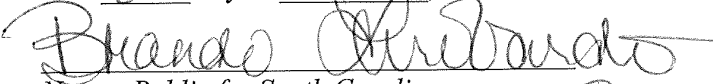
Respectfully submitted,



Sonya Autrey
Legal Assistant

Sworn to and Subscribed before me

This 2nd day of Feb., 2022.



Brandon K. Roberts
Notary Public for South Carolina
My commission expires: 7-21-2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
IN THE MATTER OF:	)	
Estate of Florence Petrak Mensch	)	C.A. No.: 2022-CP-23-01064
	)	
John R. Mensch and Shauna M. Waddell	)	
Individually and as Personal Representative	)	
of the Estate of Florence Petrak Mensch	)	
and John R. Mensch	)	
	)	NOTICE OF MOTION AND MOTION
Respondent,	)	TO DISMISS APPEAL
	)	
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	)	
	)	
Appellant.	)	
	)	

TO: DEVON M. PURIEFOY, ESQUIRE AND KIMBERLY T. THOMASON, ESQUIRE,
ATTORNEYS FOR DEFENDANT/APPELLANT STERLING RAYMOND MENSCH,
III

You will please take notice that Respondent will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard for an Order dismissing the appeal. The grounds for this motion are that pursuant to Rule 7(b)(1), SCRCP, and case law interpreting the same Appellant was required to specify the grounds of his motion to alter or amend the probate court's underlying Order. As found by the Honorable Debora A. Faulkner in her Order dated February 17, 2022, Appellant failed to comply with the mandates of Rule 7(b)(1). The legal effect of Appellant's failure to specify the grounds of his motion to reconsider is that the filing of the motion did not stay the time for appeal pursuant to Rule 59(f), SCRCP. As such, Appellant has

failed to comply with the provisions of S.C. Code Ann. §62-1-308(a) by appealing in a timely fashion the Probate Court's Order granting Petitioner summary judgment.

Based on the foregoing, it is respectfully submitted this Court must dismiss the appeal of the underlying Orders from the Probate Court as there exist no appellate jurisdiction of this Court.

This Motion is based upon the pleadings on file with the Court, pleadings which may be contained within the Probate Court file, a memorandum of law to be submitted and such other and further materials as the Court may consider.

Respectfully submitted,

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

s/ Tyler E. McLeod
Tyler E. McLeod
S.C. Bar No. 101309
106 Williams St.
Greenville, SC 29601
Telephone: (864) 271-7424
tmcleod@bmemhlaw.com
Attorneys for Respondent

Greenville, South Carolina

February 25, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
IN THE MATTER OF:	)	
Estate of Florence Petrak Mensch	)	C.A. No.: 2022-CP-23-01064
	)	
John R. Mensch and Shauna M. Waddell	)	
Individually and as Personal Representative	)	
of the Estate of Florence Petrak Mensch	)	
and John R. Mensch	)	
	)	MEMORANDUM IN SUPPORT
Respondent,	)	OF MOTION TO DISMISS APPEAL
	)	
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	)	
	)	
Appellant.	)	
	)	

TO: DEVON M. PURIEFOY, ESQUIRE AND KIMBERLY T. THOMASON, ESQUIRE,
ATTORNEYS FOR DEFENDANT/APPELLANT STERLING RAYMOND MENSCH,
III

The Respondents by and through their undersigned counsel, file this Memorandum in Support of Respondents' Motion to Dismiss Appellant's Appeal. The grounds for the Motion to Dismiss Appellants' Appeal are that pursuant to Rule 7(b)(1), SCRCF, and case law interpreting the same, Appellant was required to specify the grounds of his motion to alter or amend the probate court's underlying Order. On February 2, 2022, Appellant filed a Motion to Alter or Amend Judge Faulkner's Order dated January 26th, 2022. Appellant's Motion to Alter or Amend is attached hereto as **Exhibit 1**. Judge Faulkner's January 26th Order, attached hereto as **Exhibit 2**, was a final order awarding damages in favor of Respondent. As found by the Honorable Debora A. Faulkner in her February Order denying the motion to alter or amend, attached hereto as

Exhibit 3, Appellant failed to comply with the mandates of Rule 7(b)(1). Not only did Appellant fail to state any grounds whatsoever for the Motion to Alter or Amend, but Appellant also failed to state the relief or order sought as required under SCRCP Rule 7(b)(1). The legal effect of Appellant's failure to specify the grounds of his motion is that the filing of the motion to alter or amend did not stay the time for appeal pursuant to Rule 59(f), SCRCP.

In *Camp v. Camp*, the Court of Appeals stated, “ ‘A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion.’ ” *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (quoting *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004)); Rule 203(b)(1), SCACR; Rule 59(f), SCRCP. “Rule 7(b)(1), SCRCP requires that motions ‘shall state with particularity the grounds therefor, and shall set forth the relief or order sought.’ ” *Camp*, 386 S.C. at 575, 689 S.E.2d at 636. “The particularity requirement ‘is to be read flexibly in recognition of the peculiar circumstances of the case.’ ” *Id.* (quoting *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996)). “ ‘By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly.’ ” [401 S.C. 132] *Id.* (quoting *Calderon v. Kansas Dep't of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir.1999)). The Court in *Camp v. Camp* further stated, “The purposes of insufficient and successive post-trial motions appear to be the same: both attempt to buy time without asserting a meritorious claim. These tactics further neither justice nor efficiency, and we cannot facilitate their use. *Id.*”

The holding in *Camp v. Camp* was overruled by the Supreme Court, but for reasons that do not exist in the present case. The Supreme Court held that “we do not believe applying the particularity requirement in an overly technical fashion **in this case** would serve the purpose behind the rule.” However, the Supreme Court goes on to state that it is not necessary to apply the particularity requirement in that case because (1) neither party was prejudiced and (2) the court was able to both comprehend the motion and deal with it fairly. In the case of *Camp v. Camp*, a motion hearing was held and ruled upon “based on the arguments of counsel” after the filing of a bare motion that stated no grounds or relief sought. *Id.* Therefore, the Supreme Court found in that particular case that the lower court was able to deal with the motion for reconsideration fairly. *Id.*

However, in this case Appellant did not state sufficient grounds or relief sought, leaving the Court unable to comprehend the motion or deal with it fairly. The substance of Appellant’s motion stated:

“Respondent...move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure to alter or amend the Order granting Petitioner damages. WHEREFORE, Respondent respectfully requests this court to alter or amend its January 26, 2022, Order.”

However, unlike cases in which the court and the parties can comprehend the basis of the motion and deal with it fairly, in this case Judge Faulkner specifically found in her February 23, 2022 order “the bare request to the Court to amend the Order under Rule 59 fails to give notice to the Court and opposing counsel of the relief being requested of the Court.” Judge Faulkner went on to state that after careful review of the **final Order** in its entirety, she found no basis to give Respondent relief under SCRCP 59.

Judge Faulkner's order denying the motion to alter or amend is consistent with the spirit and letter of Rule 7(b)(1). No overly technical application of the Rule is being applied nor asked for. It was incumbent upon Appellant to comply with the requirements of Rule 7(b)(1) in order to trigger the stay provided by Rule 59(f).

The legal effect of Appellant's failure to specify the grounds of his motion is that the filing of the motion did not stay the time for appeal pursuant to Rule 59(f), SCRCF. Therefore, Appellant's notice of appeal was untimely. As such, Appellant has failed to comply with the provisions of S.C. Code Ann. §62-1-308(a) by appealing in a timely fashion the Probate Court's Order for damages dated January 26th, 2022.

Based on the foregoing, it is respectfully submitted this Court must dismiss the appeal of the underlying Orders from the Probate Court as there exist no appellate jurisdiction of this Court.

Respectfully submitted,

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

s/Tyler E. McLeod
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Telephone: (864) 271-7424
tmcleod@bmemhlaw.com
Attorneys for Respondents

Greenville, South Carolina

April 25, 2022

EXHIBIT

1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE PROBATE COURT

C.A. No.: 2018-ES-02854

FILED

FEB 02 2022

**GREENVILLE COUNTY
PROBATE COURT**

Estate of Florence Petrak Mensch,)
John R. Mench and Shauna M. Waddell)
Individually and as Personal Representative)
Of the Estate Florence Petrak Mensch)
And John R. Mensch)

Petitioner,

v.

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.

MOTION TO ALTER OR AMEND

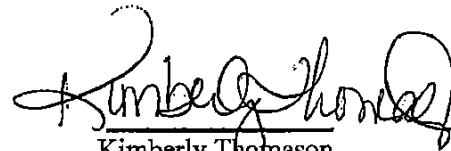
Respondent, Sterling Raymond Mensch, III, Individually as Personal Representative of the Estate of Florence Petrak Mensch and in the former Capacity as Agent under a Power of Attorney for Florence Petrak Mensch ("Respondent"), through his undersigned counsel, move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure to alter or amend the Order granting Petitioner damages.

WHEREFORE, Respondent respectfully requests this Court to alter or amend its January 26, 2022, Order.

[signature page to follow]

Respectfully Submitted this
2nd day of February, 2022

TRULUCK THOMASON, LLC



Kimberly Thomason

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Attorney for Respondent

ELECTRONICALLY FILED - 2022 Apr 25 2:28 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2301064

EXHIBIT

2

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

CASE NO.2018ES2302854

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,
Respondents.

ORDER

FILED

JAN 26 2022

GREENVILLE COUNTY
PROBATE COURT

Date of Hearing: September 16, 17, 2021
Presiding Judge: Debora A. Faulkner, Probate Judge
Attorney for Petitioners: Tyler E. McLeod
Attorneys for Respondent: Devon M. Puriefoy, Kimberly Thomason
Court Reporter: Rachel Wood

This matter came before the court for trial to determine the amount of damages owed the Estate of Florence Mensch by Respondent, Sterling Raymond Mensch (SRM) admits he misappropriated funds belonging to Florence Mensch and her estate. However, the amount of damages due the estate is the central issue in the litigation. The relevant time period for the misappropriations is from May 17, 2010, the date Mrs. Mensch's executed her Durable Power of Attorney (DPOA) naming SRM as her Attorney in Fact, (AIF) and April 26, 2018, the date of Ms. Mensch's death.

Present at the hearing was Petitioner Shauna M. Waddell (SW) represented by Tyler McLeod. Petitioner John Mensch (JM) was present for days one and two of the hearing. SRM appeared for each day of trial with his attorneys, Devin Puriefoy and Kimberly Thomason. Witnesses in the case were Petitioner, SW, Petitioners' expert, John Markel, and Respondent's expert, Mark Chastain.

Prior to taking testimony the Court denied the Petitioner's *Motion in Limine*.

STIPULATIONS

1. SRM made a number of withdrawals from Mrs. Mensch's bank account totaling \$820,382.

Dg Wf 14/1/21

SW
Z

2. SRM deposited the funds from these withdrawals into his single owner checking account.
3. Both expert witnesses are qualified to give their opinions

PROCEDURAL HISTORY

1. On December 14, 2018, SRM filed the Will and Codicil with the Court but took no action to have the documents admitted as the valid testamentary documents of his mother. Neither did he apply for appointment as Personal Representative (PR) which would have granted him legal authority over her assets for the benefit of the devisees named in her Will and any estate creditors.
2. On January 23, 2019, SRM filed his application for admission of the Will and Codicil to Probate and for his appointment as PR. He was appointed PR on January 23, 2019.
3. On May 15, 2019, this action was filed by Petitioners.
4. On August 28, 2019, the Hon. Clayton L. Jennings issued an Order in response to Petitioners' Motion to Compel which, among other rulings, ordered SRM to provide discovery to Petitioners within ten days of the entry of the Order. The Order attached hereto is incorporated herewith as if fully set out.
5. On December 4, 2019, the Hon. Clayton L. Jennings issued his Order in the Petitioner's first Rule to Show Cause proceeding finding SRM in willful contempt of the August 28, 2019 Order. Accordingly, the Court removed SRM as PR and appointed Shauna Waddell to serve as Successor PR. The Court imposed further financial sanctions against SRM. The Order is attached hereto and incorporated herewith as if fully set out.
6. On May 13, 2020, an Amended Petition was filed as permitted by Judge Jennings' Court Order.
7. On September 2, 2020, the Hon. Clayton L. Jennings issued an Order as a result of the Petitioners' filing a second Rule to Show Cause against SRM. The Court found SRM to be in willful contempt of the Court's prior Orders. This Order attached hereto is incorporated herewith as if fully set out.
8. On January 13, 2021, the Hon. Clayton L. Jennings issued an Order as a result of Petitioners third Rule to Show Cause alleging SRM willfully failed to comply with the September 2, 2020 Order. He was found to be in willful contempt, ordered to pay attorneys' fees to Petitioners and cautioned that he would be subject to incarceration should he violate this Order. This Order attached hereto is incorporated herewith as if fully set out.
9. On July 29, 2021, the Court entered an Order granting the Petitioners Summary Judgment on the following causes of action: 1) Breach of Fiduciary Duty as Attorney in Fact (AIF), 2) Violation of the S.C. Uniform Power of Attorney Act, and 3) Conversion. The Court denied Petitioners' Motion for Summary Judgment on the remaining causes of action: Negligence, Unjust Enrichment/Money Had and Received, and Constructive Trust.
10. Trial in this case was heard on September 16-17, '21. By agreement of counsel, Petitioner, John Mensch, participated by telephone on September 17, 2021.
11. A proposed Order was transmitted to the Court on 10/15/21. An extension was granted to SRM's counsel to Dec. 16, 2021 to lodge objections to the proposed Order.

FINDINGS OF FACT

By the preponderance of the evidence, I make the following findings of fact:

By 2014 4/11/21

Handwritten signature/initials.

1. Mrs. Mensch and her husband moved to Greenville from New York. From their marriage, they had three children, John, Sterling and Shauna.
2. Mr. Mensch died in or around 1995.
3. The record contains no evidence that Ms. Mensch had anything other than a loving relationship with all three of her children.
4. In 1998, Ms. Mensch executed a Will leaving her estate equally to each of her three children. She named all three children to serve as Co-Personal Representatives. Similarly, she named each of her 3 three children to share equally in her non-probate accounts which includes a retirement account. Based on the foregoing, I find that Ms. Mensch intended to leave her estate both probate and non-probate to each of her three children in equal shares.
5. In 2007, Mrs. Mensch executed a DPOA naming the Petitioner, SW, as her attorney in fact but it was later revoked in favor of SRM in 2010.
6. After her husband's death, Ms. Mensch lived in her own home at 207 West Beverly Street in Greer, S.C.
7. On May 17, 2010, Ms. Mensch, with the assistance of an attorney, executed another DPOA naming SRM as her AIF. This DPOA contained no provisions allowing SRM to make gifts to himself.
8. She also executed a Codicil to her 1998 Will naming SRM as her sole Personal Representative. She republished her 1998 Will in all other respects, i.e. her estate plan remained unchanged.
9. SW testified that around 2009 she began to take notice of her mother's dementia symptoms.
10. In or around 2012, she purchased an apartment at Rolling Green. She moved into the Rolling Green apartment and sold her home in Greer.
11. In or around 2013 or 2014, as a result of her diagnosis of dementia, Alzheimer's type, SW arranged for FM to be moved to the memory care unit at Oakleaf Village. No evidence was presented that this decision was contested. She died at Oakleaf Village on April 26, 2018.
12. At Ms. Mensch's funeral, SRM advised his brother John to return to Oregon, because he would be starting the estate administration immediately. After hearing nothing from SRM, SW called him about the estate administration. SRM told her he was waiting on tax information.¹ She called again and he said the taxes were done and that he would be dropping off the estate information to attorney, David Massey's office. After hearing nothing further, SW called the attorney's office and the attorney's office didn't have any estate information. SRM told SW that their secretary probably lost it. The firm was never hired by SRM. SW's communication with SRM became increasingly difficult.
13. On December 14, 2018, SRM filed FM's Will and Codicil in the Probate Court without opening an estate. On January 23, 2019, nine months after Ms. Mensch's death, SRM filed his application to admit the Will and be appointed as the PR. He was appointed PR on January 23, 2019. He filed this without the assistance of counsel.
14. On April 30, 2018, SRM signed and filed a sworn *Inventory and Appraisement* with the Court. The *Inventory and Appraisement* is part of the Court's record. On that *Inventory*, he swore that the balance in the UBS account on 4/30/2018 was \$409,652. Petitioner's Exhibit 21, the UBS statement from April, 2018 shows that SRM had withdrawn \$259,000.00 on April 23, 2018 with a resulting balance of \$154,069. He also stated on the *Inventory*, under oath, that the Tarleton Way home had an existing mortgage of \$238,170.00 Two months earlier on February

¹ The records would later show that upon her appointment as Successor PR, SW learned that the 2018 tax return had never been filed. Petitioner's #19 is an IRS Letter stating that on 12/31/18, the estate owed \$91,367.

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Handwritten signature/initials.

8, 2019, he paid the sum of \$232,047 in full satisfaction of the mortgage. So, after being sworn, he voluntarily and willfully filed perjured information to the Court.²

15. After his mother's death, rather than filing the Will immediately and becoming the PR of her estate, he was continuing to make post-death withdrawals from Ms. Mensch's x7059 account. He was also allowing her GE pension auto deposits to continue despite her death. He made his last withdrawals from FM's account in or around February, 2019 leaving approximately \$1500 in x7059 and \$65 in x2007. SRM withdrew a total of \$170,000 from Ms. Mensch's bank accounts after her death. This proceeding was commenced three months later on May 15, 2019

TARLETON WAY HOUSE AND LOT

16. On April 18, 2007, Ms. Mensch purchased property in a subdivision in Greer. As such, she signed the mortgage obligating herself to pay \$330,000.00 for the property in monthly installments. Further, she signed a "Rider" stating that this would be her second home and keep the home only for her exclusive use.

When she purchased the property, she was still living at her West Beverly Street property. Her intent was never to live at this Tarleton Way property. The intent was that the house would actually be purchased by SRM as a home for him and his daughter. SRM orchestrated this arrangement since he was a party in a divorce proceeding. He wanted to protect the property from being included as marital property subject to equitable division. SW testified that it wasn't until after FM's death that she and her brother discovered that the house was not actually owned by SRM.

SRM's expert witness, Mr. Chastain, listed that SRM should be given credit for \$39,000.00 that he paid as a down payment from his own funds when the home was purchased. Upon further examination of the witness, it appeared this was untrue in that the amount was folded into the mortgage.

SRM paid nothing to FM for the 12 years he lived there. It was home with landscaping, pool, theatre room, and nice finishes. SRM alleges he made a total of \$240,631.00 in payments from his personal funds to service the principal and interest on the Tarleton mortgage and that he should be credited with those payments as being beneficial to FM.

SRM's employment status and income were never presented in evidence. In order to weigh the veracity of this assertion, the ability of SRM to pay this would need to be known. It is unknown whether or not he was employed; or, if so, the dates of his employment and the amount of his income. Petitioner's expert witness, Mr. Markel, attempted to trace these alleged mortgage payments using bank documents. He found that many of the alleged payments were untraceable and were inconsistent with the dollar amounts alleged. Countless online cash withdrawals from x7059 to SRM's account were in amounts similar to the amount of the mortgage payments. Bank statements prior to 2012 were not available to the parties.

SRM also alleges that he used some of the cash from FM's accounts to make improvements and repairs to the home which were beneficial to FM. He alleges these expenditures amount to \$69,957.00.³ Despite repeated directions from the Court, SRM never produced receipts or other documents to prove this amount. He failed to testify at this hearing regarding how he arrived at this total. He failed to produce witnesses to confirm payments made for improvements. He failed to issue any subpoenas for merchants or repair companies to produce records.

² The estate record contains a claim filed on 2/11/2019 by Traci Malone of South State Bank. On the same day, February 11, a *Loan Payoff Statement* was filed. SRM satisfied the mortgage in full on 2/8/19. SW's *Settlement Statement* (Exh. #25) when TW was sold shows a mortgage payoff of 218,579 to South State Bank on 12/3/2020

³ SW testified in detail regarding the condition of the home after SRM moved resulting in an expense to the estate of \$10,000.00 on extensive cleaning and repairs in order to make it fit for sale.

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When SRM moved from the home in September, 2020, the estate has to spend \$10,000 for cleaning and repairs to make the property presentable for potential buyers.

As a minor point; but one that shows how no opportunity was missed by SRM, SRM collected \$22,434.00 in insurance proceeds for hail damage to FM's home. The amount of the damage was not placed in the record. Again, these are proceeds from an insurance policy that FM pays for each month in mortgage payments for a house she doesn't need; and, that is being used as a residence for her able bodied son. SRM's expert witness testified that the damage estimate was less than the amount collected and that SRM appeared to have kept the balance not used. This was not contradicted by SRM.

FLORENCE MENSCH'S ASSETS

17. A listing of FM's assets and their values on the date SRM became FM's AIF in 2010 is not in evidence. Bank records were not available prior to 2012. However, from the evidence presented, it appeared that her assets, residential expenses were as follows on the dates indicated:

<u>Asset</u>	<u>Value</u>	<u>Date of Value</u>	<u>Residential Expense</u>
*Home on Tarleton Way	420,000.00	Sold 12/3/20	Moved to Rolling Green In 2012 Oakleaf in 2015
x7059 BOA Checking account	various		
x2007 BOA Savings account	various		
Elfin Trusts + GE stock IRA ⁵	\$1,321,717.00	1/1/2015	
UBS Retirement Acct	\$913,511.00	12/30/16	

Annual Income

2012 \$16,000.00 SSA 2580 x 12/ 31K
 \$17,800.00 Pension
\$49,240.00 IRA Distribution
 \$83,090.00

2013 \$16,000.00 SSA 2580 x 12/ 31K
 \$17,800.00 Pension
\$70,000.00 IRA Distribution
 \$104,125.00

2014 \$16,000.00 SSA 2580 x 12/ 31K
 \$17,800.00 Pension
\$90,594.00 IRA Distribution
 \$124,964.00

2015 \$16,000.00 SSA 4550x12/55K
 \$17,800.00 Pension

⁴ Purchased 2007 for \$330,000.00 Includes \$39,700.00 down payment, additional \$65,000.00 for pool, home theater, fencing, landscaping, etc. SRM claims he paid this via his allegations in an affidavit.

⁵ Elfin later managed by State Street Global.

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\$213,945.00 IRA Distribution
\$248,590.00

2016 \$16,000.00 SSA 4550x12/55K
 \$17,800.00 Pension
 \$208,727.00 IRA Distribution
 \$243,379.00

MANAGEMENT OF ASSETS BY SRM

18. FM's Bank of America (BOA) accounts are her checking account, x7059 and a savings account x2007. The fund balance in x7059 was the result of FM's monthly income deposits plus any online transfers directed by SRM-AIF from her investment accounts. Payments for her residence at the facilities were automatically drafted from x7059.⁶

19. In 2013, SRM, using the authority granted to him by FM in the DPOA, decided to add his name as a joint account owner to x7059. No evidence was presented on why SRM chose to do this, especially since this change would affect FM's estate plan. Instead of the balance being a part of her estate to be shared by all 3 of her children, this change would result in SRM being able to claim all funds remaining on deposit for himself.

20. SRM's personal BOA account is x3259. From 2013 until FM's death in April, 2018, SRM engaged in over 239 online transfers, cash transactions, withdrawals, from FM's BOA accounts. He directed these transfers to his personal BOA account x3259 which was a POD account, providing that his daughter would be paid the balance in the account upon his death. The parties stipulate that the total for all these transfers comes to \$820,382.00⁷ Once deposited into his account, SRM spent the funds on a variety of personal pleasures including nice restaurants, men's clothing stores, jewelry, home improvement stores, grocery stores, travel, alcohol, etc. He made several large cash withdrawals and made online payments to his personal credit card company from FM's account. The piece de resistance \$8000.00 to Greenville Matchmakers.

21. From 2015 through 2018, SRM withdrew funds from Elfin Trust, taking smaller amounts from FM's GM stock. On 12/31/2015, the Elfin fund's market value was \$279,819.00; on the same date, the GM market value was \$1,321,717.00.

22. SRM facilitated IRA distributions to FM in excess of the amount mandated for *required minimum distributions* (RMD).⁸ In years 2011, 2012, 2015, 2016, and 2018, SRM unnecessarily caused FM's IRA distributions to exceed allowable RMD for each year. From the above chart, SSA and pension income were largely sufficient to cover her monthly living expense at Rolling Green and less so at Oak Leaf. However, no evidence is presented to show that the allowable RMD for each year plus her income would have been insufficient to comfortably pay for her care. The amount of income taxes incurred due to these excessive withdrawals was \$163,420.00.

23. On March 20, 2018, SRM sold the GE stock for \$406,255.80.

24. Petitioners allege that SRM failed to properly diversify FM's portfolio resulting in a reduction of approximately \$400,000.00 in value. Court finds that this was speculative and not supported by the preponderance of the evidence.

⁶ Occasionally, SRM would use the x2007 to receive online transfers.

⁷ No bank records were available prior to 2012.

⁸ Under Treasury Regulations, taxpayers over 70.5, like FM must take the required minimum distributions.

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25. On April 23, 2019, three days prior to FM's death, SRM transferred \$259,000.00 of the \$409,652.00 held in FM's UBS retirement account to FM's 7059 account.

26. SRM failed to notify BOA and failed to notify GE Pension of FM's death. The pension payments continued unabated and SRM continued to make withdrawals from the BOA accounts. From the time of FM's death on April 26, 2018 until February 18, 2019, SRM directed \$170,000 of FM's, i.e. the Estate's, post-death funds to his x3259 personal account. These were funds earmarked to be divided equally among her 3 children. SRM withdrew these post-death pension payments from FM's account for his personal use. To reimburse GE for these overpayments. As a result, the estate was charged with an overpayment of \$30,157.00.

SW, as PR, agreed to forfeit the \$10,000 of GE life insurance that FM intended to be shared equally by her children. SW assigned \$3333.33 of the 10,000 for each beneficiary. This left a balance due to GE of \$20,157.81 from the estate. SRM should be liable to the estate for the total amount of overpayment in the amount of \$30,157.00.

27. At the time SW was appointed PR, there was only \$15,000 in FM's x7059 account.

TAX LIABILITIES

28. Between 2012 and 2016, SRM's failed to timely file tax returns and failed to timely pay taxes due resulting in penalties for failure to file and penalties and interest for failure to pay the IRS and SCDOR. The amount admitted by SRM's attorneys is \$13,820.17.

29. SRM failed to file tax return for FM for 2017.

30. SRM made gifts from FM to himself, SW and Steve, John and Shea, Sterling and Holly in the years 2014, 2015, and 2016 for the purpose of meeting the annual exclusion allowed by the IRS. This was permitted by FM's DPOA.

31. SRM failed to take action necessary to avoid \$40,314.00 penalties and interest connected to FM's 2018 taxes. This amount is currently on appeal.

32. From 2011 through 2016, SRM failed to itemize deductions for property tax and mortgage interest on the Tarlton Way on FM's returns. FM as owner of the property was clearly entitled to claim those itemized deductions, and thereby proportionately reduce her tax liability for each respective year. This failure amounts to \$24,559 in excessive tax.

33. From 2011 through 2018, SRM caused FM and, later, her estate to incur unnecessary tax liabilities of \$163,420 as set forth in Petitioner's Exhibit #1⁹ due to SRM's withdrawals in excess of the RMD for each year.

34. In 2015 and 2016, SRM wrote checks to his siblings, their spouses, to himself and his daughter in accordance with IRS rules that permit gifting a certain amount each year. Each year he wrote himself a check equal to the others, despite his siphoning of funds from his mother to subsidize his lifestyle. He has made no good faith effort whatsoever during this litigation to pay any amount that he admits he owes. The only amounts he has paid to the estate to date for his wrongdoing were attorneys' fees ordered by Judge Jennings short of incarceration. As a matter of equity, SRM should not be able to sit at the table with his siblings and collect a gift in an amount equal to theirs given his actions. Specifically, the record indicates he paid himself \$14,000.00 for 2015 and 2016 for a total of \$28,000.00.

⁹ Pet. Exhib. 21, USB states RMD for 2018 is 33,358. SRM withdrew \$259,000 or \$ 225,642 in excess of IRS limits

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CONCLUSIONS OF LAW

Applying the facts to applicable law, I make the following conclusions of law:

BREACH OF FIDUCIARY DUTY

1. "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Davis v. Greenwood Sch. Dist.* SO, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005). To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. See generally, *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) (discussing the elements comprising a breach of fiduciary duty claim); *RFT Mgmt. Co. v. Tinsley & Adams*, 399 S.C. 322, 732 S.E.2d 166 (2012).

2. A fiduciary relationship existed between FM and SRM as expressed in the DPOA signed by FM in May, 2010. FM reposed special confidence in SRM; confidence that he would act in good faith placing her. As such, SRM has all the duties and obligations set forth in the document plus he is duty bound to act at all times with due regard to the interests of FM. *Moore v. Benson*, 390 SC 153 (2010). Being in the firm grasp of Alzheimer's disease, she was squarely at the mercy of SRM to act in her best interests. Instead, SRM exploited the trust his mother bestowed on him at every turn.

3. The clear weight of the evidence shows SRM used the DPOA as a license to access as much of his mother's property as possible, leaving enough for her basic requirements, such as the payments to her facility. The chart above shows that her income and RMD distributions were substantially exceeded the amount of her monthly facility fees. The excess was taken as a part of the obvious scheme concocted by SRM to maximize his grift. At every opportunity, he placed his desire to take as much of her property as possible ahead of his mother's welfare. To further nail down his continued free use of his mother's money, to the detriment of his siblings, he added his name as a joint owner to her BOA accounts. By doing this, he was depriving his siblings of their right to inherit a share of the balance as their mother so intended. To further thwart his mother's estate plan, he designated his personal checking account as a POD account. With this change, all the ill-gotten funds in this account would become the property of his daughter to the detriment of his mother's estate, i.e. his siblings.

4. He breached his fiduciary duty by using the authority reposed in him by FM to delay or fail to file taxes, resulting in unnecessary fines and penalties, thus reducing FM's estate. He made withdrawals exceeding her RMDs, he liquidated her IRA, and also resulting in unnecessary taxes and penalties. These accounts were all created by FM to be divided equally at her death. FM's estate, both non-probate and probate, would have been substantially greater but for the shenanigans employed by SRM while his mother suffered with Alzheimer's disease, helpless to intervene.

5. The DPOA contained no express authority for SRM to gift himself any of his mother's property. The Decedent's DPOA contains the following provision on page 5, third paragraph:

Notwithstanding any provisions herein to the contrary, my attorney in fact shall not satisfy the legal obligations to the attorney in fact, out of any property subject to this power of attorney. Except to the extent this power of attorney specifically authorizes gifts to my attorney in fact, my attorney in fact may not exercise this power in favor to the attorney, the attorney's estate, the attorney's creditors, or the creditors of attorney's estate.

An agent acting for a principal pursuant to a power of attorney may not make a substantially gratuitous conveyance of the property of the principal to himself unless the power to do so is expressly granted by the instrument itself. *Fender v. Fender*, 329 SE2d 430 (1985).

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6. Florence Mensch died on April 26, 2018. S.C. law requires anyone in possession of a decedent's Will to file the Will within 30 days of the date of death. 62-2-901 (Supp. 2014). SRM waited until December, 2018 to file the Will and Codicil. He waited until January of 2019 to open his mother's estate. He continued to collect her pension and spend money belonging to the estate from April 26, 2018 until February, 2019. Since her death, he continued to convert her property to his own use, said amount totaling approximately \$170,000.00 and causing the estate to be indebted to GE for the overpayment of monthly pensions.

SRM's actions equate him to executor de son tort. Because he continued to receive and spend estate property, he is chargeable as the executor of his own wrong. The value of the property is charged to the *executor de son tort*. 62-3-619 S.C. Code Annot. (Supp. 2014)

I find SRM, who was named as the PR in the Will of his mother, did intentionally and with bad faith convert and waste estate property by means of the concealment of the fact of his mother's death to her bank and to her pension company.

7. While serving as PR, SRM failed to repay or make any effort to repay to the Estate the property he converted to his own use. Further, he failed to comply with the Orders of this Court, failed to cooperate with his first attorney so the attorney could assist in the estate administration. All these acts together constitute a violation of his fiduciary duty as Personal Representative to the Estate causing unnecessary time and expense in the administration of what could have been a very straight forward estate administration.

8. While serving as PR, SRM failed to properly file his mother's 2018 tax returns resulting in taxes, penalties and interest assessed against her estate in excess of \$40,000.00.

VIOLATION OF THE UNIFORM POWER OF ATTORNEY ACT

9. As a matter of law, it is undisputed SRM owed a fiduciary duty to the Decedent as her AIF. Loftis v. Eck, 341 SE 2d 641(1986). Instead of preserving her funds for the future use of the Decedent, Sterling Mensch transferred funds from the Decedent's accounts to his personal account while acting under the authority given to him by her in her DPOA. It is undisputed that Sterling Mensch used funds from these transfers for his own personal use, resulting in the diminishment of available funds for the Decedent's estate to distribute. Therefore, Sterling Mensch failed to maintain Decedent's estate plan as is required by the South Carolina Power of Attorney Act.

This Court has previously ruled as a matter of law that no genuine issue of material fact exists as to this cause of action and Petitioners are entitled to judgment against Respondent.

The Decedent's DPOA contains the following provision on page 5, third paragraph:

Notwithstanding any provisions herein to the contrary, my attorney in fact shall not satisfy the legal obligations of the attorney in fact, out of any property subject to this power of attorney. Except to the extent this power of attorney specifically authorizes gifts to my attorney in fact, my attorney in fact may not exercise this power in favor to the attorney, the attorney's estate, the attorney's creditors, or the creditors of attorney's estate.

While serving as Decedent's AIF, Sterling Mensch transferred funds from the Decedent's accounts to his personal account. Sterling Mensch admitted that he made the unauthorized transfers as described. However, he claims that he used a substantial part of the transfers for the benefit of Florence Mensch. In Moore v. Benson (supra), the Court of Appeals upheld the Master in Equity's refusal to allow credit for alleged tax payments without documentary evidence to support the claim. As to these claims, the Court finds that Sterling Mensch was unable to demonstrate that the above-referenced transactions were for Florence Mensch's benefit. He produced no receipts, documents, witnesses and he failed to testify. In addition to failure to provide proof, as a matter of equity, He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in

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which he seeks relief, *Emery v. Smith*, 361 S.C. 207,220, 603 SE2d 598, 605 (Ct. App. 2004). He who seeks equity must do equity. *Norton v. Matthews*, 249 S.C. 71, 152 SE2d 680 (1987).

As a result of Mr. Mensch's failure to keep complete and accurate records, the Court finds he has violated the following provisions of the Uniform Power of Attorney Act, S.C. Code Ann. 62-8-114 (Supp. 2017): failed to act in good faith; failed to act within the scope of authority granted in the DPOA; failed to act with care, competence and diligence; failed to keep records or all receipts, disbursements and transactions; failed to preserve the Decedent's estate plan by liquidating retirement accounts; failed to preserve the Decedent's estate plan by using her funds for his personal use resulting in less assets to be distributed to all three of her children from her estate; failed to timely file taxes resulting in penalties and interest; failed to minimize taxes and incurring penalties by liquidating retirement accounts; acted with reckless indifference to the purpose of the power of attorney; and his conduct was reckless and willful in complete disregard of duties imposed upon him as a fiduciary.

The Court finds that Sterling Mensch is liable to the Decedent's successors in interest for the amount required to restore the value of the Decedent's property to what it would have been had the violations not occurred. S.C. Code Annot. 62-8-117 (Supp. 2017).

As to the amount, See Section VII.

CONVERSION

10. The evidence is clear and convincing that SRM converted funds belonging to his mother, and later, the estate to his own use and control. To recover in an action for conversion, Petitioners must:

- (1) Have an interest in the thing converted;
- (2) Respondent must have converted the property to his own use;
- (3) The use was without Petitioners' permission.

Moseley vs. Oswald, 656 SE 2d 380 (2008). The Personal Representative has an interest in and a duty to recover all property due the Estate of Florence Mensch. John Mensch as a devisee in her Will has joined the Personal Representative in order to secure the inheritance intended for him by his mother. SRM has admitted taking over \$800,000.00. These funds were used without the permission of Florence Mensch, her Estate, or John Mensch.

By exploiting his status as AIF he wrongfully and willfully took without legal authority property belonging to FM and ultimately to FM's Estate. The wrongful detention of another's property may give rise to action for conversion; in such cases, conversion occurs when, without justification or excuse, one refuses to surrender the possession of goods after demand for possession by one entitled thereto. Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. *Owens v. Andrews Bank & Trust Co.*, 265 SC 490, 220 S.E. 2d 116 (1975). Conversion is a wrongful act which emanates from either a wrongful taking or wrongful detention. *Kirby v. Horne Motor Co.*, 295 S.C. 7, 11, 366 S.E.2d 259, 261 (Ct. App. 1988).

This Court previously ruled as a matter of law that no genuine issue of material fact exists as to this cause of action and Petitioners are entitled to judgment against Respondent.

Rent, Pre-Judgment Interest, Causes of Action for Negligence, Fraudulent and Negligent Misrepresentation and Concealment, Unjust Enrichment/Money Had and Received and Eviction/Ejectment.

11. Petitioner has requested pre-judgment interest as a part of its relief. However, in order to recover pre-judgment interest, such must be specifically pled. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003). The Court finds that Petitioner's statement of "including any interest and appreciation that should have accrued from the time of the violations," contained in line 70 of Petitioner's Petition does not constitute a specific pleading of pre-judgment interest. Therefore, the Court has determined that pre-judgment interest will not be awarded because it was not specifically pled.

12. Petitioner requested rent be charged against Respondent as damages related to Respondent's occupation of 512 New Tarleton Way. Special damages, however, must be particularly alleged and proved. *Kline Iron & Steel Co. v. Superior Trucking Co.*, 261 S.C. 542, 547, 201 S.E.2d 388, 390 (1973) (emphasis added) (failure to plead and prove special damages will prevent recovery). Thus, special damages must be specifically stated to avoid surprise to the other party. *Benedict College v. Nat'l. Credit Sys.* 400 S.C. 538, 548, 735 S.E.2d 518 523 (Ct. App. 2012). The reasoning for such a pleading requirement is to give a party due notice of the amounts sought. *Norwest Properties, LLC v. Strebler*, 424 S.C. 617, 624, 819 S.E.2d 154, 158 (Ct. App. 2018). The Court finds that rent will not be awarded from Respondent as such is special damages which must be specifically pled.

Additionally, Petitioners asserted causes of action for negligence, fraudulent and negligent misrepresentation and concealment, unjust enrichment/money had and received as well as a motion for eviction/ejectment. The Court dismisses the foregoing actions asserted by Petitioner as cumulative given the relief granted by the Court herein.

PUNITIVE DAMAGES

13. The Probate Court can only exercise the jurisdiction provided by statute as enacted by the S.C. General Assembly. As such, the Probate Court lacks subject matter jurisdiction to award punitive damages.

DAMAGES

14. The Court received a number of exhibits during the trial as well as testimony from SW, the estate's PR, and lengthy testimony from both expert witnesses. Mr. Chastain, Respondent's expert, offered testimony regarding his opinions based upon a review of banking and other transactional documents as to the amounts of money transferred from the account of Florence Mensch as compared to the opinion and report of Petitioner's expert John Markel whose testimony was also received. Based upon the testimony of Mr. Chastain in conjunction with the evidence submitted by Mr. Markel, Petitioner's expert, as well as the party's stipulation as to the amount, it is the finding of this court that \$820,382.00 was transferred from Decedent's accounts by Sterling Mensch to his own account for his own personal use.

It is the further finding of this court based upon the evidence that Sterling Mensch is not due any offsets or credits regarding the aforementioned amounts transferred from Decedent's account. Under the settled law of this State, an essential preliminary to the allowance of an offset is that the offset claimed must be pleaded, and there must be some evidence tending to establish such plea. *Hurst v. Sumter County*, 189 S.C. 376, 1 S.E.2d 238 (1939). Likewise, Respondent was required to plead offset. Furthermore, based on the testimony and evidence presented at trial by Respondent, this Court finds that Sterling Mensch has failed to meet his burden of showing that any transfers of funds were made directly for the benefit of Florence Mensch.

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It is a further finding of this court that Petitioners shall not recover any amount for Sterling Mensch's failure to diversify Florence Mensch's assets, as such amount is too speculative for this Court to determine.

With regard to the \$820,382.00 transferred from the Decedent's account by Sterling Mensch, the court subtracts from such amount \$273,461.00 as a credit for Respondent's one-third (1/3rd) inheritance, leaving \$546,921.00 due from Respondent to the estate to compensate the Petitioners loss of inheritance. Added to this amount is \$24,559.00 for avoidable taxes due to failure to itemize for the years 2011 through 2016, as well as 2018 penalties and interest, currently on appeal to the IRS, in the amount of \$40,314.00. The Estate had to spend \$10,000.00 to clean and repair Tarleton Way when SRM moved in order to market the property. Because SRM concealed the death of his mother resulting in an overpayment in pension funds, he owes the estate \$ 30,000.00.

Sterling Mensch admitted he owed penalties and interest in the amount of \$13,820.00.00 thus, the total owed from Respondent to John Mensch and Shauna Waddell as damages is \$625,614.00. This amount will be reduced by the 2018 penalties and interest if the appeal of those penalties and interest is successful. Petitioner's expert calculated that \$163,420 in taxes were levied to excessive RMD distribution. Further, he should not receive the benefit of a gift from his mother at a time he was converting her funds almost on a daily basis in violation of his fiduciary duty to her when she needed him most.

These are just the damages that Petitioners have been able to discover from SRM who has lied to the Court, lied to his siblings, lied by omission to GE Pension and BOA, failed to cooperate with his first attorney, refused to obey Court Orders, failed to produce cooperate in discovery, and failed to produce documentary evidence or witnesses to support his written allegations.,

By preponderance of the evidence and to confirm the foregoing, the Court finds in favor of Petitioners on causes of action for Breach of Fiduciary Duty both as AIF and Personal Representative, Violation of the SC Power of Attorney Act, and Conversion.

In addition to the damages referenced above, the court finds that Petitioners are entitled to recover from Respondent attorney's fees and costs in the total amount of \$127,572.00 as provided by 62-1-111 SC Code Annot. (Supp. 2014). This is a reduction of \$6380 related to time spent on engagement letters, subpoenas, time spent on Affidavit of Fees. I will further note that this amount includes the fees for Petitioners' expert witness. With regard to such fees, the court considered all the elements required under the case of Glasscock v. Glasscock, 304 S.C. 158, 403 S.E. 2d 313 (1991) and finds such fees to be reasonable. Specifically, the Court assessed (1) the nature, extent and difficulty of the case, (2) the time necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingent nature of the compensation, if any, (5) the beneficial results obtained, and (6) customary legal fees for similar services. Applying the foregoing factors, as noted above, and after review of the Affidavit of Attorney's Fees and Costs submitted by Petitioners' Counsel, the Court finds \$127,572.00 to be reasonable attorney's fees and costs.

Petitioners request the Court award the estate 1,462,495.00 not including pre-judgment interest.

Respondent requests that Court award \$513,336.00. To date, SRM has paid nothing toward even the amount he admits he owes.

The relief requested by John Mensch, as a 1/3 devisee of the estate, is addressed by payment to Shauna Waddell as Personal Representative of the Estate. Any claim he has against the Respondent is derivative to the Estate's claims.

In view of the foregoing, this Court awards the Estate of Florence Mensch a judgment in the amount of \$821,343.00 calculated as follows:

\$ 546,921.00 Misappropriations from FM's BOA accounts less SRM's 1/3 share in FM's Will

24,559.00 Failure to itemize FM's tax returns

¹⁰ 40,314.00 2018, taxes, penalties and interest

13,820.00 Tax penalties and interest

163,420.00 Avoidable Income tax due SRM taking more than the RMD from 2011-2018

30,157.00 GE pension overpayment

10,000.00 Cost to estate to clean and repair Tarleton Way

28,000.00 Annual exclusion gift to himself in 2015, 2016

127,572.00 Attorneys fees, costs

\$ 984,763 Total Damages

PAYMENT OF DAMAGES

15. A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title. *Lollis v. Lollis*, 354 SE2d 559, 561 (1987). A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. It is resorted to by equity to vindicate right and justice or frustrate fraud. *McNair v. Rainsford*, 499 SE2d 488, 501 (Ct. App 1988). The Court finds by clear and convincing evidence that a constructive trust should be imposed upon SRM's non-exempt property of whatever type, wherever located, and however titled. This remedy is appropriate as a result of his deceitful, devious, willful, wanton, and careless actions set forth above. He engaged in repeated action of civil theft for 8 years, depleting his mother's property without any regard to what her future needs might be, without regard to her estate plan, without regard to his siblings, without regard to tax law, probate law, prudent investment principles, etc.

16. If execution on this judgment is commenced by Petitioners, the specific property subject to this constructive trust will be identified in accordance with 14-23-360-420, S. C. Code Annot. (1976 as Amended) and any other applicable law. Any discovery regarding the ability of SRM to pay the judgment will be incident to these supplemental proceedings after they have commenced.

¹⁰ This amount is on appeal with the IRS. SRM is allowed to reduce the total judgment should this amount change as a result of the appeal

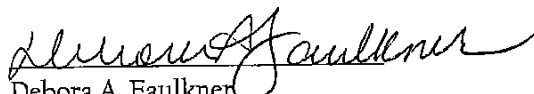
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ORDER

1. STERLING RAYMOND MENSCH, III shall pay \$984,763.00 in damages to Shauna Waddell, Personal Representative of the Estate of Florence Mensch. Payment shall be made immediately.
2. Shauna Waddell, Personal Representative of the Estate of Florence Mensch, is hereby awarded judgment against STERLING RAYMOND MENSCH, III in the amount of \$984,763.00.
3. Post-judgment interest shall begin to accrue at the legal rate of interest 7.25% or the current rate approved by the S.C. Supreme Court when this Judgment is transcribed and enrolled in the Offices of the Clerk of Court of Greenville County.
4. Should this Order be appealed, interest on the judgement will be governed by 14-23-380 S.C. Code Annot. (1976 as Amended) and other applicable law.

IT IS SO ORDERED.


Debora A. Faulkner
Greenville County Probate Judge

Greenville, South Carolina
Dated this 26 day of Jan, 2022

I ATTEST A TRUE COPY

Clerk, Probate Court
Greenville County, SC
Dated: 1/28/22

PAID OFF 1/4/22

EXHIBIT

3

FILED

STATE OF SOUTH CAROLINA **FEB 17 2022** IN THE PROBATE COURT
 GREENVILLE COUNTY
COUNTY OF GREENVILLE **PROBATE COURT** C. A. No.: 2018-ES-23-02854

Estate of Florence Petrak Mensch)

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

Petitioner,

ORDER

v.)

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.)

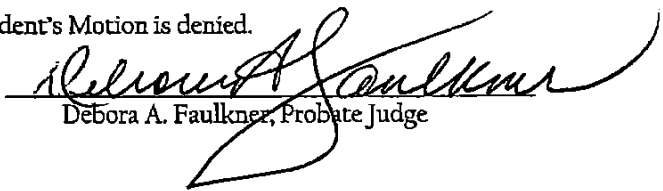
This matter is before me to address Respondent's *MOTION TO ALTER OR AMEND* filed with the Court on February 2, 2022. Evidence of service by mail upon Petitioners' counsel on February 2, 2022 was filed with the Court. As of the date of this Order, no *RETURN* has been filed by the Petitioners' counsel.

S. C. Supreme Court Order of February 4, 2022 regarding the operation of trial courts during the Coronavirus Emergency, directs that hearings on Motions should be minimized. The Order directs trial judges to dispose of Motions without merit without waiting on a Return or other response from opposing counsel.¹

The Court finds that the Motions fails to comply with Rule 7 (b) (1) in that it fails to state any grounds that would entitle the Respondent to relief. As such, the bare request to the Court to amend the Order under Rule 59 fails to give notice to the Court and opposing counsel of the relief being requested of the Court.

After careful review of the final Order in its entirety, I find no basis to give Respondent relief under SCRCP 59.

If view of the foregoing, Respondent's Motion is denied.


Debora A. Faulkner, Probate Judge

February 17, 2022
Greenville, S.C.

¹ See <https://sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2655>

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MATTER OF:
Estate of Florence Petrak Mensch

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,

Appellant,

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

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2022-CP-23-01064

**MEMORANDUM IN OPPOSITION OF
MOTION TO DISMISS**

TO: THE ABOVE PARTIES AND THEIR ATTORNEY OF RECORD:

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, (hereinafter "Appellant"), by and through his undersigned counsel, respectfully requests that Respondent's Motion to Dismiss be denied. Appellant admits that the appeal seems to be premature as the order from the lower court is not a final order. However, due to Respondent's Motion to Dismiss, Appellant seeks an order from this Court stating that the lower court's order is not a final order and having the appeal held in abeyance until a final order is issued. In the alternative, if this Court finds the lower court's order to be a final order, then the appeal was timely made.

PROCEDURAL POSTURE

On May 15, 2019, the Respondents filed a Petition with the Probate Court for numerous causes of actions against the Appellant. [01/26/2022 Order]. Over two years later on July 29, 2021, the Probate Court entered an Order granting the Respondent's Motion for Summary Judgment on Breach of Fiduciary Duty, Violation of the S.C. Uniform Power of Attorney Act, and Conversion. *Id.* A damages hearing was held on September 16 and 17 of 2021. *Id.* On January 26, 2022, The Court found in favor of Respondents and awarded Nine Hundred Eighty-Forty Thousand Seven Hundred and Sixty-Three Dollars (\$ 987,763.00) to the Personal Representative. *Id.* Of the total Judgment, Forty Thousand Three Hundred and Fourteen Dollars (\$ 40,314.00) were to be awarded from tax implications. *Id.* However, the footnote associated with the payment of taxes specifically stated, "This amount is on appeal with the IRS. **SRM is allowed to reduce the total judgment should this amount change as a result of the appeal.**" *Id.* (emphasis added).

On February 2, 2022, only Seven (7) days after Judgement, Appellant filed a timely SCRCP 59 Motion to Alter or Amend with the Court. The Motion in its entirety stated,

"Respondent, 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"), through his undersigned counsel, move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure to alter or amend the Order granting Petitioner damages.

WHEREFORE, Respondent respectfully requests this Court to alter or amend its January 26, 2022, Order."

On February 17, 2022, the Probate Court filed an Order stating that Appellant failed to comply with SCRCP 7(b)(1) because the motion failed to state any ground that would entitle the Respondent to relief. [02/17/2022 Order]. Respondent filed its appeal on February 23, 2022. Respondent file a Notice of Motion and Motion to Dismiss the Appeal on February 25, 2022.

ANALYSIS

The Order by the Probate Court is not a full and final order pursuant to S.C. Code Ann § 62-1-308 and therefore, is not immediately appealable. Alternately, if this Court finds the Order to be a final order of the court, then it must deny Respondent's Motion to Dismiss as the appeal is timely.

I. The Probate Court's Order is not a final order and Appellant admits that the appeal is premature.

Appeals from the Probate Court are governed under S.C. Code Ann § 62-1-308. It states in part, "A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county. *Id.* Our Supreme Court has defined what a final order is in the case of *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008). In *Fulmer v. Cain*, the Court of Appeals held that an order denying a motion to remove was immediately appealable. Our Supreme Court reversed this holding stating that because the order did not resolve all issues, the order can not be considered a final order under S.C. Code Ann § 62-1-308.

Furthermore, the case law in the state is well settled that only a final order from the probate court is appealable. *See Dorn v. Cohen*, 421 S.C. 517, 520, 809 S.E.2d 53, 54 (2017) (Because the probate court's order adding a party to the action was not a final order, the order was not immediately appealable pursuant to section 62-1-308); *Breland v. Love Chevrolet*, 339 S.C. 89, 529 S.E.2d 11 (2000) (order denying a motion to change venue is not immediately

appealable); *Ballenger v. Bowen*, 313 S.C. 476, 477–78, 443 S.E.2d. 379, 380 (1994) (order denying a motion for summary judgment is not immediately appealable).

