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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF RIVERSIDE**

11 In re the

12 DIA KENSHALO ABRAMS TRUST
13 DATED DECEMBER 16, 2016

14 CLINTON ABRAMS, an individual; and
15 CRISARA ABRAMS, an individual,

16 Petitioners,

17 v.

18 KEITH HARPER, an individual and as
trustee; DIANA FEDDER (aka DIANE
19 FEDDER), an individual and as trustee; and
DOES 1 through 50, inclusive,

20 Respondents.
21

Case No. PRIN2100297

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR APPROVAL
OF TERM SHEET OR,
ALTERNATIVELY, FOR SUSPENSION
OF TRUSTEE AND APPOINTMENT OF
TEMPORARY TRUSTEE**

Date: 10-26-22

Time: 10:00

Dept.: PS3

Judge: Hon. John G. Evans

[Prob. Code § 17200]

[Filed concurrently with Notice of Ex Parte
Application, Proposed Order, Declaration of
Matthew R. Owens, Declaration of Clinton
Abrams, Consent of Richard Munro]

1 Crisara Abrams and Clinton Abrams (together, “**Petitioners**”), adult children of Lydia (aka
2 Dia) Kenshalo Abrams (“**Dia**” or “**Settlor**”), hereby respectfully present this *Memorandum of Points*
3 *and Authorities in Support of Ex Parte Application for Approval of Term Sheet or, Alternatively, for*
4 *Suspension of Trustee and Appointment of Temporary Trustee* (“**Application**”) as follows:

5 **I. INTRODUCTION**

6 The Parties settled this matter on August 5, 2022, in a fully executed term sheet signed by
7 Petitioners and by Respondent Keith Harper (“**Harper**”). The settlement is subject to approval by
8 this Court. Harper’s attorney unexpectedly passed away soon after the term sheet was signed, and
9 as a result, the term sheet has not been reduced to a long-form settlement agreement. Despite the
10 term sheet and the settlement contained therein, Harper has continued to make unilateral, long-
11 lasting changes to the real property of the Trust, far exceeding the limited powers provided to him
12 in the term sheet. The term sheet should be entered as a final settlement of this matter, to ensure
13 there is no further damage to the real property of the trust. Alternatively, if the Court determines
14 there has not been a full settlement of this matter, Harper should be immediately suspended as trustee
15 and this case should be set for trial.

16 **II. FACTUAL BACKGROUND**

17 **a. Dia’s Estate Planning**

18 On December 16, 2016, Settlor created The Dia Kenshalo Abrams Trust (“**Trust**”). (Ex. 1
19 [2016 Trust].) Crisara was the sole successor trustee and sole remainder beneficiary under the 2016
20 Trust.

21 On May 22, 2020, Dia executed the First Amendment and Complete Restatement to the Dia
22 Kenshalo Abrams Trust (“**2020 Restatement**”) naming Harper as successor trustee and beneficiary,
23 and Diana Fedder (“**Fedder**”) as alternate trustee and beneficiary. (Ex. 2 [2020 Restatement]).

24 Dia purportedly executed the Power of Attorney (“**POA**”) on May 22, 2020, the same date
25 she executed the 2020 Restatement. (Ex. 3 [POA].) Harper was named primary agent under the
26 POA. (*Id.* at p. 1.) Fedder was named alternate agent under the POA. (*Ibid.*)

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b. Dia's Disappearance

On June 6, 2020, just 15 days after Dia executed the 2020 Trust Restatement and the POA favoring Harper and Fedder, she went missing under suspicious circumstances.