To determine whether the order is a full and final order, the court must look to see if there is some further act, which must be done by the court prior to a determination of the rights of the parties. *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267 (2010). A judgment which determines the law but leaves open a question of fact is not a final judgment. *Id.* A final judgment is one that disposes of the whole matter or terminates the proceeding “leaving nothing to be done but to enforce by execution what has been determined.” *Id.*

In this instance, Forty Thousand Three Hundred and Fourteen Dollars (\$ 40,314.00) were to be awarded to the Respondents. However, the footnote associated with the payment of taxes explicitly stated, “This amount is on appeal with the IRS. *SRM is allowed to reduce the total judgment should this amount change as a result of the appeal.*” [01/26/2022 Order]. (emphasis added). Thus, under a *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control* analysis, the Order issued by the Probate Court is not immediately appealable as the parties are waiting on a further act by the IRS. The IRS could determine that more taxes are owed or that less taxes are owed. The IRS could even find that the same amount of taxes are due. However, the parties are still waiting on the IRS to determine the final amount owed. Once the IRS determines the amount of taxes owed, the probate court’s order will be changed to reflect such amount. The law in this state is well settled, only full and final orders are immediately appealable under S.C. Code Ann § 62-1-308. Therefore, this Court should remand this action to the Probate Court pending the outcome of the IRS issue.

II. Alternatively, if the Court finds that the Probate Court's Order is a full and final order, Appellant has timely appealed.

Our Supreme Court has already ruled on the issue of whether a motion to reconsider denied pursuant to SCRCP 7(b)(1) tolls the time to file an appeal. In *Camp v. Camp*, 386 S.C. 571, 576, 689 S.E.2d 634, 637 (2010), judgement was entered and a motion to reconsider (motion to alter or amend) was filed with the court. In its entirety it stated:

“PLEASE be advised that the Defendant through his undersigned attorney, will move before the Honorable David Sawyer, Jr., to reconsider the ruling in his Order dated July 26, 2006, in awarding Plaintiff, William James Camp's college expenses and costs. This motion hearing is set to be heard on the 18th day of October, 2006, at 3:45 o'clock, p.m. Please be present to defend if so minded.”

Id.

There was no accompanying brief in support of the motion and the motion was denied by the court. *Id.* The party who filed the motion to reconsider filed an appeal well after the deadline of the judgment, but within the time frame required after an order was issued from the motion. *Id.* The Court of Appeals found the appeal untimely. *Id.* Our Supreme Court then reserved the Court of Appeals and held that applying an overly technical reading of the rules does not serve the purpose of SCRCP 7(b)(1) and tolled the time for filing a notice of appeal. *Id.*

Furthermore, it is well settled that a timely motion to alter or amend tolls the time to appeal. *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (holding a timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion); *Nexstar Media Grp., Inc. v. Davis Roofing Grp., LLC*,

431 S.C. 593, 599, 848 S.E.2d 597, 600–01 (Ct. App. 2020) (holding a motion for reconsideration tolled the time to file its appeal).

On January 26, 2022, the lower court entered a judgment against the Appellant. On February 2, 2022 Appellant filed a motion to alter or amend the Order due to the court awarding the Petitioner damages. On February 17, 2022, the Probate Court filed an Order stating that Appellant failed to comply with SCRCP 7(b)(1) stating that the motion to alter or amend failed to state any ground that would entitle the Respondent to relief. Appellant then filed its appeal after ten days of the original order, but within ten days of the order denying Appellant’s Motion to Alter or Amend. Under the *Camp v. Camp* analysis, because Appellant filed its appeal within the ten-day time frame pursuant to S.C. Code Ann § 62-1-308, the Appeal is timely. Furthermore, the appeal was plead with specify as required by SCRCP 7(b)(1) as Appellant asked the court to amend its order due to damages. Therefore, based on Our Supreme Court holding in *Camp v. Camp* the motion to alter or amend tolled the time to file an appeal.

CONCLUSION

Based on the foregoing, Appellant admits that the appeal is most likely premature and apologizes for the use of judicial resources to hear this motion. Due to Respondent’s Motion to Dismiss, Appellant seeks an order of this Court stating that the Appeal is not a final order and hold the appeal in abeyance until the tax issue is resolved. In the alternative, if this Court finds the lower court’s order is a final order, then Appellant’s Motion to Alter or Amend tolled the time to appeal.

[signature page to follow]

Respectfully Submitted this
25th day of April, 2022

TRULUCK THOMASON, LLC

s/John-Paul Baum

John-Paul Baum

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11

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16 Greenville, South Carolina 29601
17 (864) 331-1751
18 (Devon@truluckthomason.com)

19 Attorney for Respondent.
20
21

22 ALSO PRESENT: John Mensch, Shauna Waddell, Sterling Mensch
23 Erin Callahan, Brandi Larobardiere, Phyllis
24 Jones
25

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: 9:11:23.9

2 Okay. We will go on the record. We are here today for
3 a Final Hearing in the Estate of Florence Mensch. The
4 Case File Number is 2018ES2302854. The Petitioners in
5 this matter of Shauna M. Waddell, Individually and as
6 Personal Representative of the Estate of Florence
7 Mensch, and John R. Mensch. Both Petitioners are
8 represented by Tyler McLeod. They're present in the
9 courtroom along with their counsel. Respondent is
10 Sterling Raymond Mensch, III, individually and as former
11 PR of the Estate of Florence Mensch and in his former
12 capacity as agent under a Power of Attorney for Florence
13 Mensch. He is present along with his counsel, Mr.
14 Puriefoy, and also I believe we've got -- I'm sorry.
15 I'm drawing a blank.

16 MS. THOMASON:

17 Kimberly Thomason.

18 THE COURT:

19 Thomason. I'm sorry.

20 MS. THOMASON:

21 No problem.

22 THE COURT:

23 They are both present in the courtroom. Okay. Before
24 we get started let me just kind of run down for those of
25 you who aren't familiar. For the last year or so we've

1 been doing our hearings virtually. Because there was a
2 request to do this in person back some months ago it
3 appeared to be a safe method to conduct this trial.
4 Since there's been some escalation of this virus we are
5 going to be requiring everyone here to wear a mask
6 unless you're speaking. I'm speaking right now and if
7 you can't hear me I will take it off, but if you are
8 speaking, if you are testifying or you are a lawyer
9 conducting any examination feel free to take your mask
10 off. It will help the sound. It will help our court
11 reporter, who is Rachel Wood. If there's somebody in
12 here who is a high risk for this virus, if you have a
13 compromised immune system and that sort of thing, you
14 probably need to let us know. If you're not absolutely
15 essential to the case, i.e., not a party or a witness
16 who is about to be called, or support staff to the
17 attorneys, or my one court personnel, I don't need an
18 audience or observers who are just in here to observe
19 only because of the virus. So if that's the case and
20 that describes you I would appreciate it if you would
21 wait somewhere until you're called and I just am trying
22 to make as few people in here as possible just because
23 that is the instructions I have from the Supreme Court.
24 Also we are supposed to be six feet apart as best we
25 can. I understand with counsel and their clients

1 they've got be able to speak with one another. I'm
2 clearly not six feet from the witness here, but I am
3 surrounded by plexiglass and I'm going to keep my mask
4 on. So we're going to do everything possible, but I
5 don't want to compromise the parties being able to have
6 a full and fair hearing given the constraints we're
7 under. So that's kind of how we're going to operate.
8 Please silence all your mobile devices. If you have a
9 mobile device that rings I'm going to give it to that
10 nice deputy over there and he is going to hold it until
11 I decide to give it back. We don't need devices going
12 off during the trial. So if you've got it with you and
13 you don't want this nice gentleman to have it, please
14 turn it off at this time. After each witness testifies
15 Phyllis Jones, who is seated at the back works for me in
16 our Records Division, is going to come down with a
17 little wipe and she's going to wipe down the witness
18 stand before the next witness comes up. We might take a
19 little break in between witnesses while she does that.
20 So I just wanted to let you know kind of how we're going
21 to treat this going forward. Now, today we've got the
22 trial and I want to make sure we have a clear
23 understanding on what the issues are at the trial.
24 Previously I issued an Order as a result of a Summary
25 Judgment Motion and the issues I have on my list for

1 trial today are damages as a result of a breach of
2 fiduciary duty under the Power of Attorney, which I have
3 found previously that the Petitioner has established
4 damages as a result of violation of the Uniform Power of
5 Attorney Statute, damages as a result of the conversion
6 on the UBS Retirement Account and Petitioner's request
7 for attorney's fees and costs. That is what I have as a
8 result of the Motion for Summary Judgment, which leaves
9 under the issues or the prayer for relief under the
10 Petition was, and I didn't rule upon under the Summary
11 Judgment, an accounting from Mr. Mensch as the Agent
12 under the Power of Attorney, accounting of Probate and
13 non-Probate assets, restore property misused by Agent
14 under POA, Constructive Trust Judgment for damages and
15 attorney's fees. So, Mr. McLeod, are you going to
16 proceed under the other Causes of Action or since The
17 Court has already found that the Respondent -- that you
18 met the burden of evidence as a matter of law on the
19 breach of fiduciary duty, the violation of the Power of
20 Attorney Statute, the conversion of the retirement
21 account, are you going to proceed on damages under those
22 three or are you going to also include in your case
23 testimony to support the other Causes of Action that
24 you've enumerated? And if you would stand, please.

25 MR. MCLEOD:

1 Yes, ma'am.

2 THE COURT:

3 You can take your mask off of you want to.

4 MR. MCLEOD:

5 Yeah. Your Honor, we have not prepared to do the other
6 Causes of Action.

7 THE COURT:

8 Okay. That's fine.

9 MR. MCLEOD:

10 I sort of assumed like --

11 THE COURT:

12 I think this overlapped.

13 MR. MCLEOD:

14 They overlap a lot. We're going to argue overall
15 damages and --

16 THE COURT:

17 Okay.

18 MR. MCLEOD:

19 -- some of those things may, like a Constructive Trust
20 we may move on later. So I don't know if that -- are we
21 going to have a final judgment or those Causes of Action
22 could potentially be tried later or --

23 THE COURT:

24 No, we're going to try everything that you want to try
25 today.

1 MR. MCLEOD:

2 Okay.

3 THE COURT:

4 And from the Summary Judgment Order I have found as a
5 matter of law that the Conversion, the Power of Attorney
6 Statute, and the breach of fiduciary duty you have --
7 and the evidence show that as a matter of law you have
8 met your burden. And the matter then before me becomes
9 what are the damages as a result of that. And the only
10 other thing that I have would be your -- in your
11 Pleadings was a request for attorney's fees and costs.
12 So that is what I have for today unless you still want
13 to proceed under the other Causes of Action that you
14 enumerated in your Petition or do you believe that the
15 ones that I've already found that you succeeded on are
16 sufficient to cover all the damages that you're going to
17 seek from the Respondent?

18 MR. MCLEOD:

19 I think they're sufficient to cover them.

20 THE COURT:

21 Okay.

22 MR. MCLEOD:

23 There is the Constructive Trust we will proceed on that
24 today, Your Honor. I think we will make that request.

25 THE COURT:

1 Okay. So we'll add to this list you're going to proceed
2 on Constructive Trust.

3 MR. MCLEOD:

4 And then also I believe -- let me look at my Causes of
5 Action. Money hadn't received I think -- like I said a
6 lot of them overlap, but there may be some discrepancy
7 between them to where you might say it's more like money
8 hadn't received in conversion. So I guess we could add
9 that one.

10 THE COURT:

11 And that was in your Pleadings?

12 MR. MCLEOD:

13 That's in the Pleadings. Let's see. Next Cause of
14 Action unjust enrichment, money hadn't received for 9th
15 Cause of Action.

16 THE COURT:

17 Okay. All right. So --

18 MR. MCLEOD:

19 I do believe one of our arguments negligence it would
20 fit right under that, so I think I can argue negligence
21 today.

22 THE COURT:

23 Tell me where --

24 MR. MCLEOD:

25 That's the 7th Cause of Action on page 22.

1 THE COURT:

2 All right. And tell me how does that fit in with my
3 Probate Court jurisdiction, just the negligence?

4 MR. MCLEOD:

5 We're going to make the argument that he should not have
6 held GE stock and that he failed to diversify assets
7 which I believe falls under breach of fiduciary duty.

8 THE COURT:

9 I think so.

10 MR. MCLEOD:

11 I think it does. The negligence you could also make an
12 argument that he had a duty. He breached that duty by
13 not diversifying. He has damaged -- we have damages and
14 causation.

15 THE COURT:

16 I think negligence per se is more a Cause of Action in
17 Common Pleas rather than just here, so I think that
18 muddies the water for me.

19 MR. MCLEOD:

20 That's fine.

21 THE COURT:

22 Especially since I think fiduciary duty breach covers
23 all of that.

24 MR. MCLEOD:

25 That's fine, Your Honor.

1 THE COURT:

2 Okay. So what I have then is damages as to breach of
3 fiduciary duty, damages as to the violation of the
4 Uniform Power of Attorney Statute, damages as to the
5 conversion Cause of Action to be proven, the
6 Constructive Trust and money hadn't received plus
7 attorney's fees. Mr. Puriefoy, any response to those as
8 an outline of our issues today?

9 MR. PURIEFOY:

10 Nothing, Your Honor. Of course, Mr. McLeod certainly is
11 entitled to prosecute the case as he sees fit. We would
12 certainly note on the record that we believe that all
13 Causes of Action that fall beyond the three that have
14 already been ruled on by This Court the damages across
15 the board are the same. I believe that for purposes of
16 limiting the testimony today in hopes of being to
17 conclude this in an expeditious manner that the focus
18 should likely stay on the damages rather than any
19 liability issues unless The Court finds that as it
20 relates to the Constructive Trust and the other claim I
21 believe Mr. McLeod is attempting to establish liability
22 on that we focus on the damages today.

23 THE COURT:

24 Okay. Very good. Thank you. I agree. I think this is
25 primarily a hearing where my job is to determine

1 damages.

2 MR. MCLEOD:

3 Your Honor, can I clarify one thing?

4 THE COURT:

5 Yes.

6 MR. MCLEOD:

7 On the Petition to review agent's conduct and the Power
8 of Attorney I believe you are saying those would fall
9 under breach of fiduciary duty and the Power of Attorney
10 Statutes?

11 THE COURT:

12 Yes.

13 MR. MCLEOD:

14 I just wanted to clarify.

15 THE COURT:

16 Yes. Now, also in my Order for the Summary Judgment I
17 asked that counsel, you exchange certain information
18 prior to today's hearing and that you communicate with
19 each other, mark exhibits, so on and so forth. Have you
20 done that?

21 MR. PURIEFOY:

22 Your Honor, I believe Mr. McLeod sent us a list of
23 stipulations including exhibits that he intends on
24 entering today. We conferred at the beginning of the
25 trial there are only two items on the stipulations that

1 we do not agree to, but the exhibits themselves have
2 been agreed to and as it relates to providing the agreed
3 upon transfers benefits to the Estate and benefits
4 directly to the Respondent, we have produced those as
5 well and so has Mr. McLeod.

6 THE COURT:

7 Mr. McLeod.

8 MR. MCLEOD:

9 Your Honor, we have stipulated to certain things. We
10 obviously have the Motion in Limine that we filed and
11 they have a Motion in Limine, so we do not stipulate to
12 their Expert Report. And I haven't looked through every
13 --

14 THE COURT:

15 Right.

16 MR. MCLEOD:

17 -- and I haven't looked through every exhibit in here.

18 THE COURT:

19 But you have complied with my Order as I requested in
20 good faith?

21 MR. MCLEOD:

22 I believe we all made a good faith effort, yes, Your
23 Honor.

24 THE COURT:

25 Have you resolved any of these issues between yourselves

1 in terms of have you agreed that "X" amount of dollars
2 is between you both you agree on this amount of money so
3 that we start out with a figure or have you not?

4 MR. PURIEFOY:

5 Your Honor, so the -- the experts in this case have both
6 prepared their own independent reports. Unfortunately
7 as it relates to the transfers from mom's account to the
8 Respondent's account those accountings were only off by
9 about \$2,000, which was incredible based on the amount
10 of transactions that took place. And so we are all
11 certainly starting from the same starting point. The
12 only difference that we may run into is items that we
13 deem to be for the benefit of the Estate --

14 THE COURT:

15 Right.

16 MR. PURIEFOY:

17 -- versus those that -- that Petitioners deem were not
18 for the benefit of the Estate. But even in those
19 figures we have narrowed it down I believe within a
20 couple of -- about ten thousands of dollars as it
21 relates to what we're claiming was actually used for the
22 Respondent's benefit versus the Estate's benefit.

23 THE COURT: 9:26:01.0

24 So are you saying that you-all have -- you have a figure
25 that you believe would satisfy what the Petitioner is

1 entitled to, you have a figure in mind already based on
2 that? And then of course he doesn't agree with that,
3 but you have a figure in mind and he knows what that is?

4 MR. PURIEFOY:

5 Yes, Your Honor.

6 THE COURT:

7 Okay. Is that --

8 MR. MCLEOD:

9 Based on the Expert Report I think I can figure out what
10 it is. As to the transfers I think there's so many
11 transfers that is what will take a lot of time if we had
12 to actually prove that. I think our numbers -- their
13 number is more than ours. So I don't know if we can
14 stipulate to the transfers. We didn't really nail that
15 down. You-all's is 852,951.15. Our is 820,000
16 something.

17 THE COURT:

18 Okay.

19 MR. MCLEOD:

20 So I'll take their money.

21 THE COURT:

22 Well, what I'm trying to do is figure out if you guys
23 were able to work on this so that today we can save some
24 time.

25 MR. MCLEOD:

1 That's what I'm hoping.

2 THE COURT:

3 So I'm going to assume that you-all have done that and
4 I'm not going to have to hear testimony about every
5 little thing because we won't get finished. I mean I
6 understand that some of those details have got to be
7 testified to, but -- and I'm going to let both of you
8 try your case if it takes -- if we run out of time
9 tomorrow we will come back and continue the hearing
10 because I want both of you to try your case. But also I
11 don't want to waste The Court's time and waste your time
12 either on details that are accumulative and that are not
13 pertinent to what we've got to prove here today. So the
14 point of my Order was to get you guys to talk and we
15 agree on this, we agree on this, we agree to at least
16 this much is due. This over here is what we don't agree
17 to, so we can at least start out with something so we
18 don't have to go through and take testimony on things
19 that everybody is in agreement on, you know, because
20 that -- that is not an efficient use of our time. Now,
21 as to the Motion in Limine, Mr. McLeod, I got that I
22 believe yesterday and here's what I don't -- and I
23 assume, Mr. Puriefoy, you've gotten a copy of this?

24 MR. PURIEFOY:

25 I have, Your Honor, and if I may we have two Motions in

1 Limine as well I've provided to Mr. McLeod with copies.

2 If I may approach --

3 THE COURT:

4 Okay.

5 MR. PURIEFOY:

6 -- I'll hand you copies of these.

7 THE COURT:

8 Yes. Well, first of all, let me say this before we get
9 into this. You-all realize this is not a jury trial. I
10 can separate the wheat from the chaff and I don't need a
11 lot of the typical motions that are in a civil jury
12 trial when a jury could get confused about certain
13 evidence. So Motions in Limine in these cases as you
14 know I can rule on these and it doesn't make any
15 difference because if you don't bring it up during the
16 trial it doesn't -- it doesn't -- it really is kind of a
17 waste of time because it doesn't mean anything unless
18 you bring it up during the trial. So I'm not sure what
19 we gain by me ruling on this. It becomes almost
20 academic since it doesn't hold any weight in terms of
21 evidence that's allowed in and evidence that's not
22 allowed in. So my ruling is going to be on the all the
23 Motions in Limine is that I'm going to take up each one
24 of these issues if and when they come up during the
25 trial and I'll rule on them then. Okay. All right.

1 All right. Mr. McLeod, or Mr. Puriefoy, Ms. Thomason,
2 anything else before we have Mr. McLeod call his first
3 witness?

4 MR. PURIEFOY:

5 Nothing, Your Honor, and I just want to apologize
6 because I'm afraid that there will likely be an early
7 objection depending on the direction of the testimony to
8 begin with based on our Motions in Limine, but hopefully
9 we can get that ruled upon very quickly.

10 THE COURT:

11 That's okay. I'll rule on that and that's not a
12 problem.

13 MR. PURIEFOY:

14 Thank you, Your Honor. Nothing further.

15 THE COURT:

16 Mr. McLeod, are you ready to proceed with your witness?

17 MR. MCLEOD:

18 Your Honor, would you want us to read in the
19 stipulations into the record right off the bat?

20 THE COURT:

21 Yes, that would be great.

22 MR. MCLEOD:

23 Can we go off the record for five minutes and discussion
24 them to make sure we're clear on them?

25 THE COURT:

1 Yes. Yes. Let's go off the record for ten minutes
2 while the attorneys talk about the stipulations and
3 we're going back on the record when they're finished.

4 Off the Record: 9:31:06.9

5 On the Record: 9:42:41.8

6 Okay. I think we can go back on the record. When we
7 left we were going to have one of the attorneys recite
8 stipulations that have been made between counsel and,
9 Mr. McLeod, you're standing. Could you do that for us?

10 MR. MCLEOD:

11 Yes, Your Honor. The parties have stipulated to the
12 following facts and state that these are true and
13 uncontested as fact and will be read into the record and
14 I'll do that now. The parties stipulate that John
15 Markel and Mark Chastain are experts so it's not
16 necessary to qualify them. The transfers by Sterling
17 Mensch from Florence Mensch's Bank of America account
18 ending 7059 and 2007 to his Bank of America account
19 ending in 3259 total 820,382.13. So we have stipulated
20 the total transfers amount to 820,382.13. We have not
21 stipulated that all of that was wrongful I guess or
22 there will be certain offsets they'll try to argue we'll
23 object to.

24 THE COURT:

25 I understand.

1 MR. MCLEOD:

2 Thank you, Your Honor. There are no objections by
3 Petitioner or Respondent to the following documents
4 being admitted into evidence and such is admitted into
5 evidence by stipulation of the parties. That all bank
6 records previously produced by Petitioner or Respondent
7 were obtained from the respective banks and have not
8 been altered. These include but are not limited to the
9 following: Florence Mensch Bank of America Statements
10 ending in account number 7059. Statements from June
11 2012 through December 2019. Florence Mensch Bank of
12 America account -- or Bank of America savings account
13 ending in account number 2007, June 2012 through January
14 2020. Sterling Mensch Bank of America statements ending
15 in account number 3259. These are statements from 2013
16 through February of 2019, including the notebook
17 produced on January 1, 2021 by Respondent pursuant to
18 Judge Jennings' Order dated September 30th, 2020, with
19 certain highlighted items by Sterling Mensch which was
20 previously produced in the evidence for Motion of
21 Summary Judgment. And that's these two notebooks
22 essentially.

23 THE COURT:

24 Okay.

25 MR. MCLEOD:

1 Let's see. The GE Mutual Funds accounts that's number
2 [REDACTED] 2563. Also account number [REDACTED] 2571 and
3 also account number [REDACTED] 2589 and
4 then account number [REDACTED] 2597. Those are all in
5 the name of Florence Mensch. Yearly investment
6 statements for each of the years 2009 through 2015. UBS
7 Financial Services account number [REDACTED] 80JG in the name
8 of Florence Mensch. Statements of account activity
9 covering each of the months during the time frame of
10 June 2016 through March of 2020. The State Street
11 Global Advisors account number [REDACTED] 2563. Account
12 number [REDACTED] 2571 and account number [REDACTED] 2589 in
13 the name of Florence Mensch there are yearly investment
14 statements for each of the years 2016 through 2018 and
15 for three months ending March 29th, 2019. And then the
16 Sterling Mensch T. Rowe Price Retirement Plan account
17 statement obtained via subpoena or discovery in this
18 matter for all bank statement -- for all bank accounts
19 and retirement accounts. This includes any deposit
20 slips, tickets, checks, withdrawals, which have been
21 produced by Petitioner or Respondent in discovery. Tax
22 returns and IRS notices of Sterling Mensch and Florence
23 Mensch including the following: Florence P. Mensch
24 United States Individual Income Tax Returns for each of
25 the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018

1 and 2019. The same thing for her South Carolina
2 Individual Income Tax Returns for each of the years 2011
3 through 2019. Sterling Mensch Federal and State Tax
4 Returns produced by Respondent. GE Pension form showing
5 amounts owed to the GE Pension. Discovery responses
6 from Petitioners or Respondent. And that's all, Your
7 Honor.

8 THE COURT:

9 Mr. Puriefoy, are you in agreement with that?

10 MR. PURIEFOY:

11 We are, Your Honor.

12 THE COURT:

13 Thank you. And I did want to make one other mention on
14 the record from my previous Order as to damages. I did
15 find in my previous Order that punitive damages were
16 outside the scope of the subject matter jurisdiction of
17 The Court so we won't be bringing any punitive damages.
18 Okay. Mr. McLeod, if you're ready you may call your
19 first witness.

20 MR. MCLEOD:

21 All right. Your Honor, I will call John Markel, expert
22 accountant.

23 THE COURT:

24 All right, Mr. Markel. Good morning, sir.

25 MR. MARKEL:

1 Good morning.

2 THE COURT:

3 If you will step around here and face me and raise your
4 right hand, please, sir.

5 *****

6 JOHN MARKEL, being duly sworn to tell the truth, the whole
7 truth, and nothing but the truth of his own knowledge
8 concerning the matter herein, testified as follows:

9 *****

10 THE COURT:

11 All right. If you'll have a seat and let me make sure
12 you have some water. You may proceed.

13 MR. MCLEOD:

14 Thank you, Your Honor. May it please The Court.

15 *****

16 EXAMINATION BY MR. MCLEOD:

17 Q. John, my name is Tyler McLeod as you know, and I'm going
18 to be asking you some questions today. Can you please
19 state your name for the record?

20 A. My name is John Robert Markel.

21 Q. And can you please tell The Court what your occupation
22 is?

23 A. I'm a certified public accountant.

24 Q. Okay. And we've stipulated that you are an expert so I
25 won't go too far into that, but in general have you

1 testified in court before?

2 A. Yes.

3 Q. Okay. Have you testified as to -- let me state it this
4 way: have you -- what matters and what subject matter
5 have you testified about previously?

6 A. I've testified on various matters including commercial
7 damages, business valuation, intellectual property,
8 infringement damages.

9 Q. Okay.

10 A. Divorce matters and business disputes and breach of
11 trust.

12 Q. Okay. I'm going to hand you what's been stipulated and
13 admitted into evidence as Petitioner's Exhibit 1. I'll
14 just mostly refer to things as Exhibit 1 for my exhibits
15 and then we'll say Respondent's if ours overlap.

16 THE COURT:

17 Have they already been marked? They've been marked.

18 MR. MCLEOD:

19 They're already marked.

20 THE COURT:

21 Okay.

22 MR. MCLEOD:

23 And some overlap a little bit.

24 THE COURT:

25 That's fine.

1 MR. MCLEOD:

2 Me and Devon talked about that.

3 MR. PURIEFOY:

4 Your Honor, I believe, and Mr. McLeod already noted it
5 as well he's going to have certain objections to our
6 Expert Report. We stipulate to the parties being
7 designated as experts, but to the extent that they're
8 going to discuss certain aspects of the Report we would
9 reserve the right to object to those portions of the
10 Report.

11 THE COURT:

12 Sure. Thank you. Okay. And we will then -- as to
13 Petitioner's Exhibit Number 1 the parties have agreed
14 that will be admitted as an exhibit without objection.
15 However, other objections may be raised other than the
16 fact that they are -- that the exhibit itself has been
17 compiled of records from certain bank accounts without
18 alterations, so on and so forth.

19 MR. MCLEOD:

20 That's correct, Your Honor. And I've spoken too fast.
21 I said it was stipulated to. The Report itself was not
22 stipulated initially.

23 THE COURT:

24 Right.

25 MR. MCLEOD:

1 That he's expert. So I'm sorry about that.

2 THE COURT:

3 Okay.

4 (Introduction of previously marked document,

5 Markel 2nd Amended Expert Report

6 August 16, 2021 as

7 Petitioner's Exhibit Number 1.)

8 EXAMINATION RESUMED BY MR. MCLEOD:

9 Q. So I will hand you Exhibit 1. Can you identify that
10 document for me?

11 A. This is the 2nd Amended -- it's titled 2nd Amended
12 Expert Report of John R. Markel, CPA, August 16th, 2021,
13 which is a Report that I prepared especially for this
14 hearing and for the purposes of this hearing. It's an
15 amendment of a previous Report that I prepared for the
16 -- in support of the Motion for Summary Judgment.

17 Q. And did you rely on certain documents in preparing that
18 Report?

19 A. Yes, I did.

20 Q. What documents did you rely on?

21 A. I think they're listed in the Appendix B of this Report,
22 which is on page 18 and 19.

23 Q. Okay. And can you quickly go through what you relied on
24 in that Appendix B? I believe is it Appendix C?

25 A. Appendix C. I'm sorry.

1 Q. Appendix C. Can you briefly go through that?

2 A. Do I really need to read all this?

3 Q. You don't need to read through all of it. In general
4 did you rely on the Florence Mensch Bank of America
5 accounts 3259 and 2007?

6 A. Yes.

7 Q. Was that for the years --

8 A. Well, no. Her account numbers were 7059 and 2007.

9 Q. Okay. Yeah, 7059 and 2007?

10 A. Right.

11 Q. Okay.

12 A. And on --

13 Q. What years were those statements through?

14 A. June 2012 through January of 2020 for both of them.

15 Q. Okay. And did you also rely on Bank of America checking
16 accounts ending in 3259, which are in the name of
17 Sterling Mensch?

18 A. Yes.

19 Q. And what years do those --

20 A. They cover approximately the same period June 2012
21 through January of -- part of January of 2020.

22 Q. Okay. And did you rely on certain tax returns of
23 Florence Mensch?

24 A. Yes, I did.

25 Q. Were those for the years 2011 through 2018?

1 A. Yes.

2 Q. Both federal and state tax returns; is that correct?

3 A. Yes.

4 Q. You referenced certain Orders of the Probate Court, the
5 August 28, 2019 Order, the December 4th, 2019 Order,
6 July 29th, 2021 Order; did you rely on all of those?

7 A. Yes.

8 Q. Did you rely on Respondent's Responses to
9 Interrogatories and Request for Production?

10 A. Yes.

11 Q. Okay. Did you rely on the State Street Global Advisors
12 account, the three account numbers that you list in your
13 exhibit -- or your Appendix C?

14 A. Yes.

15 Q. Okay. Did you rely on the UBS Financial Services
16 account number [REDACTED] 80JG, which is in the name of
17 Florence Mensch?

18 A. Yes, I did.

19 Q. And is that for the time frame June 2016 through March
20 2020?

21 A. That's correct.

22 Q. Okay. And all of these things listed in Appendix C of
23 your Expert Report you relied upon; correct?

24 A. Yes.

25 Q. John, I'm just going to ask you to go through your

1 Report and explain to The Court your findings.

2 MR. PURIEFOY:

3 Objection, Your Honor. I believe that Mr. McLeod
4 testified -- not testify, argued to The Court a moment
5 ago that the Reports themselves were not being
6 stipulated to in evidence and therefore I would ask that
7 he move to enter that Expert Report into evidence and
8 allow for any objections that I deem necessary, Your
9 Honor.

10 THE COURT:

11 All right. Mr. McLeod, is it your intention to move
12 this Report into evidence?

13 MR. MCLEOD:

14 Yes, Your Honor. We ask that it be admitted into
15 evidence.

16 THE COURT:

17 Okay.

18 MR. PURIEFOY:

19 And, Your Honor, we do object for the very limited
20 purpose of relevance which was addressed in our Motion
21 in Limine. We do not object on the whole to the Report
22 coming in. However, there are a few specific damage
23 calculations that we do believe are not properly before
24 The Court. Your Honor, as The Court knows there are two
25 different types of damages that we're dealing with here.

1 There are general damages, which are the natural result
2 of the tort that has been alleged against the
3 Respondent, and there are also special damages that are
4 being asserted within this Expert Report. Specifically
5 there are two. Your Honor, the first there is a rent
6 calculation on page 7, paragraph 19 of Mr. Markel's
7 Report where he goes through a calculation of back rent
8 that he believes is due to the Estate of Ms. Mensch. As
9 our courts have held and as Rule 9(g) has made clear,
10 Your Honor, under the Rules of Civil Procedure in order
11 to plead special damages or at least being able to
12 recover special damages you must specifically plead that
13 damage in your Petition. The Petitioners in this case,
14 Your Honor, did not make a single mention to back rents
15 being part of the recovery that they're entitled to in
16 either their original Petition or their Amended
17 Petition. The Courts in South Carolina, Your Honor,
18 they made very clear that because special damages are
19 not implied by law they must be specifically pled with
20 specificity and failure to do so is fatal to any claim
21 for recovery of the same.

22 THE COURT:

23 Okay. What page are you talking about here?

24 MR. PURIEFOY:

25 Your Honor, specifically in Mr. Markel's Report, page 7,

1 paragraph 19. And the case law to support this
2 position, Your Honor, was contained in our Motion in
3 Limine.

4 THE COURT:

5 Okay.

6 MR. PURIEFOY:

7 But it is the calculation in paragraph 19 that we're
8 seeking to exclude from being introduced as evidence in
9 this case as the Petitioners did not plead a single
10 cause of action or a single fact related to these back
11 rents.

12 THE WITNESS:

13 I'm sorry I think that's an incorrect paragraph
14 referenced.

15 THE COURT:

16 Okay. Mr. Puriefoy, if you will just hold on a minute.
17 I'm looking at paragraph 22, page 7.

18 MR. PURIEFOY:

19 And, Your Honor, I apologize. There was a 2nd Amended
20 Report. I am so sorry. I was referring to the 1st
21 Amended Report.

22 THE COURT:

23 Okay. And, Mr. McLeod, I'll hear from you now.

24 MR. MCLEOD:

25 Your Honor, I received these Motions in Limine right

1 before the hearing. I haven't prepared anything and I'm
2 looking through my answer at the -- when we filed the
3 answer we did not have discovery. We did not know how
4 long Mr. Mensch had lived at the property. We didn't
5 know the facts. Even new facts have come out, which
6 we'll object to today stating that this was -- you know,
7 I think they're taking the position that this was
8 actually Mr. Mensch's house. So I've learned that
9 recently. It's very difficult to, you know, plead
10 everything when you're having to go through two years of
11 trying to get discovery and then you get an Expert
12 Report or affidavit nine days after Summary Judgment.
13 So we are basing that rent calculation on him occupying
14 her property and utilizing the Power of Attorney to his
15 own benefit, which we have clearly pled in several
16 Causes of Action. The rent is damages for him doing
17 that, for breaching his fiduciary duty.

18 MR. PURIEFOY:

19 Your Honor, if I may. Rule 9(g) could not be more
20 clear. It specifically states that special damages,
21 which are not the natural result of the tort that's been
22 alleged. And all ten of the Petitioner's Causes of
23 Action the damage related to all of those Causes of
24 Action are the same. I.e., the removal of funds from
25 Ms. Mensch's account and the benefit that was derived by

1 the Respondent in this case. The amended -- or the
2 original Petition and the Amended Petition failed to
3 make any mention to allege back rent and, in fact, Mr.
4 Markel's original Report was created on February 12th of
5 2021. It is now August 17th of 2021 and in that
6 original Report Mr. Markel makes reference to the rent
7 calculation. However, that does not satisfy our
8 pleading requirements in the state. The Petitioners
9 simply needed to amend their Petition to include this
10 damage calculation. They never intended to do so and it
11 is only at this hearing that they are now raising this
12 issue for the first time to actually be considered by
13 The Court on the purposes of these back rents. The case
14 law, Your Honor, Holdings, LLC verse BJC Enterprises,
15 LLC makes clear that a failure to state with specificity
16 a special damage in your Petition, not through the
17 discovery process, but in your Petition is fatal to your
18 ability to recover that damage, Your Honor, and
19 therefore we would ask as a preliminary matter that the
20 back rent portion of Mr. Markel's Expert Report be
21 excluded from evidence.

22 THE COURT:

23 Let me ask you this: do you have case law that equates
24 the request for rent amounting to a special damage?

25 MR. PURIEFOY:

1 No, Your Honor, but what the case law does state is that
2 the difference between a general damage and special
3 damage is general damage is the resulting damage as a
4 result of the tort is the natural and necessary result
5 of the tort. For example, the breach of fiduciary duty
6 that has been claimed in this case where it has been
7 alleged that the Respondent in this case removed funds
8 from the Estate or the bank account of Ms. Mensch into
9 his own account. To the extent he did not use that to
10 Ms. Mensch's benefit the damage is the natural result of
11 his removal of those funds and placing them into his
12 account. What the case law states that we've
13 referenced, Your Honor, Holdings, LLC v. BJC
14 Enterprises, LLC is that although a special damage is a
15 consequence of the tort that has been alleged, if it is
16 not a necessary result of the tort then it is in fact
17 special. Here the removal of the funds from Ms.
18 Mensch's account is natural harm that resulted from the
19 tort that was alleged. There are a number of special
20 damages. However some of them have been pled. For
21 example, the resulting tax implications as a result of
22 those removals have been pled with specificity and
23 therefore are properly before The Court. The rent
24 itself was not pled and is not the natural result of the
25 alleged tort. The allegation is that through some

1 economic computation Mr. Markel has come up with a
2 formula to determine what rent could or should have
3 been. That is not the natural result of the removal of
4 any funds from Ms. Mensch's account. That requires --
5 that although a consequence of the removal is not the
6 natural result. And what the case law very clearly
7 states is that the general damages are those that are
8 the necessary result of the tort.

9 THE COURT:

10 Was this question about the rental value, was that a
11 subject of discovery?

12 MR. PURIEFOY:

13 Your Honor, there's been -- there's nothing that it
14 could be. Nothing could be discoverable related to that
15 topic because it's more of an abstract finding. There's
16 no document that indicates that rents were intended.
17 There was no letters, lease agreements, or anything that
18 exists that would suggest that rent was something that
19 was intended to be paid. This is an exercise in an
20 economic calculation by Mr. Markel that's not tied to
21 any document or claim in this case. It's simply through
22 his Expert Report he's unilaterally determined that rent
23 should have been imposed on the Respondent in this case.
24 But I think the Rule 9(g) in South Carolina Rules of
25 Civil Procedures states that damages must be -- shall

1 be, Your Honor, and I think that's extremely important,
2 that special damages shall be stated with specificity.
3 That has certainly not been done in this case, Your
4 Honor.

5 THE COURT:

6 All right. Mr. McLeod.

7 MR. MCLEOD:

8 And, Your Honor, are we talking about the tort because
9 under the failure to comply with Section 62-8-114 of the
10 South Carolina Power of Attorney Act we plead as a
11 direct and approximate result of Respondent's failure to
12 comply with 62-8-114 of the South Carolina Power of
13 Attorney Act and with The Court's Orders the Estate of
14 Florence Mensch has suffered damages including, but not
15 limited to actual consequential, incidental and punitive
16 damages. Petitioners are therefore entitled to recovery
17 damages for Respondent's failure to comply with Section
18 62-8-114 of the South Carolina Power of Attorney Act.
19 That's the Agent's duties, 62-8-114 list the Agent's
20 duties. I don't have to read it to you, but keep a
21 record of all receipts, disbursements and transactions.
22 Act with the care, competence, and diligence ordinarily
23 exercised by agents in similar circumstances. Act so as
24 not to create a conflict of interest that impairs the
25 agent's ability to act impartially in the principal's

1 best interest. Act loyally for the principal's benefit.
2 I think having a house that you used for 13 years and do
3 not pay any rent whatsoever and, you know, use when that
4 could be rented to somebody and, you know, made to be
5 income producing I think that's a breach of fiduciary
6 duty. I think it's a violation of the Section 62-8-114
7 and I believe we have pled damages. His Report came out
8 in -- when did we say, February? They've known about it
9 for a long time. That's all I have, Your Honor.

10 MR. PURIEFOY:

11 Your Honor, just very briefly. I believe that Mr.
12 McLeod's recitation, the Petitioner's recitation of the
13 Power of Attorney Act demonstrated exactly why this Rule
14 is in place. He is arguing from a liability standpoint.
15 Liabilities aren't even established. We're arguing
16 simply as it relates to the introduction of damages to
17 this damages hearing. What Mr. McLeod has failed to
18 point to in either his original Petition or his Amended
19 Petition is a plea for special damages related to these
20 rents. Mr. McLeod went through a very comprehensive
21 review of the facts as it related to his Amended
22 Petition and it was very clear that he had some
23 additional documentation that went into the creation of
24 that document and what he failed to do was to plead
25 these rents. What the case law that has been cited in

1 the Memoranda that was produced to Your Honor makes
2 very, very clear is the purpose of requiring special
3 damages be plead with specificity in the Pleadings is to
4 put the Respondent on notice as to the damages that are
5 going to be sought at trial. That's exactly what we're
6 dealing with here. There are a number of calculations
7 contained in Mr. Markel's Report that are not tied in
8 any way to the allegations claimed by the Petitioners in
9 the case and this is one prime example. There's a
10 second example, and I believe the last example, Your
11 Honor, in follow-up to this, but what I believe we've
12 done throughout the course of these proceedings is
13 ensure that we're holding the parties' feet to the fire
14 as it relates to their responsibilities and adherence,
15 strict adherence to the Rules of Civil Procedure, our
16 ethical obligations, and every other rule state, common
17 law and statutory. It has been This Court's practice
18 throughout this entire litigation to ensure a strict
19 adherence to those rules. The rule in this case, Your
20 Honor, could not be more clear. Rule 9(g), which is the
21 South Carolina Rules of Civil Procedures, states special
22 damages are not implied and must be pled with
23 specificity. Mr. McLeod has not been able to point to
24 that. I would be more than happy to give him
25 opportunity to review his Amended Petition to determine

1 whether or not he made any reference whatsoever to back
2 rents being a portion of the damages in this case, but I
3 can assure you, Your Honor, he did not.

4 THE COURT:

5 And would you agree that the Report you received, the
6 initial Report of Mr. Markel, had this rental
7 calculation in it and you received that in February?

8 MR. PURIEFOY:

9 Yes, it did, Your Honor, but I think there's an
10 important distinction. Rule 9 specifically deals with
11 pleading your special damages. The discovery process in
12 and of itself is not a pleading. That is not to be
13 relied on by the Respondent in this case. We understand
14 that that went into his calculation, but we did not
15 prepare a case in response to an allegation that was not
16 plead in the Complaint. And I believe that in
17 suggesting that the affidavit itself put the Respondent
18 on notice of these special damages seems to circumvent
19 the Rule what the case law is and that is you must plead
20 them with specificity. Now, there are other issues when
21 you are dealing with Interrogatories for example where
22 notice in and of itself is satisfactory to put you on
23 notice that a claim is being made or certain damages are
24 being alleged. The problem is even take it a step
25 further if you look at the Discovery Responses in this

1 case it does not have a breakdown of the rent
2 calculation whatsoever. And, again, the Petition itself
3 does not plead that as a special damage. I don't
4 believe that there is any gray area as it relates to a
5 Petitioner's responsibility to plead special damages.
6 Those special damages have been plead all throughout the
7 Petitioner's Amended Complaint and will be relied on and
8 are properly before This Court, but that particular
9 special damage was absolutely not before This Court as
10 Mr. Markel's affidavit was not submitted to This Court
11 as part of the Pleadings, but simply in the discovery
12 process in preparation for trial. So we do not believe
13 that reliance on that affidavit for satisfying Rule 9(g)
14 is appropriate.

15 THE COURT:

16 Mr. McLeod.

17 MR. MCLEOD:

18 Your Honor, I've stated my position. I believe we pled
19 general damages and we pled -- let me see. Back to that
20 paragraph I mean as I said I believe that him occupying
21 the property was clearly a breach of his fiduciary duty.
22 I think we've alleged damages and we are now presenting
23 those damages as to the breach of fiduciary duty. I do
24 not believe that we had to actually state that we were
25 claiming rent. We're claiming damages for his actions

1 and we had -- you know, we've had this in our Complaint
2 or in our Report. We argued it at Summary Judgment. I
3 believe liability was founded. We part on that. Now,
4 we're arguing the damages. So I just don't understand
5 the argument and I believe --

6 THE COURT:

7 So are you saying by his Report on this that you are
8 wanting now to collect 13 years of back rent; is that
9 what you're -- is that the purpose of this?

10 MR. MCLEOD:

11 We're asking The Court to award rent, imputed rent,
12 based on his occupancy of the property.

13 THE COURT:

14 And do you agree that if you had pled that the
15 Respondent would have had notice to assert any defenses
16 that he may have had such as statute of limitations,
17 things of that nature, if it had been specifically pled
18 so that your clients now decide that they want to
19 collect this back rent? And I'm assuming that they were
20 aware that he's living in the house rent free for that
21 -- for those years. I'm not sure. But my concern is --
22 I see your point because the Respondent was her
23 attorney-in-fact under a Power of Attorney. That Power
24 of Attorney had no gifting provision to him and, in
25 fact, it had a clause that said he was not to use -- he

1 shall not satisfy his legal obligations out of any
2 property subject to this Power of Attorney, except to
3 the extent this Power of Attorney specifically
4 authorizes gifts to my attorney-in-fact, which I didn't
5 see one. My attorney-in-fact may not exercise this
6 Power of Attorney in favor of the attorney-in-fact. The
7 attorney's estate, his creditors, or the creditors of
8 the attorney's estate. So if he was living there out of
9 his -- and being there because he -- he was living there
10 as her attorney-in-fact, he wasn't paying anything. He
11 wasn't authorized to use her property in his favor
12 unless she specifically gave him authority to do so
13 under this Power of Attorney, which she did not. I
14 understand that and I understand him living there can on
15 its face doesn't look like someone who was trying to
16 adhere strictly to that Power of Attorney. But then
17 again the failure to completely plead that for a 13 year
18 period of time also puts the Respondent at a
19 disadvantage because they have not been able to assert
20 whatever defense they may have to that being they've
21 exceeded their statute of limitations. They have --
22 maybe there was some agreement somehow. I don't know,
23 but it puts them at a disadvantage. Now, if I exclude
24 this you certainly can proceed as an offer of proof.
25 Put it on the record and in the event of an appeal it

1 will be on the record for you to have preserved. But
2 that's such an extensive period of time I believe that
3 it puts the Respondent at a disadvantage. I agree they
4 saw it in his Report, but just because it's in his
5 Report doesn't mean that it's going to be before me. I
6 mean there's lots of things in Reports that don't amount
7 to Pleadings. But I can see your point that clearly he
8 received a benefit from her property, which she did not
9 specifically authorize in her Power of Attorney, but he
10 received that benefit for of course 13 years. But I
11 have not been able -- but I'm not able to receive that
12 information because I think they have been -- they
13 should have been able to respond by presenting any
14 affirmative defenses or any other thing that they may
15 have. So I'm going to exclude that in terms of what
16 we're going to -- what I'm going to consider here today.
17 But as an offer of proof if you would like to go ahead
18 with that and preserve it for the record you certainly
19 have my permission to do that.

20 MR. MCLEOD:

21 And, Your Honor, I'd just like to in light of that
22 there's also in the Report giving him credit for paying
23 the mortgage payment and taxes that we can actually show
24 that he paid on bank statements. I think that should
25 also be excluded. We were only going to give him credit

1 if that imputed rent wasn't opposed by The Court. That
2 was just in fairness to him if he did pay mortgage and
3 taxes then we were going to give him a credit for that.

4 THE COURT:

5 Okay. Well, we will address that when that comes up.

6 Okay. All right.

7 MR. MCLEOD:

8 Thank you, Your Honor.

9 MR. PURIEFOY:

10 Your Honor, finally kind of in line with the special
11 damages, and I don't believe that there should be too
12 much of an objection to this. However, there's been
13 some indication based on the Report that was submitted
14 by Mr. Markel that they will also be seeking pre-
15 judgment interest as it relates to all damages that are
16 presented to The Court today. Once again Tilley v.
17 Pacesetter Corporation requires that the Petition must
18 be clear and specifically pled for the purpose of --
19 there's three reasons why, Your Honor, pre-judgment
20 interest can't be considered for purposes of today's
21 hearing. The first being that you must plead pre-
22 judgment damages as part of your Petition, which the
23 Petitioners failed to do either in their original or
24 their Amended Petition. For that reason alone the
25 parties cannot seek pre-judgment interest. For a second

1 reason South Carolina has stated that in addition to
2 specifically pleading pretrial damages you also have to
3 be able to demonstrate that you're entitled to those
4 damages as a result of contract or statute. There's no
5 contract in this case between Respondent and the
6 Petitioners that would give rise to pre-judgment
7 interest, nor does any statute that's been pled in this
8 particular case permit or allow for pre-judgment
9 interest, Your Honor. So for those two independent
10 reasons and then a final reason, if one is necessary,
11 pre-judgment interest inherently requires that the
12 damage itself be a liquidated damage amount for -- can
13 be reduced to a sum certain amount. The inability for
14 the parties to reduce a proposed pre-judgment interest
15 to a liquidated amount or a sum certain amount bars
16 recovery of pretrial interest. Your Honor, in this case
17 the entire hearing today is about the damages associated
18 with certain transfers, over 800 transfers I believe
19 there were, and the experts have not been able to agree
20 as to what that damage figure was and therefore it's
21 impossible through any mathematical formula to reduce
22 this damage number to a sum certain amount. And so for
23 those three independent reasons, Your Honor, we would
24 ask that the testimony by Mr. Markel be limited inasmuch
25 that no reference be made to any pre-judgment interest.

1 It's no different than special damages, Your Honor, that
2 the case law could not be more clear that it is must
3 pled. Petitioners have not specifically pled pre-
4 judgment interest. The Petitioners a moment ago read to
5 The Court the damages that they are seeking which are
6 general, actual, consequential, and punitive. And in no
7 Cause of Action has the Petitioners asked for pre-
8 judgment interest and that in and of itself is fatal to
9 their ability to recover the same, Your Honor.

10 THE COURT:

11 Is there any law in opposition of what you're arguing to
12 me?

13 MR. PURIEFOY:

14 Your Honor, there is not. This is -- and we are very
15 candid with The Court when presenting our case law. And
16 if there is a distinguishing case that we believe can be
17 distinguished, although it may have some negative impact
18 on our case, nothing that we found. In fact, every case
19 that we found, and we're talking dozen of cases, Your
20 Honor, have cited this particular case site which is
21 Tilley v. Pacesetters Corp 33 or 355 SC 361 at page 375
22 which stands for the proposition that it must be clear
23 and specifically pled in order to recover pre-judgment
24 interest. There is a string site that is attached to
25 that as well, Your Honor, but there are three or four

1 other cases that have asserted that same -- found that
2 same holding, Your Honor.

3 THE COURT:

4 Well, do you think this is premature? I mean I've got
5 to determine the amount. My job here is to determine
6 what is necessary to make the Estate of Florence Mensch
7 whole. If Mr. Sterling Mensch had complied strictly
8 with his duties as Power of Attorney and his duties as
9 Personal Representative what would the inventory of Ms.
10 Mensch look like? And I've got to make that decision
11 and once I make that decision then that becomes my
12 judgment. And then once that happens the issue of pre-
13 judgment then I hear your argument. Once I make that
14 decision am I allowed to order the Respondent to pay
15 pre-judgment interest and that under the law you're
16 arguing to me today is only if Mr. McLeod has pled that
17 in his Pleadings in which he asked for certain relief
18 and he should have specifically, what you're saying he
19 should have specifically asked for pre-judgment
20 interest; is that correct?

21 MR. PURIEFOY:

22 That's correct, Your Honor. But I think it's also
23 important, and to the extent that The Court is inclined
24 to allow to some testimony related to that to come in
25 because it's important to note that Mr. Markel's Report

1 does a thorough analysis in the conclusion section which
2 includes a pre-judgment interest amount that changes --

3 THE COURT:

4 Right.

5 MR. PURIEFOY:

6 -- the total amount of that's being allocated to that
7 particular harm. But it's important I think, Your
8 Honor, at least for me to state or request that I have a
9 standing objection related to any pre-judgment interest
10 because what I don't want is at the conclusion of
11 Petitioners case-in-chief is to move to amend their
12 Pleadings if conforming with evidence that's been
13 presented --

14 THE COURT:

15 I understand.

16 MR. PURIEFOY:

17 -- and so I would ask that there be a standing objection
18 to any reference to pre-judgment interest, Your Honor.

19 THE COURT:

20 Okay. I don't have a problem with that. Mr. McLeod,
21 I'll hear from you.

22 MR. MCLEOD:

23 Your Honor, I think I can end this right now.

24 THE COURT:

25 Okay.

1 MR. MCLEOD:

2 For page 13 of our Amended Petition for 3rd Cause of
3 Action Petitioner to review agent's conduct under Power
4 of Attorney and grant appropriate relief pursuant to
5 Section 68 -- 62-8-116 and 62-8-117 of the South
6 Carolina Power of Attorney Act. Number 70, paragraph
7 70, of our Petition states Petitioners request The Court
8 to order Sterling Raymond Mensch, III to restore the
9 value of the principal's property to what it would have
10 been had the violations not occurred pursuant to Section
11 62-8-117 of South Carolina Probate Code, including any
12 interest and appreciation that should have accrued from
13 the time of the violations. And I have a case. It's
14 Maybank verse BBT Corp -- Corporation. It states that
15 "In all cases of accounts stated and in all cases
16 wherein any sum or sums of money shall be ascertained
17 and, being due, shall draw interest according to law,
18 the legal interest shall be at the rate of eight and
19 three-fourths percent per annum." It goes on further to
20 state, "The trial court's decision whether to award pre-
21 judgment interest will not be disturbed on appeal absent
22 an abuse of discretion. The proper test for determining
23 whether pre-judgment interest may be awarded is whether
24 the measure of recovery, not necessarily the amount of
25 damages, is fixed by conditions existing at the time the

1 claim arose."

2 MR. PURIEFOY:

3 Your Honor, I believe the last sentence of that goes in
4 favor of the third independent reason why pre-judgment
5 interest are improper in this case. There is no
6 mathematical formula by which to deduce or reduce this
7 damage calculation to. If there was there really be no
8 need for a damages hearing. It is not a sum certain
9 amount that we're discussing. There are highly
10 contested facts that would alter and fluctuate what the
11 -- the total damage amount is. But more importantly,
12 Your Honor, I believe we've also gotten away from
13 there's been a failure to indicate that there's any
14 contract or statute that gives rise to pre-judgment
15 interest. Each one of these -- these instances that
16 I've made reference to, Your Honor, are independent
17 reasons why pre-judgment interests are improper. So if
18 The Court believes that Mr. McLeod or the Petitioners
19 have pled pre-judgment interest as a result of the
20 reading of that particular provision, which I don't
21 believe is the case because it simply says an increase
22 in any -- what was the language? Any interest in the
23 case if there have been an allegations that are a
24 failure to properly diversify an account resulted in
25 damages to that account. We believe that would be

1 applicable to that particular allegations. But the fact
2 remains, Your Honor, that the case law is very clear you
3 have to plead it with specificity and to simply say all
4 interest is not pleading pretrial interest with
5 specificity. Nor has there any indication that there
6 exists a contract or a statute under any of the Causes
7 of Action that have been raised by the Petitioners that
8 allows for the collection or proving of pre-judgment
9 interest. The case that Mr. McLeod and the Petitioners
10 have referred to I would venture I guess, although I do
11 not have it in front of me, related to a statute that
12 allowed for pre-judgment interest or a contract that
13 considered pre-judgment interest.

14 MR. MCLEOD:

15 Your Honor, I think we clearly stipulated to liquidated
16 amounts and a sum certain. I mean we had a sum certain
17 on the transfers out of the account and we know the
18 exact time frame, the exact date that they were
19 transferred out of the account. It is literally you can
20 trace each one and that's what John is going to testify
21 about that he has done pre-judgment interest, a
22 calculation based on each transfer out of the account.
23 And so each -- those sum certainties that were transferred
24 out, he's calculated pre-judgment interest.

25 MR. PURIEFOY:

1 Your Honor, that's incorrect. The Petitioners are
2 arguing that the transfers themselves constituted sum
3 certain damage. In fact, they took a directly contrary
4 position prior to this trial starting. In fact, what
5 they indicated that we are not stipulating to the
6 rightful or wrongful use of the funds that resulted from
7 those transactions. We're simply stipulating to the
8 fact that those transactions occurred. The totality of
9 the transactions is not what would be reduced for the
10 sum certain amount. It's going through the factual
11 allegations and the defenses in the case as relates to
12 the damages to determine which transfers were rightful
13 and which transfers were wrong. That cannot be reduced
14 to a mathematical formula.

15 THE COURT:

16 Yes, Mr. Puriefoy, though it's the -- when The Court
17 rules on this case The Court is going to come up with
18 some number that The Court feels is in compliance with
19 all applicable law and it will have to come up with that
20 number by going through the evidence that's presented.
21 Once that number is arrived at the question then becomes
22 would the Petitioners be entitled to pre-judgment
23 interest and at that time it would have to be -- a
24 calculation would have to be done on The Court's --
25 whatever The Court comes to in terms of a number. The

1 Pleadings ask for interest. It says penalties and
2 interest. If -- no, I'm sorry. It says penalties and
3 interests as a result of tax returns, but it asks for
4 interest and appreciation. I'm not ruling on
5 appreciation right here, because I don't know if that
6 can be proven. But the interest -- the fact if he used
7 funds that would have been available to the Estate at
8 the time of her death and they now are not available
9 then there would have been whatever the interest was
10 made available or what it was accruing at that time.
11 The Estate has lost that, which would be something that
12 the expert would have to quantify. And I suppose that
13 is tantamount to pre-judgment interest; is that right,
14 Mr. McLeod?

15 MR. MCLEOD:

16 That's correct, Your Honor.

17 THE COURT:

18 My job is to make Ms. Florence Mensch's Estate whole as
19 she would have wanted it based on her Power of Attorney
20 and based on her Will. And if she had funds that would
21 have been available, but they were not because they were
22 misused, then those funds have been denied to the Estate
23 and including whatever interest they were gaining at
24 that time. And he has asked for interest under this
25 Code Section and it says under this Code Section that

1 the agent that violates this article is to restore the
2 value of the principal's property to what it would have
3 been had the violation not occurred. And so that
4 necessarily involves not only the funds, but interest.
5 And he's asked for that in his paragraph 70, which could
6 have been explored through discovery or counterclaim or
7 -- so I'm going to --

8 MR. PURIEFOY:

9 Your Honor, if I may just briefly.

10 THE COURT:

11 Yes.

12 MR. PURIEFOY:

13 There's a particular point. I apologize. I apologize
14 for interrupting.

15 THE COURT:

16 Okay. I'll be glad to hear from you.

17 MR. PURIEFOY:

18 Two points in particular, Your Honor. We are not
19 disputing the Petitioner's ability to introduce evidence
20 as it relates to interest. If the Petitioner is able to
21 demonstrate that the funds that were transferred from
22 the Bank of America account were accruing interest and
23 had they been allowed to stay there they would have
24 continued to accrued interest at that rate we absolutely
25 do not dispute that and we will simply have to produce

1 our own counter testimony to that point. But interest
2 accruing on the banking account versus pre-judgment
3 interest is not the same. Prejudgment interest for
4 purposes of today's hearing will be calculated at 8.75
5 percent. We have absolutely no idea what the interest
6 was that was accruing on the Bank of America account,
7 and Mr. Markel can certainly testify to that, but we do
8 not believe that those two figures would conflate. So I
9 don't believe that it would be proper to impose pre-
10 judgment interest related to that interest in
11 particular. But, Your Honor, there's a very important
12 point that you hit on. There's a case here in South
13 Carolina that's referred to as the Dixie Bell Case and
14 this is South Carolina Court of Appeals 374 at page 656.
15 And it goes through the exact analysis that Your Honor
16 just went through as it relates to The Court. Prong
17 four of this test, Your Honor, it's a four part test,
18 and prong four of this test and prong five it is not
19 reduced to a sum certain operation of law or controlling
20 statute. It can only be reduced to certainty by a jury
21 determination. We're not here in front of a jury and so
22 the only way to reduce this to a sum certain amount is
23 through Your Honor weighing the credibility of the
24 witnesses and determining which damages Your Honor
25 believes to be appropriate in this case. The Court

1 cannot simply rely on anything that has been presented
2 to The Court today to simply say the damage is this
3 exact number. It requires your -- your ability to
4 listen to the credibility of the witnesses and determine
5 what you personally believe, Your Honor, and sitting as
6 a jurist believe the damages to be. That is the exact
7 consideration that was -- that was taken under
8 consideration in the Dixie Bell Case. If it's such that
9 the damage that's being alleged could only be reduced to
10 certainty by a jury in this particular instance, but a
11 judge in this instance, Your Honor, then it cannot be
12 considered for purposes of pretrial -- pretrial --
13 pretrial interest. Excuse me, Your Honor, pre-judgment
14 interest. This is the Dixie Bell Case. It goes through
15 the very analysis that you went through, Your Honor.

16 THE COURT:

17 Mr. McLeod.

18 MR. MCLEOD:

19 Your Honor, I don't have that case in front of me and I
20 haven't reviewed it. But again I couldn't have pled
21 better including any interest and appreciation that
22 should have accrued from the time of the valuation --
23 the violation.

24 THE COURT:

25 If I understand Mr. Puriefoy's argument what he's

1 saying, what the cases are saying, that a pre-judgment
2 interest is for cases in which there is a clear sum due.
3 Say for instance in a foreclosure action you have a
4 judgment of \$40,000 was due on a mortgage, it never got
5 paid. The \$40,000 would be subject to a pre-judgment
6 interest. What he's arguing this case says that in a
7 case like this where your clients are alleging he has
8 misspent a large sum of money. He's going to allege he
9 didn't. There's not a clear sum such that anyone should
10 -- or is on notice that they owe some certain amount of
11 money for which they are going to be charged pre-
12 interest because that sum is unknown. And the interest
13 that the money was earning of course it makes sense that
14 that would be pertinent to the amount that would be due
15 to the Estate to make it whole. Your argument is that
16 --

17 MR. MCLEOD:

18 Your Honor, I think there's also cases, and I don't it
19 in front of me, I've read them previous to this trial
20 and I'll find it for you, but it basically is saying any
21 offsets that they try to claim you assess pre-judgment
22 interest first. You don't do it after the offset. It's
23 assessed on those amounts, those sum certain amounts
24 that were transferred out of the account. So that's
25 where you assess it. You don't wait and see what it

1 comes out to. It's assessed on those sum certain
2 amounts and they're gone. He transferred 75,000 out, or
3 whatever the number is, he transfers it out of her --
4 this joint account that he was added on. He owes the
5 Estate that sum right there.

6 THE COURT:

7 Okay.

8 MR. MCLEOD:

9 And there should be pre-judgment interest to capture
10 when she was deprived from that sum.

11 THE COURT:

12 Okay. I think what I'm going to do is I'm going to note
13 your objection. I'm not -- I'm not going to rule on it
14 at this time. I'm going to note it. I'm going to let
15 you go ahead and proceed to ask your witness about pre-
16 judgment and -- but this is an issue that I need to
17 study because I'm not swayed one way or the other. I've
18 got questions and I need to study it more. So with that
19 I'm going to make a note of that. I'll rule on that at
20 the end of the case, but for right now I'm going to let
21 you go ahead and ask him about that. Okay.

22 MR. MCLEOD:

23 Okay. Thank you, Your Honor.

24 THE COURT:

25 Okay.

1 MR. PURIEFOY:

2 Just for clarification, Your Honor, can I have a
3 standing objection?

4 THE COURT:

5 A standing objection is noted on any testimony or
6 documents or Reports having to do with pre-judgment
7 interest.

8 MR. PURIEFOY:

9 Thank you, Your Honor.

10 THE COURT:

11 Uh-huh.

12 EXAMINATION RESUMED BY MR. MCLEOD:

13 Q. All right, John, we'll resume. Can you please go
14 through the Report and explain your findings to The
15 Court?

16 A. Okay. I think the simplest way to do this is to look at
17 my Appendix D in the Report, which appears on -- let me
18 make sure I have the page number right. Page 20 of my
19 Report, it's Exhibit 1. And just go through. Appendix
20 D what it does is it breaks down the losses under my
21 primary computational approach. It breaks the losses
22 down into categories. Row Number 1 is the aggregate and
23 unexplained cash transfers out of Ms. Mensch's bank
24 account for the benefit of Sterling Mensch, III. And
25 this is where we come up with the amount just to the

1 right of that of \$820,382. And that's not -- let's be
2 clear here. That's not just an abstract number of
3 dollars out there. I work with numbers every day and
4 sometimes very large numbers, but it helps me to kind of
5 break them down just to see what that consist of. Okay.
6 This \$820,382 figure consisted of 239 specific line
7 items, which are referenced in my Appendix E to my
8 Report. So it's very much a sum certain and very much a
9 sum certain as to --

10 MR. PURIEFOY:

11 Objection, Your Honor.

12 A. -- as to --

13 THE COURT:

14 Excuse me.

15 A. -- 239 --

16 THE COURT:

17 Mr. Markel, if you'll wait.

18 THE WITNESS:

19 Yes.

20 MR. PURIEFOY:

21 Your Honor, I would object to any reference to sum
22 certain as that is legal question for The Court and he
23 has not been tendered has an expert to speak to any
24 legal matters whatsoever. He can speak to what is
25 referenced in his Report, but I don't believe that he's

1 qualified to speak as to what constitutes a sum certain
2 amount for purposes of determination of pre-judgment
3 interest, Your Honor.

4 THE COURT:

5 Thank you, Mr. Puriefoy. I overrule your objection. He
6 can speak to what he has. His aggregate unexplained
7 cash transfers he has computed to be 820,382. That
8 doesn't mean that you don't have the chance to talk
9 about how much of that went for her benefit or not, but
10 he can add up the transfers. Okay. You may proceed.

11 EXAMINATION RESUMED BY MR. MCLEOD:

12 A. And the term sum certain is also an accounting term.
13 Okay. It's 239 specific line items that we know the
14 exact date that those went out of Florence Mensch's
15 account and into Sterling Mensch's account. So I
16 computed what we can call pre-judgment interest, or
17 whatever you want to call it, as an advisory, because I
18 had the dates and amounts available to me and it's a
19 very easy computation to make on an Excel spreadsheet.
20 They give you tools to just do it, so I computed it for
21 informational purposes. So if you take each one of
22 those 239 different cash transfers out and bring them
23 forward to today, August 17, 2021, and apply the Supreme
24 Court's pre-judgment interest rate for this year, they
25 change it every year, of 7.25 percent you come up with

1 an associated pre-judgment, or whatever else you want to
2 call it, interest amount of \$312,955. I traced each one
3 of these 239 line items from Florence's bank statement
4 records to Sterling's bank statement records. So I know
5 that they happened. These bank statements were -- were
6 obtained on subpoena directly from Bank of America, so
7 it's an outside third-party source. I'm not -- I'm
8 supposed to be independent. I'm just taking third-party
9 evidence and -- and accumulating it into a useful form,
10 which I tried to do. And so the detail supporting Row
11 Number 1 is contained in my Report paragraph 17 and the
12 detailed number of computations are included at Appendix
13 E. But let's also look at this 800 -- what makes up
14 this 820,382 figure. This was taken out over a 73 month
15 period from February 2013 to February 2019. That's an
16 average of \$11,238 per month for that 73 month period.
17 On an annual 12 month basis, 12 times \$11,238 that adds
18 up to a little bit under \$135,000 per 12 month period.
19 During one six month time frame in 2016 Sterling
20 transferred over 181,000 from Florence's account to his
21 account. I'm saying this to rebut the contention that
22 there is credits that should be applied, or whatever,
23 for Ms. Mensch's benefit. These numbers are so large
24 that it just doesn't make sense that there were
25 substantial offsets to this amount. And I'll just put

1 that out there for information. I guess we can move
2 along to Row Number 2.

3 Q. Well, tell me one more time --

4 A. Sure.

5 Q. -- the date range of these transfers.

6 A. Well, let's make absolutely sure about that. We refer
7 to Appendix E. The first line item, the first item that
8 was removed according to my analysis. I might have
9 missed some items. We're talking about thousands of
10 line items. I tried to be as accurate as I could, but
11 the first one I noted was on February 25th, 2013 for
12 \$300. Okay. Then that continued, if we move on to page
13 27 of my Report, the next to the last line item there
14 was on February 19th, 2019 for \$400. The very last item
15 on this -- on page 27 I added it at a later date when I
16 picked up on it, but the time frame is February 2013 to
17 February 2019.

18 Q. Okay. And, Mr. Markel, for each transaction did you
19 calculate pre-judgment interest?

20 A. In -- in the far right-hand column of Appendix E I have
21 all the information I need to calculate what I call pre-
22 judgment interest. We can argue about what the proper
23 label is, but I have the date it was withdrawn. I have
24 the date of today, August 17th, 2021. And through the
25 magic of an Excel spreadsheet I can immediately come up

1 with the fact that 3,095 days elapsed between February
2 25th, 2013 and today. And I can apply a daily interest
3 rate. In other words, I took the annual interest rate
4 of 7.25 percent and divided it by 365 days to come up
5 with a daily simple interest rate. And that's how I
6 came up with in this first line pre-judgment interest of
7 \$184.43. And I did that for every single line item out
8 of the 239 line items in here that have a dollar amount
9 in the debit column.

10 Q. And all of these transfers came out of either 7059 or
11 2007?

12 A. Right.

13 Q. Those are Florence Mensch Bank of America accounts.
14 Those are the last four digits; is that correct?

15 A. That's correct.

16 Q. And when you're looking at Appendix E is there any real
17 consistency to the transfers in your opinion?

18 A. I --

19 Q. And I'm speaking about amounts. Is there consistency in
20 the amounts or the times?

21 A. Over the years I've gotten pretty good at spotting
22 patterns, but I didn't see a noticeable pattern as to
23 dates or amounts. Although there are a lot of transfers
24 in the amount of \$2,000 even. I guess you could call
25 that a pattern.

1 Q. Well, how often does that pattern occur? I'm looking
2 at Appendix E, the overall. Going through I don't see
3 too many 2,000 in a row.

4 A. (Witness reviewing exhibit.) Well, like on page 23
5 there are four or five of them.

6 Q. Okay.

7 A. You know, out of 35 line items on that page. There
8 don't appear to be that many of them on the other pages.
9 This is one, I just eyeballed.

10 Q. So for example can you read line 83?

11 THE COURT:

12 Excuse me, but let me interrupt. Is that somebody's
13 cell phone that just went off? It's yours?

14 THE DEPUTY:

15 Yes, I was trying to --

16 THE COURT:

17 Okay. All right. Okay. You're allowed.

18 THE DEPUTY:

19 Excuse me.

20 THE COURT:

21 You're exempt.

22 EXAMINATION RESUMED BY MR. MCLEOD:

23 A. On page 23, line 83.

24 Q. Well, actually you can start at line 72, please. What
25 is the date and amount?

1 A. June 4, 2014, \$2,000.

2 Q. And then line 83?

3 A. It's September 9th, 2014, \$2,000.

4 Q. And line 86?

5 A. It's October 28, 2014, \$2,000.

6 Q. And line 87?

7 A. It's November 10, 2014, \$2,000.

8 Q. And line 94?

9 A. It's December 24, 2014, \$2,000.31.

10 Q. Okay. Can you read line 105 for me?

11 A. It's February 25th, 2015, \$11,167.43.

12 Q. On page 26 can you read line 178?

13 A. August 4, 2016, \$75 even.

14 Q. All right. And I think you misstated that one.

15 A. 178?

16 Q. Page 178 on page 26.

17 THE COURT:

18 I think he meant 75,000.

19 Q. You mean 75,000?

20 A. No -- 75,000.

21 Q. You said \$75.

22 A. 75,000 even.

23 Q. Okay.

24 A. It's what I said.

25 Q. Okay. I may have misheard. Then line 189?

1 A. February 8, 2017, \$12,996.03.

2 Q. And line 194?

3 A. It's on May 2nd, 2017, \$35,721.43.

4 Q. Line 197?

5 A. That's July 11, 2017, \$12,641.63.

6 Q. And line 201?

7 A. That's on October 30, 2017, \$28,000.

8 Q. Line 205?

9 A. May 18, 2018, \$7,385.

10 Q. 206?

11 A. June 19, 2018, \$5,500.

12 Q. 207?

13 A. It's on July 6, 2018, \$6,206.71.

14 Q. Read line 242 on page 27 of your Appendix E of your
15 Expert Report?

16 A. That was line 242 is a transfer was made on November 4,
17 2013 for \$1,651.20.

18 Q. And actually I'm going to go back to 211.

19 A. That was on July 23, 2018, \$12,000.

20 Q. And line 215?

21 A. August 20, 2018, \$8,500.

22 Q. Line 239?

23 A. That was on January 16, 2019, \$13,500.

24 Q. And state your total for these one more time.

25 A. My total which is stated at the bottom of page 27 was

1 \$820,382.13.

2 Q. And your total for pre-judgment interest?

3 A. That's also at the bottom of page 27 and the total is
4 \$312,955.11.

5 Q. And did you also review Florence's GE stock and UBS and
6 her South -- South State or State Street bank records?

7 A. Well, they're broker records.

8 Q. Yeah, you can correct me on it. They were brokerage
9 records; is that correct?

10 A. South State is a brokerage firm, yes.

11 Q. Okay.

12 A. Yes, I did.

13 Q. Okay. And what did you learn from those statements
14 regarding -- related to these transfers on your Appendix
15 E?

16 A. They were -- they were transferred -- there were several
17 large transfers made from the brokerage account into one
18 of Florence's two Bank of America accounts.

19 Q. So were most of these amounts derived from her
20 retirement accounts?

21 A. Well, certainly they --

22 Q. I'll restate that. Were most of them derived from the
23 UBS account, State Street account, and the GE stock
24 account?

25 A. Let me put it this way: those transfers accumulated to

1 hundreds of thousands of dollar and, yes, they went into
2 Florence's bank account. So we have these large
3 transfers in from her retirement accounts and then we
4 have these large transfers out to Sterling's account.

5 Q. Okay. All right. I'll let you pick up where you left
6 off going through your Appendix -- what was your
7 Appendix?

8 A. Appendix D.

9 Q. D. Okay. I'll let you pick back up going through that.

10 A. Okay. In the far left-hand column it says Row Number 2
11 and the time frame was 2011 to 2018. And this line item
12 has to do with avoidable income taxes generated by IRA
13 distributions to Ms. Mensch that were of course during
14 this time facility by Sterling Mensch either as agent
15 under the Power of Attorney and Personal Representative,
16 in excess of the amount mandated for minimum required
17 IRA distributions for a particular year. There's a rule
18 in the Internal Revenue Code that once you reach the age
19 of seventy and a half that a certain percentage of your
20 IRA balance at the end of the previous year has to be
21 distributed to you as taxable income. This was a law
22 was made to plug a tax loophole to keep wealthy people
23 from just dumping funds into IRA's and then just keeping
24 them there forever without ever having to pay tax,
25 because when you contribute to an IRA it's a tax free

1 transaction. When you take it out years later you're
2 taxed on it at that time. So that's the -- so but what
3 happened in these particular years is that Sterling
4 caused large outflows to be made from the IRA accounts
5 in excess of the required minimum distribution. In some
6 years quite an excess.

7 Q. And you lay that out on your Appendix F; is that
8 correct?

9 A. Yes. And if I could step down and go back and get
10 something out of my briefcase it will help.

11 THE COURT:

12 That's fine. Yes.

13 MS. THOMASON:

14 Your Honor, may we take this opportunity to a quick five
15 minute break?

16 THE COURT:

17 Any objection, Mr. McLeod?

18 MR. MCLEOD:

19 No objection, Your Honor.

20 THE COURT:

21 Okay. Let's take a 15 minute recess and we will come
22 back at 11:25.

23 MS. THOMASON:

24 Thank you, Your Honor.

25 Off the Record: 11:07:38.5

1 On the Record: 11:26:21.2

2 All right. We're back on the record after a recess.

3 Mr. Markel is still on the stand. He has already been
4 sworn. Mr. McLeod, you may proceed.

5 MR. MCLEOD:

6 Thank you, Your Honor.

7 EXAMINATION RESUMED BY MR. MCLEOD:

8 Q. So, John, let's pick back up where we were. We were on
9 Appendix E and you were going over your Row 2 of your
10 Expert Report.

11 A. Right.

12 Q. And we were looking at Appendix F and we are going to
13 turn to that and have you explain how you came up with
14 your 163,420 on line -- or Row 2.

15 A. Okay. Appendix F is summarized somewhat, but it boils
16 down in -- in the year on the 2011 tax return there was
17 \$999 in excess in distributions from the IRA in excess
18 of the required minimum distribution. And applying a
19 blended state and federal tax rate of .3304 to that,
20 which that was one of the rates in effect in 2011, the
21 income tax that should have been avoided had this been
22 done properly would have been \$330. So \$330 in income
23 tax was incurred that year that should not have been.
24 And those taxes would have been due on April 15th, 2012.
25 3,411 days have elapsed since April 15 of 2012 and

1 today. So if you plug in the equivalent daily interest
2 rate, the 7.25 percent, that yields pre-judgment
3 interest of \$224. And for the year -- for taxes for the
4 year 2012 there was \$10,230 distributed in excess of the
5 required minimum distribution. And if you, again, apply
6 the blended federal and state rate of .3304 you come up
7 with excess income tax of \$3,380. So that's on the
8 second line on the schedule on Appendix F and that tax
9 was due on April 25, 2013. 3,046 days have elapsed
10 since that day and today. So if you apply the daily
11 interest rate you come up with \$2,045 in pre-judgment
12 interest. Okay. In the year 2015 IRA distributions
13 were made in excess of the required minimum distribution
14 that year of \$78,699. Applying the blended state and
15 federal rate again would yield income tax that should
16 have been avoided of \$26,002. That tax was due on April
17 15, 2016. And since that day 1,950 days have elapsed
18 which would yield \$10,071 in pre-judgment interest. On
19 January 1, 2016 a retirement plan distribution was made
20 that exceeded the required minimum distribution for that
21 year by \$238,105. Applying the blended rate of .3304
22 that yields avoidable income tax of \$78,670. That tax
23 was due on April 15, 2017. 1,585 days have elapsed
24 between then and today, so that would yield pre-judgment
25 interest on the avoidable income tax of \$24,768.

1 Finally in 2018 there was -- there were IRA
2 distributions made in the amount of \$187,715 in excess
3 of the required minimum distribution. The blended tax
4 rate went down that year because of federal, new federal
5 tax legislation, so the blended rate became .2932. That
6 would yield avoidable income tax of \$55,038 as shown in
7 the schedule. If you add all those up, all those
8 avoidable income tax amounts up, they total up to
9 \$163,420, which is shown on my Appendix D in the losses
10 column. For the income -- for the avoidable income tax
11 for 2018 I did not compute pre-judgment interest because
12 that income tax return was filed late and is still under
13 -- interest and penalties are still under appeal with
14 the IRS. So I decided that the best thing to do with
15 that was just to not compute pre-judgment interest so
16 that it wouldn't be overstated, but it will have to be
17 computed at some future date.

18 Q. And your total for pre-judgment interest?

19 A. For the years -- for avoidable income taxes in the
20 years, '11, '12, '15 and '16 total \$37,107, which is
21 also shown on my Appendix D.

22 Q. Okay. And for the entry on April 23rd, 2018, do you
23 know what day Florence Mensch died?

24 A. I believe it was on April 26th, 2018.

25 Q. Okay.

1 A. So just a few days before she died.

2 Q. All right. Do you know the amount that was transferred
3 that caused that tax? The total amount of the transfer?

4 A. I don't -- I don't have that right at hand.

5 Q. Okay.

6 A. We can look it up.

7 Q. Is it 249,000?

8 A. It was somewhere in that --

9 Q. Somewhere in that vicinity?

10 A. Between 2 and 300,000. Somewhere in that range.

11 Q. Okay. All right. And so you're calculating only the
12 amount above the required minimum distribution; is that
13 correct?

14 A. Right. Because my -- my assumption was that Ms.
15 Mensch's living expenses in the memory care facility as
16 a general rule are pretty much covered by her pension
17 income and her Social Security income. So she -- she
18 didn't -- had no real need to take distributions out in
19 excess of the required amount. So I attributed these
20 excess amounts to really poor management on the part of
21 Sterling Mensch in terms of his fiduciary duty. You
22 know income taxes that could have easily been avoided or
23 at the best deferred for a number of years just by
24 keeping them in the account. There was no need to incur
25 those taxes. So that's why I included it.

1 Q. And these were incurred by taking it from her retirement
2 accounts, at least the amounts that make up your
3 calculation in Appendix F, that came from retirement
4 accounts that were taxable accounts; is that correct?

5 A. If you take funds out of them they become taxable.

6 Q. Correct.

7 A. To the extent they -- and if you take out the minimum,
8 you have to take out that amount. In fact, you're taxed
9 on it even if you don't take it out. But the amount
10 that you take out in excess just adds to your tax bill
11 that year. So it's something that can be avoided if
12 it's managed properly.

13 Q. And is it correct to say that usually you only want to
14 take your required minimum distributions?

15 A. That's -- everybody who has an IRA, I fall in the
16 category of being over seventy and half years of age. I
17 only take the minimum. I leave the rest in there.
18 There's no point in paying tax on it if you don't --
19 unless you need it for something. Thankfully I have not
20 needed.

21 Q. Yeah. These are tax advantage accounts; correct?

22 A. Right. Right.

23 Q. There's an advantage to that.

24 A. When you put -- the amount that you put in is excluded
25 from income in the year that you put it in. So during

1 your higher earning younger years you can exclude income
2 from tax. But then it's only fair that when you take it
3 out, and that's the way the law is written, when you
4 take it out it becomes taxable. But then there's a
5 special provision for older people. Those over seventy
6 and half that they're required to take out a certain
7 amount every year.

8 Q. So there is a benefit to leaving it in that account and
9 only taking your required minimum distributions;
10 correct?

11 A. Right. My mother is 98 years old. She's been taking
12 out required minimum distributions for the last 26 years
13 or so. And she only takes the minimum believe me.

14 Q. Yeah. And is it true that if you leave it in you're
15 actually making money by not paying that tax?

16 A. Right. And everything that -- the buildup in value is
17 tax free, too. You don't pay current tax on the buildup
18 in value. So there's all kinds of advantages to just
19 leaving in there unless you absolutely have to take it
20 out.

21 Q. So do you think your Report captures all the damage from
22 taking those excess required minimum distributions?

23 A. No, it actually probably understates it to the extent
24 that if those -- if those dollars were left in those
25 funds they could have grown based on the investment

1 portfolio that was in the IRA and they would have grown,
2 but I did not make that computation.

3 Q. And, again, the years this tax was imposed, can you just
4 read those years again?

5 A. The tax was imposed on the returns of the years 2011,
6 2012, 2015, 2016 and 2018.

7 Q. And were the majority of those between 2015 and 2016 and
8 2018?

9 A. That's where most of the dollars were, yes. All but
10 about \$3,600 of the 163,000.

11 Q. So during --

12 A. For the tax, increased tax.

13 Q. Yeah.

14 A. You know the distributions would have been far greater
15 than that, but I don't have that --

16 Q. Yeah.

17 A. -- the amount of distributions right here at hand.

18 Q. Yeah. And if those amounts weren't taken there would
19 have been in theory some appreciation over time; is that
20 correct?

21 A. That's correct.

22 Q. Is that difficult to quantify?

23 A. That would be difficult to quantify. Now, I have a line
24 item later on where a portion of that increase in value
25 might possibly be picked up, but it's probably only a

1 portion but we can deal with that at that time.

2 Q. Yes, sir. And would the Estate in your opinion have
3 realized any benefit if those amounts were not taken in
4 excess above those required minimum distributions?

5 A. Well, the Estate would have realized the benefit that
6 they would have been able -- those funds could have
7 stayed in the investment account and continue to grow in
8 value in addition to generating premature income taxes.

9 Q. So what you're capturing in this Appendix F based on
10 what you've said is just the income taxes that were in
11 excess?

12 A. The income taxes generate by the -- only the
13 distributions in excess of the required minimum amount.

14 Q. Okay. All right. We can go back to Appendix D and your
15 Row 3.

16 A. Okay. Okay. Row 3 consist of what I have called
17 avoidable penalties and interest that were assessed as a
18 result of late payments by Sterling Mensch of Ms.
19 Mensch's income tax liabilities for the years 2012
20 through 2016. And they total to as shown in the loss --
21 losses column on Row 3 of \$13,820. And associated with
22 that was pre-judgment interest, perspective pre-judgment
23 interest, calculated to today of \$4,115. And on
24 Appendix G of my Report there are 17 line items that add
25 up to the \$13,820 figure. These are penalties and

1 interest that were incurred over time for late filing,
2 late payment of income taxes in each of the years -- for
3 taxes for each of the years 2012, 2013, 2014, 2015,
4 2016. And these really were just again poor management.
5 These -- all these items were paid out to the IRS and to
6 the South Carolina Department of Revenue just because
7 taxes weren't paid when they were due and returns
8 weren't filed on time. Just items of negligent
9 management year by year over time that added up to a
10 fairly substantial amount of money. If you look at
11 individual years you say, "Well, there's \$46 there and
12 \$79 there. You know \$418 there," but over time it adds
13 up. So I included it in my Report.

14 Q. Okay. And on Row 5 can you explain that?

15 A. On Row 4?

16 Q. Actually Row 5 on your Appendix D. Well, let me stop
17 you.

18 A. Well, we could go ahead with Row 5.

19 Q. Let's go to Appendix H for a minute. Turn to Appendix
20 H.

21 A. Okay. That's associated with Row 4.

22 Q. Yeah. Can you explain just -- you don't have go line by
23 line, but just in general what you've done on Appendix
24 H?

25 A. Okay. In the years -- in the tax returns for the years

1 2011 through 2016, each one of those years, Sterling
2 Mensch failed to itemize deductions for property tax and
3 mortgage interest in each of those years. You know I
4 examined, scrutinized each of the tax returns for those
5 years, and he did not include itemized deductions for
6 property tax and mortgage interest in those years. And
7 those -- that failure to itemize resulted in taxes,
8 income taxes, in those years that really just didn't
9 have to be paid. But they could have been -- for tax
10 liability for each of those years would have been lower
11 by the amount of, for example, \$5,130 in 2011. \$5,676
12 in 2016 as shown on Appendix H. And all those
13 overpayments for that six-year time frame amounted to
14 \$24,559 and the associated pre-judgment interest was
15 \$11,099.

16 Q. Have you reviewed Sterling Mensch's tax returns?

17 A. Yes.

18 Q. Do you know if any of these deductions that you list in
19 your Appendix H were taken on his tax returns?

20 A. I didn't do a full line by line analysis, but I know in
21 at least -- I can state from personal knowledge in
22 several of those years he apparently took those
23 deductions himself even though they were taxes -- taxes
24 on Florence's property. That is the house in Greer, the
25 512 New Tarleton Way. And the interest on the mortgage

1 note it was -- it was collateralized by that real
2 Estate.

3 Q. And by Florence's property you mean it was titled in her
4 name?

5 A. Titled to her and, you know, it would seem like the
6 deduction should follow the ownership, but, you know I
7 think the assertion can be made that the person who paid
8 the taxes and paid the interest might somehow qualify to
9 take those deductions.

10 Q. Or in some cases if the person was living at the
11 property; is that correct?

12 A. That shouldn't have had anything to do with it.

13 Q. All right. In your experience do people sometimes have
14 the tenant pay those taxes?

15 MR. PURIEFOY:

16 Objection, Your Honor. I believe you have ruled on the
17 issue of back rent.

18 MR. MCLEOD:

19 What do you want me to do, Your Honor? Do you want me
20 to proffer every time I'm about to say something that's
21 even related to it?

22 THE COURT:

23 I'll just note for the record that this is being asked
24 under a proffer.

25 MR. MCLEOD:

1 It's not only related to the rent. It's also related to
2 the ownership. Who owned it, who the payments were for
3 the benefit of? So there's actually like dual.

4 THE COURT:

5 Yeah. I will allow it as it might pertain to the
6 Respondent's action with regard to this property and his
7 tax returns as in is it appropriate for someone who
8 isn't an owner of a piece of property, but he just lives
9 there, to take deduction A, B, and C? I will allow it
10 for that because you're -- one of your loss statements
11 shows that these deductions were not properly taken for
12 Ms. Mensch, but I won't let it be for the purpose of
13 calculating the collection of past due rents under --
14 because I've already ruled on that. So if you want to
15 have it be for both then I will allow it without
16 restriction as to the fact that it impacts the losses to
17 the Estate but -- and I will allow it under your proffer
18 as far as rental. Collection of past due rents.

19 MR. MCLEOD:

20 Your Honor, there's also an argument that we've having
21 to get into the intent of, you know, was this Sterling
22 Mensch's residence during this time or was it for
23 Florence Mensch's benefit, because when we're looking at
24 whether mortgage payments and taxes should be --

25 THE COURT:

1 That will fall under whether or not the actions of the
2 Respondent taken by him during his service to her as her
3 attorney-in-fact and/or as her Personal Representative
4 were those actions taken did they result in a benefit to
5 her or did they not. Under the terms of Power of
6 Attorney did his actions and transactions result in a
7 benefit or an enhancement to the property interest of
8 Ms. Mensch or did they not.

9 MR. MCLEOD:

10 Okay.

11 EXAMINATION RESUMED BY MR. MCLEOD:

12 Q. Let's go back to your Appendix D, John.

13 A. Okay.

14 Q. All right. Tell us what Line 5 is.

15 A. Okay. That -- that relates to avoidable penalties and
16 interest that were assessed as a result of late payment
17 and failure to file by Sterling Mensch of Ms. Mensch's
18 income tax returns for 2018. And a summary of those
19 losses appears in my Appendix I.

20 Q. Okay. Can you turn to Appendix I and walk us through
21 your numbers there?

22 A. I have some additional work papers of mine that I think
23 explain it a lot more -- a lot clearer, more clearly
24 than what I have in that Appendix if you want.

25 Q. All right.

1 A. It depends on how deep you want to get into this.

2 MR. MCLEOD:

3 If Your Honor will allow it. Can the witness obtain his
4 work papers? I think he's got them in the back of the
5 room.

6 THE WITNESS:

7 No, no, I have copies of them.

8 MR. MCLEOD:

9 Oh, you've got them on you?

10 THE WITNESS:

11 Right here. They're --

12 THE COURT:

13 Are they a part of his --

14 MR. MCLEOD:

15 Are these a part of your Report?

16 THE COURT:

17 Did you rely on those in making this Report?

18 THE WITNESS:

19 Yeah. Absolutely. They just -- I think they will just
20 aid in the explanation.

21 THE COURT:

22 Okay. They haven't been agreed upon as an exhibit;
23 correct? As part of this exhibit that you-all agreed
24 on?

25 MR. MCLEOD:

1 We will hand copies and let them look it over.

2 THE COURT:

3 Okay. But it hasn't as far as what you stipulated it's
4 not a part of this. You-all can stipulate, but it's --

5 MR. MCLEOD:

6 Some of our stipulations are so broad.

7 THE COURT:

8 Okay.

9 MR. MCLEOD:

10 Like we're saying all tax returns. And so I don't know
11 if that's what it is.

12 THE COURT:

13 Right. We don't know. We can address that as he
14 testifies.

15 THE WITNESS:

16 It's just a more detailed schedule of what's in Appendix
17 I. That's all it is.

18 THE COURT:

19 Just make sure you provide counsel with a copy.

20 MR. PURIEFOY:

21 Your Honor, we don't mind referring to it for purposes
22 of testimony without it being admitted.

23 THE COURT:

24 Okay.

25 MR. PURIEFOY:

1 But he can certainly testify to it.

2 THE COURT:

3 Okay.

4 THE WITNESS:

5 I just thought it would help everybody understand it.

6 THE COURT:

7 Okay.

8 THE WITNESS:

9 More easily. Save some time.

10 THE COURT:

11 Mr. McLeod, don't forget to move it into evidence if you
12 want it.

13 EXAMINATION RESUMED BY MR. MCLEOD:

14 Q. All right.

15 A. Okay. These amounts are not computed up to today's
16 date. I decided from many years experience with the
17 IRS, and you can ask any other CPA about this, that
18 their method of computing penalties and interest they
19 have a proprietary program that they use. And you can
20 attempt to do it by the rules, but it never seems to
21 come out to exactly the same amount. So I made the
22 simplifying assumption in this case that I would just go
23 with what the IRS has put forth in their most recent
24 bill for the 2018 taxes. And if you'll look at the work
25 paper that looks like this, it ties the amounts on this

1 latest bill to the amount of tax penalties and interest
2 due supported totally by the IRS's bill. So it's all
3 right there. The pages behind this -- this gray sheet
4 is the latest one and then the pages behind that are a
5 previous bill from the IRS and from the South Carolina
6 Department of Revenue that was back in -- dated March of
7 2021. So basically if you combine those two you come up
8 with the figures that I have on my Appendix I and that
9 totals up to \$40,314. And I chose not to compute pre-
10 judgment interest because for one thing it's not the
11 final amount as of today. And this particular year is
12 still under appeal to try to get the penalties and
13 interest abated. So the way it works with the IRS you
14 can't pay the amount and then they give you a refund.
15 That just hurts your case as far as getting -- you just
16 never get any refund back. So the best thing to do is
17 just not to pay it and be hopeful about the appeals
18 process. So there again as a simplifying assumption I
19 didn't compute associated pre-judgment interest, but if
20 pre-judgment interest is allowed at some point that will
21 have to be computed.

22 MR. MCLEOD:

23 Okay. Your Honor, I'd offer this into evidence as
24 Exhibit 19.

25 THE COURT:

1 Any objection, Mr. Puriefoy?

2 MR. PURIEFOY:

3 No objections, Your Honor.

4 THE COURT:

5 All right. Thank you. So admitted without objection
6 Petitioner's Number 19.

7 (Court Reporter marks document,
8 Supporting Paper Work to Appendix I as
9 Petitioner's Exhibit Number 19.)

10 EXAMINATION RESUMED BY MR. MCLEOD:

11 Q. (Counsel reviewing documents.) I'm going to hand you
12 Exhibit 17. I'll give counsel one first. It's been
13 premarked as Exhibit 17. Can you tell me what this
14 document is?

15 A. It's an IRS Notice for taxes due for Florence Mensch for
16 the year 2018. It's a final balance due reminder and
17 notice of intent to seize or levy property.

18 Q. Can you just tell us the amount on that notice?

19 A. Right. It's \$92,845.98. The same amount that was on my
20 work paper I guess in Exhibit 16.

21 Q. Okay.

22 A. And of that \$63,431 is tax and the remaining \$29,414 are
23 penalties and interest.

24 Q. And on Exhibit 19 that we've just looked at on I think
25 it's page 2 you have a notice there.

1 MR. PURIEFOY:

2 Your Honor, we don't have Exhibit 19.

3 MR. MCLEOD:

4 This is Exhibit 19 she just marked it. That's all it
5 is.

6 EXAMINATION RESUMED BY MR. MCLEOD:

7 Q. Do you see that the IRS notice is dated April 5th, 2021?

8 A. Yes, I see it.

9 Q. Okay. And can you read the amount on that one?

10 A. It's \$91,367.34. And that same amount appears on page 2
11 of Trial Exhibit 17.

12 Q. And what is the date of that notice?

13 A. May 24, 2021. That's the date of Trial Exhibit 17.

14 Q. And on Trial Exhibit 19 these were you work papers that
15 we just admitted into evidence.

16 A. Oh, okay. The date that was -- the \$91,367 figure came
17 from that was dated March 15, 2021.

18 Q. And why is the amount different on that notice on
19 Exhibit 19 and Exhibit 17?

20 A. An additional 527 -- \$527 in interest and \$951 in
21 penalties had been accrued.

22 Q. Okay. And you said the date of that was May 24, 2021;
23 is that correct?

24 A. Yes.

25 Q. So has the amount increased since then?

1 A. Yes, because we're now August 17, 2021 so it would be
2 maybe as much as \$2,000 more.

3 Q. And will it continue to increase until --

4 A. Until it's paid, yes.

5 Q. Or how about an appeal?

6 A. Well, if -- if the appeal is successful then, if the
7 appeal is 100 percent successful, then only the amount
8 of the tax will be due which is \$63,431. That's an
9 absolute. That's what it is unless the IRS should later
10 examine the return and raise it, but that amount is
11 going to have to be paid.

12 Q. Yeah.

13 A. But the additional amount of penalties and interest
14 that's what is being appealed. And the basis for the
15 appeal is because this occurred in the year of death and
16 there was a change in the Personal Representatives. I
17 mean I think there's at least some chance that the
18 appeal will be successful.

19 Q. Are you aware of whether they have ever forgiven
20 penalties and interest in the past, the IRS?

21 A. On Florence Mensch's account, yes, they had in a prior
22 year. But their general policy is if you get -- you
23 kind of like get one free pass, but after that you don't
24 -- you have to pay the penalties and interest. They're
25 much less likely to allow it. You know this -- this

1 particular appeal, you know, you have some additional
2 like the change of the Personal Representative, the year
3 of death. That's sort of special case for income tax
4 so, you know, the appeal is not without -- totally
5 without merit, but its probability of success is
6 probably -- probably less likely than not. We'll just
7 have to see how it comes out.

8 Q. But in the meantime that amount will continue to
9 increase and --

10 A. Right.

11 Q. -- will not decrease until the appeal is done?

12 A. Is settled. Right.

13 Q. If it's successful it might be decrease, but it will
14 continue to increase; correct?

15 A. Right.

16 Q. Okay.

17 MR. MCLEOD:

18 And I would offer Exhibit 17 into evidence.

19 THE COURT:

20 Okay.

21 MR. PURIEFOY:

22 Your Honor, I'm not sure is this outside what we've
23 already stipulated to? I understood that all the
24 documents that are being referenced are already
25 stipulated in evidence beyond the Row 5 calculation that

1 was provided.

2 MR. MCLEOD:

3 It's just if you consider it to fall under the tax
4 returns. It's a notice related to the tax returns.

5 THE COURT:

6 I have that it's a Notice of 2018 Tax Return, but I
7 guess this a little different than that. But if you
8 don't have an objection just for the record make it
9 clear.

10 MR. PURIEFOY:

11 I don't have an objection, Your Honor.

12 THE COURT:

13 Okay. This will be moved into evidence as Exhibit 17
14 without objection.

15 (Introduction of previously marked document,
16 IRS Tax Notices as
17 Petitioner's Exhibit Number 17.)

18 EXAMINATION RESUMED BY MR. MCLEOD:

19 Q. I had it marked as Exhibit 17 already.

20 A. Which copy is this? Is that your copy?

21 Q. Yeah, that's your copy. You can keep that.

22 A. Are you sure?

23 Q. Yeah, in case I refer to it. So in your Appendix D you
24 come up with a subtotal. Can you please read that for
25 The Court? It's in Row 6 of your Expert Report,

1 Appendix D.

2 A. Right. The subtotal of losses, that is the total of
3 Rows 1 through 5 on Appendix D, is \$1,062,495 and the
4 associated pre-judgment interest would be \$365,276.

5 Q. Okay. Can you turn to Appendix N? Can you just
6 describe what Appendix N is?

7 A. Okay. On your copy it might have an incorrect label.

8 Q. Okay.

9 A. Okay. The proper label is Summary of Losses Under the
10 2nd Alternative Computation. And lines 1 through 6 are
11 exactly the same as Appendix D that we just ran through.

12 Q. Okay.

13 A. Totally the same.

14 Q. And what is the difference between Appendix N and
15 Appendix D?

16 A. Okay. In Appendix D I include a figure for accrued
17 unpaid rent on line 7 of Appendix D. In Appendix N I
18 omit that line item. That's the only difference between
19 Appendix D and Appendix N. In Appendix N there's no --
20 no accrued rent. There is however another line item
21 below line item 6 that we haven't discussed yet.

22 Q. We will discuss that in a minute, but Appendix K, can
23 you turn to Appendix K?

24 A. Okay. Appendix K is also the same as Appendix D for
25 lines 1 through -- for Rows 1 through 6, but then it

1 deviates from both Appendix D and Appendix N in that
2 there is accrued unpaid rent on Row 7 and a credit for
3 property taxes and mortgage payments on Row 8.

4 Q. Okay. So the difference between N -- or actually D and
5 K is that you are giving him -- or you are crediting
6 disbursements made for property tax and mortgage
7 payments against the accrued unpaid rent; is that
8 correct?

9 A. That's correct. And actually in Row -- Row 8 of
10 Appendix K there is a typo in Row 8 in the bottom line
11 of the description column. It should read instead of
12 Row 6 it should be Row 7. Just to eliminate any
13 confusion. In other words, the -- the items on Row 8
14 credit against the items on Row 7. And the assumption
15 here is that the items on Row 8 were for property tax
16 and mortgage payments that we could identify by
17 reference to the bank statements.

18 Q. So that credit for disbursements, that line 8, are those
19 amounts that you could actually see in the bank
20 statements were made for the property taxes and the
21 mortgage payments on 512 New Tarleton?

22 A. Right. That were made by -- out of Sterling Mensch's
23 account.

24 Q. And so --

25 A. So I mean the economic approach to that is on line 7 we

1 have imputed rent and on line 8 we have defacto rent in
2 the form of property taxes and mortgage payments paid by
3 Sterling Mensch.

4 Q. Okay. And you mentioned that it was paid from
5 Sterling's account. Is that the account, Bank of
6 America account ending 3259?

7 A. That is.

8 Q. Okay. And is that the same account where the funds of
9 Florence Mensch's Bank of America accounts were
10 transferred to?

11 A. Yes.

12 Q. And as you reviewed the account statements for Sterling
13 Mensch ending in 3259, did the some the funds that he
14 transferred from Florence Mensch go to pay some of the
15 mortgage payment and taxes?

16 A. I did not make that analysis line by line, but, you
17 know, once -- once the funds go into Sterling's account
18 then they just become part of a whole. It's like
19 pouring water into a bathtub. It's all there and, of
20 course, once it's there it's used for whatever goes out
21 of the fund, so.

22 Q. So after it leaves Florence's account ending in 7059,
23 her Bank of America account, and goes to Sterling
24 Mensch's account it's pretty difficult once it gets
25 there to see what it's being used for; is that correct?

1 A. Right. Right. It's very -- it would require some
2 speculation to say. There were no transfers that I
3 could find out of Florence's account into Sterling's
4 account in the exact same amount of either the property
5 taxes or the mortgage payments that I can recall.

6 Q. I'm going to turn to Appendix M and hold that thought.

7 A. Appendix M.

8 Q. Appendix M.

9 A. Okay.

10 Q. All right. And tell me what Appendix M is, please.

11 A. Okay. These are potential credits to be applied against
12 accrued rent and they consist of, these potential
13 credits consist of mortgage payments to Park Sterling
14 Bank and South State Bank and property taxes on the 512
15 New Tarleton house for Greenville County real estate
16 tax.

17 Q. And so these amounts and payments were they paid out of
18 Sterling's account, his 3259 account?

19 A. Yes.

20 Q. And when you compared Appendix E, which is the
21 unexplained outgoing cash transfers for the benefit of
22 Sterling Mensch is there -- are any of those transfers,
23 do any of them match up to the mortgage payments that he
24 made?