Dia's disappearance is under investigation by the Riverside County Sheriff's Department as a possible homicide and foul play is suspected. Harper has testified that he was the last person to see Dia on the date she went missing. After her disappearance, Dia's keys, purse, and cell phone were found at her residence. Dia also left a note indicating she feared for her life, and blood was found in her room. The same day Dia was reported missing, Harper fled the State of California for New Mexico where he hid for several days. Harper later returned to California and now resides at Dia's residence located on the 115-acre ranch at 58111 Bonita Vista, Mountain Center, California (the "Ranch"). The Ranch is a Trust asset, yet Harper lives there rent-free.

c. Harper's Mismanagement of Dia's Assets

After Dia's disappearance, Harper assumed control of the trust assets and began acting as trustee under the 2020 Restatement and as agent under the POA. Harper has already committed multiple breaches of fiduciary duty, warranting his suspension as trustee and agent.

Harper's potential involvement in Dia's disappearance makes him unfit to serve as trustee and as agent under her POA. Further, separate and apart from his potential involvement in Dia's disappearance, Harper is unfit to serve as a fiduciary based on past criminal activity and transgressions, as well as breaches of fiduciary duty to Dia. Harper, who has been convicted of two sex offenses and pled guilty to another assault charge stemming from a sexual assault allegation, is required to register as a sex offender in California and Colorado. He recently filed a motion to have his sex offender status lifted, but his motion was denied. He has not demonstrated that he is fit to manage Dia's significant assets in her absence.

Harper also failed to pay the mortgages on Dia's properties, failed to make them productive, and engaged in self-dealing by living on the Ranch rent-free for more than two years. Harper also subjected the Trust to liability by renting out the Ranch for vacation rentals and weddings. Further, an employee at the Ranch died on the property earlier this year in an alleged ATV accident. Harper

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1 was the one who was at the Ranch at the time and allegedly discovered the deceased employee after
2 the fatal accident. That was the second woman who has either disappeared or died at the Ranch in
3 the last two years while Harper was present.

4 **d. The Term Sheet and Harper's Representation**

5 The parties attended mediation via Zoom on July 28, 2022, and August 5, 2022, with the
6 Hon. David Chapman (Ret.). (Declaration of Matthew Owens ("Owens Decl."), ¶ 3.) Crisara,
7 Clinton, Harper, and Fedder attended the mediation on July 28, 2022. (*Ibid.*) Crisara, Clinton, and
8 Harper attended the mediation on August 5, 2022. (*Ibid.*) Following the mediation on August 5,
9 2022, Crisara, Clinton, and Harper executed a Term Sheet. (*Id.* at ¶ 4, Ex. 1 [Term Sheet].) As
10 relevant here, the Term Sheet provides that Harper will continue acting as co-trustee, with limited
11 powers to "maintain the [Ranch] until sold" and "maintain livestock." (Owens Decl., Ex. 1 [Term
12 Sheet].) Harper agreed to "cooperate with the successor co-trustee, and make all disclosures for [the]
13 successor co-trustee to perform his or her fiduciary duties." (*Ibid.*)

14 At the time of the mediation and the execution of the Term Sheet, Harper was represented
15 by his counsel, Dennis Healey ("Healey"). (Owens Decl., ¶ 4.) Healey also signed the Term Sheet,
16 noting that it was "approved." (*Ibid.*; Owens Decl., Ex. 1 [Term Sheet].)

17 After the execution of the Term Sheet, counsel for Crisara and Clinton drafted the
18 contemplated long-form settlement agreement (the "**Draft Settlement Agreement**"), incorporating
19 the terms of the Term Sheet and providing clarification and detail on several points. (Owens Decl.,
20 ¶ 5.) On September 12, 2022, counsel for Crisara and Clinton sent the Draft Settlement Agreement
21 to Healey for his review and consideration. (*Ibid.*; Owens Decl., Ex. 2 [09/12/22 e-mail].)

22 On September 14, 2022, counsel for Crisara and Clinton learned Healey had unexpectedly
23 passed away between the date of the mediation and the date the Draft Settlement Agreement was
24 provided. (Owens Decl., ¶ 6.) The same date, counsel for Crisara and Clinton spoke with Jacquetta
25 Bardacos of the law firm of Burt + Clerc, practice administrator for Healey, and provided her with
26 the Term Sheet and the Draft Settlement Agreement for her review. (*Ibid.*; Owens Decl., Ex. 3
27 [09/14/22 e-mail].) On September 26, 2022, counsel for Crisara and Clinton followed up with Ms.
28 Bardacos regarding her review of the Draft Settlement Agreement. (Owens Decl., ¶ 7; Owens Decl.,

1 Ex. 4 [09/26/22 e-mail].) On October 3, 2022, counsel for Crisara and Clinton reached out to Ms.
2 Bardacos to inform her of action Harper was taking with the Ranch, discussed in further detail
3 below. (Owens Decl., ¶ 9.) Ms. Bardacos informed counsel for Clinton and Crisara that “the firm of
4 Burt + Clerc, Practice Administrator for [Healey], will be taking appropriate steps to decline
5 representation in this matter and will seek the appropriate order should we not receive a signed
6 substitution of attorney.” (*Ibid.*; Owens Decl., Ex. 5 [10/03/22-10/10/22 e-mail chain].) On October
7 12, 2022, Burt + Clerc informed counsel for Clinton and Crisara that Harper had not retained their
8 firm and is now “in pro per.” (Owens Decl., ¶ 10; Owens Decl., Ex. 6 [10/12/22 e-mail].)

9 At this point, Petitioners are informed and believe Harper is unrepresented in this matter and
10 is now acting *in propria persona*, although they have not received a notice of substitution of
11 attorney.

12 **e. Recent Developments Requiring Ex Parte Relief**

13 Pending finalization of the Draft Settlement Agreement incorporating the terms of the
14 executed Term Sheet, Harper has been continuing to act as trustee of the Trust. As part of that role,
15 Harper has been managing the Ranch. Harper’s management of the Ranch has historically been
16 problematic. Harper resides at the Ranch, without any legal authority to do so, and refuses to pay
17 rent. Harper has been renting out a portion of the Ranch on Airbnb and has refused to account for
18 the income. The Airbnb listing is under Fedder’s name. One of the reviews from a recent Airbnb
19 tenant states that Harper made racist, threatening comments during the tenant’s stay. Harper has
20 been renting out the Ranch for private events such as weddings, causing extensive damage to the
21 property, and collecting the money for himself. Both Fedder and Harper admitted at their respective
22 depositions that they did not deposit the rental income into any Trust account, but instead deposited
23 the funds into their personal bank accounts, which is a clear breach of fiduciary duty. (Owens Decl.,
24 Exs. 7 [Deposition Excerpts from Deposition of Harper], 8 [Deposition Excerpts from Deposition
25 of Diana Fedder].) Bank records the Petitioners received via subpoena confirm this.

26 Harper’s mismanagement of the Ranch has intensified in the past weeks. Even after
27 executing the Term Sheet, which provides he will have limited authority as co-trustee to “maintain”
28 the Ranch, Harper has continued to unilaterally and brazenly use the Ranch for his own benefit.

1 Harper appears to have created a new website for renting the Ranch—calisgreatescape.com.
2 (Declaration of Clinton Abrams (“Abrams Decl.”), ¶ 2, Ex. 1 [rental website]) He has filmed a
3 promotional video of the Ranch, including aerial drone footage. (*Ibid.*) He appears to be offering
4 full wedding packages, including a reception venue and a four night stay at the Ranch. (*Ibid.*) Signs
5 regarding the new website for renting the Ranch are posted on the property itself. (*Ibid.*) Petitioners
6 are informed and believe Harper intends to have concrete poured at the Ranch to turn some portion
7 of the property into an RV park. (*Id.* at ¶ 4.)

8 Although pursuant to the terms of the Term Sheet he will have limited authority as co-trustee
9 only to “maintain” the Ranch until it is sold, Harper appears to be making permanent modifications
10 to the Ranch, and otherwise ensuring the successor co-trustee will have to handle the disappointment
11 of those who rented the Ranch for their weddings and other events, and will likely have to provide
12 refunds and reimbursement to the aggrieved parties from the funds of the Trust since the Ranch is
13 required to be sold under the terms of the settlement.