25 A. I haven't -- I haven't done that, but I can do it now.

1 Q. Please -- please review the document and let me know
2 when you're ready.

3 A. (Witness reviewing documents.) Okay. On June 10, 2013
4 there was a \$2,580 transfer from Florence to Sterling
5 and three days later there was a mortgage payment made
6 by Sterling of \$1,351.68.

7 Q. And which line on Appendix E are you referring to?

8 A. Three.

9 Q. So you're referring to the June 10th, 2013 there was a
10 transfer of 2,580 and then on Appendix M, which one are
11 you referring to?

12 A. I'm referring to -- there's no line numbers there, but
13 it's the transfer about eight lines down on June 13,
14 2013, three days later.

15 Q. Do those match up?

16 A. No, the transfer -- the transfer into Sterling's account
17 was larger than the amount --

18 Q. Yeah.

19 A. -- transferred -- amount used to pay the mortgage
20 payment.

21 Q. And what I'm asking just to clarify is do any of the
22 payment amounts match the amounts transferred from
23 Florence's account?

24 MR. PURIEFOY:

25 Your Honor, I have to object to speculation unless we're

1 going to go line by line through every single mortgage
2 payment verse every single transfer, which I thought we
3 were trying to avoid doing in this particular instance.

4 THE COURT:

5 Okay. I think, Mr. McLeod, I think and maybe counsel
6 will stipulate to this, by looking at this in this
7 fashion you're trying to make the point that the
8 transfers made by Respondent from his mother's account
9 into his account those transfer don't match dollar
10 amounts, any of the amounts that he paid from his
11 account to Park Sterling Bank and South State Bank; is
12 that --

13 MR. MCLEOD:

14 That's correct, Your Honor.

15 THE COURT:

16 So further supporting -- so the witness' testimony that
17 once you put funds from Ms. Mensch's account into a bank
18 account owned by Sterling and they become commingled
19 with his own funds it becomes more difficult to account
20 for Ms. Mensch's funds were used?

21 MR. MCLEOD:

22 Correct, Your Honor.

23 THE COURT:

24 So if that's the point you're trying to make in getting
25 him to make these comparison I think we can make a

1 finding of that without an objection. Is that --

2 MR. PURIEFOY:

3 Absolutely, Your Honor.

4 THE COURT:

5 Okay.

6 MR. PURIEFOY:

7 Those figures were included in the 820,000 that we
8 stipulated to, so.

9 THE COURT:

10 Okay. All right. With that we can go to the next
11 question.

12 MR. MCLEOD:

13 All right.

14 EXAMINATION RESUMED BY MR. MCLEOD:

15 Q. Can you tell me the dates on Appendix M? The first
16 mortgage payment you list and the last mortgage payment?

17 A. The first mortgage I list was on June 19, 2012 to Parks
18 Sterling Bank and the last mortgage payment, which was
19 made to South State Bank, was on November 7, 2019.

20 Q. And as to the taxes on page 39 of Appendix M can you
21 read the amount of the taxes starting at, the date is
22 February 11, 2014?

23 A. Right. On February 11, 2014 there was \$6,772.37 paid.
24 On March 2nd, 2015 there was \$6,669.33 paid. On April
25 18, 2016 there was \$6,587.25 paid. On February 8, 2017

1 there was \$6,592.11 paid. On August 21, 2018 there was
2 \$6,940.89 paid. And on April 16, 2019 there was
3 \$6,946.50 paid.

4 Q. Are those amounts higher than you would think property
5 taxes would be?

6 MR. PURIEFOY:

7 Objection, Your Honor. Speculation to ask this witness.

8 THE WITNESS:

9 Well --

10 THE COURT:

11 Just a second, Mr. Markel. Let him make his objection.

12 MR. PURIEFOY:

13 The objection calls for speculation. Your Honor, if
14 there's a document that Mr. Markel can refer to directly
15 to refute the numbers that are contained in his Report
16 he certainly can do that. Beyond that it would be
17 speculation as to what he believed what these property
18 taxes should be every year.

19 THE COURT:

20 I will -- Mr. McLeod, could you kind of lay more of a
21 foundation as to his --

22 EXAMINATION RESUMED BY MR. MCLEOD:

23 Q. Yeah.

24 A. Well, these -- these are the actual amount of the tax
25 due for those years. I've eliminated penalties that

1 were paid on these dates. Like for example, taxes were
2 paid on April 18, 2016. Well, by that time you've got a
3 15 percent penalty riding on top of your tax plus a \$40
4 fee, but I've eliminated those. I'm not giving credit
5 for penalties paid. This is just a base amount of the
6 tax. I went to the Greenville County Website and looked
7 up what the amount of the tax was for that year and I
8 did not show any penalties paid though, obviously, like
9 there's one area he did pay till August. You know it
10 was due in January. So, you know, absolutely there
11 would have been penalties, but I've struck those
12 penalties out.

13 Q. And also I was alluding to the penalties, but also what
14 rate are these taxes being assessed?

15 A. Okay. They're assessed at the rate of six percent.

16 Q. And why are they assessed at six percent?

17 A. Because this is property that is not occupied by the
18 owner and therefore not eligible for the homestead
19 exemption where the rate would be I understand is three
20 percent. So tax would be half, approximately half of
21 what is shown here for each of the years.

22 Q. And who was the owner of record for these years?

23 A. Florence Mensch. The house is titled -- was titled to
24 her until it was sold recently.

25 Q. Okay.

1 A. But she did not occupy it, so it was as if it were
2 rental property. You know it was taxed at a rate that
3 rental property would be taxed at.

4 Q. And do you know who was occupying the property?

5 A. Sterling occupied the property throughout this --
6 throughout this time frame, 2013 through 2019.

7 Q. Did he occupy it prior to 2014?

8 A. I understand that he started occupying it as soon as it
9 was built, which it was completed according to the tax
10 records sometime in 2007. So he occupancy goes all the
11 way back to 2007.

12 Q. So were property taxes at a rate of six percent from
13 2007 to 2000 -- I guess to present or 2020?

14 A. I didn't observe the tax records all the way back to
15 2007, but since -- my understanding is Ms. Mensch never
16 lived in the house, so it would -- if it got the
17 homestead exemption rate it was not correct.

18 Q. All right.

19 A. But I would assume that since it was taxed at the rental
20 property rate later on in the '13 through 19 period it
21 was probably taxed the same way before that.

22 Q. Okay. So your last line of property tax is on
23 4/16/2019?

24 A. Right.

25 Q. Florence Mensch had already passed away at that point;

1 right? Is that correct?

2 A. Yes. Well, what was paid on 4/16/2019 would have been
3 2018 property taxes.

4 Q. Right. And to be clear on your Appendix M in your
5 Report you were only giving him credit towards accrued
6 rent; is that correct?

7 A. Yes.

8 MR. PURIEFOY:

9 Objection, Your Honor. We're speaking about rent again.
10 I believe there's a limited instruction that this is not
11 to be presented for purposes of offsetting rent against
12 any damage figure. It's simply supposed to be based on
13 the Report that he produced without any reference being
14 made to this rent issue.

15 THE COURT:

16 You have a standing objection and he has the ability to
17 ask him under an offer of proof, so I'll take for that
18 purpose only.

19 MR. PURIEFOY:

20 All right.

21 EXAMINATION RESUMED BY MR. MCLEOD:

22 Q. And we talked about your Appendix N. Can you turn to
23 that for me?

24 A. Okay.

25 Q. So in this Appendix N you don't have any allocation for

1 any kind of rent and you also don't give any offset
2 against any kind of rent; is that correct?

3 A. There's no rent imputed and no credits against the rent
4 because the whole idea behind the -- the credits were
5 that they would be considered defacto rent, but in all
6 cases if you add those two things together they didn't
7 come up to what the market rent would have been for that
8 property. So the only reasonable way economically to
9 treat that was to impute market rent and then -- and
10 then credit --

11 MR. MCLEOD:

12 Your Honor, this is under proffer.

13 THE COURT:

14 Yes, so noted.

15 A. And credit these items that might be considered to be
16 defacto rent even though they were below -- they didn't
17 come up to market and in order to -- to be properly
18 managed they needed to be at market level rents. So
19 there's a real economic reason for doing it this
20 particular way.

21 Q. Okay. And can you detail for me how you came up with
22 your rent amount, and we're under proffer? How did you
23 come up with your rent amount?

24 A. Sure. That would be Appendix J. Okay. In a nutshell
25 what I did was I looked on Zillow earlier this month and

1 found a rental house in their neighborhood that was
2 somewhat smaller. And I took the rent, the actual rent
3 on that house on Zillow, Zillow website, gives, you
4 know, market information on sales prices of houses as
5 well rental prices. And I compared the square footage
6 of the house on Zillow to the 512 New Tarleton Way house
7 and upgraded it to that amount of rent per square foot
8 to yield a figure of -- (witness reviewing exhibit.)
9 Bear with me a minute. The current monthly that house
10 would rent today, the rental rate, would be according to
11 the market \$2,084 a month. Okay. There's a -- the
12 Federal Reserve Bank of St. Louis publishes a Consumer
13 Price Index for all urban consumers for rent of shelter
14 in the south. It has indexes going back to the 1960s.
15 And I applied that index going backwards to the original
16 2,084 number and came up with rental rates as I -- as I
17 stated in paragraph 22 of my Report of \$2,007 in 2020,
18 \$1,944 in 2019 and so on back to year 2013 of \$1,637 and
19 so on. They're all listed in paragraph 22. And then I
20 on Appendix J I plugged those rental rates for each of
21 the rent due dates starting in January of 2008. I
22 started there because we knew the house by reference to
23 the property tax records under Greenville County Website
24 the house was built and occupied. Probably earlier than
25 that, but at least by then so that's when I started. I

1 plugged in year by year the amount of the monthly rents
2 and added -- added those up in the second column of
3 Appendix J and they added up to over that January 2008
4 to August 2020 they added up to \$259,560. The pre-
5 judgment interest that would be associated with that
6 based on the days outstanding up to today would be
7 \$132,223.

8 Q. And can you read paragraph 22 of your affidavit and kind
9 of basically summarize it?

10 A. Okay. Row 7 of Appendix D and that would also be Row 7
11 of Appendix K comprised accrued unpaid rent by Sterling
12 Mensch, III, for his occupancy of Ms. Mensch's house at
13 512 New Tarleton Way from January of 2008 through August
14 -- to August 2020. It was represented to me by Shauna
15 Waddell that Sterling Mensch lived in Ms. Mensch's house
16 from the time construction was completed sometime in
17 2007 until August of 2020. And I corroborated Shauna
18 Waddell's statement by reference to the Greenville
19 County tax records. During the time frame 2007 until
20 her death in 2018, Ms. Mensch because of her dementia
21 was confined to memory care units which provided her
22 lodging, meals and personal care. Ms. Mensch herself
23 never resided in the house. Based on the Bank of
24 America bank account records provided to me of both and
25 Ms. Mensch and Sterling Mensch, III no rent was paid by

1 Sterling Mensch, III to Ms. Mensch during the June 2012
2 to December 2019 time frame. And a note aside that time
3 frame is the time frame for which I had bank account
4 records available. Moreover Ms. Mensch's tax returns
5 for each of the years made available to me, that is the
6 years 2011 through 2018, showed no rental income. That
7 would have had to have been shown on Schedule E of her
8 Form 1040 for each one of those years if there was any
9 rental income. Therefore, for the purposes -- for the
10 purpose of this exercise I assumed Sterling Mensch, III
11 paid no rent to occupy the house at 512 New Tarleton Way
12 in any of the years 2008 through 2019, nor for the time
13 frame of January through August 2020. I also determined
14 by reference to published rental rates of similar
15 properties in the area, as well as to the market value
16 of the property per the Greenville County Property Tax
17 Records that a current, that is August 2021, monthly
18 rental rate of \$2,084 for the house would be reasonable.
19 Working backward in time I then assigned a monthly
20 rental rate to each of the years in question using the
21 statistic Consumer Price Index for all urban consumers
22 rent of shelter in the south for each month during the
23 years 2007 through 2020. That should read 2008 to 2020.
24 As published by the Federal Reserve Bank of St. Louis.
25 Those monthly rental rates for each year were then

1 computed as follows. Do I need to read all those?

2 Q. No, you don't.

3 A. As shown in Appendix J to this Report I then computed
4 the accrued unpaid rent owed by Sterling Mensch, III for
5 the time frame of January 2008 through August 2020 to be
6 \$259,560. Also as shown in Appendix J the associated
7 pre-judgment interest on the accrued unpaid rent was
8 computed to be \$132,223.

9 Q. All right.

10 MR. MCLEOD:

11 And we'll end the proffer.

12 THE COURT:

13 Okay.

14 Q. On Appendix N let's go to your Row 7 --

15 A. Okay.

16 Q. -- of the Expert Report. Tell me what Row 7 is.

17 A. (Witness reviewing exhibit.) Okay.

18 Q. All right. Can you explain what Row 7 is?

19 A. Okay. This would also be Row 12 in my Appendix K. And
20 that's why I'm having trouble finding this because my
21 references are to Appendix K. I've found it now. Okay.
22 These are losses that I've computed that were suffered
23 by the Estate as a result of the failure of Sterling
24 Mensch, III to diversify Ms. Mensch's assets. Okay.
25 This line item, and I have a very extensive Appendix O.

1 Q. Yeah. And I'll hand you --

2 A. That explains this in great detail.

3 Q. Yeah.

4 A. I'm going to try to summarize.

5 Q. And first, John, I'll hand you what's been premarked as
6 Exhibit 2 and I believe this has been stipulated into
7 evidence. These are just GE Mutual Funds State Street
8 statement. This statement is from UBS, State Street and
9 GE Mutual Funds. So I'll hand you what's been marked as
10 stipulated into evidence and marked as Exhibit 2.

11 THE COURT:

12 Thank you.

13 (Introduction of previously marked document,
14 UBS, State Street, GE Mutual Fund Statements as
15 Petitioner's Exhibit Number 2.)

16 Q. All right. And you said you have sort of an outline in
17 your affidavit for analysis and I'm going to let you go
18 through that and you can use Exhibit 2 as you need to
19 explain certain things.

20 A. Okay. You want to turn to my Appendix 0 in my Report.

21 Q. Okay.

22 A. The proposition behind this is that Sterling Mensch was
23 responsible as fiduciary for Ms. Mensch's retirement
24 account investments. My contention is that he violated
25 one of the foundational principles of investment

1 management. It's so well ingrained in investment
2 management accounting, finance, economics it's just
3 become common knowledge that the way you manage an
4 account prudentially is to diversify the assets. I
5 point out in here three different texts that were
6 written decades ago that point out what a great tool
7 this is to prudentially manage investments. One writer
8 points out that this is the way that -- this is called
9 the insurance principle, this is the way the insurance
10 companies make money. They insure a large group of
11 people or events and the laws of probability are that
12 only a few of them will come to pass. That the more --
13 the more you spread out your investments is the safer
14 they will be. I've even seen this applied in
15 agriculture. I did a lot of work for a very large
16 farmer in the Low Country or in the Pee Dee and he had
17 his -- he had 7,000 acres of high-yield crops, but the
18 acreage was stretched out over a 160 mile line so that
19 if there were tornados, torrential rains he wouldn't be
20 totally wiped out. It was a very prudent thing to do.
21 He managed to acquire this -- these different tracts of
22 property over time. Okay. So having established that
23 diversification is just a foundational principle I then
24 set out to see what would happen if Sterling Mensch had
25 diversified Ms. Mensch's investment accounts at certain

1 points in time. This is one of those things where it's
2 difficult to pinpoint the exact amount of a loss. But
3 to not recognize that there's a loss from lack of
4 diversification is just by default to make it zero. So
5 I felt like I had to approach it in a reasonable way to
6 come up with some quantification of the amount of
7 losses. So what I did -- well, first I should point out
8 how -- how seriously undiversified Ms. Mensch's
9 investments were. That at the end of the year 2015 her
10 -- her retirement investment account 21 percent of it
11 was in a mutual fund which by definition is diversified.
12 The remaining 79 percent of her funds were in one spot,
13 General Electric. At the end of 2016 nine percent of
14 her holdings were in a mutual fund, diversified. And
15 the remaining 91 percent was in one stock, General
16 Electric. Then at the end of 2017 her portfolio, her
17 investment portfolio, consisted of two percent of the
18 dollars in a mutual fund, diversified, and the other 98
19 percent in one stock, General Electric. Now, over the
20 last 150 years General Electric has been a very
21 successful company, but there have been times during
22 that 150 years that it didn't do so well. So, of
23 course, the stock price dropped. But still you get back
24 to the principle of diversification. It doesn't matter
25 how good a company is, whether it's Coca Cola, or

1 General Electric, or General Motors, or Exxon, they've
2 all been around for 100 years, it's still not a -- it's
3 still a terrible idea to not diversify out of those
4 holdings. So when I'm making value judgment on the
5 viability of having investment in General Electric I
6 just bypass that totally. I just said that as of an
7 arbitrary date of where we had data available, December
8 31, 2015, that the General Electric stock would have
9 been liquidated as of that date and since this is in a
10 retirement account there's no current tax effect or
11 capital gains liability attached to it and at that time
12 the account would be rebalanced. Investment advisors
13 call this being rebalancing the account into a -- into a
14 fund that would be 60 percent equity securities and 40
15 percent very safe debt securities like Treasury Bonds.
16 And so I used the Elfun Fund Mutual Fund, which she
17 already had investments in and I had the share price
18 already there. So I hypothetically put enough of the
19 receipts from selling the General Electric shares at
20 December 31, 2015 into additional shares of the Elfun
21 Fund Mutual Fund to bring that segment of the portfolio
22 to 60 percent equities. The remainder was put into
23 hypothetically U.S. Treasury Bonds. Okay. And we set
24 that dollar amount. Then I brought that portfolio
25 forward to August 12th, 2021, which was the most recent

1 -- the most recent contemporaneous date to this day that
2 I could find and revalued this portfolio. I assumed
3 that the Treasury Bonds would not change in value. It
4 would be like cash and it would just stay the same.

5 MR. PURIEFOY:

6 Your Honor, I apologize but I have to object. I believe
7 we're getting so far into the realm of speculation at
8 this point. This line of testimony I believe needs to
9 be centered on whatever the value of the account was and
10 its decrease in the value to the extent that we're now
11 presenting testimony based on what could have been. The
12 Courts have made clear that is by its very definition a
13 speculative damage. For The Court to consider that I
14 believe would be improper. I believe that Mr. Markel
15 has indicated on a number of occasions that we're
16 assuming we're using Treasury Bonds as the -- the --
17 just as the baseline for what could have been. I think
18 that by it's very definition is speculative damages and
19 cannot be testified to. He can certainly testify to the
20 decrease in value that he alleges occurred to the GE
21 Mutual Fund, but I think it's improper to testify about
22 what could have potentially been had had the stars
23 aligned in a perfect scenario.

24 THE COURT:

25 Mr. McLeod.

1 MR. MCLEOD:

2 I think Mr. Markel --

3 THE WITNESS:

4 I can speak to that.

5 THE COURT:

6 Excuse me, sir. Would you not speak while the attorneys
7 are speaking. Thank you. Mr. McLeod.

8 MR. MCLEOD:

9 Yeah, I think he's getting a way to look at the damages.
10 I think he's already said it is hard to quantify, but --
11 but he's offering his opinion on how to quantify it and
12 he's an expert, so he can give that opinion. He's
13 trying to give The Court a way to quantify the damages
14 because like he said they're not zero. They're
15 something. We have to quantify them somehow.

16 THE COURT:

17 Mr. Puriefoy, I'm going to overrule your objection. His
18 testimony he has said what assumptions he's making as an
19 expert witness. He can make certain assumptions. His
20 testimony can be impeached on cross-examination and I
21 have to determine the weight of that testimony, but it's
22 very proper for him to discuss the Prudent Investment
23 Rule which is the standard which The Court uses for all
24 fiduciaries. So he is well familiar with this in his
25 line of work. He's testified about his expertise, so

1 noting your objection I will overrule it.

2 MR. PURIEFOY:

3 Thank you, Your Honor.

4 EXAMINATION RESUMED BY MR. MCLEOD:

5 Q. All right. You continue, John.

6 A. Yeah, I should have mentioned at the beginning that I
7 based this on -- on methodology that's been approved in
8 many court cases. It actually has a name. It's called
9 the Yardstick Method of computing losses. And this is
10 what I'm using. It's not something that John Markel
11 made up. This is something that experts like me have
12 been using for decades. It's published in -- the
13 methodology is published in a number of learned
14 treatises. In certain situations maybe the underlying
15 facts are not as black and white as you would like to
16 have them, but that doesn't mean that you can't make an
17 estimate of losses based on reasonable assumptions and
18 that's what the Yardstick Method is all about. It's
19 widely used in such things as intellectual property
20 damages, in commercial damages. It's absolutely not
21 speculative.

22 Q. Okay. And explain the Yardstick Method a little bit
23 more now that you said that term. Can you explain it
24 one more time?

25 A. Well, if you take -- you take something -- you make an

1 assumption as I have about the -- about the composition
2 of this portfolio and then you compare it to a Yardstick
3 metric that's out there in the market. It's not made
4 up. The actual market prices of these securities on a
5 certain date for a certain security.

6 Q. Okay. And in your explanation can you -- there's a
7 chart on page 42. I think you basically went through
8 it.

9 A. Correct.

10 Q. I want to ask you about that.

11 A. Okay.

12 Q. So under percentage of total holdings you're detailing
13 the amount that was held in GE stock and that the amount
14 that was held in Elfun; is that true?

15 A. Yes.

16 Q. And can you tell me the date of the first block?

17 A. It's December 31, 2015. That was the date of the
18 statements from Elfun and from General Electric.

19 Q. Okay.

20 A. I've got them right off of statements, which of course
21 are part of Exhibit -- Trial Exhibit 2.

22 Q. Yeah. And where is that shown on Exhibit 2?

23 A. Okay. Okay. The total figure of \$1,321,717.40 is shown
24 on the very first page.

25 Q. Is that the GE stock?

1 A. Well, no, it's for both Elfun and GE.

2 Q. Okay.

3 A. It's all just right there on the first page.

4 Q. Okay. And that's Exhibit 2. What is the period for
5 that statement?

6 A. The entire year of 2015. But this of course is as of
7 one day.

8 Q. Okay.

9 A. December 31, 2015.

10 Q. Okay.

11 A. And then the statement of course shows transactions
12 during that year.

13 Q. Okay. And then so below that it shows the Elfun Trust
14 Fund and the GE stock. How much is the Elfun Trust Fund
15 at that point?

16 A. As of December 31, 2015 it was \$279,819.11.

17 Q. Okay. And, again, how much was the GE stock?

18 A. \$1,041,898.28.

19 Q. Okay. And I'm back to page 42 of your Report. What is
20 the percentage there between GE stock and the Elfun
21 Mutual Fund?

22 A. It's 21.17 percent Elfun, 78.83 percent General
23 Electric. The first page of Exhibit 2 has got a far
24 right-hand column. It's very confusing. It says
25 percent of holdings, 100 percent and 100 percent.

1 That's just wrong. You actually compute the holdings.
2 They would be my percentages on shown on page 42 of my
3 Report.

4 Q. Okay. And what are the number of shares of Elfun in
5 December 1st, 2015?

6 A. There were 5,125.831 shares of Elfun.

7 Q. Okay. And how many shares of GE were there on December
8 1st?

9 A. 33,440 -- 33,447.778.

10 Q. Okay. Then the next column you have 12/30/2016.

11 A. Right.

12 Q. On Exhibit 2 where are those amounts shown?

13 A. Okay. It's not -- it's not directly -- can't you get
14 directly off. You have to do some addition.

15 Q. Okay. Well, just tell us on your Report based on your
16 review what is the number of shares on 12/30/2016?

17 A. If you add up -- if you go down to the bottom of the
18 page for Elfun Trust they are listed in three different
19 components. See down at the bottom there's three
20 different account numbers?

21 Q. Right.

22 A. You add all those up. The number of shares of the
23 market value equals what I've got in the second chart on
24 page 42 of my Report.

25 Q. Okay. And if you total up the number of shares on that

1 Exhibit 2 page two?

2 A. A total of 1,659.735 shares of Elfun and the market
3 value of as of that day was \$88,347.69.

4 Q. And what is the market value of GE on that day?

5 A. Okay. For that -- for that you have to go to the next
6 page, which is a UBS statement. Halfway through the
7 year of 2016 the GE stock was transferred from its
8 former resting place at GE Mutual Funds to UBS. And if
9 you look about three-quarters of the way down the page
10 it says common stock. And it's all General Electric,
11 \$889,715.20. And that consisted of 28,472 shares. So
12 there have been some liquidating of both these accounts
13 during the year 2016.

14 Q. And which one was liquidated more?

15 A. Well, percentage-wise it was Elfun Trust. It went from
16 5,100 shares to 1,660 shares.

17 Q. So the more diversified mutual funds were sold; is that
18 correct?

19 A. Right.

20 Q. There was more of the Elfun Mutual Funds sold than the
21 GE stock in 2016; is that correct?

22 A. Well, if you take percentage of the number of shares,
23 yeah.

24 Q. Okay.

25 A. That's why the diversification of the portfolio declined

1 and falling so much.

2 Q. And at that point in 2016 what was the percentage of
3 total holdings allocation between General Electric and
4 Elfun Trust Mutual Funds?

5 A. About nine percent Elfun and about 91 percent General
6 Electric.

7 Q. Okay. And then the next year 12/29/2017 how many shares
8 of Elfun are there now?

9 A. 166.

10 Q. Okay. What's the total market value of those holdings?

11 A. \$10,013.

12 Q. Okay. On 12/29/2017 how many shares of General Electric
13 are there?

14 A. The same number as at the end of the prior year, 28,472.

15 Q. Okay. So again the more diversified mutual fund was
16 sold; is that correct?

17 A. That's correct.

18 Q. And the General Electric stock was not sold; is that
19 correct?

20 A. Right. So you had an even more egregious pattern of
21 diversification or lack of diversification.

22 Q. What is your percentage of total holdings in 2017?

23 A. About two percent in Elfun and about 98 percent in
24 General Electric.

25 Q. Is that a diversified portfolio?

1 A. Absolutely not.

2 Q. What is the amount of the GE stock in 2017?

3 A. The dollar amount?

4 Q. The dollar amount, market value of holdings?

5 A. \$496,836.40.

6 Q. Okay. And tell me again what was it in 2015?

7 A. Well, in --

8 Q. On December 1st, 2015?

9 A. It was a different number of shares.

10 Q. Okay. Well, what's the market value of holdings on
11 2015?

12 A. \$1,041,898.

13 Q. Okay. What's the market value in 2017 again?

14 A. \$496,836.

15 Q. Okay. So it went -- nearly got cut in half; is that
16 correct?

17 A. Right.

18 Q. Okay. Can you calculate, probably not in your head, you
19 need a calculator, but the difference between
20 1,041,898.28 minus 496,836.40?

21 A. (Witness pausing.)

22 Q. I know you need paper and pen. I'm not going to do that
23 to you, but I think it's 545,061.88. Does that sound
24 right?

25 A. That should be pretty close.

1 THE COURT:

2 Mr. McLeod, I'm going to interrupt right now. I don't
3 how much longer you have but it's getting close to
4 lunchtime or a little past. Do you know how much longer
5 you need this witness before we can break for lunch?

6 MR. MCLEOD:

7 It might be a little longer, but I can close out this
8 pretty quickly.

9 THE COURT:

10 Okay. Why don't you do that and then we can break for
11 lunch and come back?

12 MR. MCLEOD:

13 All right.

14 THE COURT:

15 Okay.

16 MR. MCLEOD:

17 So I'm just going to hand him an exhibit. This is
18 Discovery Responses.

19 EXAMINATION RESUMED BY MR. MCLEOD:

20 Q. All right. John, I'm going to had you Exhibit 20, which
21 we've stipulated to, Discovery Responses.

22 MR. MCLEOD:

23 And this has been stipulated into evidence.

24 THE COURT:

25 All right. Thank you, sir.

1 MR. MCLEOD:

2 And that's Exhibit 20.

3 (Introduction of previously marked document,
4 Respondent's Responses to
5 Petitioner's First Set of Interrogatories as
6 Petitioner's Exhibit Number 20.)

7 Q. All right. John, can you read, there's no page numbers
8 on this, but it's number -- these are -- can you tell me
9 what this is first?

10 A. It's labeled Respondent's Responses to Petitioner's
11 First Set of Interrogatories.

12 Q. Okay. Can you read number 23, Interrogatory 23?

13 A. It says, "Describe in detail the reason you kept a large
14 proportion of Florence Mensch's assets in GE stock;
15 provide an explanation why the stock was never sold as
16 it continued to decline; and list all financial
17 advisors, accountants or any other advisor that you
18 sought financial advice from concerning the GE stock or
19 as to Florence Mensch's assets."

20 Q. And can you please read the response to Interrogatory
21 23?

22 A. "Florence Mensch's assets were always in the General
23 Electric Pension Fund. General Electric discontinued
24 controlling pension funds and transferred all of the
25 General Electric funds to the UBS account where UBS had

1 control over the General Electric Pension Fund.

2 Respondent tried numerous times to sell the General
3 Electric Pension Fund, but was stopped by UBS because he
4 was not Florence Mensch. Respondent called UBS numerous
5 times and produced his Power of Attorney to UBS, but UBS
6 refused to sell the stocks because he was not the listed
7 account holder Florence Mensch Respondent did not seek
8 financial advice from UBS or any other investors because
9 UBS was in charge of the account and Respondent thought
10 UBS would act in a way that was best for the account."

11 Q. Okay. In your experience does a financial institution
12 prevent you from selling stock?

13 MR. PURIEFOY:

14 Objection. Objection, Your Honor, that is speculation.
15 Unless he's able to ask a question as to whether or not
16 Mr. Markel has personal knowledge as to how this
17 particular account was managed his general knowledge
18 about how some accounts are oftentimes run is
19 speculation and cannot be permitted for purposes of this
20 line of testimony.

21 THE COURT:

22 You need to lay some foundation as to how he knows this
23 information, Mr. McLeod.

24 MR. MCLEOD:

25 Thank you, Your Honor.

1 EXAMINATION RESUMED BY MR. MCLEOD:

2 Q. Were you aware that Sterling Mensch had a Power of
3 Attorney?

4 A. Yes.

5 Q. Have you ever seen that Power of Attorney?

6 A. Yes.

7 Q. Does it contain the power to sell her assets?

8 A. I don't recall.

9 Q. You don't recall. Okay.

10 A. But I could refer to it I mean.

11 Q. Yeah. I don't have it right off the bat, but let me
12 see.

13 A. I have a copy in my work papers.

14 Q. (Counsel looking for Power of Attorney.)

15 THE COURT:

16 Mr. McLeod, are you looking for the Power of Attorney?

17 MR. MCLEOD:

18 Yes, ma'am.

19 THE COURT:

20 I've got one right here.

21 MR. MCLEOD:

22 You've got one. Can we refer to that?

23 THE COURT:

24 Let Mr. Puriefey see that. I've got one little
25 paragraph highlighted in the back.

1 MR. MCLEOD:

2 Thank you, Your Honor.

3 MR. PURIEFOY:

4 Your Honor, before we get too far down this road I just
5 want to ensure -- again to renew my objection insomuch
6 as the Power of Attorney speaks to the ability to sell
7 assets. The question presented was are you familiar
8 with how this particular --

9 THE COURT:

10 Yes. He's got show how he knows -- if you're going to
11 get him to dispute what the Respondent has said in the
12 Interrogatories you've got to show how he knows -- how
13 he knows -- if he is disputing that he's got to show how
14 he knows what UBS can or can't do either based on some
15 accounting principle or some law or some -- you know,
16 some sort of financial regulations or something that
17 would -- he could testify to since that's his area of
18 expertise to say this institution can't refuse someone
19 who has authority to do this based on regulation number
20 so and so, so and so. But I think we all know that the
21 Power of Attorney gives Mr. Sterling Mensch the
22 authority to manage her property in very broad terms.
23 The question here is whether or not the management was
24 done in a prudent fashion. And so if you're going to
25 use this response by the Respondent to question about

1 his management of her portfolio and he's in his response
2 is shifting the -- he is saying it's not my fault. It's
3 UBS. They wouldn't honor the Power of Attorney and they
4 wouldn't let me do and they wouldn't let me do that.
5 And if you're trying to get your expert to say, "Well,
6 no, that's not true," you've got to lay some foundation
7 of how he knows that UBS can't do what Mr. Mensch has
8 said that they would not permit him to do.

9 MR. MCLEOD:

10 Okay.

11 MR. PURIEFOY:

12 Thank you, Your Honor.

13 MR. MCLEOD:

14 Okay. So we don't need to reference it. I think we all
15 know that.

16 THE COURT:

17 All right. It's here if you need it.

18 MR. MCLEOD:

19 All right.

20 EXAMINATION RESUMED BY MR. MCLEOD:

21 Q. On the GE -- can you turn to Exhibit 2? The GE Mutual
22 Funds on the first page. The first page of Exhibit 2.

23 A. Okay.

24 Q. Do you know what type of account this GE Mutual Funds
25 account is?

1 A. I don't know anything other than what's written on this
2 page.

3 Q. Okay. Is it an ESOP account?

4 MR. PURIEFOY:

5 Objection, Your Honor. I believe he just testified he
6 does not know.

7 THE COURT:

8 Yeah.

9 MR. MCLEOD:

10 Okay.

11 THE COURT:

12 Mr. McLeod, try not to lead him.

13 MR. MCLEOD:

14 All right.

15 THE COURT:

16 If you don't know, Mr. Markel, just say you don't know.

17 That's okay.

18 MR. MCLEOD:

19 That's fine.

20 EXAMINATION RESUMED BY MR. MCLEOD:

21 Q. But these are the GE Mutual Funds were they were
22 received as a result of Ms. Mensch's husband's
23 employment? Are you aware of that?

24 A. I don't know.

25 Q. You don't know. Okay. All right. After your review of

1 the accounts were some of the GE Mutual Funds sold prior
2 to -- at any time? Did he ever sell any of the GE
3 stock, was any of it sold?

4 A. Well, I think what we just went through a few minutes
5 ago some shares were sold. During 2016 the number of
6 shares declined from 33,000 to 28,000 and something.

7 Q. So some shares were sold of the GE stocks?

8 A. Yes.

9 Q. Okay.

10 MR. MCLEOD:

11 Your Honor, it's probably a good time to break if you
12 want.

13 THE COURT:

14 Okay. All right. It's about 20 minutes till 2:00 so
15 you want to come back about -- we can either come back
16 at a quarter to 3:00 or 3:00?

17 MR. PURIEFOY:

18 That's fine, Your Honor.

19 THE COURT:

20 Okay. Let's say a quarter to 3:00. Okay.

21 MR. MCLEOD:

22 All right.

23 THE COURT:

24 All right. We'll be in recess.

25 Off the Record: 13:38:18.0

1 On the Record: 14:58:25.0

2 THE COURT:

3 Okay. We'll go back on the record. Mr. Markel, you can
4 step up and you've already been sworn so you're still
5 under oath.

6 THE WITNESS:

7 Okay.

8 THE COURT:

9 Before we resume with direct examination I want to go
10 ahead for the record rule on the accrued judgment
11 interest issue that was argued earlier in the case. I
12 have reviewed the Dixie Bell case and a string of cases
13 emanating from this case and based on this case I am
14 going to grant the motion of Mr. Puriefoy. Specifically
15 the case says that the Pleadings must be clear and
16 specific to include a claim for pre-judgment interest
17 and it names several other cases and one was Goodson
18 versus Carolina Container Corporation. The Hopkins
19 versus Hopkins case says that if no request for pre-
20 judgment interest, and that was highlighted and bolded,
21 is made in the Pleadings it cannot be recovered on
22 appeal or by a motion for pre-judgment interest post
23 trial. So with that sort of specific language I am
24 going to grant that motion. So any reference to pre-
25 judgment interest either in the testimony or the Report

1 of Mr. Markel won't be considered by The Court.

2 MR. PURIEFOY:

3 Thank you, Your Honor.

4 MR. MCLEOD:

5 Your Honor, can I just state something?

6 THE COURT:

7 Yes.

8 MR. MCLEOD:

9 Because I read that same case and it does say right
10 above request for pre-judgment interest must be pled, it
11 says in South Carolina interest may also be awarded in
12 equity cases, conversion cases, and property cases.

13 THE COURT:

14 Right.

15 MR. MCLEOD:

16 So --

17 THE COURT:

18 And you pled like -- you've pled interest in your
19 Pleadings and if you could produce evidence to show
20 interest -- for instance, testimony or evidence to show
21 that interest that the funds were earning at the time
22 they were removed by Mr. Mensch, but the way I read this
23 case is if you want to collect pre-judgment interest it
24 has to be in your Pleadings and it has to say pre-
25 judgment interest.

1 MR. MCLEOD:

2 Even if you define it basically? And I basically
3 defined it. I said interest at the time -- the exact
4 words it seems like are even clearer than just stating
5 pre-judgment. So I'm basically defining it.

6 THE COURT:

7 All I read -- all I referred to was the section in your
8 Pleadings that you pointed out where it talks about
9 including interest and appreciation I think was the
10 phrase you used.

11 MR. MCLEOD:

12 Well, can I read it for you one more time?

13 THE COURT:

14 You sure can. I don't want to -- I'm -- I want to hear
15 what you have to say. I just thought you had made all
16 your arguments before.

17 MR. MCLEOD:

18 Yeah, I haven't seen that case or had a motion before so
19 I went during lunch and just researched and pulled a
20 case noticed that.

21 THE COURT:

22 Okay.

23 MR. MCLEOD:

24 So I thought that took care of the contract issue
25 because we were kind of saying it was only a contract

1 issue, but the statute basically says any amount. Let
2 me see. It has a statute.

3 THE COURT:

4 Well, while you're looking for it the way I read it's is
5 it's sort of two different requirements. One is it has
6 to be pled and the other is it has to be a sum certain.
7 And a sum certain doesn't mean that it can't be
8 contested. It just means that it has to be able to be
9 reduced to a sum certain and at a time when it was
10 either payable upon demand or payable by operation of
11 law. I don't think I get to that because I'm stopping
12 at the fact that it wasn't pled. And the case also
13 draws the distinction between liquidated and
14 unliquidated claims, which again I don't think I have to
15 rule upon that because the way I'm reading this is pre-
16 judgment interest has to be pled and if you have a
17 different case or something that -- or something that
18 tells me in your Pleadings that you -- yes, sir.

19 THE DEPUTY:

20 The alarms are going off.

21 THE COURT:

22 Okay. Does that mean we have to -- are we closing
23 building?

24 THE DEPUTY:

25 I'll have to see what the alarm is but they are going

1 off outside.

2 THE COURT:

3 Okay. We'll go off the record until you get back and
4 let us know. Okay.

5 Off the Record: 15:03:39.6

6 On the Record: 15:30:07.0

7 THE COURT:

8 All right. We'll go back on the record. Mr. McLeod.

9 MR. MCLEOD:

10 Yes, Your Honor. The case Hurst verse Sumter that was
11 actually part of my Motion in Limine and it basically
12 says that you can define -- you can either plead it or
13 you can state facts which define instead of actually
14 pleading the exact words. I think my Number 70 says
15 that, "Petitioner's request to The Court order Sterling
16 Mensch to restore the value of the principal's property
17 to what it would have been had the violations not
18 occurred pursuant to Section 62-8-117 of the South
19 Carolina Probate Code including any interest and
20 appreciation that should have accrued from the date --
21 or from the time of the violation." When I was writing
22 that I was literally thinking from the time. So each
23 one of these transfers interest should accrue from that
24 time. I was thinking of pre-judgment interest and
25 basically defined it. It doesn't say the word pre-

1 judgment interest, but that's exactly what I intended
2 and I think that's how I read it. And I think in light
3 of Rule 8(a) and how Pleadings should be liberally
4 construed and, you know, substance over form, I think
5 you could read very easily that that's exactly what it
6 says. Interest from the time of the violation. So each
7 payment that was or each transaction, you know, from
8 that time when it hit Sterling's account that's when you
9 would calculate the interest. That's exactly what I
10 intended when I filed the Complaint. And the statute on
11 it is very clear as well if I can find it again. It's
12 Section 34-31-20, Legal Rate of Interest. "In all cases
13 of accounts stated and in all cases wherein any sum or
14 sums of money shall be ascertained and, being due, shall
15 draw interest according to law, the legal interest shall
16 be at the rate of eight and three-fourths percent per
17 annum. A money decree or judgment of a court enrolled
18 or entered must draw interest according to law. The
19 legal rate of interest is equal to the prime rate as
20 listed in the first edition of the Wall Street Journal
21 published for each calendar year for which the damages
22 are awarded, plus four percentage points, compounded
23 annually." It says in all cases of accounts stated and
24 all cases wherein any sum or sums of money shall be
25 ascertained. And, again, Your Honor, this Hurst case

1 that I can pass up to you if you'd like. And, again,
2 and also this was included in John Markel's Report so
3 it's not like this was surprise and we argued it at the
4 Summary Judgment Hearing and there was no objection then
5 that I can recall. I have the transcript but I don't
6 recall an objection to it then. So that was in March I
7 believe. We filed this in February. It's now August so
8 there is no surprise. There is no prejudice to
9 Respondent. They've known about the whole -- they had
10 plenty of time to prepare their argument against pre-
11 judgment interest. So I think there's cases that also
12 say that, you know, the goal of excluding it would be if
13 there was some prejudice to the Respondent.

14 THE COURT:

15 Okay.

16 MR. MCLEOD:

17 They've had six months since John Markel's Report, which
18 included pre-judgment interest just like it does today.

19 THE COURT:

20 Well, I understand the argument and it may be that I
21 think the way I read this case the best -- the best that
22 I can do is -- what I'm struggling with is to make a
23 final ruling on this perhaps -- I don't know what the
24 outcome of the case is going to be or what the ruling is
25 going to be. We don't even know if there's going to be

1 a judgment. There could be, there couldn't be. We
2 don't know. It's going to be something, you know. And
3 so maybe having that in hand would help determine this
4 question. I'm not sure about that. But this Dixie Bell
5 case is so specific as to the requirement of pleading
6 this that my -- I mean I --

7 MR. MCLEOD:

8 Can I pass Hurst verse Sumter to you?

9 THE COURT:

10 You sure can.

11 MR. MCLEOD:

12 Okay.

13 THE COURT:

14 And this Dixie Bell case goes through the whole history
15 of pre-judgment interest and how it was always very
16 severely limited and then it got more liberalized until
17 then now we have statute that governs. If I'm -- I
18 think we had a Petition -- your Petition was filed. You
19 had an original Petition and you amended your Petition
20 at least once, maybe twice. I can't remember. And I'm
21 thinking from if I'm the Respondent and I get served
22 Pleadings and it says that I'm asking for interest and
23 appreciation, Mr. Puriefey filed kind of general denial
24 to everything. Is he on notice through your Pleading at
25 that point when you filed that Pleading that the

1 interest you're asking for is pre-judgment interest?

2 You intended it to be that, but is he on notice if it's
3 that if you don't specifically say you're demanding pre-
4 judgment interest? And is -- the Dixie Bell case if you
5 read it the way the plain language is you must
6 specifically plead it. Like request for pre-judgment
7 interest must be pled. Triple Crown and its principals
8 claimed the trial court erred in awarding Dixie Bell
9 pre-judgment interest on the jury verdict because Dixie
10 Bell did not request pre-judgment interest in its
11 Pleadings. And then it quotes the Town of
12 Bennettsville's case. The Supreme Court found pre-
13 judgment interest should not be included in the judgment
14 because it was not pled in the Complaint or prayer. And
15 then Hurst. Let's see. Hurst was when? A '39 case.
16 This case was 2007, Dixie Bell. Let's see. Is this
17 Hurst about pre-judgment interest?

18 MR. MCLEOD:

19 It's about pleading --

20 THE COURT:

21 Or is just about interest?

22 MR. MCLEOD:

23 It's about pleading.

24 THE COURT:

25 Okay.

1 MR. MCLEOD:

2 I think it was about pleading actually offset because it
3 was part of my Motion in Limine and it talks about you
4 can either plead it directly or you can just include
5 enough facts to describe it.

6 THE COURT:

7 Well, there is a rule, I think it's Rule 8 under the
8 Rules of Civil Procedure that if you try a case and
9 nobody objects and evidence is admitted on a Cause of
10 Action not pled you can make a motion to make your
11 Pleadings conform to the evidence. But Mr. Puriefoy has
12 objected to anything, any testimony about pre-judgment
13 interest. Well, I don't want to spend all afternoon
14 doing this.

15 MR. MCLEOD:

16 Your Honor, can I state my motion for my Pleadings to
17 conform to the evidence based on how we basically we had
18 in Summary Judgment it was a part of that? I argued it
19 in that. There was no objection.

20 MR. PURIEFOY:

21 Well, Your Honor, I will take issue with that. As The
22 Court knows the discovery -- the Summary Judgment case
23 is not the trial case. And at the time of the Summary
24 Judgment This Court is permitted to consider evidence
25 that would not otherwise be admissible at a trial

1 including hearsay evidence. And, therefore, no
2 objections were made to the introduce of that evidence
3 at the Summary Judgment phase because it was would have
4 been improper. We did not waive our objection to
5 introduce that evidence at the trial simply by failing
6 to raise that objection at the Summary Judgment phase.
7 Again, I believe the Petitioners are relying on
8 discovery to disclose their intent to attempt to recover
9 pre-judgment interest as opposed to the plain language
10 of not only the Dixie Bell case, but also Rule 9 of the
11 Rules of Civil Procedure which it specifically states
12 special damages -- excuse me, that pre-judgment interest
13 has to be pled with specificity and I think that is so
14 important. Mr. McLeod has indicated on a number of
15 occasions that it was his subjective intent for that to
16 be pre-judgment interest, the interest that he made
17 reference to. But Dixie Bell says very clearly it must
18 be pled specifically for this exact reason so when we're
19 at trial we're not debating about whether or not this
20 comes as a surprise to the Respondent. There are
21 certainly additional defenses that would have been
22 raised had it been part of the Pleadings, but I don't
23 have to form my answer to discovery that is being
24 produced throughout the case, Your Honor.

25 MR. MCLEOD:

1 Your Honor, he denied it -- he denied it in his Answers.
2 I mean how else would he have answered his -- answered
3 that.

4 THE COURT:

5 Did his answer deny and raise -- did he deny that you're
6 entitled to pre-judgment interest?

7 MR. MCLEOD:

8 I think he just denied that paragraph 7.

9 THE COURT:

10 Right. I think the point is that pre-judgment interest
11 is separate and apart from general interest like
12 compound interest or the appreciation of property. So
13 I'm not sure how Hurst can help me with this. The other
14 thing is even if you ignore the fact that it says you
15 have to specifically plead this then you get to is this
16 liquidated or unliquidated damages. And that would be
17 the next hurdle and this is clearly one that the damages
18 is the whole reason we're having this trial as to
19 determine exactly what the Estate -- how the Estate has
20 been harmed. So I don't -- I think clearly the first
21 threshold you have to meet is the pleading part of this.
22 So I noted your objection, Mr. McLeod, but that's my
23 ruling on the pre-judgment interest and so with that you
24 can continue your examination of Mr. Markel.

25 MR. MCLEOD:

1 All right. At I'm going to hand you what's been
2 stipulated as Exhibit 3.

3 THE COURT:

4 Okay.

5 (Introduction of previously marked document,
6 Notebook of Bank of America Statements as
7 Petitioner's Exhibit Number 3.)

8 EXAMINATION RESUMED BY MR. MCLEOD:

9 Q. All right. This is Exhibit 3. This is the Bank of
10 America Statements produced pursuant to Judge Jennings
11 Order dated September 30th, 2020 and produced by
12 Respondent on January 1st, 2021.

13 THE COURT:

14 Are you introducing that entire notebook? Okay.

15 MR. MCLEOD:

16 Yes, I would like to introduce this entire notebook as
17 Exhibit 3.

18 THE COURT:

19 And that's been previously stipulated on; is that
20 correct?

21 MR. PURIEFOY:

22 It has, Your Honor.

23 THE COURT:

24 Okay.

25 EXAMINATION RESUMED BY MR. MCLEOD:

1 Q. John, have you seen this notebook before?

2 A. No.

3 Q. Have you seen the contents of the notebook before? Have
4 you reviewed the contents of it? Take a few minutes and
5 review it, please.

6 A. (Witness reviewing exhibit.) It appears to be copies of
7 bank statements from Bank of America.

8 Q. And whose Bank of America account is this?

9 A. Let's see 3259. It looks like it's all 3259, which is
10 Sterling's account.

11 Q. Okay. And are there certain highlighted items in the
12 bank statements?

13 A. Yes.

14 Q. Does that refresh your recollection on what this is?

15 A. Yes.

16 Q. Okay. And what is it?

17 A. It looks like it's bank statements from account number
18 3259 from -- I've only seen these in an online version
19 so it looks a little different.

20 Q. Yeah.

21 A. From August of 2013 all the way up to December of 2018.

22 Q. And are there certain highlighted items in the
23 statements?

24 A. Yes.

25 Q. And is there a key in the front of yours? Do you see a

1 key?

2 A. These are the yellow and purple highlighted items.

3 Q. Okay.

4 A. But I don't remember which -- I guess yellow refers to
5 the house and purple refers to payments for the care of
6 Florence Mensch.

7 Q. There is a key I think in the very front. It should be.

8 A. Well, I remember the key, but I don't see a key here,
9 but I remember there were yellow and purple highlights
10 and just by the content of the yellow highlighted items
11 they relate to the house and by the content of the
12 purple highlighted items they refer to the care of
13 Florence Mensch.

14 Q. Okay. Well, that's correct. The key should be in the
15 very front. That's the actual one that was produced by
16 them.

17 A. Okay.

18 Q. There you go. It looks like this. Turn to the first
19 page.

20 A. Well, this is the first page.

21 Q. Well, I'll hand you the key that was produced.

22 A. Okay.

23 Q. Can you read that?

24 A. (Witness reviewing exhibit.)

25 Q. Can you read it out loud for me?

1 A. Okay. "Account transactions that were used for the care
2 of and costs associated with the death of Florence P.
3 Mensch are highlighted in the bank statement with a
4 purple highlight. In addition the funds associated with
5 512 New Tarleton Way are also noted. In such cases
6 where funds were used for the property they are
7 highlighted with a yellow highlight."

8 Q. Okay. And in your Report I think you referenced these
9 bank statements in the highlighted portions?

10 A. Yes.

11 Q. I'm looking for the number. (Counsel reviewing
12 documents.) Okay. Number 23 and 24.

13 A. Okay.

14 Q. Can you read 23 and 24 for me?

15 A. "January 13, 2021 I was contacted by Tyler McLeod, legal
16 counsel for the Petitioners in this case. Mr. McLeod
17 informed me that in response to Court Orders Sterling
18 Mensch, III had recently produced a notebook containing
19 copies of bank statements for his bank account -- Bank
20 of America account number 3259. The bank statements
21 cover the time frame August 2013 to through October
22 2018. Mr. McLeod provided me with digital copies of the
23 notebook contents and asked me to scrutinize them."
24 Upon reviewing -- number 24. "Upon reviewing the
25 notebook contents I noted that on his bank statements

1 for the August 2013 through October of 2018 time frame
2 Sterling Mensch, III had highlighted certain cash
3 disbursement line items. Sterling Mensch, III alleges
4 that those highlighted line items represent
5 disbursements that were made from his bank account for
6 the benefit of his mother, Florence Mensch. He alleges
7 that the highlighted line items fall under two general
8 categories. A, disbursements made for the physical care
9 of Ms. Mensch and B, disbursements made to maintain Ms.
10 Mensch's real estate located at 512 New Tarleton Way in
11 Greer, South Carolina. In highlighting the bank
12 statements line items Sterling Mensch used a color-coded
13 system. He alleges that line items highlighted in
14 purple represent disbursements made for the physical
15 care of Ms. Mensch. While line items highlighted in
16 yellow represent real estate related disbursements."