14 **III. LEGAL ARGUMENT**

15 **A. The Term Sheet Should Be Approved and Enforced**

16 Code of Civil Procedure Section 664.6 states as follows:

17 If parties to pending litigation stipulate, in a writing signed by the parties outside the
18 presence of the court or orally before the court, for settlement of the case, or part
19 thereof, the court, upon motion, may enter judgment pursuant to the terms of the
20 settlement.

20 (Code Civ. Proc., § 664.6.)

21 It is the strong public policy of this state to encourage the voluntary settlement of litigation.
22 (*Osumi v. Sutton* (2007) 151 Cal. App. 4th 1355, 1359.) The California Supreme Court “recognized
23 a century ago that settlement agreements ‘are highly favored as productive of peace and good will
24 in the community,’ as well as ‘reducing the expense and persistency of litigation.’ [Citation.] The
25 need for settlements is greater than ever before.’ ‘Without them our system of civil adjudication
26 would quickly break down.’” (*Salmon Prot. & Watershed Network v. Cty. of Marin* (2012) 205 Cal.
27 App. 4th 195, 201, as modified on denial of reh’g (May 1, 2012).)

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1 The purpose of Section 664.6 “is to permit a court, via a summary proceeding, to finally
2 dispose of an action when the existence of the agreement or the terms of the settlement are subject
3 to reasonable dispute, something not permissible before the statute’s enactment. [Citation.]” (*Viejo*
4 *Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 206.) “In acting upon a section 664.6 motion,
5 the trial court must determine whether the parties entered into a valid and binding settlement of all
6 or part of the case. In making this determination, trial judges, in the sound exercise of their
7 discretion, may receive oral testimony or may determine the motion upon declarations alone.
8 [Citation.]” (*Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 994; *Smith v. Golden Eagle Ins. Co.*
9 (1999) 69 Cal.App.4th 1371, 1375.)

10 The principles generally applicable to contracts also govern settlement agreements.
11 (*Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 348; *General Motors Corp. v. Superior Court*
12 (1993) 12 Cal.App.4th 435, 439; *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th
13 550, 558-559.) In every contract there is an implied covenant of good faith and fair dealing by each
14 party not to do anything which will deprive the other parties of the benefits of the contract, and a
15 breach of this covenant by failure to deal fairly or in good faith gives rise to an action for damages.
16 (*Sutherland v. Barclays American/Mortgage Corp.* (1997) 53 Cal. App. 4th 299, 314; *Harm v.*
17 *Frasher* (1960) 181 Cal. App. 2d 405, 415; *Seaman’s Direct Buying Serv, Inc. v. Standard Oil Co.*
18 (1984) 36 Cal. 3d 752, overruled on other grounds; *Freeman & Mills, Inc. v. Belcher Oil Co.* (1995)
19 11 Cal. 4th 85, 102-03.) The covenant imposes on each party to the contract the duty to refrain from
20 doing anything which would render performance of the contract impossible by any act of his own,
21 and also the duty to do everything that the contract presupposes that each party will do to accomplish
22 its purpose. (*April Enters., Inc. v. KTTV* (1983) 147 Cal. App. 3d 805, 816; *Harm v. Frasher, supra,*
23 181 Cal. App. 2d at p. 417.)

24 “A settlement agreement, like any other contract, is unenforceable if the parties fail to agree
25 on a material term or if a material term is not reasonably certain.” (*Lindsay v. Lewandowski* (2006)
26 139 Cal.App.4th 1618, 1623; see Civ. Code, § 1580 “[c]onsent is not mutual, unless the parties all
27 agree upon the same thing in the same sense”]; Civ. Code, § 3390, subd. 5 [contract not specifically

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1 enforceable where terms are “not sufficiently certain” to make act to be done “clearly
2 ascertainable”). For this reason, a contract that “leaves an essential element for future agreement
3 of the parties” is ordinarily unenforceable. (*Okun v. Morton* (1988) 203 Cal.App.3d 805, 817.)