17 Q. Okay. I believe it continues on 25 and 26 you detail
18 the amounts that you found in each of those?

19 A. Yes.

20 Q. Okay. Can you please read that?

21 A. Okay. Number 25. "As a first alternative approach to
22 quantifying the Estate's net losses from the
23 misappropriations. Despite the lack of supporting
24 documentation submitted to date by Sterling Mensch, III.
25 Mr. McLeod asked me to consider the underlying character

1 of several line items in the statements of his Bank of
2 America account number 3259."

3 Q. Okay. Can you read 26?

4 A. Okay. Number 26. "To that end I scrutinized all
5 available Bank of America account number 3259 bank
6 statements which encompassed the time frame June 2012
7 through December 2019 and identified 15 cash
8 disbursements totaling \$3,984. Because the payee and
9 the associated dollar amount were obviously directly
10 linked to Ms. Mensch's care and maintenance I also
11 computed pre-judgment interest associated with the 15
12 line items. That was \$1,970. Appendix L shows in
13 detail the 15 line items and the computation of the pre-
14 judgment interest so that they may be considered as
15 potential credits to the monetary losses suffered by the
16 Estate."

17 Q. All right. And then 27.

18 A. "Also in regard to item number 25 preceding I made
19 certain assumptions as follows: A, there were 61
20 separate cash disbursements adjusted to eliminate late
21 charges and totaling \$100,674 to Park Sterling Bank made
22 from the Bank of America account number 3259 of Sterling
23 Mensch, III during the time frame June 2012 through
24 April 2018 be considered as credits to the imputed rent
25 for the 512 New Tarleton Way house. B, there are 16

1 separate cash disbursements adjusted to eliminate late
2 charges in total \$26,090 to South State Bank made from
3 the Bank of America account 3259 by Sterling Mensch, III
4 during the time frame June 2018 through November 2019 be
5 considered as credits to the imputed rent for the 512
6 New Tarleton Way house. C, six separate cash
7 disbursements were adjusted to eliminate late charges in
8 total \$40,508 for Greenville County property tax paid
9 from Bank of America account 3259 of Sterling Mensch,
10 III during the time frame February 2014 through April
11 2019 be considered as credits to the imputed rent for
12 the 512 New Tarleton Way house. Computation of the
13 potential credits and the associated credits to pre-
14 judgment interest are shown at Appendix M. Under the
15 first alternative approach quantifying the Estate's net
16 losses from the misappropriations my findings for losses
17 and pre-judgment interest are summarized in Appendix K.
18 Note that Rows 1 through 5 of Appendix K are identical
19 to Rows 1 through 5 in Appendix D. For the explanation
20 of the content of Rows 1 through 5 of Appendix K please
21 refer to paragraph 17 through 21 preceding. Also note
22 that Row 7 of Appendix K is identical to Row 7 of
23 Appendix D. For an explanation of the content of Row 7
24 on Appendix K please refer to paragraph 22 preceding."

25 Q. All right. Thank you. And when you reviewed these

1 statements were you able to discern for the highlighted
2 items which ones were for the benefit for Florence
3 Mensch? I think you mentioned the dollar amount.

4 A. That goes back to my paragraph 26 where I found that 15
5 line items totaling \$3,984 appeared to be for the care
6 of Florence Mensch.

7 Q. And as to the other items he highlighted what was the
8 issue? Why couldn't you determine whose benefit they
9 were for?

10 A. Because they were disbursements to Home Depot, CVS,
11 Publix. They were such a generic nature and there was
12 no description provided of what was purchased it could
13 have been for just about anything. There was no
14 compelling evidence that told me that they were for the
15 care of Florence Mensch or not. Therefore, I couldn't
16 include them. That would be speculating.

17 Q. In these -- in the contents of this notebook were there
18 any receipts at all?

19 A. Not any that I saw.

20 Q. Can you turn to -- let's see. And this is in Exhibit 3,
21 which is the notebook that Sterling Mensch produced, can
22 you turn to the April 2015 statement?

23 A. Okay.

24 Q. And can you turn to the second page of that statement?
25 It's identified with a Bates number Mensch 02579 and

1 there are two highlighted items in yellow.

2 A. I'm not --

3 Q. Oh, you're not there. Okay.

4 A. I don't see -- I don't see a Bates number.

5 Q. Okay.

6 A. We're referring to?

7 Q. The April 17th, 2015 statement.

8 A. Okay. I found that.

9 Q. Okay. And then the second page of that statement.

10 A. Okay. Under Withdrawals and Other Subtractions?

11 Q. Yeah.

12 A. Okay. There's two line items at the bottom of the page.

13 The first is a disbursement to Home Depot on April 18,

14 2015 for \$22.14. And one below that, a disbursement to

15 Classic Ace HA. I assume that's Ace Hardware on April

16 18, 2015 in the amount of \$42.29.

17 Q. Okay. And can you turn to the next page?

18 A. Okay. There's four line items at the top of the page

19 highlighted in yellow. And they are following the same

20 pattern. They are just disbursements to Classic Ace --

21 Ace Hardware and Home Depot.

22 Q. Okay. And there's two highlighted in purple and we said

23 purple was for the care of Florence Mensch; is that

24 correct?

25 A. Right. And the first -- the first one is a disbursement

1 to Bi-Lo Grocery on April 18 in the amount of \$28.94 and
2 the second one is WM SuperC Wall- on April 19 for
3 \$42.51.

4 Q. Okay. So out of that little sample of transactions is
5 that fairly consistent throughout?

6 A. There were a lot like that. They were just
7 unidentifiable missing transactions. It could have been
8 for -- the yellow items could have been for the house.
9 They could have been for bird seed, or tools, or
10 whatever else of the thousands of things they sell at
11 Ace Hardware and Home Depot. And the same with Bi-Lo
12 Grocery 28.94. That could have been anything. We don't
13 know whether it was --

14 Q. Can you turn to page 5 of 10 of that same statement?

15 A. Yes.

16 Q. All right. Do you see 5/4/15 Bi-Lo Grocery? It's not
17 highlighted.

18 A. 5/14 Bi-Lo Grocery.

19 Q. It's actually 5/4/15. Do you see the date?

20 A. Yeah, a lot of purple. Okay.

21 Q. There's a lot on 5/4 but --

22 A. May 4.

23 Q. The Bi-Lo Grocery one.

24 A. Right.

25 Q. And it's?

1 A. 61.84.

2 Q. Yeah. Is that one highlighted?

3 A. No.

4 Q. Okay. Is there any difference between the one -- the
5 Bi-Lo that was highlighted and that Bi-Lo to whether you
6 can tell whether it's for Ms. Mensch or for Sterling?

7 A. No, there's nothing. I mean it gives the date and
8 what's apparently a receipt number, and the store
9 number, and the location of the store, but it doesn't
10 provide any description of what was purchased.

11 Q. Can you go to May 17th, 2017?

12 A. (Witness reviewing exhibit.) Okay. I'm at May 17,
13 2017.

14 Q. Okay.

15 A. And there are no highlighted items on this page.

16 Q. On the page 4 of 8 there's one highlighted item. Do you
17 see the line in yellow?

18 A. On May 30?

19 Q. Yeah, May 30, '17.

20 A. Right. Well, \$471.70 paid to Lowe's Number 667 in
21 Greer, South Carolina.

22 Q. Okay. Can you read the next six or seven below that
23 row? Read 5/31/17 for me.

24 A. 5/31/17.

25 Q. The date. Yeah.

1 A. The first is --

2 Q. Well, yeah, there's actually a bunch of them. There's
3 one to Lowe's.

4 A. Right. It's to Lowe's, the same Lowe's Store 667 on May
5 31 of 25.42, but it's not highlighted.

6 Q. And how about the next two to Home Depot?

7 A. The next two are to Home Depot. One for 16.23 and the
8 other for 162.81, but they're not identified as to what
9 was purchased.

10 Q. How about on 6/5/17? Can you read that line? There's
11 actually four on that line. The one that's to Smith &
12 James.

13 A. Smith & James number 1?

14 Q. Yeah.

15 A. \$583.

16 Q. All right. How about 6/2/17 Ruth's Chris?

17 A. (Witness reviewing exhibit.)

18 Q. Do you see that one? Right above it. It's about three
19 above it.

20 A. Okay. May 31 charges made to Ruth's Chris Greenville?

21 Q. Yep.

22 A. For \$140.

23 Q. All right. And then a couple below 6/5/17 Sobo's?
24 Right above Smith & James. Well, actually right in
25 between the two Smith & James.

1 A. So Soby's on June 3, 2017 \$389.

2 Q. I think that's actually June 5.

3 A. Well, there's -- it cleared the bank on June 5th. The
4 charge was made on June 3rd.

5 Q. Okay. Okay. How about go to page 5 of 8. And go to
6 6/12/17.

7 A. Okay. Which one?

8 Q. Okay. Let's see. The Ruth's Chris one. See the second
9 one from the top.

10 A. Oh, okay. On June 10, 2017 a charge was made to Ruth's
11 Chris Greenville \$121.

12 Q. All right. How about 6/15/17 Hals Chophouse? It's
13 right above Spinx and Patio Imports.

14 A. Right. Charge made on June 14, 2017 Hals Chophouse
15 Greenville \$204.

16 Q. Can you go to June 17th, 2017?

17 A. I don't see anything for June 17th. Oh, I see the
18 account starts on June 17, but I don't see any charges
19 on June 17.

20 Q. Can you go -- are you on page 4, 4 of 8?

21 A. Yeah, the bank statement goes from June 17 to July 17 of
22 2017.

23 Q. Okay. Can you read 6/19/17 Bank of America withdrawal
24 at the very top?

25 A. Right. Bank of America ATM withdrawal at Bay Colony in

1 Ft. Lauderdale, Florida \$500.

2 Q. Okay. Can you go to July 18th, 2017 to August 17th,
3 2017?

4 A. Okay.

5 Q. Okay. Go to page 3 of that statement.

6 A. Okay.

7 Q. All right. Can you read the first five entries starting
8 7//20/17 to 7/24/17?

9 A. The first one is \$100 at Ruth's Chris Greenville. The
10 second is to Rick Erwin's Eastside Greenville \$153. The
11 third one is a withdrawal at Thornblade \$403. The next
12 one is Chophouse 47 \$58. And the next one is Rivera's
13 Greer, South Carolina \$199.

14 Q. I'm going to take you back a little bit, but I'm not
15 going to go too many more, but January 18, 2017 to
16 February 13, 2017.

17 A. Okay.

18 Q. All right. So you're on page 1. Flip to page -- let's
19 see. We'll start with 3, 3 of 10.

20 A. Okay.

21 Q. The next page. Can you read January 23rd, '17 the Wells
22 Fargo?

23 A. Wells Fargo Bank withdrawal, Thornblade \$1,003.

24 Q. Can you read 1/23/17, Rick Erwin's?

25 A. Rick Erwin's Westend, Greenville \$1,300.

1 Q. That's one thousand, three hundred; is that right?

2 A. Right.

3 Q. Can you turn to page 4 of 10? On January 25th, '17
4 Greenville Matchmakers. Can you read that line and tell
5 me the amount?

6 A. Greenville Matchmakers, Greenville, South Carolina
7 \$8,000.

8 Q. Okay. Can you go down to 1/30/17, Bogari, LLC?

9 A. Bogari ,LLC, Greenville, South Carolina \$1,454.32.

10 Q. Go to 2/2/17 Madi Boutique, Greer.

11 A. Madi Boutique, Greer, \$382.66,

12 Q. And right above that on 2/1/17 Greenville County Tax?

13 A. Greenville County Tax, Greenville, South Carolina
14 \$449.98.

15 Q. Is that highlighted?

16 A. No.

17 Q. Let's go to October 18, 2018.

18 A. Okay.

19 Q. On the first page there, page 1 of 8, October 18th, 2018
20 to November 15th, 2018. What is the ending balance on
21 November 15th, 2018?

22 A. \$4,318.42.

23 Q. And is this the account the 820,000 has been transferred
24 into?

25 A. Yes.

1 Q. And you said earlier that Ms. Mensch's care was mostly
2 covered by her Social Security; is that right?

3 A. That's my understanding.

4 Q. And her account 7059 did you see a lot of expenses paid
5 directly to the assisted living that she was at?

6 A. I'd have to look at the record. It would have to be
7 because I don't -- I haven't seen many in Sterling's
8 account. (Witness reviewing exhibit.)

9 MR. MCLEOD:

10 This has been stipulated as Exhibit 7.

11 (Discussion between Counsel McLeod and Counsel Puriefoy.)

12 MR. MCLEOD:

13 I have one of you, Your Honor.

14 THE COURT:

15 Thank you.

16 MR. MCLEOD:

17 Judge, I'd like to submit this as Exhibit 7 into
18 evidence. It's been stipulated.

19 THE COURT:

20 All right. Do you need to keep that one or do you have
21 a copy for me?

22 MR. MCLEOD:

23 I think I am missing one copy?

24 THE COURT:

25 That's okay. Go ahead.

1 MR. MCLEOD:

2 I'll hand it to.

3 (Introduction of previously marked document,

4 Copies of Checks as

5 Petitioner's Exhibit Number 7.)

6 EXAMINATION RESUMED BY MR. MCLEOD:

7 Q. And can you identify this Exhibit 7 for me?

8 A. (Witness reviewing exhibit.) The first?

9 Q. The first page of it.

10 A. The first page of it is a check written to Rolling Green
11 Village on February 5, 2013 in the amount of \$5,160 out
12 of Florence Mensch's 7059 Bank of America account.

13 MR. MCLEOD:

14 I'm sorry, Judge. An emergency alert.

15 THE COURT:

16 Is that another one?

17 MR. MCLEOD:

18 I don't know if that was for one from earlier.

19 MS. THOMASON:

20 There is another one.

21 MR. MCLEOD:

22 Sometimes when you turn your watch on it's like whatever
23 happened before might -- because I just pressed it to
24 see a time. We should be okay.

25 THE COURT:

1 Okay. You go ahead and maybe the Deputy will find out.

2 MR. MCLEOD:

3 All right.

4 EXAMINATION RESUMED BY MR. MCLEOD?

5 Q. So you said this is from Florence Mensch's account;
6 correct?

7 A. Right.

8 Q. And it's a check to Rolling Green Village; correct?

9 A. Right.

10 Q. Which is -- is that where she was residing in 2013?

11 A. I don't -- I assume so. He certainly paid the rent that
12 month.

13 Q. Okay.

14 A. But I don't have any direct knowledge of that.

15 Q. All right. Well, you can turn to page 2 and tell me
16 what that is?

17 A. Okay. It's a check written a month later on March 4,
18 2013 for \$2,580.

19 Q. Is that -- sorry.

20 A. Out of her 7059 account.

21 Q. Okay. And the third page?

22 A. It's a check written on April 4, 2013 for the same
23 amount, \$2580.

24 Q. Okay. And how about the next page?

25 A. The next one May 14, 2013 \$2,580 to Rolling Green

1 Village.

2 Q. Okay.

3 A. The next one June 7, 2013 the same amount, \$2,580 to
4 Rolling Green Village.

5 Q. And the next one?

6 A. The next one is July 5, 2013 to Rolling Green Village
7 \$2,580.

8 Q. Okay. Can you flip to the Bank of America statement for
9 ending balance on October 6, 2015? It's identified at
10 the bottom of Exhibit 4, page 725. It's actually a part
11 of this Exhibit 7.

12 A. Right. I see it.

13 Q. Okay. On the next page identified as page 4 of 8 at the
14 bottom.

15 A. Yes.

16 Q. It's 9/9/15. Can you read that for us?

17 A. 9/9/15 Royal Senior Care, DES, Greenville, IDF Mensch
18 \$4,555.

19 Q. Okay. And right below that what are those two entries
20 below?

21 A. Those are two transfers out of her account and into
22 Sterling Mensch's account 3259. The first one September
23 18 was \$2,000. The second on September 23rd for
24 \$3,349.39.

25 Q. Okay. Can you flip a couple of pages over to the ending

1 balance November 3rd, 2015?

2 A. Yes.

3 Q. On that second page, page 4 of 8.

4 A. Yes.

5 Q. The entry on 10/14 -- or could you just read all four,
6 all those entries under Other Subtractions?

7 A. Okay. The first on October 13, 2015. It was an online
8 banking transfer to Sterling's account 3259 in the
9 amount of \$904.56. Then there was -- this first one on
10 October 14, 2015 to Royal Senior Care for \$4,515. Then
11 on October 16 there was a transfer to Sterling's account
12 3259 for \$2,485. And another one on October 19, 2015
13 for \$3,000. And another transfer to Sterling's account
14 3259 on October 29, 2015 for \$2,000.

15 Q. And it continues on the next page, Exhibit 4, page 7772.
16 Can you read those for me?

17 A. Okay. The first item dated November 9, 2015 a transfer
18 to Sterling's account 3259 for \$2,904.27. The next is a
19 disbursement on November 10, 2015 to Royal Senior Care
20 for \$4,515. And then next five items are transfers to
21 Sterling's account number 3259 in the amounts of \$3,485,
22 \$2,000, \$1,000, \$9,000, and \$2,916.77.

23 Q. Okay. The next page under Other Subtractions can you
24 read those?

25 A. There was a disbursement to Royal Senior Care for

1 \$4,515.

2 Q. What's the date of that one?

3 A. December 10, 2015.

4 Q. Okay.

5 A. And the next one was on December 14. It was a transfer
6 to Sterling's account 3259 in the amount of \$4,167.27.

7 The next one was on December 21. Another transfer to
8 Sterling's account 3259 in the amount of \$10,000. The
9 next transaction was a cash withdrawal in the amount of
10 \$800. And then the next one was again on December 21 a
11 transfer to Sterling's account 3259 in the amount of
12 \$2,200.

13 Q. And then it continues on the next page. Can you read
14 those for me?

15 A. Okay. On January 8, 2016 there was a transfer to
16 Sterling's account 3259 in the amount of \$5,284.88. The
17 next one was a disbursement on January 8, 2016 to Royal
18 Senior Care for \$4,535. And then the next was on
19 January 15, 2016 a transfer to Sterling's account 3259
20 in the amount of \$3,000. And, again, on January 19
21 another transfer to Sterling's account 3259 in the
22 amount of \$4,000.

23 Q. Okay. And it continues on the next page.

24 A. Okay. On February 5, 2016 online banking transfer to
25 Sterling's account number 3259 in the amount of

1 \$6,819.13. The next disbursement on February 9, 2016 to
2 Royal Senior Care in the amount of \$4,550. Then we have
3 the next four items are transfers to Sterling's account
4 3259 on February 10, February 18, February 22, and March
5 7 and they were in the amounts of, in order, \$2,450,
6 \$3,000, \$14,000, and \$4,000. And the last disbursement
7 was on March 8, 2016 to Royal Senior Care in the amount
8 \$4,515.

9 Q. Okay. And can you go to page 4 of 6, Exhibit 4, page
10 870 under Other Subtractions.

11 A. Okay. The first three are transfers to Sterling's
12 account 3259 on March 14, March 24 and April 5, 2016 in
13 the amounts, in order, of \$9,849.26, \$4,200, and
14 \$5,618.55. Then the last is a disbursement on April
15 6th, 2016 of \$4,650 to Royal Senior Care.

16 Q. Okay. It continues on the next page.

17 A. On May 6, 2016 there was a transfer to Sterling's
18 account 3259 in the amount of \$3,819.03. Then on May
19 10, 2016 a disbursement to Royal Senior Care in the
20 amount of \$4,650. \$4,650. Then there were three
21 transfers to Sterling's account 3259. Two on May 23 and
22 one on May 26 in the amounts of \$2,350, \$1,000, and
23 \$4,000. And then June 7, 2016 a disbursement to Royal
24 Senior Care in the amount of \$4,650.

25 Q. Okay. It continues on page 4 of 8. It's Exhibit 4,

1 page 960, but it's still in Exhibit 7.

2 A. Okay. A disbursement on July 7, 2016 to Royal Senior
3 Care in the amount of \$4,685. Followed by three
4 transfers to Sterling's account 3259 on July 11, July
5 25, and August 4 in the amounts \$2,315.78, \$2,000, and
6 the last one for \$75,000.

7 Q. What was the date of that last one?

8 A. August 4, 2016.

9 Q. And that was for \$75,000; is that right?

10 A. \$75,000.

11 Q. Okay. And the next page it's got a Bates Number Exhibit
12 4, page 97. Ending balance on September 7, 2016.

13 What's the balance?

14 A. \$12,988.41.

15 Q. Okay. And there's some transfers on the next page,
16 Exhibit 4, 988. Can you read those first two?

17 A. Okay. This is under Deposits?

18 Q. Under Deposits and Other Additions.

19 A. Okay. On August 29, 2016 there was a transfer into
20 Florence's account 7059 from Sterling's account number
21 3259 in the amount of \$7,000.

22 Q. Okay. Read 9/1/16 for me.

23 A. General Electric Pension in the amount of \$1,414.55.
24 And on September 2nd, 2016 a Social Security check in
25 the amount of \$1,404.

1 Q. Okay. And under Other Subtractions 8/10/16 Royal Senior
2 Care?

3 A. Royal Senior Care on August 10, 2016 in the amount of
4 \$4,450.

5 Q. And then on the next page 9/12/16?

6 A. A payment to Royal Senior Care on September 12, 2016 in
7 the amount of \$4,670.

8 Q. And then Deposits and Other Additions on 10/3/16, those
9 two entries. Can you read those for me?

10 A. Okay. At the top of the page General Election Pension
11 \$1,414.55. Social Security on the same day, October 3,
12 2016 of \$1,404.

13 Q. On Exhibit 4 page 1030 can you read the Other
14 Subtractions 10/12/16?

15 A. A payment to Royal Senior Care of \$4,725.

16 Q. Can you read Deposits and Other Additions on that
17 10/13/16, the first entry?

18 A. Right. It's a wire transfer origin US Bank NA, in the
19 amount of \$82,440.90.

20 Q. And the two entries below that?

21 A. General Electric Pension on November 1, 2016 in the
22 amount of \$1,414.55. And Social Security payment on
23 November 3, 2016 of \$1,404.

24 Q. And then below that the Other Subtractions, can you read
25 those?

1 A. (Witness pausing.)

2 Q. You can just do the 11/8/16, starting there.

3 A. You're talking on the next page?

4 Q. Yeah, the next page.

5 A. \$1,056?

6 Q. \$1,056 at the bottom.

7 A. Okay. There's a payment to Royal Senior Care on
8 November 8, 2016 for \$4,650. And then the next item is
9 a transfer to Sterling's account 3259 in the amount of
10 \$5,025.25. And then the last item is on December 6,
11 2016 payment to Royal Senior Care in the amount of
12 \$4,685.

13 Q. Okay. So then on 1106 under Other Subtractions?

14 A. On the next page?

15 Q. On the next page, 1106 at the bottom.

16 A. This is on page 1156?

17 Q. It should be Exhibit 4 at the bottom page 1106.

18 A. Okay. Okay. What was the date again?

19 Q. 1/9/17 Other Subtractions?

20 A. Okay. On January 9, 2017 a payment was made to Royal
21 Senior Care of \$4,745. The next and last four items are
22 payments -- were transfers to Sterling's account 3259 on
23 January 17, January 24, January 30, and again on January
24 30. And those amounts, in order, were \$7,414.30,
25 \$11,000, \$5,000 and \$2,000.

1 Q. And it continues on the next page 1126 under Other
2 Subtractions?

3 A. Okay. There was a transfer on February 6, 2017 to
4 Sterling's account 3259 in the amount of \$1,637.42.
5 Then a payment on February 7, 2017 to Royal Senior Care
6 in the amount of \$4,678. Then that was followed by
7 transfers on February 8, 2017 and February 21, 2017,
8 both to Sterling's account 3259 in the amounts of
9 \$12,996.03 and \$4,925.69. Then the last item is -- was
10 on March 7, 2017, a payment to Royal Senior Care in the
11 amount of \$4,824.

12 THE COURT:

13 You've got five minutes, Mr. McLeod till we have to --
14 they close the building at 5:00.

15 Q. Does it appear from these statements that her assisted
16 living facility charges were being paid from Ms.
17 Mensch's account? I thought there were a number of
18 them.

19 A. Yes, a number of them.

20 Q. Over a number of years?

21 A. Yes.

22 Q. Okay. And does it appear that the General Electric
23 Pension Fund is coming into her account?

24 A. Yes.

25 Q. And she's receiving Social Security?

1 A. Right And I was incorrect earlier when I said that
2 those two things covered her -- her memory care. At
3 least during this time frame it was insufficient by
4 close to \$2,000 per month.

5 Q. Okay. (Counsel reviewing documents.)

6 MR. MCLEOD:

7 All right. Your Honor, I'm pretty close to being done
8 with Mr. Markel's questions. Let me check. (Counsel
9 reviewing documents.)

10 Q. And, John, can you go to your Appendix N of your Report
11 now?

12 A. Okay.

13 Q. Can you quickly summarize again what each line item, Row
14 1 through 8 are? You don't need to go over pre-judgment
15 interest. Just that under losses.

16 A. You mean you just want me to read the numbers into the
17 record?

18 Q. Yeah.

19 A. Okay. For Row Number 1 the losses were \$820,382. For
20 Row 2 the losses were \$163,420. For line -- for Row 3
21 the losses were \$13,820. For Row 4 the losses were
22 \$24,559. For Row 5 the losses were \$40,314. Subtotal
23 at Row 6 is \$1,062,495. Row 7 the loss was \$400,000.
24 And then Row 8 represents total losses, not including
25 any pre-judgment interest, of \$1,462,495.

1 Q. All right.

2 MR. MCLEOD:

3 I think that's all I have, Your Honor.

4 THE COURT:

5 We will start back in the morning. What time is your
6 hearing in Anderson? I forgot.

7 MR. PURIEFOY:

8 Your Honor, it's at 2:00.

9 THE COURT:

10 At 2:00. Okay.

11 MR. PURIEFOY:

12 So I anticipate being able to complete at least Mr.
13 Markel's cross-examination way before I would have to
14 leave for that. And I believe Ms. Thomason will be
15 handling the remainder of the case.

16 THE COURT:

17 Okay.

18 MR. PURIEFOY:

19 I'll be here.

20 THE COURT:

21 Okay. We will break and be recessed until in the
22 morning at 9:00. Thank you.

23 Hearing Recessed at 16:59:48.8.

24

25

CERTIFICATE OF REPORTER

I, RACHEL H. WOOD, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witnesses was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rachel H. Wood, Reporter
Notary Public for South Carolina
Commission Expires: 02/13/2029

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
) THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE) CASE NO. 2018ES2302854

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,

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.

Probate hearing taken in the aforementioned matter was
heard before the Honorable Debora A. Faulkner taken before
Rachel H. Wood, Court Reporter and Notary Public, at
Probate Court, Greenville County Square, 301 University
Ridge, Greenville, South Carolina, on the 18th day of
August, 2021, commencing at the hour of 9:04 a.m.

REPORTED BY: Rachel H. Wood, Court Reporter
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22 ALSO PRESENT: John Mensch, Shauna Waddell, Sterling Mensch
23 Erin Callahan, Brandi Larobardiere, Phyllis
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25

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: 9:04:51.7

2 Are you-all ready to go? Did you survive the tornadoes
3 and the fire?

4 MR. MCLEOD:

5 That's what I was going to mention, Your Honor. I know
6 I concluded with Mr. Markel yesterday, but I realized
7 when I went home that he got stopped during that
8 tornado and didn't get to go through his whole spill on
9 GE.

10 THE COURT:

11 Uh-huh.

12 MR. MCLEOD:

13 So I wanted to give him a chance to finish that up and
14 then I'll be done if that's okay with The Court.

15 THE COURT:

16 I don't have a problem with that. Mr. Puriefoy?

17 MR. PURIEFOY:

18 I guess I'm confused about what exactly is being
19 requested, Your Honor. I think there was quite a bit
20 of testimony about the GE stock and I had thought we
21 had made it all the way through that and concluded on
22 another issue actually, so we had moved past GE and
23 concluded on another issue.

24 MR. MCLEOD:

25 Yeah.

1 MR. PURIEFOY:

2 I don't necessarily have an issue with it.

3 THE COURT:

4 Right.

5 MR. PURIEFOY:

6 But there's some concern he's supposed to be sworn
7 between last night and this morning and hopefully no
8 conversations took place that gave rise to this newly
9 found desire just --

10 THE COURT:

11 Right. Right.

12 MR. PURIEFOY:

13 -- to continue to testify.

14 THE COURT:

15 Well, assuming that is the case. How long do you think
16 you have?

17 MR. MCLEOD:

18 I would say 15 -- I mean 15 minutes at the most.

19 THE COURT:

20 Okay.

21 MR. MCLEOD:

22 Probably less.

23 THE COURT:

24 Well, since we had kind of an unusual weather event and
25 it kind of discombobulated things I will go ahead and

1 allow you to do it. Mr. Markel, if you can step
2 forward, please, sir. And you are already sworn so
3 just have a seat in the witness stand.

4 MR. PURIEFOY:

5 And, Your Honor, if I may ask will The Court just
6 inquire as to whether any conversations took place
7 between counsel and Mr. Markel?

8 MR. MCLEOD:

9 I was going to say that. Do you want me to wait?

10 THE COURT:

11 How are you this morning, Mr. Markel?

12 THE WITNESS:

13 Just fine. How you are today?

14 THE COURT:

15 I'm fine. Thank you, sir. Please have a seat. Mr.
16 Markel, since you're already sworn and I just want to
17 make sure. Have you discussed your testimony with
18 anyone between yesterday and today?

19 THE WITNESS:

20 I -- I actually was the one who noticed that I hadn't
21 finished my testimony and I called Tyler about 8:30
22 last night and told him that I hadn't finished and that
23 was the extent of the discussion. He said he would ask
24 you this morning if I could finish, so.

25 MR. MCLEOD:

1 Yeah, he reminded me last night and he did call me and
2 we didn't discuss anything substantive. He just said
3 that he had not finished it and the tornado warning
4 went off and he was in the middle of it and I didn't
5 realize that. I didn't know he wasn't done at the time
6 and I was like, "Well, I guess you didn't get to the
7 second part because I kind of -- we were in the middle
8 of where I was going through a couple of things. I
9 know Devon objected right before and then the tornado
10 warning went off. So we were kind of right in the
11 middle of it. But if you want we can do it on
12 redirect, too. I'm fine with that if that's what you'd
13 rather do.

14 MR. PURIEFOY:

15 So, Your Honor, my primary concern is the fact that the
16 phone call occurred itself. Mr. Markel was -- or Mr.
17 Markel was still under oath and, of course, This Court
18 knows that discussions with your attorney regardless of
19 the nature if it relates in any way to your testimony
20 is impermissible. And so to call Mr. McLeod and
21 indicate that he had not concluded his testimony on
22 that particular issue I believe is problematic. I
23 don't want to be difficult. I don't know the extent to
24 which Mr. Markel intends on doubling back into the GE
25 issue. There was fairly extensive testimony that was

1 given on that yesterday and I would certainly ask for a
2 standing objection relating to anything that either
3 directly or indirectly contradicts any testimony that
4 he's previously given as it relates to that. And I
5 think that's the problem we may run into and I don't
6 want the record to have conflicting testimony on these
7 issues when technically it's under the same line of
8 questioning and that's my concern.

9 THE COURT:

10 Mr. McLeod, you said that you think you could handle
11 this on a redirect?

12 MR. MCLEOD:

13 I believe so, Your Honor. He's essentially going to go
14 through his Expert Report. He just didn't get to the
15 second half of it.

16 THE COURT:

17 Is he just going to read what's in his report about GE;
18 is that it, because the Report and the GE stuff is in;
19 correct?

20 MR. MCLEOD:

21 It is.

22 THE COURT:

23 So if he's just going to read it it's in.

24 MR. MCLEOD:

25 He's going to provide some explanation I would assume.

1 Can we ask John? I mean he's essentially -- I mean
2 it's his material. He's going to present it.

3 THE COURT:

4 Primarily his testimony has been quite a bit of him
5 just taking his Report and reading it. When you point
6 him to a section he reads it.

7 MR. MCLEOD:

8 Yeah.

9 THE COURT:

10 If the Report is in and this is just going to be him
11 reading it I don't really need him to do that.

12 MR. MCLEOD:

13 I can address it on redirect if you want. I'm fine
14 with that.

15 THE COURT:

16 Well, you can't unless it's not brought out on cross.

17 MR. PURIEFOY:

18 So long as it's within the scope of my cross-
19 examination then I don't have a problem with that.

20 THE COURT:

21 Okay. Well, let's just handle it that way.

22 MR. MCLEOD:

23 Okay.

24 THE COURT:

25 Okay. All right. Mr. Puriefoy.

1 EXAMINATION BY MR. PURIEFOY: 9:10:07.5

2 Q. Mr. Markel, my name is Devon Puriefoy. I'm here today
3 on behalf of the Respondent, Sterling Mensch. I know
4 you and I have had an opportunity to meet at least on
5 one occasion, but thank you for being here. I know you
6 were on the stand yesterday for a fairly extended
7 amount of time, so I'm going to try to keep this as
8 short and concise as I possibly can. You were retained
9 by the Petitioners in this case to provide an Expert
10 Report relating to, an objective Expert Report, related
11 to damages that you found related to Ms. Mensch's
12 Estate; is that correct?

13 A. No, that's not correct. I was engaged to determine the
14 losses. It's up to the Judge to determine damages.

15 Q. Okay. And so let me rephrase my question. You were
16 retained by the Petitioners to determine the losses to
17 Ms. Mensch's Estate as a result of certain conduct that
18 was alleged by the Petitioners by Mr. Mensch; is that
19 correct?

20 A. That's correct.

21 Q. Okay. And would you agree with me that in creating
22 your loss categories there are essentially two buckets
23 that we're dealing with. The first bucket being
24 transfers that were made from Ms. Mensch's account into
25 Mr. Mensch's account. Would that be a fair

1 representation of what went on?

2 A. That's a fair representation.

3 Q. And then the second bucket would be the consequences
4 that resulted from those transfers; would that be fair?

5 MR. MCLEOD:

6 Your Honor, I'm going to object.

7 A. No, that's not accurate.

8 THE COURT:

9 Hold just a second.

10 MR. MCLEOD:

11 I'm going to object to the extent that he's going to
12 get into any offset, because I don't think that any
13 offset or claim against the Estate was raised in the
14 Pleadings.

15 THE COURT:

16 Okay. Well, I don't know if that's where he's going
17 yet, so hold that objection until that becomes more
18 evident to me. I think your question was to the
19 witness was he was to determine the loss to the Estate
20 and something about consequences. I forgot.

21 MR. PURIEFOY:

22 Yes, Your Honor. So I believe my original question was
23 the review of the losses can essentially be broken down
24 into two buckets and I believe the testimony was the
25 first bucket would certainly be considered the

1 transfers from Ms. Mensch's account into Mr. Mensch's
2 account.

3 EXAMINATION RESUMED BY MR. PURIEFOY:

4 Q. Could we agree to that?

5 A. Yes.

6 Q. Okay. And then second bucket of losses would be the
7 losses that resulted from either those transfers or Mr.
8 Mensch's failure to act in some way; would that be
9 fair?

10 A. (Witness pausing.) I wouldn't totally agree with that.
11 My line 1 had to do with what we agreed upon. My lines
12 2 through 5 and line 7 had to do with things that
13 didn't necessarily have anything to do with the
14 transfers. They did relate to certain things that
15 Sterling Mensch did do or did not do.

16 Q. Okay. And what you're referring to is your Appendix D
17 that was produced as Exhibit 1 to Petitioners; is that
18 correct?

19 A. Yes.

20 Q. Okay. All right. And you also had an opportunity in
21 preparation for the hearing both yesterday and today to
22 review an Expert Report that was created by Mr.
23 Chastain; is that correct?

24 A. That's correct.

25 Q. Okay. And you were in the courtroom yesterday I

1 believe when we stipulated to what's -- I'm just going
2 to call it Damage Bucket 1, which was the \$820,382.13,
3 which constituted the transfers from Ms. Mensch's
4 account to Mr. Mensch's account. Do you recall that?

5 A. Right.

6 Q. Okay. And so would you agree with me that the first
7 task that you engaged -- that you were engaged for, was
8 determining as it relates to the transfers from Ms.
9 Mensch's account to Mr. Mensch's account, what of those
10 transfers constituted a benefit to Ms. Mensch's Estate
11 and what constituted a direct benefit to Mr. Mensch.
12 Would that be a fair representation?

13 MR. MCLEOD:

14 Your Honor, objection. I think he's getting into
15 offsets as to the amount going into the account and
16 they're trying to offset that against the damages
17 undergone when the amount went out of his account into
18 her account the damages were established. He owes the
19 Estate for those amounts that are gone. He is
20 attempting to -- to make an argument that those should
21 be offset by amounts that he expended for Ms. Mensch's
22 benefit or amounts that he will argue that -- that Mr.
23 -- that Ms. Mensch's Estate -- or that -- yeah, Ms.
24 Mensch's Estate owes Sterling. It's a basically a
25 claim against the Estate and it's a claim for offset.

1 MR. PURIEFOY:

2 Your Honor first off I would disagree. The case that
3 Mr. McLeod is referencing is an unreported case set on
4 the very front page said this serves no precedential
5 value and shall not be relied upon. That is the offset
6 case the Mr. McLeod submitted as part of his Motion in
7 Limine. But perhaps more importantly we're not seeking
8 offset. Inherently offset is when we are claiming some
9 sort of a damage owed back to us to be offset against a
10 damage that is claimed to be owed to the moving party.
11 That is certainly not what we're doing. In fact, what
12 we're doing is exactly what The Court has ordered on
13 three separate occasions, which is delineate for The
14 Court of the transfers that were made which were made
15 for the benefit of Ms. Mensch, because if they were for
16 the benefit of Ms. Mensch Mr. Mensch has certainly not
17 violated his fiduciary duty as related to those
18 particular transfers. It's everything else that is
19 left over that we admit there will be some damage
20 amount in this case. The question is how much of the
21 transfers were wrongful and how much were permitted.
22 That's not an offset. It's simply required under the
23 statute that Mr. McLeod has plead which is there has
24 been a demonstration of a breach, but the Damages
25 Hearing serves to demonstrate what the extent of those

1 damages are. Not that we are claiming that we are
2 entitled to some damage figure from the Estate or any
3 of the Petitioners. It's simply what constitutes a
4 wrongful transfer and if it was not wrongful it does
5 not fall within the category of liability that's been
6 established as it relates to the fiduciary.

7 THE COURT:

8 The decisions about what -- first of all, what the
9 damages are to the Estate or what the losses are to the
10 Estate are ultimately going to be the decision of The
11 Court. Whether or not anybody -- whether or not your
12 client gets the benefit of an offset is up to The
13 Court. The question that you're asking the witness is
14 I believe what you're trying to show is that some of
15 the transfers he made he actually used that money in
16 his -- he argues for the benefit of Ms. Mensch. And at
17 the end of this case you're going to want him to be
18 given a credit or something to show that those
19 transfers were legitimate under the Power of Attorney
20 or as the PR of the Estate and he should be given
21 consideration for those amounts. And that is something
22 I have to determine. Clearly you can ask about that,
23 but I'm not saying if you're asking about that that
24 he's getting any of that. And I'm not saying that he's
25 entitled to an offset. We haven't gotten into the

1 argument about the case law, but if Mr. McLeod is -- I
2 think that at the end of this case you argue before --
3 at your closing he's not entitled to an offset. He
4 didn't plead it. It's just like if that's what we were
5 going to argue but right now I think what we're trying
6 to do is cross-examine this witness to see if he has
7 determined his findings as a loss to the Estate of Ms.
8 Mensch, which is my job and he's the expert, and what
9 is the loss to her. He's already testified that he
10 believes that her Estate lost an enormous amount of
11 rent, which you objected to and because it wasn't plead
12 and it wasn't a specific amount and nothing over 13
13 years was ever done about that I made a ruling on it.
14 But in his mind the rent is an enormous part of the
15 damages that the Estate has lost. So my ruling is, Mr.
16 McLeod, I'm going to let him ask these questions. I'm
17 going to note your objection on offset. I'm not saying
18 he's entitled to an offset, but he's on cross-
19 examination and I think what his job is now is to push
20 -- or not push, but to examine the witness as to how he
21 came up with his figures, how he arrived at whatever
22 losses he's tallied up on his exhibit and that's pretty
23 much it. If he goes into, "Did you find that some of
24 the transfers were mortgage payments?" He's already
25 said he did. It doesn't mean he's going to get credit

1 payments. I mean in my mind I'm very concerned about
2 how he managed this whole transaction. I don't know
3 why he didn't make mortgage payments out of Ms.
4 Mensch's account. Why did he have to transfer it to
5 his account and then make it? That makes no sense to
6 me. If you're Power of Attorney you pay it out of her
7 account. Why did he convert it to his own single-owner
8 account? Under banking law it becomes his account. If
9 he would have died during this time all that money
10 would have gone into his Estate. So that -- this --
11 the way this was handled and all of that is what Mr.
12 Puriefoy is trying to figure out from this witness on
13 how he arrived at all these figures and at his totals
14 on his exhibits, so I'm going to overrule your
15 objection.

16 MR. MCLEOD:

17 Can you note my standing objection so I don't have to
18 object every time?

19 THE COURT:

20 Yes, I will note your standing objection.

21 MR. MCLEOD:

22 All right. Thank you, Your Honor.

23 THE COURT:

24 Thank you. All right. You may proceed.

25 MR. PURIEFOY:

1 Thank you, Your Honor.

2 EXAMINATION RESUMED BY MR. PURIEFOY:

3 Q. All right. Mr. Markel, I'll reask my last question.

4 Maybe I can frame it a little bit better.

5 A. Okay.

6 Q. Were you tasked, was one of your task at least to
7 determine based on the transfers from Ms. Mensch's
8 account to Mr. Mensch's account what of those transfers
9 were in fact for Ms. Mensch's benefit?

10 A. That was not part of my task.

11 Q. Were you tasked with determining the losses associated
12 with those transfers or if there was a loss associated
13 with the transfer itself were you tasked with
14 determining what that loss was?

15 A. My -- my program for my work was not that specific. I
16 was -- I made a lot of these decisions myself. I was
17 engaged to examine these bank statements and come to my
18 own conclusions --

19 Q. Okay.

20 A. -- about them.

21 Q. And based on your examination of those bank statements
22 did you come to a conclusion as it related to the loss
23 to Ms. Mensch's Estate related to the transfers that
24 were made by Mr. Mensch from her account into his?

25 A. Referring back to Row 1 of my Report I included that in

1 my losses. All -- all 239 of those transfers from
2 Florence's account to Sterling's account I considered
3 to be losses.

4 Q. Okay. And I'm going to have you refer back to what's
5 already been entered in evidence as Petitioner's
6 Exhibit 3.

7 MR. PURIEFOY:

8 Your Honor, does the witness have access to the
9 exhibits that were previously presented yesterday?

10 THE COURT:

11 Yes. Which exhibit would you like?

12 MR. PURIEFOY:

13 Exhibit 3, Your Honor, which was that large notebook.

14 THE COURT:

15 Yes. I'm right behind you. Okay. There you go.

16 Thank you.

17 EXAMINATION RESUMED BY MR. PURIEFOY:

18 Q. All right. Mr. Markel, you've just been handed what
19 was marked yesterday as Petitioner's Exhibit 3. Do you
20 recognize that exhibit?

21 A. I remember, yes.

22 Q. Okay. And that was the exhibit that had the key at the
23 front where Mr. Mensch indicated items that he believed
24 were used for Ms. Mensch's benefit; is that correct?

25 A. There was a key. Yes.

1 Q. And that key, it was a purple one and a yellow key; is
2 that correct?

3 A. That's correct.

4 Q. And one of them, and forgive me I don't have the key in
5 front of me, but one of them indicated monies that were
6 expended for Ms. Mensch's care?

7 A. That was the purple highlights.

8 Q. And then the yellow was expenditures made for Ms.
9 Mensch's home I believe?

10 A. Yes.

11 Q. Okay. All right. And I'm not going to have you go
12 line by line through that at all, but the transfers
13 that were contained in that exhibit was that also
14 included in the \$820,000 figure that's been stipulated
15 to?

16 A. No, because everything on Row Number 1, all 239 line
17 items, were solely transfers from Florence's account to
18 Sterling's account. There were no -- that's all they
19 are. Just transfers from one account to the other in
20 one direction.

21 Q. Sure. And the purpose I believe of Exhibit 3 was Mr.
22 Mensch indicating what he contended were benefits to
23 Ms. Mensch; is that fair?

24 A. That's probably a fair assessment. Yes.

25 Q. Okay. And you did not give any credit to that and I

1 believe your testimony yesterday was that there was no
2 evidence to support that position; is that correct?

3 A. No, that's not true. I did on -- I'd have to point out
4 the specific line item, I did allow for some
5 expenditures between 3 and \$4,000 for Ms. Mensch's care
6 where there was obvious -- very obviously were spent
7 for her care. My problem with the other expenditures
8 were that there was no substantiation of what was
9 purchased or what it was for. And they were
10 expenditures to retailers that sell all kinds of
11 merchandise, which could have been for her benefit or
12 clearly not. And I didn't want to speculate about
13 that.

14 Q. And I certainly understand, Mr. Markel. I guess the
15 more important question is do you understand Exhibit 3
16 to have been produced in this case in an effort by Mr.
17 Mensch to demonstrate what he believed to be purchases
18 for Ms. Mensch's benefit whether you agree with them or
19 not?

20 A. Yes, that's a fair characterization.

21 Q. Okay. And in addition to those documents that were
22 produced as part of Petitioner's Exhibit 3 you also had
23 an opportunity to review Mr. Chastain's Report as well?

24 A. That's correct.

25 Q. And in that Report he also --

1 MR. MCLEOD:

2 Objection. I object to the Report because that goes
3 into the offset extensively and that's basically what
4 it is is trying to seek an offset so I note my
5 objection to the Report.

6 THE COURT:

7 That's a standing objection, Mr. McLeod.

8 MR. MCLEOD:

9 Thank you, Your Honor.

10 EXAMINATION RESUMED BY MR. PURIEFOY:

11 Q. And, Mr. Markel, the question I believe was you had an
12 opportunity to review the Report that was produced by
13 Mr. Chastain in this case?

14 A. Yes, I did.

15 Q. And in that Report he too noted what he believed to be
16 transfers for the benefit of Ms. Mensch; is that
17 correct?

18 A. No, not transfers for Ms. Mensch. He -- as I recall he
19 laid out a number of expenditures made out of
20 Sterling's account that Sterling alleges were for Ms.
21 Mensch's real estate or for her personal care.

22 Q. Okay. You had an opportunity to review that Report and
23 see what he indicated was for mortgage payments and her
24 personal care; correct?

25 A. Yes, among other things.

1 Q. Okay. And you had an opportunity to review both
2 Petitioner's Exhibit 3 as well as Mr. Chastain's Report
3 before the creation of your 2nd Amended Expert Report
4 dated August 16th of this year; correct?

5 A. Yes, I did.

6 Q. Okay. All right. I'm going to have you look at what
7 was marked yesterday as Petitioner's Exhibit 2.

8 MR. PURIEFOY:

9 Your Honor, that was the GE account.

10 THE COURT:

11 Okay. Mr. Markel, I'm going to slide it to you.

12 EXAMINATION RESUMED BY MR. PURIEFOY:

13 Q. Mr. Markel, do you recall being questioned about
14 Petitioner's Exhibit 2 yesterday?

15 A. Can you restate that?

16 Q. Do you recall Mr. McLeod questioning you about
17 Petitioner's Exhibit 2 yesterday during your direct
18 examination?

19 A. Yes.

20 Q. Okay. And so if we look at the first page of
21 Petitioner's Exhibit 2 this is a GE Mutual Fund
22 Statement; is that correct?

23 A. That's correct.

24 Q. And if you look at the top right-hand corner it says
25 for the period of January 1st, 2015 through December

1 31st, 2015?

2 A. That's correct.

3 Q. Okay. And if we look at the second page of
4 Petitioner's Exhibit 2 this is a State Street Global
5 Advisors Investment Statement?

6 A. Yes.

7 Q. And that runs for the period of January 1st, 2016 to
8 December 30th, 2016?

9 A. That's correct.

10 Q. And then the third page appears to be a UBS Retirement
11 Account Statement?

12 A. Yes.

13 Q. And this is dated November 2016 through December 2016?

14 A. That's correct.

15 Q. And so if we go back to the first page of Petitioner's
16 Exhibit 2 at the top under Portfolio it appears that a
17 portion of this, this GE account consisted of General
18 Electric stock; is that correct?

19 A. That's correct.

20 Q. And then if you go down a little bit further it also
21 indicates that part of this GE account was also three
22 Elfun Mutual Funds I believe or Trust Funds?

23 A. They were Elfun Trusts. That's the name of the mutual
24 fund shares; yes.

25 Q. Okay. And do you recall that there were three separate

1 accounts related to those Elfun Trusts?

2 A. Well, now on the first page of this Exhibit 2 it does
3 not indicate that. I think on the second page the next
4 year was State Street. It does indicate that.

5 Q. Well, my question to you, and we're going to get to
6 page 2 here in just a moment, but as you sit here today
7 do you recall based on your review of the documents in
8 this case whether GE held three Elfun Trusts accounts
9 at some period of time?

10 A. That appears to be correct, yes.

11 Q. Okay. And so if we look on page 2 of Petitioner's 2
12 this is the State Street Global Advisors Statement?

13 A. Yes.

14 Q. And are you aware that at some point the GE account was
15 rolled over into one or multiple different accounts I
16 believe in 2016?

17 A. During 2016 the GE stock was transferred to the UBS
18 account.

19 Q. Well, you would agree that the GE account held Elfun
20 Trusts Mutual Fund; correct?

21 A. (Witness reviewing exhibit.)

22 Q. If you look on the first page of Petitioner's 2.

23 A. The organization called GE Mutual Funds held that.

24 Q. Correct.

25 A. Were the custodian for those funds, yes.

1 Q. And you're referring to the Elfun Trust Funds?

2 A. Elfun. It's a little confusing. The name of the
3 mutual fund is Elfun Trust Mutual Fund. It's not
4 really a trust in a legal sense.

5 Q. Sure. So for ease of reference I'll just call it the
6 Elfun Mutual Fund; is that okay?

7 A. Yes.

8 Q. Okay. So on the first page of Petitioner's Exhibit 2
9 you do notice that in the GE account there was an Elfun
10 Mutual Fund?

11 A. Yes.

12 Q. Okay. And then on page 2 of Petitioner's 2, which is
13 this State Street Global Advisors, do you see that at
14 the bottom of that page there are also three Elfun
15 Mutual Funds?

16 A. Right. It looks like also sometime during 2076 (sic)
17 that the Elfun Mutual Funds were transferred to State
18 Street Global Advisors.

19 Q. Correct.

20 A. Just like the GE stock was transferred to UBS for them
21 to act as custodian.

22 Q. And is today the first time that you realized that
23 there appears to be a transfer from the GE account to
24 State Street Global Advisors related to that Elfun
25 Mutual Fund or had you previously noted that?

1 A. I noted that it is pretty obvious.

2 Q. Okay.

3 A. They're two different organizations.

4 Q. And so is it your understanding that that Elfun Mutual
5 Fund was transferred from the GE account to State
6 Street Global Advisors?

7 A. That's -- yes. And that's what this statement says.

8 Q. I agree with you. And so if we can go over to page
9 three of Petitioner's 2. This is the UBS Retirement
10 Account; correct?

11 A. Yes.

12 Q. And being held in this UBS Retirement Account do you
13 see that GE stock is being held in this account?

14 A. Yes.

15 Q. So you would agree with me that from the General
16 Electric Fund the Elfun Mutual Fund was transferred to
17 State Street Global Advisors; correct?

18 A. Yes.

19 Q. And the stock, the GE stock, was transferred to UBS; is
20 that correct?

21 A. Right. And sometime during the year the number of
22 shares decreased. They must have been sold.

23 Q. Sure.

24 A. During the year 2016. Because they decreased from
25 33,448 shares to 28,472 shares.

1 Q. Sure. And thank you for that. How far back did your
2 review go of the General Electric Mutual Fund? What
3 year did you begin your review of that fund?

4 A. I don't remember.

5 Q. Okay. Well, would you agree with me that between the
6 State Street Global Advisors account and the UBS
7 account those two accounts were holding the same types
8 of assets that were being held in the GE Mutual Fund?

9 A. Yes.

10 Q. Okay. And I think you testified yesterday that you do
11 not know the origins of the creation of that GE Mutual
12 Fund or how that fund came to be?

13 A. No, I don't have any personal knowledge of that.

14 Q. All right. And I believe yesterday, Mr. Markel, you
15 testified that you were familiar with the concept of
16 diversification. Is that a fair representation?

17 A. That's correct.

18 Q. Okay. And part of your loss calculation was your
19 determination that Mr. Mensch failed to diversify these
20 funds; is that correct?

21 A. That's correct.

22 Q. And that total amount was \$400,000 I believe that you
23 noted in your appendix to your Report?

24 A. That's correct.

25 Q. Okay. And so I believe you also testified that in

1 order to demonstrate -- let me rephrase the question.
2 I believe you testified yesterday that it was your
3 belief that Mr. Mensch breached his fiduciary duty by
4 failing to diversify that fund; is that fair?

5 A. Yes.

6 Q. Okay.

7 A. That's what I believe.

8 Q. All right. Well, let me ask. Mr. Markel, what
9 independent research did you do to determine the manner
10 in which the UBS account specifically was managed?

11 A. I don't understand the question.

12 Q. Did you engage in any independent investigation to
13 determine what type of account this UBS account was?

14 A. No, I did not.

15 Q. Did you engage in any investigation to determine
16 whether this was a self-directed account; meaning at
17 the direction of Mr. Mensch?

18 A. No, that wasn't -- that really wasn't even relevant to
19 me. The fact was that it was undiversified and it
20 should have been fixed. And it's really irrelevant --
21 what's really irrelevant to me in my work what sort of
22 fund it was. It was just very clearly obviously
23 undiversified and so in my opinion Sterling Mensch had
24 a fiduciary obligation to diversify that account
25 however he might accomplish it.

1 Q. Okay. And we're going to get back to that in just a
2 moment. So let me ask this question. Do you have any
3 personal knowledge as to whether counsel for
4 Petitioners engaged in any independent investigation to
5 determine what type of account this was? Do you have
6 any personal knowledge?

7 A. No, I don't.

8 Q. Do you have any personal knowledge as to whether the
9 Petitioners themselves engaged in any independent
10 investigation to determine what type of account this
11 UBS account was?

12 A. I'm not aware of anything like that.

13 Q. And I believe you testified just a moment ago that it
14 was your opinion that Mr. Mensch violated his fiduciary
15 duty by failing to diversify; is that correct?

16 A. That's correct.

17 Q. Doesn't that necessarily assume that Mr. Mensch had the
18 authority to diversify it?

19 A. No, I don't believe so. I believe -- I believe that he
20 should have taken -- at the one end of the scale that
21 he should taken all available steps to accomplish the
22 diversification whatever it took. And at first blush
23 he might not have that authority, but I assume, I made
24 the assumption in coming to that conclusion that he
25 could have obtained through a ruling by the Probate

1 Court or whatever find a way to diversify that account
2 because it was egregiously undiversified.

3 Q. And let me ask this: if it was determined that Mr.
4 Mensch didn't have the authority to diversify that
5 account is it still your position that he breached his
6 fiduciary duty?

7 A. If he jumped over all the hurdles in his way to
8 diversify that retirement account and he through
9 diligent effort failed to -- there was just no legal
10 recourse for him doing that then, yes, I suppose that
11 would absolve him.

12 Q. Okay.

13 A. But short of that, no.

14 Q. Okay. And you've testified a number of times now that
15 it is your opinion that he did in fact breach his
16 fiduciary duty; correct?

17 A. Yes, that's my opinion.

18 Q. And what lengths did you go to determine for purposes
19 of creating your Report what lengths Mr. Mensch went to
20 attempt to diversify?

21 A. I did not. That wasn't part of my analysis.

22 Q. And so again your analysis assumes that Mr. Mensch had
23 the authority to act, or if he didn't have the
24 authority to act, did everything possible to attempt to
25 diversity; is that fair?

1 A. I'll add one other thing. I've read some of the
2 Responses to Interrogatories --

3 Q. Mr. Markel, I'm not --

4 A. Let me finish, please.

5 THE COURT:

6 Mr. Markel, please answer his question and then you can
7 explain it.

8 THE WITNESS:

9 This is part of my answer. I can't make a complete
10 answer without adding this part.

11 A. I read the Interrogatories and Mr. Mensch his
12 explanation of why he couldn't diversify this account
13 and he made many attempts to do so in my opinion
14 sounded totally lame.

15 Q. And what independent investigation did you conduct to
16 determine that it was totally lame?

17 A. I did not. Just from -- from my 40 years of
18 professional experience it just didn't make any sense
19 to me.

20 Q. Okay. And, again, it is contained in your Expert
21 Report there was \$400,000 attributed to that failure to
22 diversify?

23 A. That's the figure I came up with, yes.

24 Q. All right. All right. If we can go to Appendix E of
25 your Report, Mr. Markel.

1 MR. PURIEFOY:

2 And I believe was that entered, Your Honor, as
3 Petitioner's Exhibit 1.

4 THE COURT:

5 Right. And do you have that, Mr. Markel?

6 THE WITNESS:

7 I have it in my notebook, yes.

8 THE COURT:

9 I've got one copy here of it. Let me see.

10 THE WITNESS:

11 Well, I have it here.

12 THE COURT:

13 Okay.

14 EXAMINATION RESUMED BY MR. PURIEFOY:

15 A Can you tell me again what we're referring to?

16 Q. Oh, sure. If we can go Appendix E.

17 A. Okay.

18 Q. And I believe at the top of Appendix E of your Report
19 it indicates that these were the unexplained outgoing
20 cash transfers for the benefit of Sterling Mensch, do
21 you see that?

22 A. Yes.

23 Q. Okay. The accounts that are referenced in Appendix E
24 appear to be accounts ending 7059 and 2007, or 2-0-0-7;
25 is that correct?

1 A. That's correct. Those were the two Bank of America
2 accounts in the name of Florence Mensch.

3 Q. Okay. And what types of accounts were account 7059 and
4 2007?

5 A. 7059 was a checking account. Account 2007 was a
6 savings account.

7 Q. And did you as part of your Report, did you do an
8 analysis on the interest that that money would have
9 gained or would have accrued had those transfers not
10 taken place?

11 A. No, I did not.

12 Q. Okay. As part of your Report did you do an analysis of
13 interest on any account that was owned by Ms. Mensch?

14 A. No, I did not.

15 Q. Okay. And if we could go to Appendix F of your Report
16 in Petitioner's Exhibit 1. Are you there?

17 A. Yes.

18 Q. You beat me there, so. Okay. And so forgive me for
19 this line of questioning. I am no tax expert but
20 hopefully you can follow me. I will make it as clear
21 as I possibly can. Appendix F to your Report, Mr.
22 Markel, is titled "Avoidable Income Tax On Retirement
23 Plan Distribution in Excess of Required Minimum
24 Distribution." Do you see that?

25 A. Yes.

1 Q. Okay. And so the amount of \$163,420 that was included
2 in your Appendix D to your Report; is that correct?

3 A. That's correct.

4 Q. And that was included in the losses that you stated in
5 your Report were suffered by Ms. Mensch's Estate?

6 A. That's correct.

7 Q. All right. And I would assume that the reason why
8 these losses were attributed to Mr. Mensch's conduct is
9 because he was responsible for making those
10 withdrawals?

11 A. Yes.

12 Q. Okay. So let me ask you a couple of questions about
13 this. First, I want to make sure that I understand how
14 you arrived at these figures that are under the second
15 tab, which is titled "Avoidable Income Tax on Actual
16 Retirement Plan Distribution in Excess of Required
17 Minimum Distribution," do you see that tab?

18 A. I'm not following you.

19 Q. I'm calling it a tab. It's --

20 MR. PURIEFOY:

21 And if I may approach, Your Honor, for just a moment to
22 point him in the right direction.

23 THE COURT:

24 Yes, you may.

25 Q. I'm referring to this column.

1 A. Okay. The second column.

2 Q. Yes, the second column. And to make sure that I have a
3 firm understanding as to how these figures were arrived
4 at I want to make sure I understand the formula. In
5 arriving at these particular numbers for 2011, '12,
6 '15, '16 and '18 is it fair to say that you took for
7 that particular year the transfers from Ms. Mensch's
8 account to Mr. Mensch's account, the Respondent's
9 account, subtracted out the annual required
10 distribution and multiplied it by the tax rate?

11 A. Yes.

12 Q. Okay. I just wanted to make sure I had a clear
13 understanding as to how these numbers were arrived at.
14 And you allocated of the losses to Ms. Mensch's account
15 \$163,420 to Mr. Mensch's conduct?

16 A. Yes, his failure to -- to keep the distributions at the
17 required minimum distribution level.

18 MR. PURIEFOY:

19 And, Your Honor, I'm going to show opposing counsel
20 what's already been in evidence but it's going to be
21 marked as Respondent's Exhibit 1.

22 THE COURT:

23 Okay. Thank you.

24 Q. All right. Mr. Markel, if you could look through what
25 I'm going to mark as Respondent's Exhibit 1. I'll

1 represent to you that these are bank statements that
2 you would have reviewed as part of your investigation,
3 but I'll give you a moment to look at that.

4 MR. MCLEOD:

5 Your Honor, could I just state something. Not an
6 objection, but can we just make clear that we're
7 referring to Sterling Mensch every time we say Mr.
8 Mensch because there's also John Mensch? I just want
9 to make that clear throughout the record.

10 THE COURT:

11 Okay. All right. And this exhibit, is this -- you've
12 agreed to enter this as Respondent's Number 1.

13 MR. PURIEFOY:

14 The content of the exhibit was stipulated to.

15 THE COURT:

16 Okay.

17 MR. PURIEFOY:

18 Yes, Your Honor.

19 (Introduction of previously marked document
20 Bank Account Statements as
21 Respondent's Exhibit Number 1.)

22 EXAMINATION RESUMED BY MR. PURIEFOY:

23 Q. And, Mr. Markel, the documents that I've given you that
24 are marked as Respondent's Exhibit 1 these are bank
25 accounts and I believe you had an opportunity to review

1 these in advance of today's hearing?

2 A. I haven't seen this exhibit, but, yes, I'm quite
3 familiar with the bank statements.

4 Q. Okay. So what I want to have you do if we can look at
5 the second page of Respondent's Exhibit 1. Actually,
6 excuse me, the third page of Respondent's Exhibit 1.
7 Do you see under Deposits and Other Additions a wire
8 that was made in the amount of \$90,593.80?

9 A. What page is this on?

10 Q. This is page 3.

11 A. Yes, I see that.

12 Q. Okay. And what date was that wire made on?

13 A. December 29, 2014.

14 Q. Okay. And if you flip to page 4 of Respondent's
15 Exhibit 1 --

16 A. Yes.

17 Q. -- under the column marked Checks.

18 A. Yes.

19 Q. Do you note that there are six checks that were made
20 out totaling \$60,000 in December of 2014?

21 A. Yes.

22 Q. Okay. There was a check for 10,000 on December 30th,
23 two on December 26, and two on December 31st?

24 A. Yes.

25 Q. Okay. And the total of those checks was \$60,000?

1 A. Yes.

2 Q. And if you go to page 9 of Respondent's Exhibit 1. I
3 believe it should say page 9 on the bottom right-hand
4 corner. I think you've gone too far.

5 A. No, I don't see a page 9.

6 Q. It skips to page 9. On the bottom right-hand corner
7 you were previously looking at page 4 and then from 4
8 to goes to 5 and from 5 it goes to 9.

9 A. Okay.

10 Q. Okay.

11 A. I see that.

12 Q. All right. So on what's labeled page 9 of 10 on
13 Respondent's Exhibit 1 do you note the six checks that
14 we had just made mention to a moment ago?

15 A. Yes, these appear to be by the check numbers the same,
16 the same as the listing on page 4 of 10.

17 Q. And let's just go through these checks. There's one
18 check made out to Shea Mensch. Do you see that?

19 A. Yes.

20 Q. There's another check that's made out to Shauna
21 Waddell?

22 A. Yes.

23 Q. And the check amount made out to Ms. Waddell is
24 \$10,000?

25 A. Yes.

1 Q. There's a check made out to Steve Waddell in the amount
2 of \$10,000?

3 A. Yes.

4 Q. There's a check made out to John Mensch in the amount
5 of \$10,000?

6 A. That's correct.

7 Q. There's a check made out to Holly Mensch in the amount
8 of \$10,000?

9 A. That's correct.

10 Q. And there's a check made out to Sterling Mensch in the
11 amount of \$10,000?

12 A. That's correct.

13 Q. And what's noted in the memo line of each one of those
14 checks?

15 A. Gifts.

16 Q. Okay. So do you understand that these were gifts that
17 were written by Mr. Mensch to two of the Petitioners at
18 least in this case?

19 A. Well, they're just from Florence Mensch to -- they're
20 written on Florence's account.

21 Q. Correct. So let me rephrase the question. Do you
22 agree that there were checks written out of Ms.
23 Mensch's account that went to the Petitioners and their
24 respective spouses?

25 A. Yes.

1 Q. Okay. And if we go back to page -- what's marked,
2 it's going to say 3 of 10, and it actually is page 3 in
3 Respondent's Exhibit 1. Under Deposits and Other
4 Additions.

5 A. Yes.

6 Q. The total transfer was \$90,593. Do you see that?

7 A. Yes.

8 Q. And where did those funds come from?

9 A. From GE Mutual Funds.

10 Q. Okay. So of the \$90,000 that was transferred \$60,000
11 of that went to the Respondent and the Petitioners as
12 gifts; correct?

13 A. That's correct. But how did -- how did Sterling manage
14 to --

15 Q. Well, unfortunately --

16 A. -- get these shares out of the GE Mutual Fund Account?

17 Q. Unfortunately, Mr. Markel, I have the opportunity to
18 question you and my question was does it appear to you
19 that of the 90,000, \$60,000 of that were paid to the
20 Respondent and the Petitioners as gifts?

21 A. Well, it went in -- it went into the account. And once
22 it -- once these \$90,593.80 went into Ms. Mensch's
23 account, and it actually went in the same day as some
24 of these checks, it lost its identify. It became
25 commingle with the other dollars in her account.

1 Q. My question is, Mr. Markel, of the \$90,593.80 that went
2 into Ms. Mensch's account would you agree that \$60,000
3 came out as gifts that were paid to the Respondent and
4 to the Petitioners?

5 A. Yes, I can agree to that.

6 Q. Okay. So if we go to page, I believe it is 9 and that
7 page says December 2015.

8 A. Can you restate that question, please?

9 Q. Sure. So I believe you're looking at the bottom right-
10 hand corner. Does it say page 9 of 10?

11 A. Yes.

12 Q. Okay. And so if you go two pages past that you should
13 see a cover page that says December 2015?

14 A. That's on the third page past.

15 Q. It's the third page. I apologize.

16 A. Yes, I see that.

17 Q. Okay. And then on the -- if you flip two pages and at
18 the bottom of the right-hand corner it will say page 3
19 of 10 and it will be under Deposits and Other
20 Additions.

21 A. Yes.

22 Q. Okay. And do you see a wire on December 9th of 2015 in
23 the amount of \$99,681.52?

24 A. Yes.

25 Q. Okay. And where did that wire come from?

1 A. It came from the GE Mutual Fund Account.

2 Q. Okay. And if you go to the next page, which is marked
3 4 of 10 at the bottom, do you see five checks that were
4 written, two in the amount of \$14,000 and three in the
5 amount of \$10,000?

6 A. I see that.

7 Q. Okay. And that totaled \$58,000?

8 A. Yes.

9 Q. Okay. And just for purposes of clarity on the record
10 there was two \$14,000 transfers on December 15th? Or
11 excuse me checks. There were two \$14,000 checks that
12 were written on December 14th of 2015, do you see that?

13 A. Yes.

14 Q. There was a \$10,000 check that was written on December
15 21st of '15?

16 A. Well, cleared the bank on that day.

17 Q. Right. And then there were two checks that cleared the
18 bank on December 23rd of '15; is that correct?

19 A. Yes.

20 Q. Okay. And, again, that was for a total \$58,000?

21 A. That's correct.

22 Q. All right. And if you would go -- if you would flip
23 two pages pass that to page 7 of 10.

24 A. Yes.

25 Q. And do you note that there are five checks that were

1 written?

2 A. I see that.

3 Q. Okay. And one of those checks was written to Shauna
4 Waddell?

5 A. That's correct.

6 Q. And one was written to Stephen Waddell?

7 A. That's correct.

8 Q. And one was written to John Mensch?

9 A. That's correct.

10 Q. One was written to Holly Mensch?

11 A. That's correct.

12 Q. And there was one written to Shea Mensch?

13 A. That's correct.

14 Q. And in the memo lines can you tell me what they say?

15 A. It says 2015.

16 Q. Do you know if these were gifts that were written out
17 of Ms. Mensch's account to the Respondent and the
18 Petitioner? Petitioners, excuse me, and their spouses?

19 A. I don't -- I don't know that as a fact. However, they
20 were written at the end of the year. They are close to
21 the amount of the annual exclusion allowed by the IRS
22 so I think it's a fair assumption to say that they are
23 gifts.

24 Q. Okay. And if you flip two pages -- excuse me, three
25 pages. Yeah, three pages in Respondent's Exhibit 1 do

1 you see where it says Deposits and Other Additions?

2 A. Yes.

3 Q. Okay. And this would have been for the year 2016?

4 A. Yes.

5 Q. Okay. And on December 22nd, 2016 do you see a wire in
6 the amount of \$99,522.25?

7 A. Yes.

8 Q. Okay. And where did that come from?

9 A. US Bank NA.

10 Q. Okay. And do you see under checks that there were five
11 checks written?

12 A. Yes.

13 Q. Totaling \$70,000?

14 A. Yes.

15 Q. And just for the purpose of clarity again on the record
16 one of those checks cleared on December 30th of 2016.
17 Do you see that?

18 A. Yes.

19 Q. Two checks cleared on December 27th of 2016?

20 A. That's correct.

21 Q. And two checks cleared on December 28th of 2016?

22 A. That's correct.

23 Q. And, again, those checks totaled \$70,000?

24 A. Yes.

25 Q. Okay. And if you'd go to the next page.

1 A. Yes, I'm there.

2 Q. Okay. And do you see the five checks that were made or
3 the five checks that were written?

4 A. Yes.

5 Q. Okay. And do you see that one of the checks was made
6 out to Shea Mensch?

7 A. Yes.

8 Q. Do you see a check was made out to Shauna Waddell?

9 A. Yes.

10 Q. Do you see a check was made out to Steve Waddell?

11 A. Yes.

12 Q. Do you see a check was made out to John Mensch?

13 A. Yes.

14 Q. And do you see a check was made out to Holly Mensch?

15 A. Yes.

16 Q. And in the memo line of each one of those checks what
17 does it say?

18 A. Gift.

19 Q. Okay. So we've gone through in Respondent's Exhibit 1
20 three years between 2014 and '16 where checks were
21 written out of Ms. Mensch's account to Respondent and
22 Petitioners, would you agree with that?

23 A. Yes.

24 Q. Okay. Was that figure included anywhere in your
25 \$280,000 stipulated figure? Or excuse me \$820,000

1 stipulated figure?

2 A. No, they were not because they weren't transfers from
3 -- from Florence's account to Sterling's account.
4 That's all that's in the 820,000.

5 Q. Correct. And so if we go back to Appendix F of your
6 Report, which was Petitioner's Exhibit 1. Do you have
7 that?

8 A. Yes.

9 Q. Okay. So Appendix F. I believe you indicated that the
10 formula that you used to come up with this total
11 \$163,000 figure was to take the transfers from the IRA
12 and subtract them from -- for that particular year.
13 You took the total transfers for that year, subtracted
14 the required minimum distribution and multiplied it by
15 the tax rate; correct?

16 A. By the difference, yes.

17 Q. Right. And so what I would submit to you is did you --
18 in your Report did you do a calculation for the total
19 amount of the gifts that were transferred from Ms.
20 Mensch's account to the Respondent and the Petitioners?

21 A. No, I did not analyze that.

22 Q. Okay. And I would submit to you, and if you would like
23 to do the math you certainly can, but I would submit
24 that that total is \$228,000 in gifts between 2014 and
25 2016.

1 A. Okay. But that really irrelevant to my scope and focus
2 of my analysis because if this had been handled
3 properly the required minimum distributions would be
4 limited to that figure and the gifts made should have
5 been less.

6 Q. Well, then let me ask you this question, Mr. Markel.
7 You were retained to review these records in an
8 objective manner; correct?

9 A. Yes.

10 Q. And so does it not lead to the question of subjectivity
11 if you believe that you were analyzing these documents
12 based on what you thought should have been done?

13 A. I'm not sure how to answer that. Can you restate it?

14 Q. Well, my question is very simple. Under Appendix F of
15 your Report you note in 2011 that there was an
16 avoidable income tax associated with distributions in
17 excess of the required minimum distribution in the
18 amount of \$330. Do you see that?

19 A. Yes.

20 Q. Okay. My question is as you sit here today are you
21 aware that the total amount of transfers that came from
22 the IRA totaled \$228,000? Was that number in your
23 Report?

24 A. No. And, again, it wasn't really relevant. It wasn't
25 relevant because the amount of the gifts if this had

1 been managed properly should have been adjusted down to
2 the required minimum distribution amount and all this
3 amounts to is one more error by Sterling Mensch that I
4 didn't pick up on.

5 Q. Okay. Well, let me ask this: the \$228,000 in gifts
6 would that have been captured anywhere on Appendix F?

7 A. No.

8 Q. Okay. So in creating your Appendix F you did not take
9 into consideration the transfers out of the GE account
10 that totaled \$228,000 or these gifts that totaled
11 \$228,000?

12 A. No, I did not consider that.

13 Q. Okay. Is there any reason why you didn't consider
14 that?

15 A. It wasn't relevant. As I've stated already a couple of
16 times.

17 Q. Well, can you explain to The Court in September 8 of
18 2011 the avoidable income tax on actual retirement
19 distributions in excess of the required minimum
20 distribution what number did you use as the
21 distribution amount to determine that there was an
22 avoidable tax of \$330?

23 A. I'd have to look at my work papers.

24 Q. And if you have your Report, and I believe you do, if
25 you could refer to that.

1 A. It's not in my Report. It's not -- my Report is not at
2 that level of detail.

3 Q. Well, I believe for purposes of this hearing it's
4 important that we get to that level of detail.

5 A. Okay. Well, I have to look that up.

6 Q. Is that something that you have at your disposal?

7 A. No, it will take me a few minutes to find it.

8 MR. PURIEFOY:

9 Your Honor, could we take a brief intermission?

10 THE COURT:

11 Yes, we will be in recess for 15 minutes. We will
12 start back at 10:25.

13 Off the Record 10:07:04.4

14 On the Record 10:25:03.6

15 THE COURT:

16 Thank you. Please be seated. Okay. We'll go back on
17 the record and we'll continue with cross-examination of
18 Mr. Markel.

19 EXAMINATION RESUMED BY MR. PURIEFOY:

20 Q. Mr. Markel, before we took a break I think I was asking
21 if you could get the documentation to help you assist
22 me on how you came up with the numbers in column 2
23 related to Appendix F. And have you had an opportunity
24 to retrieve those figures?

25 A. Yes.

1 Q. Okay. So let's just start with the years that I was
2 specifically referring and questioned you about as
3 related to the gifts. So there was gifts that were
4 made in 2015. Do you recall that?

5 A. Yes.

6 Q. Okay. And I believe in 2015 there was a total gift
7 amount in the amount of \$58,000 pursuant to
8 Respondent's Exhibit 1?

9 A. Yes.

10 Q. Okay. So if you could for the year 2015 you noted
11 avoidable income tax on actual retirement plan
12 distributions in excess of required minimum
13 distribution in the amount of \$26,002; is that correct?

14 A. That's right.

15 Q. Okay. And you attributed 100 percent of those
16 avoidable income taxes to Mr. Mensch?

17 A. Yeah, they were included in my losses, yes.

18 Q. But you contributed 100 percent of those losses to Mr.
19 Mensch; is that correct?

20 A. I don't -- I'm not following what you're --

21 Q. To the extent that there was an avoidable income tax
22 for 2015 who would have been responsible for that loss
23 to the Estate, to the value of the Estate?

24 A. Sterling Mensch.

25 Q. Okay. And you did not know that anyone else was

1 responsible for that avoidable income tax for the year
2 2015; correct?

3 A. Right. He was the person in charge.

4 Q. Okay. So could you tell me how you came up with
5 \$26,002 for the avoidable income tax amount in 2015?

6 A. Okay. For 2015 there was -- after I went through the
7 computation there was \$78,099 in distributions in
8 excess of the required minimum distribution and I
9 multiplied that figure times the state and federal
10 blended tax rate of .3304 which yields \$26,002 which is
11 the figure I have in column 2 for year 2015.

12 Q. Okay. And in 2015 can you tell me what the RMD was?

13 A. No, I don't have that here.

14 Q. So you don't have that information to present to The
15 Court?

16 A. I didn't bring it with me. I have it back in my
17 office, but I don't --

18 Q. But for purposes of this line of questioning you don't
19 have with you the information to tell me what the
20 requirement minimum distribution was for the year 2015?

21 A. No.

22 Q. Okay. And do you have any information with you that
23 tells me what the \$78,099 consisted of that you claim
24 was in excess to the RMD?

25 A. Okay. In 2016 I went through the computation.

1 Q. 2015, Mr. Markel.

2 A. Okay. Could you restate the question? I'm sorry I got
3 confused.

4 Q. Sure. No problem. In 2015 I believe that you've
5 indicated that there was \$78,099 in excess of the
6 requirement minimum distribution for 2015; is that
7 correct?

8 A. No, that's for 2016.

9 Q. Okay. Let's start with 2015. Can you tell me what
10 number --

11 A. We already did 2015. That was the \$26,002.

12 Q. Mr. Markel, but I'm still referring to that.

13 A. Okay.

14 Q. So just to make sure I understand in 2015 is it your
15 testimony that the excess over the required minimum
16 distribution is \$78,099?

17 A. 78,699.

18 Q. 699. Okay. And you don't have for purposes of this
19 examination what the RMD was for 2015?

20 A. No, I have it, but not here.

21 Q. Is that contained anywhere in your Report?

22 A. No.

23 Q. Okay. And so in 2015 can you tell me what transfers
24 constituted the \$68,699 over -- \$68,699 --

25 MS. THOMASON:

1 \$78,699.

2 Q. -- or I'm sorry, \$78,699 over the 2015 RMD?

3 A. I'm sorry. Can you restate the question?

4 Q. Absolutely. Absolutely. Do you know what transactions
5 you considered to be a part of the \$78,699 that was in
6 excess to the RMD?

7 A. I mean there would have been distributions out of the
8 retirement account, but I don't have that information
9 here, so.

10 Q. Well, let me ask you --

11 A. So the excess -- all I've got there is what the excess
12 was, which was \$78,699.

13 Q. And so if we go back to your 2015 in Respondent's
14 Exhibit 1, and I can just hand it to you so you don't
15 have to flip through it if it would help. This is 2015
16 and do you note a transfer from the General Electric
17 account for year 2015?

18 A. Right. I mean there was a transfer on December 9th,
19 2015 of \$99,681.52.

20 Q. Okay. And as we sit here today do you know whether or
21 not that \$99,000 was included in your calculation under
22 Appendix F?

23 A. It should have been, but I didn't -- for that
24 particular computation I went by the individual tax
25 returns for that year where it listed distributions

1 from IRAs. That's what I used. I didn't trace those
2 amounts to -- back to the bank statements.

3 Q. And did you note the -- that notation in those tax
4 returns in your Report?

5 A. Say that again.

6 Q. Did you note the transfers notations that would have
7 been included on the tax returns in your Report?

8 A. No, I just stated them. No, I did not.

9 Q. Okay. So let's go to 2016. Can you tell me what
10 number you used to come up with the \$78,670 that you
11 claim in avoidable income tax for 2016?

12 A. Okay. In 2016 there was \$238,105 in distributions in
13 excess of the IRA required minimum distribution and I
14 multiplied the \$238,000 number times the blended tax
15 and federal tax rate of .3304 to yield \$78,670, which
16 is the fourth item down in column 2 of Appendix F.

17 Q. Okay. And in 2016 on December 22nd, which is
18 referenced in Respondent's Exhibit 1, there was a
19 transfer from GE in the amount of \$99,522.25?

20 A. Yes.

21 Q. Okay. And there were total gifts that were given that
22 year of \$70,000 to Respondent and Petitioners?

23 A. I don't remember the amount that was --

24 Q. I can show it to you if it would help.

25 A. That sounds right. Right. That's right.

1 Q. Okay.

2 A. Thank you.

3 Q. You're very welcome. And, again, in 2016 of this
4 \$70,000 your Report does not contain a calculation of
5 whether any of this 70,000 would have been included in
6 your calculation for Appendix F?

7 A. It should have been included if the tax return was done
8 properly, but I don't know -- I don't know that for
9 sure because I didn't -- I didn't take the time to tie
10 in the tax return number. I just assumed that the CPA
11 who prepared it knew what he was doing.

12 Q. Sure. And in anywhere in your Report do you reference
13 those findings of the CPA?

14 A. I referenced that I relied on the tax returns of
15 Florence Mensch for the years 2011 through 2018.

16 Q. But your Report doesn't contain the actual numbers that
17 were contained on the tax return went into the creation
18 of Appendix F?

19 A. My work papers do, but it's only a summary in my
20 Report.

21 Q. But for purposes of this examination you do not have
22 the documents to support your findings --

23 A. No, I do not.

24 Q. -- in Appendix F? Okay. All right. Mr. Markel, if
25 you could refer to what was previously entered as

1 Petitioner's Exhibit 19. And I believe this was the
2 Row 5 Supplement that you created that we entered into
3 evidence.

4 MR. PURIEFOY:

5 I think this is the correct number, Your Honor.

6 THE COURT:

7 Yes.

8 EXAMINATION RESUMED BY MR. PURIEFOY?

9 A. Okay.

10 Q. All right. Mr. Markel, Exhibit 19 the front page it
11 says Row 5 Supplement. Do you see that?

12 A. Yes.

13 Q. Okay. And would this have been a supplement to
14 Appendix -- Row 5 would that have been Appendix D or K?
15 Do you recall?

16 A. This line item would have appeared in D, K, and N.

17 Q. Okay. All right. And if we flip to the second page of
18 Petitioner's Exhibit 19 and at the bottom of the page
19 it states total avoidable penalties and interest
20 associated with 2018 taxes?

21 A. No, I'm sorry I don't --

22 Q. On the bottom of -- it would be --

23 A. On the left-hand side?

24 Q. The bottom left?

25 A. \$40,314.

1 Q. Right. And before that number reads total avoidable
2 penalties and interest associated with 2018 taxes?

3 A. Right. There's a total of \$31,836 in penalties and
4 \$8,478 in interest.

5 Q. Okay. And is this associated with the \$92,845.98 of
6 income taxes?

7 A. Well, it's -- that \$92,845.98 includes taxes, penalties
8 and interest.

9 Q. And so the principal amount is \$91,367.34?

10 A. (Witness pausing.)

11 Q. Based on this exhibit?

12 A. That includes -- that includes taxes, penalties and
13 interest prior to posting the interest and failure to
14 pay penalties listed on this particular bill from the
15 IRS.

16 Q. Right. And those penalties and interest are what make
17 up this 40,314?

18 A. Yes.

19 Q. Okay. And so if you look at page, I believe it's page
20 5 of Petitioner's Exhibit 19.

21 A. Okay.

22 Q. And if you go towards the bottom directly above where
23 it says IRS Help, do you see that?

24 A. Yes.

25 Q. And it gives a breakdown of how these penalties and

1 interest -- interest charges are accruing. Do you see
2 that?

3 A. Yes.

4 Q. Okay. And the total interest as of March 15th of 2021
5 was \$6,369.81?

6 A. Yes.

7 Q. And I believe that Mr. McLeod asked you yesterday that
8 that number continues to grow every day?

9 A. Yes.

10 Q. Okay. Do you recall when Mr. Mensch was removed as the
11 Personal Representative of Ms. Mensch's Estate?

12 A. It was either late 2019 or early 2020.

13 Q. Would December of 2019 sound about correct?

14 A. Yes.

15 Q. Okay. And so if you look right above IRS Help under
16 the periods that range from 4/15 of 2019 to 12/31 of
17 2019 would you agree that during those periods Mr.
18 Mensch would have been serving as the Personal
19 Representative?

20 A. Yes.

21 Q. Okay. And in December of 2019 do you know who took
22 over as the Personal Representative?

23 A. Shauna Waddell.

24 Q. And so from 2019 to the date of the creation of this
25 document do you have an opinion as to who would be

1 responsible for that interest?

2 A. No, I think that's kind of up in the air because it's
3 my understanding that Shauna didn't find out that the
4 2018, whether or not the 2018 taxes had been filed
5 until sometime after she was appointed. So, you know,
6 to be, you know, absolutely fair to both, you know,
7 you'd have to probably come to an agreement over the
8 date when she found out that taxes hadn't been paid.

9 Q. Well, if you go back to the second page of Petitioner's
10 Exhibit 19 this notice was sent to what address?

11 A. That's Shauna's address because at that time she was
12 the Personal Representative.

13 Q. Do you have any independent knowledge --

14 A. But -- but --

15 Q. -- as to this --

16 A. Let me finish.

17 Q. Sure.

18 A. I attributed this to Sterling Mensch because it all
19 flowed from his failure to file a return, not just file
20 it late or not pay the tax, but just didn't even the
21 file it at all for 2018. So at some point that
22 responsibility has to go back to him and that's what I
23 assume.

24 Q. But you would agree with me that in December of 2019
25 Mr. Mensch was removed as the Personal Representative;

1 correct?

2 A. That's correct.

3 Q. And he no longer had any authority to act on behalf of
4 Ms. Mensch's Estate?

5 A. That's correct.

6 Q. And the only person that had the authority to act on
7 behalf of Ms. Mensch's Estate was the Petitioner, Ms.
8 Waddell?

9 A. Right. But she didn't have the information to act
10 properly because Sterling Mensch apparently didn't
11 supply that information until somewhat later.

12 Q. Do you have any personal knowledge as to when Ms.
13 Waddell would have first become aware about the
14 existence of this liability?

15 A. Probably sometime --

16 MR. PURIEFOY:

17 I'm going to object, Your Honor, for that speculation.

18 THE COURT:

19 Right.

20 MR. PURIEFOY:

21 And ask to strike that response.

22 THE COURT:

23 If you have personal knowledge of when she became aware
24 then you can say that. If you don't know --

25 EXAMINATION RESUMED BY MR. PURIEFOY:

1 A. I do not, but you could look at the tax return for 2018
2 and look at when -- when that was filed and that would
3 give you an approximate date.

4 Q. And so --

5 A. But I don't have that with me.

6 Q. No problem. And so Ms. Waddell took as PR in 2019. Do
7 you know when -- I believe yesterday there was some
8 testimony that an appeal was filed to the penalties and
9 interest associated with this income tax; is that
10 correct?

11 A. That's correct.

12 Q. Okay. Do you recall based on your review of the
13 documents when that appeal was filed?

14 A. I don't know what date that was file.

15 Q. Okay. Do you know if it was filed this year?

16 A. No, I don't.

17 Q. Okay. But this appeal is still pending; correct?

18 A. That's correct.

19 Q. Okay. And you allocated \$40,314 of losses to Ms.
20 Mensch's account -- to Ms. Mensch's Estate as a result
21 of the penalties and interest; correct?

22 A. Yes.

23 Q. Okay. And you testified yesterday that it is possible
24 that these penalties and interest could be removed; is
25 that correct?

1 A. That's certainly what they're trying to do, yes.

2 Q. Okay. And so if those penalties and interest are in
3 fact forgiven would you still attribute \$40,314 in
4 losses to Ms. Mensch's Estate?

5 A. No, I'd have to change my opinion and reduce that to
6 zero.

7 Q. And so that damage figure because that appeal is still
8 pending is a speculative number that is subject to
9 change; correct?

10 A. I wouldn't use the word speculative. I'd use the word
11 contingent. I think there's a difference.

12 Q. But it cannot be said with any degree of professional
13 certainty that \$40,314 is what will be required to be
14 paid at the conclusion of that appeal?

15 A. Okay. I'm accountant and it certainly meets all the
16 rules for an accrued liability. I mean there's -- it's
17 probably more likely than not that the appeal will be
18 denied. So to state it at zero would be to misstate
19 it. Maybe to state it at 40,000 is overstating it, but
20 to state it as zero would be understating it, so here
21 we are.

22 Q. All right.

23 MR. PURIEFOY:

24 Your Honor, may we have a five minute break. I think I
25 may be about done with this witness. I just want to

1 confer with my co-counsel.

2 THE COURT:

3 Is that okay, Mr. McLeod?

4 MR. MCLEOD:

5 No objection, Your Honor.

6 THE COURT:

7 Okay. We will take a five minute recess.

8 MR. PURIEFOY:

9 Thank you, Your Honor.

10 Off the record: 10:46:42.0

11 On the record: 10:52:18.3

12 THE COURT:

13 All right. We'll go back on the record.

14 MR. PURIEFOY:

15 Mr. Markel, I don't have any further questions for you.

16 I appreciate it. Thank you.

17 THE COURT:

18 Okay. Any redirect, Mr. McLeod?

19 MR. MCLEOD:

20 Yes, Your Honor.

21 EXAMINATION BY MR. MCLEOD:

22 Q. All right. Mr. Markel, I'm going to have you refer to
23 Respondent's Exhibit 1. Do you have that in front of
24 you?

25 THE COURT:

1 That's your Report.

2 MR. MCLEOD:

3 Well, it's actually Respondent's Exhibit 1.

4 THE COURT:

5 Oh, Respondent's 1. Okay.

6 MR. MCLEOD:

7 So it would be the Bank of America Statements and the
8 list on the front.

9 THE WITNESS:

10 This is the one that I just looked at a little while
11 ago. Yes.

12 EXAMINATION RESUMED BY MR. MCLEOD:

13 Q. Okay. And Mr. Puriefoy he referenced a number of
14 items, I believe it's on page 4 of 10. Can you turn to
15 that for me?

16 A. Yes.

17 Q. And there's a number of checks that were written and
18 they're shown on page 9.

19 A. Yes.

20 Q. Do you know who Shea Mensch is?

21 A. My understanding is that it's Sterling Mensch's
22 daughter.

23 Q. Okay. And on page 9 is there also a check written to
24 Sterling Mensch for the same amounts written to the
25 other parties?

1 A. Yes.

2 Q. And was this made -- these checks that were written
3 were they all made out Florence Mensch's account ending
4 in 7059?

5 A. Yes, they were.

6 Q. So they were not made out of Sterling Mensch's account?

7 A. No.

8 Q. And let's go to -- well, let's go to the next page.

9 Those are for the dates December 8, 2015 through
10 January 5, 2016?

11 A. (Witness reviewing exhibit.)

12 Q. Are you there? Just let me know when you're there.

13 A. What does it say on the page?

14 Q. It's a Bank of America statement and it's for December
15 8, 2015 to January 5th, 2016.

16 A. Yes.

17 Q. Okay. And that's page 1. Can you turn to page 4 and
18 under Checks there's some more checks written? Can you
19 read those checks for me? Just the amounts and the
20 dates.

21 A. Okay. Let me make sure I'm in the right place. The
22 first one cleared the bank on December 14, 2015, check
23 number 5341 in the amount of \$14,000. Am I in the
24 right place?

25 Q. You're in the right place.

1 A. Then another check cleared on December 14, 2015, number
2 5342 also in the amount of \$14,000. Another cleared
3 the bank on December 23, 2015. That's check number
4 5343 in the amount of \$10,000. Another check cleared
5 on December 23, 2015. That's check number 5344 in the
6 amount of \$10,000 and on December 21, 2015 check number
7 5345 in the amount of \$10,000 cleared.

8 Q. Okay. And we're still in Florence Mensch's account;
9 correct?

10 A. Yes, 7059.

11 Q. 7059; correct?

12 A. Correct.

13 Q. Okay. So these checks were written out of Florence
14 Mensch's account; correct?

15 A. That's correct.

16 Q. Okay. Let's go to December 7th, 2016 to January 5th,
17 2017. It's just the next statement in this Exhibit 1,
18 Respondent's Exhibit 1.

19 A. December 7, 2016 to January 5, 2017?

20 Q. Yes, sir. And turn to the third page. Do you see the
21 checks highlighted in yellow there under Checks?

22 A. Yes.

23 Q. Can you read those amounts to me?

24 A. Okay. On December 30, 2016 check number 5295 cleared
25 the bank in the amount of \$14,000. On December 27,

1 2016 check number 5296 cleared the bank in the amount
2 of \$14,000. On December 27, 2016 check number 5297
3 cleared the bank in the amount of \$14,000. On December
4 28, 2016 check number 5298 cleared the bank in the
5 amount of \$14,000. And on December 28, 2016 check
6 number 5299 also cleared the bank in the amount of
7 \$14,000.

8 Q. Okay. And, again, are these coming out Florence
9 Mensch's account ending in 7059?

10 A. Yes.

11 Q. And on the next page there are certain -- it lays out
12 the checks you just went over. Can you turn to that
13 page?

14 A. Yes.

15 Q. And can you read who those checks were to?

16 A. Check 5295 was to Shea Mensch. Check number 5296 was
17 to Shauna Waddell. Check number 5297 was to Steve
18 Waddell. Check number 5298 was to John Mensch and
19 check number 5299 was to Holly Mensch.

20 Q. And what are the dates on those checks?

21 A. They're all dated December 21, 2016.

22 Q. Okay. And we've gone over this, but you've reviewed
23 Ms. Mensch's account statements; is that correct?

24 A. Yes.

25 Q. Other than these checks did you find any other checks

1 written to Steve Waddell, Holly Mensch, John Mensch, or
2 Shauna Waddell?

3 A. I really don't remember.

4 Q. You would need to reference the --

5 A. Yes.

6 Q. -- the statements?

7 MR. MCLEOD:

8 Can we stipulate that these are the only checks or do
9 you-all want me to go through the statements?

10 MR. PURIEFOY:

11 Well, I can't stipulate that those are the only checks,
12 Your Honor. I can't stipulate to that.

13 THE COURT:

14 Okay.

15 MR. PURIEFOY:

16 I can't.

17 THE COURT:

18 Okay.

19 MR. MCLEOD:

20 All right. Well, we can go through her statements and
21 let him look over it. I'm just thinking of a matter of
22 time. Can we go off the record just for a minute and
23 discuss it?

24 THE COURT:

25 Do you -- did you say you're going to have her testify

1 or are you going to have him go through the --

2 MR. MCLEOD:

3 If he goes through every statement to -- we may able to
4 -- I'm just trying to think how to avoid him sitting
5 there for an hour.

6 THE COURT:

7 Right. Yeah.

8 THE WITNESS:

9 It's probably going to take longer than that.

10 THE COURT:

11 Do you have copies of the checks? Is that what you're
12 going to do?

13 MR. MCLEOD:

14 Yeah, we have the -- and we've stipulated to those
15 being in evidence.

16 THE COURT:

17 Is there not some way since you stipulated that somehow
18 you could add up the figures and then provide it to
19 opposing counsel and see if they agree and then do it
20 that way?

21 MR. PURIEFOY:

22 Your Honor, we don't -- we don't -- I guess I'm a bit
23 confused as to where this line of questioning is going.
24 We presented those checks for a very specific reason as
25 it related to the damage calculations.

1 THE COURT:

2 Right.

3 MR. PURIEFOY:

4 Unless there is some mention of these checks in Mr.
5 Markel's Report I'm just not exactly sure where this
6 line questioning, where it goes.

7 THE COURT:

8 Okay.

9 MR. PURIEFOY:

10 If we're not claiming -- if we're not claiming that
11 these checks need to be considered against the backdrop
12 of -- or if we're not claiming any additional checks
13 need to be considered against the backdrop of Mr.
14 Markel's Report whether they exist or don't exist I
15 don't think is any material consequence. It would
16 benefit us. It would benefit us if they existed quite
17 frankly.

18 THE COURT:

19 Yeah. Right. So, Mr. McLeod, from what Mr. Puriefoy
20 is saying the checks that he's highlighted today go to
21 his argument about the total damages in that the
22 Petitioners and their spouses received funds from Ms.
23 Mensch's account. If your objective is to show that
24 this is the only time that it ever happened, what he
25 just said is this is the only time they're suggesting

1 and they're not suggesting any other times. And if you
2 go through that account and you find other checks that
3 would benefit him, but he's not asking for that. He's
4 just saying on these occasions these checks were
5 written which actually were gifts from Ms. Mensch's
6 account to the Petitioners and their husbands as well
7 as to Mr. Mensch and his daughter and so on so forth.
8 So I don't really think it's necessary --

9 MR. MCLEOD:

10 Yeah, I'm satisfied with that, Your Honor. I think
11 that pretty much --

12 THE COURT:

13 Do you agree, Mr. Puriefoy?

14 MR. PURIEFOY:

15 Yes, Your Honor.

16 THE COURT:

17 Okay. All right. Let's go on then.

18 MR. MCLEOD:

19 All right.

20 EXAMINATION RESUMED BY MR. MCLEOD:

21 Q. All right. We'll go back to the first page and then
22 I'll have you turn to that first statement dated
23 December 6, 2014 to January 6, 2015.

24 A. Yes.

25 Q. And go to the second page, that first highlighted item,

1 12/29/14 under Deposits and Other Additions.

2 A. Yes.

3 Q. On page 3. Can you tell us what that line is 12/29/14?

4 A. It's apparently a withdrawal from the GE Mutual Fund
5 account.

6 Q. Okay. And that's the GE stock that we've been
7 discussing?

8 MR. PURIEFOY:

9 Objection, Your Honor, because I believe that calls for
10 speculation and that's included in that GE account were
11 both stock and Elfund Mutual Fund and so I believe the
12 question needs to be more open-ended as to whether or
13 not Mr. Markel knows whether that came from the stock
14 or the Elfund Fund.

15 THE COURT:

16 And could you just get him to be more specific because
17 the testimony previously was that GE Mutual Fund did
18 contain the Elfund Fund as well as the GE Retirement
19 Fund, but I can't remember --

20 MR. PURIEFOY:

21 That was the GE stock, Your Honor.

22 THE COURT:

23 Yes, GE stock.

24 MR. MCLEOD:

25 You have to look at the dates as well. We're in 2014

1 through 2015. Let's see.

2 THE COURT:

3 On your Exhibit 2.

4 MR. MCLEOD:

5 That's what I was going to ask for, Your Honor.

6 THE COURT:

7 Yeah. It shows that there's GE stock and that there
8 were two Elfund Trust Funds. Well, let me see. Elfund
9 Trust Funds with two different account numbers.

10 MR. MCLEOD:

11 Yeah, can I hand him Exhibit 2?

12 THE COURT:

13 I'll do that.

14 MR. MCLEOD:

15 All right.

16 EXAMINATION RESUMED BY MR. MCLEOD:

17 Q. All right. On Exhibit 2 can you read the account
18 number. It's right there under Portfolio.

19 A. Account number in the upper left-hand corner
20 [REDACTED] 2597.

21 Q. (Counsel reviewing documents.) Can you tell me the
22 amount on 12/29/14, the amount that was transferred
23 into Florence Mensch's account?

24 A. This is on the Bank of America statement?

25 Q. Correct. On that page 3.

1 A. \$90,593.80.

2 Q. All right. I'm just going to hand you up a GE Mutual
3 Fund Statement from December 23, 2014 and I'm just
4 going to hand you that for reference. Can you find the
5 same number on that and can you describe that document
6 for me as well?

7 A. Okay. Mr. McLeod has handed me GE Mutual Fund Account
8 Statement for account number [REDACTED] 2597, Florence
9 Mensch IRA Rollover Power of Attorney and on December
10 23, 2014 there's a transaction described as a normal
11 distribution in the amount of \$90,593.80 that
12 apparently was cash that was obtained by liquidating
13 General Electric shares in the amount of 3,499.614
14 shares at \$25 -- \$25.89 per share.

15 Q. Okay. And so it appears that some shares were sold
16 from that GE account; is that correct?

17 A. Yes.

18 Q. And were they transferred to Florence Mensch's account
19 ending in 32 -- ending 7059?

20 MR. PURIEFOY:

21 Objection, Your Honor. Objection because although the
22 shares themselves were sold what the report does not
23 indicate is whether those shares after being sold were
24 transferred or if it came from the Elfun Fund. I
25 believe that's still speculation. I think he's gotten

1 from this witness what he intended which was the
2 statement demonstrating the exact same amount being
3 transferred from the GE Mutual Fund into Florence
4 Mensch's account. It does not say where those funds
5 exactly came from nor do I think that's relevant for
6 purposes of this testimony.

7 THE COURT:

8 Mr. McLeod, if he has personal knowledge of exactly
9 where those funds were sent or transmitted. If he has
10 personal knowledge or if it's stated on that document
11 he can testify to it, but other than that he can't.
12 He's just guessing at that point.

13 MR. MCLEOD:

14 Yeah, and that's all I'm asking him to do is read the
15 document and tell me if it was sold from that account.

16 THE COURT:

17 Okay. If it's on the document --

18 MR. MCLEOD:

19 Yeah.

20 THE COURT:

21 -- he can read it from the document or if he has
22 personal knowledge.

23 MR. MCLEOD:

24 The funds were transferred. Yeah.

25 THE COURT:

1 Okay.

2 EXAMINATION RESUMED BY MR. MCLEOD:

3 Q. All right. Mr. Markel, read -- I don't have that in
4 front of me, but the entire where this 90,593 reading
5 the heading and everything in that section.

6 A. Okay. It's in a section there's columns trade date,
7 transaction description, total shares owned, share
8 price, shares this transaction, and the dollar amount.
9 And below that it shows the beginning balance of
10 43,237.571 shares.

11 Q. Okay. And, again, the amount was?

12 A. And it doesn't extend that to an amount.

13 Q. Okay.

14 A. And below that there's on December 23, 2014 there's a
15 service charge that's charged in the amount of \$10 and
16 that is paid by liquidating .386 of one share. Then
17 the next line down shows a trade date of December 23,
18 2014 and the transaction description is normal
19 distribution and the total shares owned were 39,737 --
20 no, total shares owned were 39,737.571 shares at a
21 share price of \$25.89. And then the next column it
22 says shares being liquidated in the amount of 3,499.614
23 shares and the liquidated dollar amount was \$90,593.80.
24 And then the last line in the spreadsheet shows an
25 ending balance of 39,737.571 shares after the

1 subtraction of the .386 of the share for the \$10
2 service charge and after the subtraction of 3,499.614
3 shares for the liquidated amount, and we multiply those
4 remaining 39,737.571 shares by that day's share price
5 of \$25.89 to yield over in the far right-hand dollar
6 amount column of \$1,028,678.55.

7 Q. Okay. And then can you read where it says that
8 90,593.80 was transferred to the 7059 account?

9 A. Okay. Then on the Bank of America statement with a
10 clearing date of December 29, 2014 there was a wire
11 transfer from GE Mutual Funds in the exact same amount
12 \$90,593.80.

13 Q. Okay. And on Petitioner's -- Respondent's Exhibit 1
14 can you turn to the January 6? That would be -- yeah,
15 the January 6, 2015 statement.

16 A. Yes.

17 Q. Actually, I'm sorry turn to the December 8, 2015 to
18 January 5, 2016 statement, a few pages over on page --
19 it says page 1 of 10 Bank of America.

20 A. For Bank of America statement account number -- this is
21 a combined statement. Account 7059 and 2007.

22 Q. That's it.

23 A. For December 8, 2015 to January 5, 2016.

24 Q. Yeah. And can you turn to page 3 for me?

25 A. Okay.

1 Q. All right. That highlighted item 12/9/15 can you read
2 that?

3 A. Okay. This transaction cleared the Bank of America on
4 December 9, 2015. It's a wire transfer from GE Mutual
5 Funds in the amount of \$99,681.52.

6 Q. And can you compare that page to the previous
7 highlighted item that we just looked at and are those
8 the same statements with the same --

9 A. With the previous.

10 Q. -- accounts? This would be page 3 of 10.

11 A. Compare page 1 of 10 to page 3 of 10?

12 Q. Correct. Well, page 3 of 10 that you were just on to
13 page 3 of 10 of the December 6, 2014 to January 6, 2015
14 statement.

15 A. I'm sorry I'm confused.

16 Q. Yeah. Is that the same -- is it GE Mutual Funds, is
17 that -- are they the same on the one you just read on
18 page 3 of 10 and the one on this -- there's no Bates
19 numbers that would make it easier. Let's see. On the
20 December 8, 2015 to January 5, 2016, that page 3. Is
21 that the same account?

22 A. I'm sorry I can't follow where you're trying to agree
23 --

24 Q. Yeah.

25 A. -- the two amounts.

1 Q. All right. Turn to page -- first go to the front and
2 turn to page 3 where it's highlighted 90,593.80.

3 A. Yes, on December 29, 2014.

4 Q. Correct.

5 A. Yes.

6 Q. And then keep your finger on that.

7 A. Okay.

8 Q. And turn it to the December 8, 2015 to January 5, 2016,
9 the second page after that.

10 A. Okay. Where there's a deposit on December 9, 2015 in
11 the amount of \$99,681.52?

12 Q. Yes.

13 A. And that's also labeled as a wire transfer from GE
14 Mutual Funds. I mean there are a lot of other serial
15 numbers in there, but it looks like they both came from
16 GE Mutual Funds.

17 Q. And then --

18 A. One a year later than the other.

19 Q. And the 12/9/15 one can you state that amount one more
20 time?

21 A. \$99,681.52.

22 Q. And those two did you -- are those listed in your
23 Report? Can you refer to your Report to the exhibit
24 where you list the excess required minimum
25 distributions?

1 A. No, it's not listed. It doesn't -- my Report doesn't
2 contain that level of detail.

3 Q. Okay. But the amounts that you calculated do they take
4 into account the excess of these transfers?

5 A. I mean I -- as I testified before to Mr. Puriefoy I
6 based my analysis of this on the tax returns, not on
7 the bank statements, so I can't -- I can't say that
8 that's what it was because I don't -- I'd have to go
9 back and trace them in.

10 Q. Okay. So based on the tax returns, assuming those were
11 prepared correctly, would this include those amounts?

12 MR. PURIEFOY:

13 Objection, Your Honor, that's speculation and I don't
14 believe that Mr. Markel has testified that he was able
15 to ascertain through a review of the tax returns
16 whether or not those tax returns contained this
17 information. I think this is just a way circumventing
18 his personal knowledge as to whether or not these items
19 were actually contained in his figure.

20 THE COURT:

21 Yeah, Mr. McLeod, I think he's testified that he used
22 figures from the tax returns rather than from these
23 statements and barring that I don't believe without
24 these tax returns as a part of his Report that he could
25 actually answer your question.

1 MR. MCLEOD:

2 Yeah, that's fine, Your Honor. I'll move on from that.

3 THE COURT:

4 Okay.

5 EXAMINATION RESUMED BY MR. MCLEOD:

6 Q. So one more question after this and I'll move on. So
7 the two items we just read, one on 12/29/14 for
8 90,593.80 and the one on 12/9/2015 those amounts were
9 transferred from the GE Mutual Funds account to
10 Florence Mensch's Bank of America account ending in
11 7059; correct?

12 A. Yes.

13 Q. All right. And then can you turn to your Report?
14 Let's see. To your Appendix E of your Report?

15 A. Okay.

16 Q. All right. And then referencing this Respondent's
17 Exhibit 1 the checks that we went over that were
18 payable to Shea Mensch, Shauna Waddell, Steve Waddell,
19 John Mensch and Holly Mensch and the one to Sterling
20 Mensch on December 29th, 2013, were any of those
21 included in your Appendix E?

22 A. No, the only ones that could possibly be, and I'd just
23 have to trace them in, would be checks written to
24 Sterling Mensch.

25 Q. And excluding the Sterling Mensch one. The John

1 Mensch, Shauna Waddell, Shea Mensch, Steve Waddell, and
2 Holly Mensch were any of those included in your
3 Appendix E?

4 A. No.

5 Q. Okay. And can you review the statement and tell me
6 whether the \$10,000 on December 29th, 2014 written to
7 Sterling Mensch was included in Appendix E?

8 A. December 29, 2014.

9 Q. 2014.

10 A. No, it's not showing up.

11 Q. Okay. So on page 27 of your Report your total of
12 820,382.13 does not include any of the gifts we went
13 over in this Respondent's Exhibit 1; is that correct?

14 A. That's correct.

15 Q. Okay. And why is that?

16 A. Well, I made a -- number one, we just went through this
17 exercise, but I also made a conscious effort to exclude
18 gifts from this total because that would -- would not
19 have been an unexplained transfer.

20 Q. Would any check written to -- the only thing included
21 in this Appendix E is amounts that came from Florence
22 Mensch's 7059 Bank of America account or went from
23 Florence Mensch's Bank of America account 7059 to
24 Sterling Mensch's Bank of America account ending 3259;
25 is that correct?

1 A. Yeah, plus the transfers that came from Florence's 2007
2 --

3 Q. Correct.

4 A. -- savings account. There are some of those in here.

5 Q. Okay. But these are amounts that went from Florence
6 Mensch's two accounts 2007 and 7059 to Sterling
7 Mensch's account 3259; correct?

8 A. Yes.

9 Q. (Counsel reviewing documents.) On your Report on
10 Appendix N.

11 A. Yes.

12 Q. Can you read line 3 for me? Just the part under
13 description.

14 A. "Avoidable penalties and interest that were assessed as
15 a result of late payments by Sterling Mensch, III of
16 Ms. Mensch's income tax liabilities for the years 2012
17 through 2016."

18 Q. So for those years did Sterling Mensch --

19 MR. PURIEFOY:

20 Objection, Your Honor. I think that goes beyond the
21 scope of my cross-examination. I made specific
22 reference to Row 5, which were avoidable penalties and
23 interest assessed for income taxes for 2018. The row
24 that Mr. McLeod is referencing, 3 I believe, relates to
25 income taxes for 2012 through 2016, which he would have

1 had an opportunity to direct Mr. Markel on during his
2 direct examination. It certainly goes beyond the scope
3 of what I referred to in Appendix N which was Row 5.

4 THE COURT:

5 Mr. McLeod, doesn't that go beyond the scope of what
6 cross-examination was for this witness?

7 MR. MCLEOD:

8 Well, he was making an argument that some portion of
9 the 2018 penalties and interest should be attributed to
10 Shauna Waddell. I'm trying to show that Sterling
11 Mensch filed late returns for four straight years or
12 five straight years.

13 THE COURT:

14 I think that's already in the record. That's already
15 in the record.

16 MR. MCLEOD:

17 That's fine, Your Honor. I'll move on from that. Your
18 Honor, I may be done, but can I have five minutes and
19 then I may come back to make sure.

20 THE COURT:

21 All right. We will recess for five minutes.

22 Off the Record: 11:36:47.0

23 On the Record: 11:42:32.6

24 THE COURT:

25 All right. We'll go back on the record.

1 EXAMINATION RESUMED BY MR. MCLEOD:

2 Q. All right. John, I'm going to ask you to look at
3 Exhibit 2 again. Do you have Exhibit 2?

4 A. Okay.

5 Q. Okay. Can you turn to the second page? It's Exhibit
6 13, page 006.

7 A. Yes.

8 Q. Do you see that? Can you identify that document real
9 quick?

10 A. It's an account statement from State Street Global
11 Advisors for Florence Mensch's account for the period
12 January 1, 2016 to December 30, 2016.

13 Q. Okay. And can you read under Investor's Statement?
14 Just everything under that stopping at that little
15 block. You can stop at Dealer Branch.

16 A. Okay. "Investor's Statement for the period of January
17 1, 2016 to December 30, 2016 page 1 of 4. Investor
18 Services: Telephone number 800-242-0134." Is that
19 what you -- is this what you mean?

20 Q. Yes, sir. Down to Dealer Branch.

21 A. Okay. "Internet: www.ssga.com/GEAM. Investment Rep:
22 NA. Investment Rep Number: NA." And then the next
23 line is "Broker/dealer:" And it says, "No dealer
24 assigned. Care of U.S. Bancorp Fund Services, LLC.,
25 1615 East Michigan Street, Milwaukee, Wisconsin 53202-

1 5210." And then "Dealer/Branch: 9999/9999."

2 Q. Okay. Can you go to I think it's page 4 identified by
3 Bates number Exhibit 13 page 011 and can you please
4 identify that document?

5 A. Yes. This is an account statement from State Street
6 Global Advisors, Florence Mensch's account. Investor
7 Statement for the period of January 1, 2017 to December
8 29, 2017.

9 Q. And can you read under Asset Allocation the paragraph
10 to the left?

11 A. Okay. It says, "Asset Allocation," and then below that
12 it says, "We believe that asset allocation is an
13 important factor contributing to your total investment
14 return. To learn more about this strategy please
15 contact our Service Center at 800-242-0134."

16 Q. Okay. All right. Can you turn just to -- it's in your
17 Report and Petitioner's -- yeah, Petitioner's Exhibit 1
18 to your Appendix 0 on page 41 of your Report?

19 A. Yes.

20 Q. Okay. And Mr. Puriefoy was asking you about your
21 400,000 number. Can you explain how you arrived at
22 that \$400,000 number?

23 A. Okay. We can refer here to my Report to paragraphs 11
24 through 15 in Appendix 0. I took the portfolio as it
25 existed at December 21, 2015. It consisted of

1 5,125.831 shares of Elfund Trust Mutual Fund and
2 33,447.778 shares of the General Electric Company. The
3 market value of the holdings on that day were for the
4 Elfund Trust Mutual Fund \$279,819.11 and for the General
5 Electric stock \$1,041,898.28. And in the far right-
6 hand column the percentage of total holdings Elfund
7 Trust Mutual Fund made up 21 percent of the total
8 holdings in dollar value and the General Electric
9 Company stock made up 79 percent of the portfolio in
10 dollar value. Then in order to simulate
11 diversification of the account I made the assumption
12 that the General Electric stock had been --

13 MR. PURIEFOY:

14 Your Honor, I think at this point --

15 A. -- at the date of this in its entirety --

16 THE COURT:

17 Excuse me, Mr. Markel, I need to you stop while I hear
18 the objection.

19 MR. PURIEFOY:

20 Objection. I think at this point I believe the first
21 part of his testimony was okay and within the scope of
22 my cross-examination. I believe he's getting back into
23 the very issues that he testified to during his direct
24 examination which is the valuation method, which was
25 not referenced in my cross-examination. That was

1 limited exclusively to whether or not he believed the
2 assets were if in fact diversified and I believe the
3 first part of his testimony answered that question. I
4 think now he's going to go back into his methodology
5 for calculating damages based on some hypothetical
6 scenario which was addressed during direct.

7 THE COURT:

8 Let's see. You crossed him about the failure to
9 diversify and questioned the ability of whether Mr.
10 Mensch, the Respondent, had the ability to diversify.
11 And Mr. Markel testified that he felt that Mr. Mensch
12 should have taken all reasonable steps to try to change
13 the way the account was set up and thereby questioning
14 really was it -- was it the responsibility of the
15 Respondent and was it his fault that the portfolio was
16 not diversified calling into question whether he should
17 be assigned this \$400,000. And he's addressed the
18 issue of diversification and, Mr. McLeod, you're asking
19 how he arrived at the \$400,000?

20 MR. MCLEOD:

21 That's correct, Your Honor. And we've established
22 liability. We're trying to determine the damages at
23 this point and he asked him about the 400,000.

24 THE COURT:

25 So, Mr. Puriefoy, you sort of put the 400,000 kind of

1 in play.

2 MR. PURIEFOY:

3 Well, I think, Your Honor, the question I asked Mr.
4 Markel was was the 400,000 the result of the failure to
5 diversify. That was the very question that was asked
6 and I believe his response was yes. I never questioned
7 while cross-examining him on his valuation methodology.
8 I never went into how he arrived at the 400,000. The
9 focal point of my line of questioning was simple did
10 the failure to diversify lead to the 400,000 and was
11 the failure to diversify the direct result of some
12 action that Mr. Mensch could have taken and failed to
13 take. I think they're getting back into the
14 methodology of the 400,000 goes down to scope. It's
15 certainly relevant and was relevant for purposes of his
16 direct and I think he went through a fairly exhaustive
17 line of -- line of testimony that detailed how he
18 arrived at that figure, but I don't believe my
19 questioning asked how he arrived there. Quite frankly,
20 Your Honor, I don't necessarily care but for purposes
21 of judicial economy I just figure that this is not
22 something that needs to be rehashed.

23 THE COURT:

24 I think, Mr. McLeod, what we've got is we've got his --
25 his Report in the record. His methodology for arriving

1 at this 400,000 hasn't been questioned by the
2 Respondent. You know I mean they aren't questioning
3 how he came up with the figure. His Report is in the
4 record. They aren't questioning his methodology.
5 Their question from the cross-examination is whether or
6 not these losses should be attributable to Mr. Mensch
7 because they are alleging or seem to be that his hands
8 were tied somehow and wasn't able to diversify. I
9 think that's their defense to this. They aren't
10 questioning his methodology. And given everything if
11 he had had the ability to diversify and didn't I think
12 they would agree they're not contesting his methodology
13 of coming up with 400,000. Their defense is he wasn't
14 able to diversify for some reason. That his hands were
15 tied and it came up yesterday somehow in some of the
16 testimony that UBS would not allow him to change the
17 portfolio under his authority as attorney-in-fact under
18 the POA. So as far as his methodology they aren't
19 questioning it. They are not questioning how he came
20 up with 400,000. Their theory is despite that his
21 hands were tied and he couldn't change it because UBS
22 wouldn't let him. Is that what you're saying, Mr.
23 Puriefoy?

24 MR. PURIEFOY:

25 That is correct, Your Honor.

1 MR. MCLEOD:

2 Is that an argument against liability? I mean we're at
3 a Damages Hearing. He's been found in breach of
4 fiduciary duty.

5 THE COURT:

6 It's already been found that his liquidation of that
7 account was a violation of his fiduciary duty. Now,
8 we're talking about another element of damages which is
9 the portfolio loss. And your client -- I mean your
10 witness is saying it was 400,000. He's saying, "Yeah,
11 I liquidated it, but I shouldn't have to pay 400,000
12 because I couldn't diversify because UBS wouldn't let
13 me."

14 MR. MCLEOD:

15 Okay.

16 THE COURT:

17 And you're taking issue with that and you can question
18 him about that or of course, you know, develop that
19 with another witness. But if your point in having him
20 testify about his methodology I don't think it's
21 necessary because A, we have this in evidence and B,
22 they're aren't questioning his methodology at arriving
23 at this figure. It's fine with them the 400,000. They
24 aren't questioning how he came up with it. They're
25 questioning that his client shouldn't be assigned that

1 loss because they're saying it was out of his control.
2 His ability to diversify was out of his control and
3 your client testified that he had read his response to
4 the Interrogatory and he thought it was "lame" and all
5 that. We went through that yesterday.

6 MR. MCLEOD:

7 Okay.

8 THE COURT:

9 So that issue is still at play whether or not he was --
10 he could diversify or he couldn't. That's what's going
11 to have to be developed either through his testimony or
12 somebody from UBS or something. But the 400,000 figure
13 all things being equal they aren't taking any issue
14 with that. We've got this in evidence. Okay. To save
15 time I think you can just move on to the next question.

16 MR. MCLEOD:

17 Well, that's all I have, Your Honor.

18 THE COURT:

19 All right. Anything on recross?

20 MR. PURIEFOY:

21 Nothing, Your Honor.

22 THE COURT:

23 Thank you, Mr. Markel. Any objection to him being
24 excused?

25 MR. MCLEOD:

1 No objection.

2 MR. PURIEFOY:

3 No objection, Your Honor.

4 THE COURT:

5 All right. Mr. Markel, thank you. You may be excused.

6 THE WITNESS:

7 Okay. I have these exhibits.

8 THE COURT:

9 I need the exhibits back.

10 THE WITNESS:

11 Okay.

12 THE COURT:

13 Thank you, sir. And the notebook is down there
14 somewhere.

15 THE WITNESS:

16 Yes.

17 THE COURT:

18 Okay. I'll step around behind you and get that from
19 you. Thank you.

20 THE WITNESS:

21 Thank you.

22 THE COURT:

23 All right. Counsel, is this a good time for us to
24 break for lunch?

25 MR. MCLEOD:

1 Yes, Your Honor.

2 MR. PURIEFOY:

3 Yeah, it is, Your Honor, and I have to be in Anderson
4 for a hearing at 2:00.

5 THE COURT:

6 Yes, you do.

7 MR. PURIEFOY:

8 And so I just don't want to start on a witness and me
9 not being able to finish.

10 THE COURT:

11 So let's go ahead and take a lunch break and we'll come
12 back at 1:00. All right. We'll be in recess.

13 Off the Record: 11:58:30.0

14 On the Record: 13:09

15 THE COURT:

16 All right. We'll go back on the record.

17 MR. MCLEOD:

18 Thank you, Your Honor. I call Shauna Waddell.

19 THE COURT:

20 Ms. Waddell, please come forward and face me.

21 SHAUNA MENSCH WADDELL, being duly sworn to tell the truth,
22 the whole truth, and nothing but the truth of his own
23 knowledge concerning the matter herein, testified as
24 follows:

25 *****

1 (Audio Difficulty until 13:11:54)

2 Non-verbatim Questions and Answers from Notes:

3 Q. (Counsel reviewing documents.) Can you state your name
4 for the record?

5 A. Shauna Mensch Waddell.

6 Q. What is your date of birth:

7 A. [REDACTED] 1968.

8 Q. What is your address?

9 A. 402 Planters Walk Drive, Easley, South Carolina

10 THE COURT:

11 Can you-all hear her? You need to speak up.

12 THE WITNESS:

13 I'm sorry.

14 Q. How are you related to Florence Mensch?

15 A. I am her daughter.

16 Q. What is your occupation?

17 A. I am a financial advisor.

18 Q. Do you have any siblings?

19 A. Two brothers.

20 Q. What are their names?

21 A. Sterling Raymond Mensch, III and John Robert Mensch.

22 Q. How old are your brothers?

23 A. Sterling will be 62 years old in November. John is 56
24 years old.

25 Q. When were you appointed as Personal Representative for

1 your mother?

2 A. Appointed Personal Representative December 2019. Mom
3 in memory care. Has advanced stages of Alzheimer's.
4 John lives in Oregon and was calling about making plans
5 to come in for funeral arrangements and funeral. John
6 wanted to know if he needed to plan to stay after
7 funeral to help take care of mom's estate. Sterling
8 stated John did not need to stay for the estate because
9 Sterling would handle everything.

10 (Audio Starts 13:11:54. Verbatim testimony.)

11 A. He would handle her Estate planning and Wills and he
12 was going to do that at the beginning of the next week.
13 And then nothing happened for quite a while. We didn't
14 hear from him and just as a follow-up I called him a
15 few months later and he said was waiting for taxes to
16 be done. So we waited a little bit longer and I
17 followed back up with him and he said that the taxes
18 were done. He would -- and he had dropped off the
19 paperwork at David Merline's office. And I called
20 David Merline's office and David Merline's office had
21 never received any paperwork. And so I told him, I
22 said, "Well, David Merline's office doesn't have any of
23 your paperwork." And he said, "I gave it to the
24 secretary. She must have lost it." And so that kind
25 of raised a flag with me that, you know, he wouldn't

1 talk to us about anything. We didn't really know what
2 was going on. He wouldn't communicate with us at all,
3 so we kind of thought that that was a red flag. But
4 prior to my mother's death when the GE stock was
5 declining I talked to him one day and I said, "If mom
6 has anything left in GE stock you need to move it now,
7 because it's going down." And he said that he had to
8 -- they wouldn't let him move it without a doctor's
9 note. And so he scheduled an appointment with her
10 doctor to get a doctor's note to send to GE so that he
11 could move the GE stock. Well, when it came time for
12 the day of the appointment he said, "She soiled herself
13 so we missed the appointment." And so he never follow-
14 up with that or did anything more and was not able to
15 do anything with the stock. However, she was already
16 under the diagnosis and care of a geriatric specialist
17 who was treating her for Alzheimer's as well as -- and
18 that was Dr. Arya and as well as Dr. Bansaly, that was
19 the general doctor. She was confined to a memory care
20 facility so just in that fact she's not capable of
21 taking care of her, you know, her business or her
22 personal needs of any kind. The memory care facility
23 also had a doctor that visited once a month to look at
24 patients and take care of any needs that they might
25 have. So, you know, I felt like that that was not a

1 good excuse to not follow through to do whatever he
2 needed to do to sell that stock or move the stock.

3 Q. Okay. And I set you up with a kind of tough question
4 related to time frame. Give us a little bit of a time
5 frame on when you told him to sell the GE stock.

6 A. I didn't document that conversation as far as writing
7 down the date, but it was somewhere in the spring of
8 2017.

9 Q. Okay.

10 A. Somewhere in that time frame.

11 Q. Okay.

12 A. I never thought we would end up -- I never thought we
13 would end anywhere close to being in a legal situation
14 that I needed to document my conversation.

15 THE COURT:

16 Ms. Waddell, I'm sorry to interrupt. Can you move that
17 microphone just a little bit closer to you?

18 THE WITNESS:

19 Sure.

20 THE COURT:

21 Maybe and turn it. There you go. You don't have to
22 keep it right in your face, but just a little closer.

23 THE WITNESS:

24 Is that better? Is that better?

25 MS. THOMASON:

1 Yes, thank you.

2 MR. MCLEOD:

3 That seems a little better.

4 THE COURT:

5 Okay. Go ahead.

6 EXAMINATION RESUMED BY MR. MCLEOD:

7 Q. All right. And you can continue. You were telling me
8 about the time frame.

9 A. Uh-huh. It had to have been like around the spring of
10 2017. I didn't make a note of the -- you know, the
11 date of that conversation but I do vividly remember the
12 conversation. It was held at Oakleaf Village while we
13 were there one day at the same time.

14 Q. The Oakleaf Village was that the --

15 A. The memory care facility.

16 Q. That your mom was residing in?

17 A. Correct.

18 Q. And you mentioned she was under the care of two doctors
19 at that time?

20 A. Uh-huh.

21 THE COURT:

22 You need to answer yes or no, please?

23 THE WITNESS:

24 Oh, yes.

25 EXAMINATION RESUMED BY MR. MCLEOD:

1 Q. Yes, sorry about that.

2 A. Her geriatric specialist was Dr. Arya and then Dr.

3 Bansaly was in the same office complex as Dr. Arya, but
4 she took care of just general physical ailments.

5 THE COURT:

6 And if you can, can you spell those names for the court
7 reporter?

8 THE WITNESS:

9 Yeah, Dr. Arya is A-r-y-a and Dr. Bansaly is B-a-n-s-a-
10 l-y I believe.

11 THE COURT:

12 Thank you.

13 EXAMINATION RESUMED BY MR. MCLEOD:

14 Q. Okay. And have you -- have you ever spoken to her
15 doctors?

16 A. Well, when I -- as far as her mental capacity and her
17 abilities?

18 Q. That would be one thing, yeah.

19 A. Yes, just taking her for doctor's visits. I guess one
20 of the -- one of the -- whenever we would take her to
21 the geriatric specialist she would go through a battery
22 of questions. You know what year is this? How many
23 children do you have? You know can you draw a picture
24 of a clock? Just basic questions that they go through,
25 that doctors go through with these Alzheimer's

1 patients. And, of course, she never got any of the
2 answers correct. And then they asked her how many
3 children do you have she looked at me for the answer
4 and, of course, I couldn't answer for her. But then --
5 I mean it was obvious that she couldn't take care of
6 herself. When she lived at Rolling Green Village she
7 was in independent living and then my brother called me
8 one day and said that Rolling Green Village had said
9 that we had to move her immediately to memory care.

10 Q. Do you know about when that was?

11 A. Probably 2014 maybe. 2013, 2014.

12 Q. Okay.

13 A. It's whenever we moved her to memory care at Rolling
14 Green.

15 Q. Okay. And when did your mom start showing some signs
16 of dementia and Alzheimer's?

17 A. And so the doctors have -- what the doctors have said
18 is that it's a hard illness to diagnose and it's
19 something that's kind of diagnosed over time. And at
20 first, you know, there is some general. We noticed
21 personality changes a little bit and just memory. You
22 know having a hard time remembering things and a little
23 bit of frustration with not being able to remember
24 things and over the course time, you know, there's so
25 many forms of dementia. And over the course of time

1 you can look back in hindsight and say, "Oh, yes, I saw
2 signs of this." And I was talking to Sterling one day
3 and I said, "You know I can -- I remember back to, you
4 know, end of 2008 and 2009 and I can see definite signs
5 of dementia. The beginnings of dementia and everything
6 and Alzheimer's in my mom." And he said, "Oh, yes, way
7 before that." And that was a conversation he and I had
8 one day also while we were at Oakleaf Village in the
9 hall.

10 Q. Can you tell me the rough time period that that
11 occurred?

12 A. That was probably around -- it wasn't long before she
13 died. 2018 sometime.

14 Q. Okay.

15 A. In the spring. It wasn't but a few weeks before she
16 died I -- I think.

17 Q. That was a conversation with Sterling; correct?

18 A. Correct.

19 Q. Okay. And what time period were you-all referring to
20 when those signs first started developing? He was
21 saying long before -- or way before that?

22 A. I just said, you know, in hindsight I can look back to
23 around 2008 and 2009 and see signs of -- of all this
24 starting back then. And he said, "Oh, yes, way before
25 that." And I don't know what he meant by that. I

1 didn't really question and it wasn't important.

2 Q. Were you close with your mother?

3 A. I was very close with my mother my whole life and we
4 lived not far from them for a long time. And I guess
5 our routine once they moved back to Greenville and I
6 had started a family our routine was to -- my husband,
7 and the children and I would go out dinner on Saturday
8 nights and then we always went to my parents' house to
9 visit them on Saturday night after we ate. And then my
10 mom and I used to go to the Holiday Fair together and I
11 mean we'd go shopping together. We just went over
12 there all the time and we were with them a lot. When I
13 first got married they were living in New York, but
14 planning to move back to Greenville. And so they were
15 down here looking for a house and my dad had a brain
16 hemorrhage and it was a very critical life-threatening
17 event and so my parents moved in with us for a month
18 and stayed with us while he was recovering from that
19 hospital stay. So, yeah, my mother and I were close my
20 whole life. She was my best friend. And, yeah, they
21 moved in and we helped to care for him and help her
22 with, you know, the move and I mean I always called my
23 mother every day on my home from work. And after my
24 dad passed away I would call her in the mornings on the
25 way to work and in the afternoon on the way home from

1 work because she was living by herself at that point.

2 Q. And what time was that, what time period?

3 A. He died '90 -- in February, February 11th of '95 I
4 think it was. February 11th, '95.

5 Q. Okay.

6 A. And so --

7 MS. THOMASON:

8 Your Honor, there's not a question. We have pauses for
9 the witness to continue and as we sit here I know and
10 appreciate the history. It's not that. It's just from
11 a timing standpoint we're here on damages and we're
12 going back and I just hear long pauses without a
13 question and then continue.

14 THE COURT:

15 Right. I know, Mr. McLeod, you're probably trying to
16 set the background for this, but the issues of course
17 relate to damages, so just kind of move it along.

18 MR. MCLEOD:

19 Yes, Your Honor.

20 THE COURT:

21 Thank you.

22 MR. MCLEOD:

23 That's fine.

24 EXAMINATION RESUMED BY MR. MCLEOD:

25 Q. Well, let me take you back to we were talking about the

1 GE stock and you telling Sterling that he should sell
2 Florence Mensch's GE stock. What led you to that
3 conclusion?

4 A. Because I knew that the GE stock value was declining
5 rapidly.

6 Q. And how did you know that?

7 A. I mean it was in the news and -- and I looked at my
8 statements and -- and I just knew what was happening
9 with GE stock. It wasn't a secret. It was in the
10 news.

11 Q. Okay. And did you know that your mother owned some GE
12 stock?

13 A. I didn't know what the state of her finances were at
14 that time because he had Power of Attorney and didn't
15 share any information with us regarding any of her
16 finances. And so I knew that they had had a good bit
17 of money in GE stock, so I told him if she still has
18 money in GE stock you need to move it.

19 Q. Okay. And did your mother -- well, let me start over.
20 So when you told Sterling that he should sell the stock
21 tell me again what he said right after that.

22 A. He said that he had to have a doctor's statement for GE
23 before he could do anything with the GE stock. And he
24 said that he had scheduled an appointment with the
25 doctor and that when he went to pick her up and they

1 were leaving she soiled herself and so they missed the
2 appointment because of that. And then -- I mean I
3 never heard back from him. I guess he never did
4 anything about it. He just let it go at that point
5 evidently.

6 Q. And in the spring of 2017 she had two doctors that were
7 looking after her; is that correct?

8 A. I mean she had already been diagnosed. Yes.

9 Q. Okay.

10 A. And the facility had a doctor that could have come in
11 and given a statement or provided, you know, the
12 information for the form, whatever form he needed.

13 Q. Okay. As you said you spoke with the doctors when you
14 needed to; correct?

15 A. Uh-huh.

16 THE COURT:

17 I need you to say yes or no.

18 THE WITNESS:

19 Oh, yes, I'm sorry.

20 THE COURT:

21 That's okay.

22 MR. MCLEOD:

23 (Counsel reviewing documents.) All right. Shauna, I'm
24 going to hand you what's been admitted into evidence.
25 It's marked Exhibit 21. This will be Petitioner's

1 Exhibit 21 and I would ask that that be submitted into
2 evidence.

3 THE COURT:

4 Okay. That's been stipulated to previously; correct?

5 MS. THOMASON:

6 Yes, Your Honor.

7 THE COURT:

8 Okay. Thank you. It's admitted into evidence without
9 objection.

10 (Introduction of previously marked document,
11 Rollover IRA General Electric Statements as
12 Petitioner's Exhibit Number 21.)

13 EXAMINATION RESUMED BY MR. MCLEOD:

14 Q. And, Shauna, can you tell me what this document is?

15 A. It's the -- the account name is Florence Mensch
16 Rollover IRA. Account type is IRA Rollover. The
17 account number is [REDACTED]80GE.

18 Q. Okay. And there is an amount on there that says
19 \$250,000 and can you tell me which page it is? I don't
20 have a copy of it so you'll have to tell me.

21 A. Page 1 of 5. I'm sorry page 1 of 6. There is a net
22 deposit and withdrawal amount of \$259,000.

23 Q. And which account was that withdrawn to?

24 A. Well, it would have come out of this. It's on this
25 account [REDACTED]80GE.

1 Q. Okay. And I'll hand you Exhibit 22, which has also
2 been stipulated and admissible into evidence and ask
3 that be submitted into evidence. The Exhibit 22.

4 MS. THOMASON:

5 What is that one?

6 MR. MCLEOD:

7 That's the Bank of America 7059.

8 THE COURT:

9 Do you agree?

10 MS. THOMASON:

11 Yes.

12 THE COURT:

13 Okay. Exhibit 22 is entered without objection.
14 (Introduction of previously marked document,
15 Bank of America Account 7059 Statements as
16 Petitioner's Exhibit Number 22.)

17 EXAMINATION RESUMED BY MR. MCLEOD:

18 Q. Can you describe that statement for me?

19 A. Okay. This is Bank of America Account number
20 [REDACTED] 7059, which is the checking account. I'm --
21 ye.

22 Q. Okay.

23 A. This is the checking account for Florence Mensch. And
24 there is a wire transfer deposit of \$259,000 on April
25 23rd, 2018.

1 Q. Okay. And how long before your mom's death was April
2 23rd?

3 A. April 23rd was three days before she died. We were --
4 Sterling and I were both staying with her around the
5 clock at memory care for the most part. I would go
6 home and take a shower in the morning and come right
7 back and then he left to go eat or shower. I think he
8 spent one night at home that week.

9 Q. Okay.

10 A. And she was under the care of hospice at that time. We
11 were basically sitting with her around the clock.

12 Q. So was she at the facility at that time or was she --

13 A. She was at Oakleaf Village at the memory care facility
14 in her room.

15 Q. Okay. And you and Sterling were both with her pretty
16 much around the clock?

17 A. Uh-huh. Yes.

18 Q. Okay. So during that time Sterling made that -- do you
19 think Sterling made that transfer from her account?

20 A. He was the only one that had Power of Attorney and
21 could make that transfer. So at some point three days
22 before she died he made a \$259,000 transfer.

23 Q. Did he tell you at that time that he was making that
24 transfer?

25 A. No.

1 Q. So you-all were together pretty much 24/7 during that
2 item and he did not mention; correct?

3 A. No, he did not mention it. And that's correct we were
4 there pretty much 24/7 except for going home to shower
5 and come right back.

6 Q. Okay. And after reviewing that document is the
7 transfer from her UBS Retirement account to her Bank of
8 America account ending in 32 -- or ending in 7059?

9 A. The deposit -- the transfer was made to the account
10 ending in 7059 at Bank of America and it was -- it was
11 transferred out account number [REDACTED]80GE, which is the
12 Rollover IRA under Florence Mensch's name.

13 Q. Okay. And who was the beneficiary on the UBS
14 Retirement Account?

15 A. On the UBS Retirement Account there are three
16 beneficiaries. Myself and both of my brothers.

17 Q. Just to clarify where does that account go now, the UBS
18 Retirement Account?

19 A. Where does it go now?

20 Q. Does it go to the Estate of Florence Mensch, the
21 Probate Estate?

22 A. That one can be moved into the Estate of Florence
23 Mensch. That's correct.

24 Q. Okay. And so you probably -- this is a legal
25 difference, but --

1 THE COURT:

2 Phyllis, will you go outside and tell them to quiet
3 down, please. Thank you. Sorry.

4 Q. But essentially that account will pass through the
5 Probate Estate; is that correct?

6 A. Correct.

7 Q. Okay. And who are the beneficiaries of the Probate
8 Estate according to Florence Mensch's Will?

9 A. Myself and my two brothers, Sterling Mensch, III and
10 John Mensch.

11 Q. Okay. Is it equal --

12 A. Yes.

13 Q. -- distributions?

14 A. Yes.

15 Q. In the original Will --

16 A. And I'm sorry I think I said this has to go through
17 beneficiaries. This -- this account can go directly to
18 the Estate.

19 Q. Okay. Which account were you referring that goes to
20 the --

21 A. The Elfun Trust Funds have to go to beneficiaries.

22 Q. Okay. And who are the beneficiaries on the Elfun Trust
23 Fund?

24 A. They would be myself and my two brothers, Sterling
25 Mensch, III and John Mensch.

1 Q. In equal one-third shares?

2 A. Correct.

3 Q. Okay. And prior to that transfer does that statement
4 tell you how much was in the account?

5 A. Yes, it says the value at year end for 2017 was
6 \$496,000 -- \$496,816.40.

7 Q. Okay. And you're referring to Exhibit 21; is that
8 correct?

9 A. Yes.

10 Q. Okay.

11 A. And then it also shows the value of the account on
12 March the 4th -- I'm sorry on March the 29th of
13 409,652.44 and then on April the 30th 154,069.08.

14 Q. And can you read that one more time for me?

15 A. Yes. The value of the account as of March the 29th,
16 2018 was 409,652.44.

17 Q. Okay.

18 A. And then on April the 30th the value of the account was
19 154,069.08.

20 Q. Okay.

21 MR. MCLEOD:

22 All right, Your Honor, I'm going to admit Exhibit 23,
23 which as been stipulated as admissible into evidence
24 and I'll submit this as Exhibit 23.

25 THE COURT:

1 Okay. Admitted without objection.

2 (Introduction of previously marked document,

3 USB Account [REDACTED] 33E4 as

4 Petitioner's Exhibit Number 23.)

5 EXAMINATION RESUMED BY MR. MCLEOD:

6 Q. Can you tell me what Exhibit 23 is?

7 A. Exhibit 23 is the UBS account. It's an IRA rollover
8 account in the name of the Estate of Ms. Florence
9 Mensch. And it's got my name on it I guess as Personal
10 Representative. It's an IRA Rollover Account
11 [REDACTED] 33E4.

12 Q. Okay. And can you tell me the balance on -- well,
13 first of all, is that the same UBS account as Exhibit
14 21?

15 A. I believe it is, yes.

16 Q. Okay. Can you tell me the amount on that statement?

17 A. The balance as of July 30th, 2021 was \$153,800 --
18 \$153,864.24.

19 Q. Okay. And is this account a taxable account? Do you
20 know if it's a retirement account?

21 A. It's an IRA rollover account so it would be taxable.

22 Q. Okay. I'm going to hand you -- I'm going to hand you
23 what's been marked as Exhibit 24 and stipulated as
24 admissible into evidence and ask that the Court
25 Reporter admit this as Exhibit 24 into evidence.

1 THE COURT:

2 All right. This is Exhibit 24 without objection.

3 (Introduction of previously marked document,
4 State Street Global Advisors Account as
5 Petitioner's Exhibit Number 24.)

6 EXAMINATION RESUMED BY MR. MCLEOD:

7 Q. Can you identify this account for me?

8 A. Yes, this is a statement from State Street Global
9 Advisors and it -- it has three account numbers listed
10 on it in the name of Florence Mensch and they are Elfun
11 Mutual Fund accounts.

12 Q. Okay. And what is the date of the statement?

13 A. The date of the statement is for the period of April
14 1st, 2021 through June 30th, 2021.

15 Q. Okay. And this is the account that you said this one
16 has beneficiaries on it; is that correct?

17 A. That's correct.

18 Q. And that's identified under Florence Mensch there's a
19 transfer on death; is that correct?

20 A. One of them shows transfer on death. The other doesn't
21 have that listed.

22 Q. Okay. On Exhibit 24 at the top it says Florence Mensch
23 and then it says --

24 A. Yes.

25 Q. -- transfer on death?

1 A. Correct.

2 Q. Okay.

3 A. Correct.

4 Q. And then next to that it says POA; is that correct?

5 A. Correct.

6 Q. And what is the amount of that statement?

7 A. The total for the three accounts as of 6/30/2021 was
8 189,035.26. And that's for the three separate accounts
9 in total.

10 Q. And did you obtain this statement from State Street
11 Global Advisors?

12 A. Yes, it was mailed to my house.

13 Q. Was this latest statement?

14 A. Yes.

15 Q. Okay. And did State Street Advisors tell you what
16 needed to be done for these funds to be distributed?

17 A. Well, right now it's -- they have to be distributed to
18 each of the beneficiaries. So a third to myself, a
19 third Sterling, and a third to John.

20 Q. Okay.

21 A. Now, we'll have to -- we would have to have some court
22 documents to make any changes to that distribution.

23 Q. Did that mention that you could -- that Sterling could
24 disclaim his interest or The Court could order --

25 A. Yes.

1 Q. Okay. And I'll finish. The Court could order him to
2 disclaim his interest?

3 A. Yes.

4 Q. Okay.

5 THE COURT:

6 Let me stop you there for a second, Mr. McLeod.

7 MR. MCLEOD:

8 Okay.

9 THE COURT:

10 If these accounts were all POD doesn't make them non-
11 Probate accounts?

12 MR. MCLEOD:

13 The only -- well, the only non-Probate would be the
14 State Street Global Advisors.

15 THE COURT:

16 Right.

17 MR. MCLEOD:

18 Yeah, the UBS is a -- it basically did not have a
19 beneficiary on it.

20 THE COURT:

21 Right.

22 MR. MCLEOD:

23 It goes to the Estate.

24 THE COURT:

25 But I mean if these State Street were -- have

1 beneficiaries does that usually mean that it's an
2 account that's not distributed pursuant to the
3 decedent's Will or Estate because it sits outside of my
4 purview?

5 MR. MCLEOD:

6 I'm not sure I would say that. I think one -- one
7 avenue would be a constructive trust, which is what
8 we've pled. I think you could order a constructive
9 trust over the funds in this account. It gives you a
10 broad authority,

11 THE COURT:

12 I want to make sure I understood how this entered into
13 it given the way the account is -- the ownership of the
14 account. So your theory is that this property although
15 normally would be considered non-Probate you're saying
16 that you're arguing that this has now become Estate
17 property or under the jurisdiction of The Court based
18 on the circumstances surrounding the management of the
19 account; is that your argument?

20 MR. MCLEOD:

21 That's correct, Your Honor. And I also think you would
22 have the authority to impose a constructive trust over
23 it.

24 THE COURT:

25 All right. I just wanted to see where you were going

1 with that.

2 MR. MCLEOD:

3 Yeah.

4 THE COURT:

5 Okay.

6 EXAMINATION RESUMED BY MR. MCLEOD:

7 Q. (Counsel reviewing documents.) All right. I'm going
8 to hand you what's been stipulated. It's been
9 premarked Exhibit 25 and stipulated as admissible into
10 evidence. So we would ask that this be admitted into
11 evidence as 25.

12 THE COURT:

13 Petitioner's Number 25 entered without objection.
14 (Introduction of previously marked document,
15 Settlement Statement for Sale of Property as
16 Petitioner's Exhibit Number 25.)

17 EXAMINATION RESUMED BY MR. MCLEOD:

18 Q. Shauna, can you describe this document for me, please?

19 A. This is the Settlement Statement from the sale of the
20 property at 512 New Tarleton Way, Greer, South
21 Carolina.

22 Q. And were you involved in this sale?

23 A. Yes, I was.

24 Q. What was your involvement?

25 A. As Personal Representative of the Estate I made

1 arrangements to have repairs made to the house to put
2 it in saleable condition and to sell the house and
3 attend the closing.

4 Q. Okay. And can you read the Settlement Statement
5 starting with sale price of property and just kind of
6 walk us through out?

7 A. Okay. The sale price of the property \$420,000. The
8 deposit from the buyer was \$15,000 deposit. The loan
9 amount that the buyer had was \$336,000. The
10 assessments and county taxes that were debited from the
11 buyer to the seller was \$52.89. The county taxes
12 debited to buyer and credited to the seller \$516.99.
13 The payoff to the mortgage company, South State Bank,
14 was \$218,000 -- \$218,579.91. And that consisted of
15 principal of 217,822.98 and interest of 756.93. The
16 recording fees charged to the seller was \$19.50. The
17 county deed taxes debited to the seller \$462. The
18 state deed taxes \$1,092 a debit to the seller.
19 Commission \$12,600 debit to the seller for the listing
20 agent. A debit of \$12,600 to the seller for the
21 selling agent's commission. The title charges, there
22 were three title charges, \$40, \$345, \$75. And those
23 were debited to the seller and payable to Holliday
24 Ingram, LLC, which was the closing attorney.
25 Miscellaneous charges debited to the seller 2020

1 property taxes in the amount of 6,969.76. HOA
2 certification fee \$300. Home warranty to the buyers
3 for \$645. Then there were some charges to the buyer
4 the title was \$35. A title for the overnight package
5 fee was debited to the buyer at \$25. The title for the
6 lender's title policy to Commonwealth Land Insurance
7 Title Company was \$825.60. There was title examination
8 search fee debited to the buyer payable to Holliday
9 Ingram for \$225. Title insurance commitment fee
10 debited to the buyer payable to Holiday Ingram for
11 \$225. Title settlement at closing fee to Holiday
12 Ingram debited to the buyer for \$445. The title, the
13 owner's title policy, to Commonwealth Title Land
14 Insurance \$476.80. Homeowner's insurance premium to
15 Safeco Insurance was a debit to the buyer of \$1,287.
16 The total credits to the seller was \$420,569.88. The
17 amount due to the seller was \$166,841.71. But then
18 there was also \$3,500 that was held for additional
19 repairs that needed to be made to the house.

20 Q. Okay. And so what was the total amount that the Estate
21 received? You don't have to give an exact number. I'm
22 not putting you on the spot.

23 A. 163,000 -- \$163,000 roughly.

24 Q. So roughly \$163,000?

25 A. Roughly.

1 Q. And then attached to that there's a hold back
2 agreement. Do you see that?

3 A. Yes.

4 Q. Okay. Can you briefly just go over what that says?
5 You can read if you want starting from the parties.

6 A. Okay. "The parties above hereby acknowledge and agree
7 that the condition of the above referenced property is
8 unsatisfactory to buyer as of the date of closing due
9 to a toilet and hydraulic gate needing repair."

10 Q. Okay. And just read that first sentence of the --
11 below that.

12 MS. THOMASON:

13 Your Honor, we can stipulate to the contents.

14 THE COURT:

15 Yeah.

16 MR. MCLEOD:

17 Yeah, I'm getting there.

18 THE COURT:

19 You don't need her to read through --

20 MR. MCLEOD:

21 Yeah.

22 THE COURT:

23 -- every little exhibit.

24 MR. MCLEOD:

25 Okay.

1 THE COURT:

2 That just -- I mean I can read a closing statement.

3 THE COURT:

4 All right. Yeah. So just in the interest of time

5 EXAMINATION RESUMED BY MR. MCLEOD:

6 Q. What was the amount of the repairs?

7 A. \$3,000 was held for the gate repair. \$500 was held for
8 the toilet repair. Those repairs were made. The buyer
9 paid for the toilet repair and then the Holliday Ingram
10 paid for the gate repair out of these funds.

11 Q. Were there any other repairs other than these required?

12 A. Yes. Prior to selling the house we spent a little over
13 \$10,000 to get the house ready to sell.

14 Q. What repairs did that include?

15 A. We had to -- we had to replace some electrical, outdoor
16 electrical outlet coverings. We had to do that. We
17 had to replace the carpet in the master bedroom because
18 it was filthy. We had to have the front steps repaired
19 because they were damaged in -- the steps were rotten
20 and damaged in the back, the risers were knocked in.
21 We had to have the exterior of the house, we had to
22 have some of the -- it was a two-story house, kind of a
23 Charleston style house, and we had to have the railings
24 and pickets were damaged and had to be -- some of those
25 had to be repaired and replaced. And the flooring on

1 the porches had to be repaired and replaced because
2 they were rotten.

3 MS. THOMASON:

4 Your Honor, I don't think there's a claim for any
5 damage to the house. I don't think it's been pled or
6 included in the special damage, so I don't think it's
7 part of the damages calculation.

8 MR. MCLEOD:

9 Your Honor, we pled actual and consequential damage.
10 That seems like that would be included in actual and
11 consequential.

12 MS. THOMASON:

13 From the taking of the money. You know the transfer of
14 the money the damage. These are special damages that
15 she's speaking to.

16 THE COURT:

17 Right. So your Pleadings don't say -- your Pleadings
18 are couched in the terms of the fact that there were
19 Estate monies that would have been available to the
20 Estate distribution but for the bad acts of the
21 Respondent. And you go through about all the accounts
22 and the transactions. So are you now saying that in
23 addition to those you want to count the \$10,000 that
24 the Estate had to pay to get the house ready to sell?

25 MR. MCLEOD:

1 Well, Your Honor, in their expert's Report or their
2 affidavit they're getting in --

3 THE COURT:

4 That I haven't seen.

5 MR. MCLEOD:

6 You haven't seen that yet. But they're going to get
7 into all kinds of things that they have to reduce
8 damages and they haven't Plead any of those things
9 either. I just want to keep it in mind.

10 THE COURT:

11 We haven't gotten there yet.

12 MR. MCLEOD:

13 I'm okay, but I'd like to keep it in mind if we're
14 going to say this about everything I say. I mean --

15 THE COURT:

16 I know to try a case.

17 MR. MCLEOD:

18 I know how. I'm sorry.

19 THE COURT:

20 Don't worry about.

21 MR. MCLEOD:

22 I know. I trust you.

23 THE COURT:

24 But if we're going to go -- if we're going to do this
25 and you're going to talk about these is this something

1 that you decided is going to be in your calculation of
2 damages to the Estate given the fact that the house had
3 to be repaired and that those repairs I suppose your
4 argument would be because Mr. Mensch lived in the
5 house?

6 MR. MCLEOD:

7 And, Your Honor, I will just allude to your argument.
8 Yesterday at the end of this you're going to come up
9 with what you think the damages are and what you think
10 it takes to put the Estate back in the position --

11 THE COURT:

12 Right.

13 MR. MCLEOD:

14 -- that it would have been in had all these things not
15 occurred.

16 THE COURT:

17 Right.

18 MR. MCLEOD:

19 So I think you're going to factor these things in and
20 come up with your number.

21 THE COURT:

22 Exactly.

23 MR. MCLEOD:

24 I'm just trying to present so you have the facts to do
25 that.

1 THE COURT:

2 Well, I'm going to let him ask about the damage to
3 Estate property and you can remedy that or rehabilitate
4 that as you see fit through your witness or on cross.

5 MS. THOMASON:

6 Okay.

7 THE COURT:

8 Okay. All right.

9 MR. MCLEOD:

10 All right.

11 EXAMINATION RESUMED BY MR. MCLEOD:

12 Q. And we're going to wrap that up. I mean you were -- I
13 think you had -- I'll let you finish your --

14 A. Well, we had to repair some tile in the bathroom that
15 damaged in the master bathroom shower. We had to have
16 some of that repaired. I'm trying to remember
17 everything we had to have repaired. There was a lot of
18 trash underneath the house that had to be removed. Old
19 pool floats, end tables, and buckets, and rags, and
20 just debris, general debris.

21 Q. Okay. And at the time of your mom's death was Sterling
22 Mensch living at that property 512 New Tarleton?

23 A. Yes, he was.

24 Q. Okay. Do you know how long he had lived at that
25 property?

1 A. He was the only one that ever occupied that house. I
2 mean he and his daughter were the ones that lived in
3 that house from the time it was built. So I think
4 2007-ish.

5 Q. Okay.

6 A. Sometime in 2007 until he moved out in September of
7 2020.

8 Q. Okay. When you met with the Probate Court did you ever
9 meet with the Probate Court and Sterling Mensch?

10 A. Yes.

11 Q. Okay. And can you just tell me about that meeting?

12 A. Well, he had not started the probate process and I told
13 him one day that, you know, you're supposed to start
14 probate within 30 days of the deceased's passing and he
15 said he didn't know that. So we scheduled -- we had
16 planned to meet several times and I know he cancelled.
17 One time he didn't show and he cancelled and I finally
18 got him there and we went to -- we went to Probate.
19 And he listed -- he had to fill out an inventory form
20 and he listed the house on the Probate form as part of
21 my mother's property. And then when we left the
22 Probate office that day we were standing out in the
23 front having a conversation and I thought that the
24 house that he was living was his house and he had
25 listed it as my mother's house. And he said to me, "I

1 have a dirty little secret." Well, from looking at the
2 address that he wrote down as being my mother's
3 property I knew that he did have a dirty little secret
4 and that was a big red flag to me. And, of course, I
5 called John and talked to him about it and said, "I'm
6 kind of concerned that there are some improprieties
7 here."

8 Q. So it was your understanding that that was Sterling's
9 house; correct?

10 A. Yes. Until, you know, he listed it as my mother's
11 house.

12 Q. And he listed that on the inventory for her Probate
13 Estate; correct?

14 A. He did.

15 Q. Okay. What did you say when he said he had a dirty
16 little secret, what was your response?

17 A. Well, I had seen him write the -- I had seen him fill
18 out the Probate Inventory Sheet so I -- I knew at that
19 point in time that obviously he has a dirty little
20 secret and I said, "Yes, I know."

21 Q. Okay.

22 A. And that's all I said. We didn't have any further
23 conversation about it.

24 Q. Okay.

25 A. Well, we did actually. He said, "You can have the

1 house and you can have what's left in the Estate. You
2 and John can have that."

3 Q. Okay.

4 A. And I didn't respond to any of that. I just -- I just
5 left because I knew that there was something going on
6 that -- that John and I needed to look into, or
7 discuss, or -- I was just kind of in shock at that
8 point in time.

9 Q. Okay. And after that what led to you being appointed
10 as Personal Representative of the Estate?

11 A. Well, John --

12 Q. Can you describe those events when you were appointed
13 Personal Representative of the Estate?

14 A. Well, I guess, you know, based on the first couple of
15 hearings that we had with Judge Jennings and the
16 evidence that we were able to come up with he
17 determined that some things had not been handled
18 properly and he removed Sterling as the Personal
19 Representative and appointed me as Personal
20 Representative.

21 Q. Okay. And I think you basically mentioned before had
22 you sought information from Sterling about the Estate?

23 A. Yes, several times before -- a day or two before the
24 funeral, the day of the funeral, several calls over the
25 course of the summer, you know after the funeral. John

1 had -- well, I guess I can't say that. But John and I
2 had talked and John told me that he had called to see
3 if any paperwork had been turned into Merline's office.
4 But, yeah, we -- he wouldn't share any information. I
5 did try to get him to meet with me a few times to go
6 over stuff and finally he -- he would cancel on me or
7 whatever. So finally I just said, "Just give me a date
8 that you can commit to," and I went to his house. And
9 he basically showed me what he had filled out at
10 Probate Court and wouldn't show me anything else, so I
11 just left. I said, "We're just not getting anywhere
12 here," so I left and I think that's what --

13 Q. Did you check with Merline's office to see if the
14 Probate had been started or was in the process?

15 A. Yes, I did.

16 Q. And what did you find out with you checked with them?

17 A. I talked to David Merline and he told me that they had
18 not received any information from Sterling.

19 Q. And had Sterling indicated differently to you?

20 A. Yes, he told us at the funeral he was going to take
21 everything to David Merline's office at the beginning
22 of the following week and we trusted that he was taking
23 care of that. And then after a few months we started
24 questioning why we hadn't heard anything and contacted
25 him and he said that he was waiting for taxes to be

1 completed. So we gave him so more time and went back
2 to him and he said, "Well, the taxes have been
3 completed and I took the information to Merline's
4 office and left it with the secretary." And I said,
5 "Well, she doesn't have it." And he said, "How do you
6 know that?" And I said, "Because I called his office
7 to see if he had received anything and he had not."
8 And he said, "Well, I gave it to the secretary. She
9 must have lost it."

10 Q. And had the taxes been completed when you took over as
11 PR?

12 A. When I took over as PR the only taxes that had been
13 complete were for 2016 and those were filed mid-year of
14 2018. So they were about -- almost a year and a half
15 late being filed.

16 Q. Okay. And when did you take over as PR?

17 A. December of 2019.

18 Q. And at that point which taxes hadn't been filed?

19 A. 2017 and 2018.

20 Q. After you were appointed how soon did you begin trying
21 to obtain information regarding the Estate of Florence
22 Mensch?

23 A. Immediately. We had -- we had to first find out where
24 stuff was. Where accounts were, what accounts were,
25 how to get information regarding the accounts. We had

1 a real difficult time getting the checking account
2 statements or the bank account statements from Bank of
3 America. And then with COVID amping up it made it even
4 more difficult, so we -- it took several months before
5 we really even got a good handle on what was out there
6 and what had been done and not done. And then I just
7 had recalled at some point in time that the accountant
8 that did her taxes, and I thought it was Ballentine,
9 but it turned it -- a long story short Allen Hodges at
10 Stokes, CPA was the accountant that did her taxes for
11 years and I was able to locate him. And then he was
12 able to give me information regarding the taxes that he
13 had prepared and the fact that he had tried to get in
14 touch with Sterling to give him information for the
15 2017 and 2018 taxes and was not getting any response.
16 And I have a copy of a letter that he sent to
17 Sterling's house regarding the 2018 taxes, but those
18 taxes were never filed and that's when I found that
19 out.

20 Q. And so you hired Al Hodges to do the 2017 and 2018
21 returned; is that correct?

22 A. That's correct.

23 Q. Okay.

24 A. And we didn't have all the information we needed so we
25 went back to some of the old taxes and that was -- that

1 gave us information on where to look for accounts and
2 what -- you know, what funds to look at and where to go
3 looking for information because they were documented on
4 her prior taxes.

5 Q. Okay. Have you met with the IRS regarding the 2017 and
6 2018 tax returns?

7 A. Yes, I actually took most the day off of work to go
8 meet with the Federal IRS and the South Carolina
9 Department of Revenue and the Federal IRS would not
10 forgive any of the penalties. Right now they've only
11 assessed penalties and interest on the 2018 returns.
12 They have not assessed penalties and interest on the
13 2017 returns. They are very far behind and so they
14 told me they would not forgive any of the interest and
15 penalties on the 2018 taxes because he had already used
16 that one time forgiveness for taxes on a prior year
17 that he had filed taxes late.

18 Q. And who is "he"?

19 A. Sterling.

20 Q. Okay.

21 A. So because of that they denied any forgiveness for the
22 2018 taxes and penalties, but they did say that they
23 would mail me some forms that I could fill out to file
24 an appeal. And they told me not to do anything until
25 those forms came in and so I received those forms a

1 couple of weeks ago. I've been out of the town the
2 last couple of weeks because I had two sick grandbabies
3 in Charleston that I had to go take care of for a
4 couple of weeks. So those forms are now in and I'll be
5 filing the appeal for 2018 taxes.

6 Q. Okay.

7 A. I also went to the 2016 -- I mean I also went to the
8 South Carolina Department of Revenue and I also have
9 now gotten some forms to file an appeal for those
10 penalties and interest.

11 Q. Okay. And have you talked with an accountant about the
12 likelihood that the penalties or interest will be
13 forgiven?

14 MS. THOMASON:

15 Objection, Your Honor. We're getting a lot of hearsay.

16 THE COURT:

17 Yeah.

18 MR. MCLEOD:

19 I withdraw that question, Your Honor.

20 THE COURT:

21 Okay. Thank you, Mr. McLeod.

22 EXAMINATION RESUMED BY MR. MCLEOD:

23 Q. All right, Shauna, I'm going to hand you what's
24 stipulated and admissible into evidence and premarked
25 as Exhibit 6 and ask The Court to admit this as Exhibit

1 6 -- Exhibit 26 into evidence.

2 THE COURT:

3 Okay. All right. Petitioner's 26 admitted without
4 objection.

5 (Introduction of previously marked document,
6 SunTrust Account Estate 6779 as
7 Petitioner's Exhibit Number 26.)

8 Q. All right. And, Shauna, can you quickly identify this
9 statement for me?

10 A. Yes, this is a SunTrust checking account statement for
11 the Estate of Florence P. Mensch that I set up when I
12 became Personal Representative.

13 Q. Okay. Can you identify the account number on that for
14 me, the last four at the top?

15 A. Yes, the last four digits of the account number are
16 6779.

17 Q. Okay. And is this the Estate account that you set up?

18 A. Yes, it is.

19 Q. Okay. And can you tell me the date of the statement
20 period?

21 A. The date of the statement is 7/31/21.

22 Q. Okay. And can you tell me --

23 A. And it goes from 7/1/2021 to 7/31/2021.

24 Q. Okay. Did you recently request these statements from
25 SunTrust?

1 A. Yes, but I also get a copy of -- I requested a whole
2 set because that was what I was asked to do to provide
3 for the hearing. And then I also receive the
4 statements.

5 Q. This is the latest statement?

6 A. It is.

7 Q. Okay.

8 A. Yes, it is.

9 Q. Can you tell me the amount in the account beginning
10 balance and ending balance?

11 A. The beginning balance is 143,985.25. The ending
12 balance on this statement is 134,985.25.

13 Q. And there's a check there for \$9,000; is that correct?

14 A. That's correct.

15 Q. What was that for?

16 A. That was for John Markel services.

17 Q. Is that all you paid John Markel?

18 A. No.

19 Q. How much have you paid John Markel?

20 A. I don't know off the top of my head. I would have to
21 look at the statements.

22 Q. Okay. Would roughly 25,000 be correct?

23 A. I think it's probably more than that.

24 Q. Okay.

25 A. I have a summary of my statement I can look at.

1 Q. Okay. That's okay. I mean is it roughly between 25
2 and 28,000?

3 A. It's probably close to 30,000, 25 or 30,000. Somewhere
4 in there.

5 Q. Yeah, just an estimate for now. Okay. Do you know how
6 much the Federal 2018 taxes are currently?

7 A. I can't quote that off the top of my head. I mean we
8 have the -- we have the documents.

9 Q. Yeah. I'm going to hand you a statement to see if it
10 refreshes your recollection. (Counsels conferring)
11 I'm going to show you this document just to refresh
12 your recollection on certain things. So the current
13 amount in the SunTrust account has that -- on this
14 Exhibit 26 has that gone down? Is it less now?

15 A. You mean less than the 134,000?

16 Q. 985.25?

17 A. Correct. It's down to \$119,091.30.

18 Q. Okay. And what was that drop caused by?

19 A. We paid attorney's fees of \$15,893.95.

20 Q. Okay. And we went over the current balance of the UBS
21 IRA Account. Can you tell me that amount?

22 A. \$153,864.24.

23 Q. Okay. And then there's a non-Probate asset, the State
24 Street account, what is that amount?

25 A. The total for those three accounts on the State Street

1 statement is \$18,935.26.

2 Q. Okay. And on liabilities the federal 2018 taxes the
3 latest calculation from the IRS what is that?

4 A. \$95,408.34.

5 Q. And the state taxes for 2018?

6 A. \$27,675.10.

7 Q. And the 2017 federal taxes?

8 A. \$1,672.

9 Q. And the 2016 federal taxes?

10 A. \$1,771.73.

11 Q. Okay. All right, Shauna, I'm going to show you what's
12 been stipulated as admissible into evidence and
13 identified as Exhibit 27 and I'll ask The Court to
14 admit this into evidence as Exhibit 27.

15 THE COURT:

16 Number 27 without objection.

17 (Introduction of previously marked document,
18 GE Pension Overpayment Form as
19 Petitioner's Exhibit Number 27.)

20 Q. All right. Can you tell me what this statement is?

21 A. This statement is the GE Pension Overpayment Form.
22 Once we were going -- once we got access to the
23 checking at Bank of America, my mother's checking
24 account statement, we found that deposits were -- after
25 she died deposits from the GE Pension Plan were still

1 being deposited into her checking account. So when I
2 discovered that I got home from work one day and looked
3 at the statement and discovered that. And so the next
4 morning I called GE to let them know that she was
5 deceased, but they had been -- they had been paying --
6 paying the pension because nobody had stopped them from
7 paying the pension.

8 Q. Did they not know that she was deceased?

9 A. GE did not know. Sterling never informed them that she
10 had passed away and they continued to make deposits
11 into her checking account. So when I found that out I
12 called GE and told them that she had passed away and
13 they asked me when and I gave them the date of the
14 death and sent them the forms. And they sent me this
15 overpayment form and a statement saying that we owed
16 \$30,157.81 for pension payments that were made after
17 her death. They also said that, and this form includes
18 that, that there was a GE life insurance policy in the
19 amount of \$10,000 that was left to the three
20 beneficiaries, myself, Sterling and John. And so they
21 asked -- they said, you know, we can go ahead and turn
22 over our portions of that insurance benefit to reduce
23 the amount of overpayment that would need to be made to
24 back to GE. So John and I went ahead and signed over
25 our share of the death benefit. And then sent that off

1 to GE. And then I guess it looks like on May 28th,
2 2020 Sterling agreed to sign over his share of the
3 death benefit for that life insurance policy, but he
4 never mailed that to GE because I called to follow up
5 on it probably about a month or so ago and so I sent
6 this copy to them where he had signed turning over his
7 share. So the amount -- the overpayment was
8 \$30,157.81. Because all three of us have turned over
9 our portions of the life insurance benefit the amount
10 now owed back to GE is \$20,157.81.

11 Q. Okay. And so as another liability you'll have to repay
12 this -- the Estate will have to repay the GE Pension
13 repayment; is that correct?

14 A. That's correct. John and I already, you know, provided
15 them a portion of the payment for the monies that were
16 taken.

17 Q. Okay. And if they hadn't been taken you would have
18 shared a \$10,000 life insurance policy; is that
19 correct?

20 A. That's correct.

21 Q. And it would have been one-third between yourself, John
22 and Sterling; is that correct?

23 A. That's correct. And if it had been handled properly
24 whenever she passed away then this would have never
25 been an issue for the Estate to handle.

1 Q. Okay. And on the UBS Retirement Account we mentioned
2 that's a taxable account; correct?

3 A. Correct. It's an IRA so as funds are distributed it
4 generates tax liability.

5 Q. Correct. And it was payable to the Estate; correct?

6 A. That account will have to be transferred into an
7 Estate account and then it can be distributed.

8 Q. Okay. And upon being transferred into the Estate
9 account will that create a tax?

10 A. I think it will because I -- and I don't know for sure.
11 It will either become taxed at that point or if it's
12 able to be rolled into an IRA whenever that IRA is, you
13 know, liquidated then it -- it's still taxable at some
14 point in time. I don't know at what it will be taxed.
15 I'm assuming it will be taxed whenever we take it out
16 of that rollover IRA and put it into the Estate, but
17 that I don't know yet. I haven't -- I don't know that
18 yet. I haven't work with GE other than to know what
19 the next step is.

20 Q. Okay.

21 A. But it is a taxable -- it will be a taxable event at
22 some point to the Estate.

23 Q. Okay. And so after taxes and -- well, after taxes are
24 taken out of that and the liabilities are paid have you
25 calculated what you think the estimated balance after

1 taxes and liabilities will be?

2 A. Yes. The estimated balance after taxes and liabilities
3 are \$69,812.34. And that's an estimate.

4 Q. And that is assuming a 49 percent rate on the UBS IRA?

5 A. That's right.

6 Q. So we'll make that clear. You don't know for sure that
7 that's the rate, but based on what you do know?

8 A. That's correct. That's an estimate.

9 Q. Okay. Based on what you've been told Estates are taxed
10 at the highest rate; is that correct?

11 A. That's right.

12 Q. Okay.

13 A. That's right.

14 Q. All right. I think that's all I have. And, again, the
15 State Street account that has a payable or transfer on
16 death; is that correct?

17 A. That's correct.

18 Q. Okay. All right. Let's see.

19 MR. MCLEOD:

20 Your Honor, I think I'm close. Can we go off the
21 record for five and just make sure? Is that okay with
22 you?

23 THE COURT:

24 We will take five. We will be in recess for the next
25 five minutes.

1 Off the Record: 14:24:22.5

2 On the Record: 14:30:25.0

3 THE COURT:

4 Okay. Let's go back on the record. Mr. McLeod?

5 MR. MCLEOD:

6 Just a few follow-ups, Your Honor

7 EXAMINATION RESUMED BY MR. MCLEOD:

8 Q. Let's see. All right. Shauna, I'm going to hand you
9 what's already been admitted into evidence as Exhibit
10 3.

11 MR. MCLEOD:

12 Your Honor, can I get your Exhibit 3 to refer to?

13 THE COURT:

14 Yes.

15 Q. All right. Ms. Waddell, have you seen this notebook
16 before and the contents of it? You can review it for a
17 few minutes.

18 A. Yeah, it looks familiar. Yeah.

19 Q. What is it?

20 A. Well, it's got the bank statements.

21 Q. And whose bank statements are those?

22 A. Let's see. It looks like Sterling Mensch's bank
23 statements.

24 Q. Okay. And are there -- can you describe what's on the
25 bank statements? Just in general.

1 A. I mean it shows the bank balances and the withdrawals,
2 transfers, checks.

3 Q. Okay. Is it highlighted?

4 A. It is.

5 Q. And do you know what the highlights are for?

6 A. I believe he's highlighted some things that were for
7 the benefit of my mother.

8 Q. Okay. And are there certain things highlighted in
9 yellow?

10 A. Yes. I think those are the ones that he highlighted
11 that pertain to the house maybe and then the ones in
12 purple looks like he's got notes that they were for his
13 mother, our mother.

14 Q. Okay. So the things in yellow were allegedly for 512
15 New Tarleton Way?

16 A. That's right.

17 Q. And then the things in purple were allegedly for the
18 benefit of Florence Mensch; is that correct?

19 A. Yes.

20 Q. And how extensively have you reviewed this?

21 A. I have spent hundreds of hours looking over bank
22 statements, and investment statements, and taxes, and I
23 mean hours and hours and hours over the last --

24 Q. This statement in particular, this notebook?

25 A. This? I haven't looked at this particular notebook.

1 Q. All right.

2 A. I've looked at the bank statements.

3 Q. Okay. You've just looked at Sterling Mensch's bank
4 statements?

5 A. Yes, a lot.

6 Q. Okay.

7 A. Yes.

8 Q. And for this account 3259 --

9 A. Yes.

10 Q. -- is that correct?

11 A. Yes, that's correct.

12 Q. Okay. And the things outlined in yellow, which we said
13 were for the house can you -- how about turn to just
14 December 17, 2014. Can you find that one? It's
15 towards the middle. More towards the beginning.

16 A. December 17th through January 15th? December 17th to
17 January 14?

18 Q. Correct. Yeah.

19 A. Through January 15?

20 Q. Yeah.

21 A. Uh-huh.

22 Q. And do you see on that page where there are three
23 highlighted items to Classic Ace Hardware starting on
24 1/5/15?

25 A. Yes.

1 Q. And then there's -- can you try the two below that are
2 highlighted?

3 A. Classic Ace Hardware for both of them. The amounts for
4 all three of those highlighted items are \$44.33,
5 \$64.71, and \$93.84.

6 Q. Okay. And have you ever seen any receipts to back any
7 of this up?

8 A. No.

9 Q. And were you aware that this was produced from a
10 Judge's Order?

11 A. Yes.

12 Q. Did the Judge order him to produce receipts?

13 A. Yes.

14 Q. Okay.

15 A. On more than one occasion.

16 Q. Is it difficult to tell whether that Classic Ace
17 Hardware was for Florence's benefit?

18 A. You can't tell from this what -- what benefit it was
19 for or who used it or what it was for.

20 Q. Okay. Because just on that same page are there a
21 number of transactions?

22 A. There's a lot of transactions.

23 Q. Yeah. Do the three that are highlighted mean anything
24 different to you than the others?

25 A. No. The only difference is that I can tell is the

1 amount and who the -- who the pay to was for.

2 Q. Okay. And, Shauna, this is my last question, but what
3 affect has this had on you? The events since your
4 mom's death?

5 A. If you had told me three years ago that we would be
6 sitting here today and that we have gone through
7 everything that we've gone through for the last three
8 years I would have never believed you. This to me is
9 something you see on TV. This is not something you
10 live. I'm almost embarrassed to use my maiden name
11 anymore because I don't want anybody to know that I've
12 even related to Sterling after the things that we have
13 discovered. It's been a distraction to my career.
14 It's been a distraction to my family. It's -- it's
15 been a nightmare. I never thought that I would find
16 the behavior that I have found and the things done the
17 way things have been done from somebody in my family.
18 I never thought -- I just never thought I would ever
19 see any of this. And the more we looked the more we
20 found and the more shocked we were. To be -- I think
21 one of the most insulting things I think there's been
22 so much disrespect shown to my family through all these
23 misdeeds. It has caused me a huge amount of stress. A
24 huge amount of stress. And disappointment, shame in
25 that this has gone on in my family. Sleepless nights.

1 You know you start looking and you think surely this is
2 not -- surely I'm seeing something that I'm misreading.
3 And then you dig some more and you find more. Honesty
4 and integrity and doing the right thing for people, for
5 my family, for my parents. I mean that's just what you
6 do. You don't deviate from that. I've got three new
7 grandbabies this year that I feel like this has been
8 distraction to that, too. It's taken time away from --
9 from my family. And I want to enjoy these years of my
10 life and the simple pleasures that we have to watch
11 these children grow and to spend time with them and to
12 spend time with my family in a happy, peaceful setting
13 that I've always known. And this has been a huge
14 distraction. I -- I can't tell you the disappointment
15 and the stress this has caused me. I never, ever
16 thought I would ever sit in any courtroom of any kind
17 with a dispute against anybody much less my family.
18 That's just -- I mean I work hard. I've worked hard
19 all my life. I do the right things. I don't lie. I
20 don't cheat. I don't steal. I mean I just -- I just
21 never would have thought I would have been here and I
22 don't -- I don't know what I'm allowed to say and what
23 I'm not allowed to say. I'm not an attorney and I've
24 not been in a courtroom situation, but I can just tell
25 you -- I can just tell you that this is has caused a

1 lot of heartbreak. A lot of disappointment.

2 Q. All right. Thank you, Shauna. I appreciate it.

3 MR. MCLEOD:

4 No further questions, Your Honor.

5 THE COURT:

6 Okay. Ms. Thomason.

7 MS. THOMASON:

8 Okay. I'm going to try to -- I'm glad for a minute to
9 take that off (referring to mask).

10 EXAMINATION BY MS. THOMASON:

11 Q. Thank you, Ms. Waddell. I'm not going to be very long.
12 I don't have much, but. So I think you testified that
13 you didn't -- that you knew that Sterling was the only
14 person to live in the house, he and his daughter from
15 2007 forward; is that correct?

16 A. As far as I knew.

17 Q. And you were actually Power of Attorney from 2007 to
18 2010 for your mother?

19 A. I was -- she may have me listed on some papers but I
20 never had received copies of those papers and I was
21 never acting Power of Attorney because from 2007 to
22 that time period she was living on her own in her own
23 home and managing her own affairs. So I guess that
24 would be similar to my having my Powers of Attorney
25 listed for my children, but they're not using any

1 Powers of Attorney because there's no need for it. I'm
2 not incapacitated.

3 Q. But you -- I'm sorry. But Sterling was not Power of
4 Attorney during that time?

5 A. I don't know. I didn't have those documents.

6 Q. I think in your Pleadings though you've stated that he
7 became Power of Attorney in 2010?

8 A. I think that's what we found out.

9 Q. Okay. Now, you mentioned your mom was living on her
10 own. She had her own residence?

11 A. Uh-huh. Yes, she did.

12 Q. Okay. And so she lived in her residence and Sterling
13 and his daughter lived in the Tarelton Way residence;
14 is that right?

15 A. That's correct.

16 Q. When did she -- when did she go into assisted living?

17 A. She never went into assisted living. She went into
18 memory care.

19 Q. Okay. So like an unassisted living on her own, but in
20 a memory care facility?

21 A. She went into memory care. Well, she lived at her
22 residence and then she moved into independent living at
23 a retirement center.

24 Q. Okay.

25 A. But she was still living independently. She had her

1 car and she was living independently. And then she
2 moved into memory care after -- after that.

3 Q. Was that somewhere around 2012?

4 A. She went into memory care -- I don't have the dates.

5 Q. Well, she sold her house in 2012 she lived at?

6 A. She sold her -- she moved into an apartment in
7 independent living and then she sold her house. And
8 then she was independently living at a retirement
9 facility for probably a year or -- I don't have the
10 dates and I don't want to -- I don't want to specify
11 the dates because I might quote it wrong, but.

12 Q. I'm just trying to layout the timeline.

13 A. Probably 2013, '14. I don't know.

14 Q. Okay. Now --

15 A. We could -- I have the records.

16 Q. From when she went in?

17 A. I have those records if you want me to get them and
18 give you the time.

19 MS. THOMASON:

20 Tyler, have those been sent to me?

21 MR. MCLEOD:

22 I don't know. If you want to pull them.

23 Q. I think right now we can just go with kind of a
24 timeline. I just want to lay it out for the record the
25 progression of her dementia --

1 A. Sure.

2 Q. -- and moving into and being completely in a more full-
3 service facility.

4 A. Sure.

5 Q. And so that would be the Rolling Green facility that
6 step up in the care she needed; is that right?

7 A. When she moved out of her house into independent living
8 that was at Rolling Green Estates. And then she -- or
9 Rolling Green Village and then when she first moved
10 into memory care it was at Rolling Green Village.

11 Q. Okay. All right. Now, earlier you testified that when
12 you started to notice that GE stock was falling that,
13 you know, you advised Sterling to sell?

14 A. Uh-huh.

15 Q. And in the years before that your mom had always held
16 everything 100 percent GE; is that right?

17 A. I think she had Elfun Funds.

18 Q. Managed by GE Mutual Funds; is that right?

19 A. Well, it -- it's not the same as the GE stock.

20 Q. So I understand it was a mutual fund and the GE stock
21 was a stock fund, but it was -- it came under the same
22 statement with the same custodian?

23 A. I don't think -- no, it didn't. I don't think so.

24 Q. I thought we looked up and there were many statements
25 where the GE -- where the GE Mutual Funds -- I mean it

1 had a custodian on the statements, but both of those
2 types of funds were listed on a single statement; isn't
3 that correct.

4 MR. MCLEOD:

5 Your Honor, can we refer to the statements if we're
6 going to do it?

7 MS. THOMASON:

8 Sure.

9 THE COURT:

10 Let me see. I think Exhibit 2 has got -- here's the
11 State Street.

12 MS. THOMASON:

13 These are the earlier one. I'm going to go from here.

14 THE COURT:

15 Don't forget to give it back to me. Okay?

16 MS. THOMASON:

17 I know because I get all that stuff in there.

18 EXAMINATION RESUMED BY MS. THOMASON:

19 Q. Let me show you what's been marked as Exhibit 2 and
20 it's already been admitted into evidence. And that is
21 a statement that shows the portfolio breakdown and it
22 has GE Mutual Funds at the top. What is the name of
23 the custodian listed at the top?

24 A. Florence Mensch TOD POA.

25 Q. I think just above that it has custodian.

1 A. At the top it says Florence Mensch TOD POA.

2 Q. Here?

3 A. Oh, you're talking down. Under -- under account number
4 [REDACTED] 2597 it says US Bank NA Cust Florence Mensch IRA
5 Rollover POA.

6 Q. And that has both the stock in the portfolio and then
7 references the Elfun Funds as well; isn't that right?

8 A. (Witness reviewing exhibit.)

9 Q. I promise you I'm not trying to trick you.

10 A. Well, I'm just not going to answer until I know for
11 sure. Okay. I see that. I see Elfun Fund. I see
12 Elfun Trust Funds.

13 Q. Okay. And that GE stock your dad worked for GE for 40
14 years I think --

15 A. I think 42, but, yes, I think -- yes, he did.

16 Q. And so that GE stock was originally managed by GE
17 Mutual Funds through a custodian; isn't that correct?

18 A. I think he managed his own accounts.

19 Q. When it was with GE? Have you done any independent --
20 are you aware of what kind of account that was? Was it
21 stock -- stock options?

22 A. I don't know how he handled his accounts, but I know he
23 watched them and he would take money out of his
24 accounts when he needed to and not take money out of
25 his accounts when he didn't need to.

1 Q. But that had always been GE stock is my point. It had
2 always been from the time he worked and built up his
3 investment portfolio in a rollover to your mother;
4 right?

5 A. I knew he had GE stock.

6 Q. In fact, he had only GE stock in a rollover to your
7 mother at his death?

8 A. I think he also had mutual funds.

9 Q. Would that be the Elfun Funds?

10 A. Yes.

11 Q. Okay. Now, the reason that that was moved over to UBS
12 isn't it a fact that GE stopped managing their own?

13 A. I think that's correct.

14 Q. And so that wasn't a decision any one person made, GE
15 did that with all of theirs? They got out of that
16 business; isn't that right?

17 A. I don't know. I don't know what the decision was to
18 letting them manage. I know my 401k has been moved
19 around to different managing entities, but.

20 Q. Exactly. Without you making an affirmative decision to
21 move it? Whoever is custodian, whoever is handling it
22 makes that decision?

23 A. Right. But I have -- I have the authority to go in and
24 move money in and out of it and change my elections and
25 liquidate if I need to or not liquidate if I don't need

1 to.

2 Q. Okay.

3 A. I still manage my -- I still manage my funds.

4 Q. Now, when this -- there was not really a concern about
5 diversification or the fact that mom had held
6 everything in GE stock, the majority of her portfolio
7 on GE stock, for all these years until 2017 when the
8 value tanked; is that -- is that correct?

9 A. I mean GE had been strong for a long time and then the
10 value did start to decline rapidly.

11 Q. And so in 2017 it really was over a few months that
12 half the value was lost; isn't that right?

13 A. I think we did notice that there was a decline from
14 what, 2016 to 2017 and beyond.

15 Q. Not significant however. I mean it was in 2017 that it
16 really over a course of a few months declined; isn't
17 that correct? That's what got your attention?

18 A. Yeah, that and what I was reading and hearing in the
19 news.

20 Q. Okay. So it wasn't that he didn't -- that Sterling
21 didn't diversify over a long period of time, it was all
22 of a sudden GE value was reducing fast, very quickly
23 and that became a concern at that time?

24 A. I think we noticed in the statements in monitoring her
25 statements after the fact when I started getting the

1 statements we could see the declines from statement to
2 statement to statement over a longer period of time
3 than just a few months.

4 Q. But hadn't it already been the GE stock was already
5 liquidated by the time you took over?

6 A. By the time I took over it was -- it was I guess moved
7 into this GE Stock IRA.

8 Q. You mean when you took over as Personal Rep it was --

9 A. That was in 2019.

10 Q. Okay. So you were getting statements after that or you
11 went back and got prior statements?

12 A. I didn't start getting the statements until after I was
13 appointed and had to find out where all this stuff was
14 and then I started getting statements. And, yes, we
15 did require previous statements.

16 Q. So when you say that you noticed it declining you're
17 referring to the previous years?

18 A. When I -- when I knew that the GE stock was declining I
19 contacted or I talked to Sterling and told him, "GE
20 stock is going down. If mom has anything left in GE
21 stock you need to move it now."

22 Q. Okay. Okay. And my only point being it wasn't on a
23 long decline, it happened very quickly?

24 A. Well, I don't think it happened immediately.

25 Q. Okay. Now, the State Street Elfun, that mutual fund

1 eventually ended up in Global State Street Mutual
2 Funds. It's actually already been admitted into
3 evidence, but in those mutual funds as we can see from
4 the statement that we just showed and others that have
5 been admitted it was about 277,000. It went up a
6 little bit and down a little bit, but it stayed around
7 there; is that right?

8 A. Can you repeat that, please?

9 Q. Sure. On this statement how much does it show is in
10 Elfund Funds?

11 A. (Witness reviewing exhibit.)

12 Q. Does it show 279,000?

13 A. (Witness reviewing exhibit.) Okay. This first page
14 that I'm looking at is for the period of January 1,
15 2015 to December 31st, 2015. It's page 2. If I turn
16 the page I see a statement for the period of January
17 1st, 2016 to December 30th, 2016. And the beginning
18 value -- the beginning value was \$279,819.11 and then
19 there were withdrawals of \$208,727 with an ending value
20 on 12/30/2016 of 88,347.69.

21 Q. So when you're looking at that first page and it has --
22 what's the date range? You said that's for the year
23 2015; correct?

24 A. 2015. Uh-huh.

25 Q. So that 279,000 on December 31st, 2015 we know -- we

1 know that there was a sizeable wire and then in
2 December of 2015 I think the testimony has been, and
3 we've got evidence admitted in the record, that \$84,000
4 in gifts were given from this account?

5 A. I think the gifts were given from my mother's checking
6 account.

7 Q. I think the record earlier showed that they came out of
8 the -- out of the -- it was GE still at that time in
9 2015?

10 A. The mutual funds I think I mean you'd have to go back
11 to John's testimony this morning, but I think he -- he
12 showed or testified that there was money moved out of
13 her mutual funds and transferred in the same amount
14 into her checking account and then checks for gifts
15 were written out of her checking account.

16 Q. Sure. That was my point. He testified they were moved
17 out of her mutual funds --

18 A. Okay.

19 Q. -- into here. And so we know part of that reduction is
20 \$60,000 of gifts in '14, 84,000 in '15 and 84,000 in
21 '16 that were gifts. My only point here is you
22 testified that this account is a beneficiary pay upon
23 death account and it goes directly to the three of you.

24 A. Correct. And that's the mutual funds, not the stock.
25 I understood you --

1 Q. So if there was 279,000 in there in 2015 and 220,000
2 come out to the three of you, like it would after, the
3 difference is, you know, maybe 50,000 or 60,000 not
4 taking into account taxes; is that right?

5 A. I mean I don't know. I'm not doing the math.

6 Q. The three of you have already received 220 of what that
7 account would have paid out to you. I think the checks
8 show it. I mean we've got the checks in?

9 A. (Witness pausing.)

10 Q. Do you want to just let the checks stand for
11 themselves?

12 A. I mean I'm not --

13 Q. It's okay. Okay.

14 A. I'm not going to say something that I don't have
15 something to back up and have in front of me and
16 definitively say that -- I'm not going to say you're
17 correct if I don't know that you're correct.

18 Q. Now, you also said that these funds were going to be
19 taxed at any point when they were taken out; isn't that
20 right?

21 A. I was talking about the IRA account.

22 Q. Right. Both of these would be taxed upon withdrawal?

23 A. I think the mutual funds and I don't know yet, because
24 I have not done this yet, but I think if you have
25 stocks and bonds and mutual funds I think you can

1 transfer them. I think you can transfer them into
2 another account and that then becomes the basis for the
3 taxes and you wouldn't pay taxes on it until you
4 liquidated your new account that you transferred these
5 to.

6 Q. So just so we can clarify on the record though the
7 mutual funds are the IRAs?

8 A. I think -- I kind of feel like you're combining the GE
9 Stock IRA and the mutual fund accounts into one
10 conversation.

11 Q. They're both IRAs; correct?

12 A. (Witness reviewing exhibit.) I mean the GE Stock IRA
13 is the only one that's listed as an IRA by its -- by
14 its description on the report.

15 Q. Okay. So anytime, and I understand you're saying
16 you're not sure about rolling over, but at the point
17 that this was realized in cash, liquid asset coming out
18 of these accounts, it would be taxed?

19 A. If -- if -- as long as my mother owned these accounts
20 and money was taken out of these accounts it becomes a
21 -- capital gains are taxed.

22 Q. And they're taxed after she passed away; correct?

23 A. As long as -- to my knowledge as long as they're
24 liquidated under her name out of her account they are
25 taxed. I think, and I don't know for sure because I'm

1 not a CPA and I'm not an attorney, but I think when you
2 have stocks and bonds and mutual funds I think if I
3 were to say to GE, "I'm going to take my share of the
4 mutual funds and I want you to roll those into an
5 account under my name," I don't think there is a tax
6 liability there. I think that then becomes the basis
7 and then if I were to then liquidate my portion, my new
8 account, I think at that point in time the difference
9 between the starting point of when I moved that money
10 to what the new value would be become would be the
11 capital gain tax that we would pay. I'm not 100
12 percent sure about, because again I'm not a CPA. I'm
13 not a tax specialist and I'm not an attorney.

14 Q. No, no, no. It was just earlier I think testimony was
15 it would be 49 percent once it comes to the Estate.

16 A. We were referring to the GE Stock IRA only.

17 Q. Okay. So what would -- would the tax be on the Elfun
18 Fund IRA?

19 A. Well, I -- I -- again, I don't know for sure, but I
20 think if I were to say, "Okay. Here's my portion of
21 this account," and I roll it into another Elfun account
22 under my name to my knowledge I think you can do that
23 without paying the tax on it. I think it becomes the
24 basis. And, again, I'm not a tax professional. I'm
25 not an attorney and I'm not a CPA. But I think that

1 that's the way it works.

2 Q. Did you calculate taxes though when you came up with
3 your 65,000 net number? Was that based on paying taxes
4 or was that based on what you --

5 A. I estimated paying 49 percent out of the \$153,000, the
6 GE Stock IRA. That was just an estimate. I don't know
7 what that number is going to be.

8 Q. Okay. But you've already received 84,000. John has
9 received 84,000 and then --

10 A. Now, as those funds were being liquidated there was tax
11 liability generated for my mother's accounts.

12 Q. Right.

13 A. Because they were not -- those -- and those just were
14 just taken out of her -- those were taken out of her GE
15 account and put into her checking account.

16 Q. Right. And it generated taxes?

17 A. Yes. And likewise if I -- if -- and, again, I'm not an
18 accountant. I'm not an attorney and I'm not a tax
19 professional, but my understanding is if I take the
20 mutual funds and roll them over into an Elfun account
21 under my name I don't think there's taxes at that point
22 in time. I think that the tax -- I think that once I
23 liquidate out of my account I think that generates the
24 tax liability and only from the basis which I moved the
25 money into that to the time I move it out. I'm not

1 sure. Again, I am not -- and that's why I did not
2 estimate any taxes on that money, because I don't know.

3 Q. And I'm not really trying to be difficult. I just want
4 to make sure I understood you because I think you said
5 you estimated 49 percent on that money?

6 A. And I estimated that.

7 Q. Okay.

8 A. Because I know that there is a higher rate for Estate
9 taxes than there is for just general personal income
10 taxes.

11 Q. Who paid the taxes on the gifts for each of these years
12 '14, '15 and '16?

13 A. Whenever that -- that money was liquidated from my
14 mother's account and put into her checking it became a
15 tax liability to -- to her.

16 Q. So the taxes were paid out of her account for that?

17 A. Correct.

18 Q. Okay.

19 A. But now the taxes haven't been paid for 2017 and '18.

20 Q. Yeah, we're talking 2014, '15 and '16.

21 A. Yes. Late, but they were paid.

22 Q. Okay. Now, are you aware that the house, the Tarleton
23 Way house that Sterling put the down payment down, he
24 paid all of the payments, paid all the insurance, and
25 the all the property taxes, all the improvements and so

1 there was no expense borne by your mother's Estate?

2 A. That's not a true statement. There were checks written
3 for mortgage out of my mother's account, the checking
4 account. I don't know -- I don't know the property,
5 the land according to the records show that she
6 purchased the land.

7 Q. It has her name on it?

8 A. It does.

9 Q. Okay. She never had any discussions with you, you've
10 not seen any notes, handwritten notes regarding
11 intention that that would be Sterling's home?

12 A. No.

13 Q. Okay. Let's see.

14 A. I didn't know she was involved in the purchase of it to
15 begin with.

16 Q. You said that on the GE Pension overpayment, the
17 \$31,000 --

18 A. Correct.

19 Q. -- that you and John Mensch had already -- you had paid
20 part of that. Are you referring to the \$10,000 life
21 insurance policy just for clarification?

22 A. We forfeited our share of that life insurance policy as
23 a goodwill gesture to GE Pension and told them that we
24 were going to, you know, try to get the funds available
25 to be able to, you know -- to try to get that paid

1 back.

2 Q. The life insurance policy that was the three of you?

3 A. Correct.

4 Q. There was just one \$10,000?

5 A. That's correct. That's correct.

6 Q. Okay. One last question. In speaking about 2017 when
7 you mentioned to Sterling that he needed to sell the
8 stock if there was anything left. You said that your
9 mother was already under the care of two physicians
10 that could have -- Dr. Arya and doctor?

11 A. Bansaly.

12 Q. Bansaly. But isn't it true that Dr. Arya had already
13 moved to Texas by that time and Dr. Bansaly left her
14 practice as well.

15 A. She was patient of both of those doctors. I don't know
16 at what point. I don't know what date that they left,
17 but they diagnosed her and they were -- they managed
18 her medicines, both of them.

19 Q. But you don't know what efforts were made to get her in
20 to see a physician or how many months passed that
21 Sterling made those efforts?

22 A. He -- he just told me that he went to take her to a
23 doctor's appointment and she soiled herself and so he
24 couldn't take her, but Oakleaf Village had a physician
25 that visited once a month to attend to any needs that

1 the residents had. But the medical records from Dr.
2 Bansaly and Dr. Arya are certainly available.

3 Q. But you have no personal knowledge whether UBS would
4 accept those or not if they sent and they declined to
5 accept them without an updated letter, you don't have
6 personal knowledge about that?

7 A. He just told me he needed to have a doctor's statement
8 to show that she was not able to handle her affairs.

9 Q. Okay.

10 MS. THOMASON:

11 Give me one second, Your Honor. I might be done.

12 THE COURT:

13 Sure.

14 MS. THOMASON:

15 (Counsel reviewing documents.)

16 Off the Record: 15:11:18.5

17 On the Record: 15:11:28.3

18 MS. THOMASON:

19 I think that's it.

20 THE COURT:

21 I have a question for this witness before she steps
22 down. Do you have any redirect?

23 MR. MCLEOD:

24 I don't think I will, Your Honor.

25 THE COURT:

1 Okay.

2 MR. MCLEOD:

3 But you go ahead and ask your question.

4 EXAMINATION BY THE COURT:

5 Q. I'm just trying to understand the different residences
6 of your mom.

7 A. Uh-huh.

8 Q. So when your mom and dad were living together did they
9 live in a house here in the Greenville?

10 A. They did. They lived at 207 West Beverly Street.

11 Q. Okay. 207 West Beverly.

12 A. Street. And that's in Greer.

13 Q. In Greer. And then what was the next place your mother
14 lived?

15 A. Then she moved to Rolling Green Village and she lived
16 in independent living there. She bought a two-bedroom
17 apartment.

18 Q. Okay. And she sold the Silver Leaf --

19 A. After she moved into -- correct.

20 Q. And then from Rolling Green Village she moved from
21 independent living into the memory care?

22 A. That's correct.

23 Q. And then I heard you mention Oakleaf. Did she go to
24 another place?

25 A. And she was living in Rolling Green Village and she got

1 sick and we kind of determined that she was being over-
2 medicated, so we -- I had found a geriatric specialist
3 and we had started -- we had moved her to Dr. Arya's
4 care. And so we just felt like the best move was to
5 move her out of Rolling Green Village and into Oakleaf
6 Village. I mean Rolling Green Village and move her
7 into Oakleaf at Thornblade. It was just another memory
8 care facility and they were probably a little bit
9 better equipped and better willing to handle some of
10 the personal -- personal needs whereas --

11 Q. Was that the last place she lived before she passed?

12 A. Yes, it was.

13 Q. Okay.

14 A. It was.

15 Q. And the Tarleton house did it get built sometime during
16 -- she never lived in it according to the testimony.

17 A. She never lived in it.

18 Q. So it was built?

19 A. In the 2007 to 2008 time frame.

20 Q. Was that while she was living --

21 A. In her home.

22 Q. In her home at Silver Leaf?

23 A. Silver Leaf. Uh-huh.

24 Q. And so she purchased -- she made the purchase of the
25 land or purchased whatever -- had it built or purchased

1 it if it was existing around 2007 and '8, but she never
2 lived in it?

3 A. Correct.

4 Q. Okay.

5 A. I think that's right.

6 Q. Okay.

7 A. And I don't know how all the -- all that transpired.

8 Q. Okay. I just was trying to make sure I --

9 A. Yes, ma'am.

10 Q. -- understand how, because I know there was some
11 mention of an apartment, but that was probably the
12 Rolling Green?

13 A. That's correct.

14 Q. Okay.

15 A. That was the first --

16 Q. The independent living?

17 A. Independent living, yeah.

18 Q. Okay.

19 A. You know they were broken down into several different
20 --

21 Q. Right. Right.

22 A. -- phases of senior life there.

23 Q. So she was at Silver Leaf, the she went to Rolling
24 Green Village independent living in an apartment, and
25 then went to memory care at Rolling Green, and then

1 after not being happy with the treatment there she was
2 moved to Oakleaf at Thornblade and that's where she was
3 before she died?

4 A. That's right.

5 Q. Okay.

6 A. That's right.

7 Q. All right. Thank you.

8 A. Thank you for asking.

9 Q. Uh-huh. Okay.

10 THE COURT:

11 All right. I'll turn it back over. Mr. McLeod,
12 anything?

13 MR. MCLEOD:

14 Nothing, Your Honor.

15 THE COURT:

16 Okay. Okay. You may step down. All right. Let's
17 take a ten minute recess and we'll have the witness
18 chair wiped down and we'll come back at 25 after 3:00.
19 We'll be in recess.

20 Off the Record: 15:15:12.7

21 On the Record: 15:27:39.4

22 THE COURT:

23 Thank you. Please have a seat.

24 MS. THOMASON:

25 Your Honor, before we go on the record can we just

1 please talk about the logistics?

2 THE COURT:

3 Sure. Please.

4 MS. THOMASON:

5 So Tyler and I were just -- Mr. McLeod and I were just
6 talking and I don't think you have any more witnesses
7 right now?

8 MR. MCLEOD:

9 That's true. No more witnesses. I have one thing I'm
10 considering, but I'm probably going to close my case.

11 MS. THOMASON:

12 And we have one, maybe two witnesses, and to put -- I
13 need about 30 minutes to get my expert here because I
14 was just going to give him a call. I didn't know. But
15 I'm concerned that it would be highly prejudicial to
16 put him on the stand to answer partial answers.

17 THE COURT:

18 Uh-huh.

19 MS. THOMASON:

20 Leave and come back. I mean that being said I don't
21 know what The Court has available to very quickly turn
22 around and reconvene.

23 THE COURT:

24 We'll have to Kim Campos-Ivey will have to look on The
25 Court's schedule and see when we can come back. And

1 probably we need to estimate high instead of low so we
2 don't run out again. I don't know if you think another
3 whole day or we ought to put two days. I'd rather go
4 high than low, you know, to finish because you may have
5 reply witnesses. I don't know. You have how many,
6 two?

7 MS. THOMASON:

8 One and probably two, but I know one and I think his
9 testimony would probably take me an hour and an hour to
10 get through, maybe two hours because it's an expert.

11 THE COURT:

12 Okay. And then he's going to cross. So you figure
13 that's probably more than a half a day right there and
14 then you've got one more.

15 MS. THOMASON:

16 Potentially.

17 THE COURT:

18 I think we ought to get a two-day block. We can do
19 that. You know Kim can send you-all something tomorrow
20 and I'll get her to make it a priority the next two
21 days that we've got and then you can look at calenders
22 and determine.

23 MS. THOMASON:

24 Maybe we can -- I know you have a witness that has to
25 travel.

1 MR. MCLEOD:

2 He won't be here. He won't be here.

3 MS. THOMASON:

4 But you're not going to call him now?

5 MR. MCLEOD:

6 I'm not going to call him, no.

7 MS. THOMASON:

8 Okay. So that would have been a problem. Other than
9 that we can split up. I mean Devon -- Devon's 2:00 he
10 hasn't gotten called yet. He's in a group. He's still
11 waiting.

12 THE COURT:

13 Oh, he is. Okay. So you've got two more witnesses.
14 You've two witness that are what, your expert?

15 MS. THOMASON:

16 My expert and then potentially Sterling. But my expert
17 I think it will take me an hour and a half, two hours
18 and I'd rather not have to -- I mean I'm okay breaking
19 for your cross, but midway through the questioning.

20 MR. MCLEOD:

21 I see.

22 THE COURT:

23 So we have an hour and a half left of today is there
24 anything we can accomplish in that hour and a half.
25 Have you-all --

1 MR. MCLEOD:

2 If we're going to go that route anyway can we take a
3 few more minutes so I can talk with my clients some.
4 I've got one thing I'm considering. We can do ahead
5 and maybe put on the record and then I don't know if
6 John -- I need to talk with them for a few minutes and
7 see if he wants to testify.

8 THE COURT:

9 Okay. Well, we've got an hour and a half of court time
10 that either I -- you can talk about that or if you want
11 to talk about the case so far in terms of trying to
12 reach a settlement that's always a good use of time,
13 you know.

14 MR. MCLEOD:

15 I wish we could.

16 THE COURT:

17 Wonders never cease.

18 MR. MCLEOD:

19 Yeah.

20 THE COURT:

21 But how about --

22 MS. THOMASON:

23 Maybe, Your Honor, after he talks -- and I'm so sorry.

24 THE COURT:

25 That's okay. I was just going to say why don't I go

1 back in and just come back out in about ten or 15
2 minutes and after you've had a chance to talk to your
3 clients and see where we are at that point and see if
4 we can use the remainder of the day for something
5 constructive.

6 MR. MCLEOD:

7 I'm sorry to cut you off. Do you think Kim can give us
8 -- is she here? Can she give us some dates?

9 THE COURT:

10 Yep, she's here. And I can ask her to come around and
11 see if she can -- she can probably pull up The Court
12 calendar in here and give you some dates.

13 MR. MCLEOD:

14 All right.

15 THE COURT:

16 I'll have her do that.

17 MR. MCLEOD:

18 All right. Sounds great.

19 THE COURT:

20 Okay.

21 MS. THOMASON:

22 Thank you, Your Honor.

23 THE COURT:

24 All right.

25 Off the Record: 15:32:10.9

1 On the Record: 15:49:11.6

2 THE COURT:

3 Thank you. Please be seated. Okay. I understand
4 you've got a couple of days scheduled. So as far as
5 the remainder of today is there anything further for
6 today after you've had a chance, Mr. McLeod, to talk to
7 your folks?

8 MR. MCLEOD:

9 Your Honor, I'd just like to leave my case open and
10 resume it on that day and if I have any other
11 witnesses, I probably won't, but I'd like to leave it
12 open if that's okay with The Court.

13 THE COURT:

14 Well, see that could throw me because if you leave it
15 open you might come up with three or four more
16 witnesses and then we are down to a day and a half and
17 -- I mean I'm a little bit reluctant to do that since
18 apparently you don't feel like right now in your mind
19 you don't have anything that you think has got to come
20 up, but I don't know. Ms. Thomason, what do you think?

21 MS. THOMASON:

22 To the extent that it's a witness that you've already
23 disclosed.

24 MR. MCLEOD:

25 Yeah, it would be if John comes back basically.

1 MS. THOMASON:

2 Oh, as a rebuttal or reply?

3 MR. MCLEOD:

4 Yeah. Most likely a reply, but I may call him.

5 THE COURT:

6 A reply witness I've got no problem with it.

7 MR. MCLEOD:

8 Yeah.

9 THE COURT:

10 I'm just talking about more witnesses for your case-in-
11 chief.

12 MR. MCLEOD:

13 It will not be anybody that I haven't disclosed. I can
14 promise you that. I mean obviously.

15 MS. THOMASON:

16 I mean I have no objection if it's -- if you're stating
17 it's John.

18 THE COURT:

19 She's being awfully nice.

20 MR. MCLEOD:

21 Thank you. I appreciate that.

22 THE COURT:

23 So because of that I will leave it open for you to
24 consider if you need to call somebody else.

25 MR. MCLEOD:

1 All right. Thank you, Your Honor.

2 THE COURT:

3 And so I think we come back -- is it September 17th and
4 18th?

5 MS. THOMASON:

6 Is it 16th and 17th?

7 THE COURT:

8 It's a Thursday and a Friday.

9 MS. THOMASON:

10 Yes. Yes, Your Honor.

11 THE COURT:

12 And we start at 11:00 on Thursday?

13 MS. THOMASON:

14 Yes. We have a hearing at 9:30 but we should be here.

15 THE COURT:

16 All right. All right. That sounds good. She'll send
17 out some notices, but we've got it on the calendar, so
18 that was a good use of our time while everybody was in
19 the courtroom.

20 MS. THOMASON:

21 Thank you, Your Honor.

22 THE COURT:

23 All right. Thank you-all very much and we'll resume
24 then on that day.

25 HEARING RECESSED AT 15:51:33.9

CERTIFICATE OF REPORTER

I, RACHEL H. WOOD, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witnesses was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rachel H. Wood, Reporter
Notary Public for South Carolina
Commission Expires: 02/13/2029