4 It is not necessary, however, to state every term in the contract. (*Elite Show Services, Inc. v.*
5 *Staffpro, Inc.* (2004) 119 Cal.App.4th 263, 269.) In addition, the court may rely on other extrinsic
6 evidence to clarify the acts required under the agreement. (*Okun v. Morton, supra*, 203 Cal.App.3d
7 at p. 818; *see Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349 [“Equity does not require that all
8 the terms and conditions of the proposed agreement be set forth in the contract. The usual and
9 reasonable conditions of such a contract are, in the contemplation of the parties, a part of their
10 agreement.”].)

11 “In determining whether the material factors in a contract are sufficiently certain for specific
12 performance, ‘the modern trend of the law favors carrying out the parties’ intention through the
13 enforcement of contracts and disfavors holding them unenforceable because of uncertainty . . . The
14 defense of uncertainty has validity only when the uncertainty or incompleteness of the contract
15 prevents the court from knowing what to enforce.’” (*Blackburn v. Charnley* (2004) 117 Cal.App.4th
16 758, 766; *accord, Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 736;
17 *see Patel v. Liebermensch, supra*, 45 Cal.4th at p. 349 [“[t]he law does not favor but leans against
18 the destruction of contracts because of uncertainty; and it will, if feasible, so construe agreements
19 as to carry into effect the reasonable intentions of the parties if [they] can be ascertained”].)

20 Here, the Parties agreed to settle this matter on the terms set forth in the Term Sheet. The
21 Term Sheet was signed both by Harper and by his counsel, who noted he “approved” of the terms
22 as set forth. The agreement set forth in the Term Sheet is sufficiently definite to allow the Court to
23 enter the Term Sheet as the final settlement agreement in this matter. It clearly sets forth how a
24 successor co-trustee will be appointed, the limited powers which will remain with Harper, attorneys’
25 fee reimbursements, provisions for the tangible personal property of the Trust, and more. Harper
26 should be bound by the agreement set forth in the Term Sheet, which is a full and complete
27 resolution of the litigation among the Parties.

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1 Further, the Parties expressly agreed to seek this Court’s approval of the terms set forth in
2 the Term Sheet, making the Term Sheet subject to disclosure for purposes of obtaining such Court
3 approval. (Evid. Code, §1123, subd. (a).) Specifically, the Term Sheet provides that “[t]hese terms
4 are subject to approval by Judge Evans.” (Owens Decl., Ex. 1 [Term Sheet].)

5 **B. Respondent Should Be Immediately Suspended as Trustee**

6 “If it appears to the court that trust property or the interests of a beneficiary may suffer loss
7 or injury pending a decision on a petition for removal of a trustee and any appellate review, the court
8 may, on its own motion or on a petition by a co-trustee or beneficiary, compel the trustee whose
9 removal is sought to surrender trust property to a co-trustee or to a receiver or temporary trustee.
10 The court may also suspend the powers of the trustee to the extent the court deems necessary.”
11 (Prob. Code, §15642, subd. (e).) Further, “[t]he Court in its discretion may make any orders and
12 take any other action necessary or proper to dispose of the matters presented by the petition,
13 including appointment of a temporary trustee to administer the trust in whole or in part.” (Prob.
14 Code, § 17206; *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427-428, 430 (“Where a probate
15 court has the express authority to remove a trustee sua sponte . . . , it necessarily has the inherent
16 equitable power to employ the less extreme remedy of suspending most of the trustee’s powers and
17 appointing an interim trustee pending a hearing Where the decision to remove a trustee lies
18 within the probate court’s discretion . . . , the decision to suspend most of the trustee’s powers
19 likewise falls within the court’s discretion.”); *see also* Prob. Code, § 1046 (“The Court shall hear
20 and determine any matter at issue and any response or objection presented, consider evidence
21 presented, and make appropriate orders”).)

22 Petitioners, who are a 50% beneficiary under the Term Sheet, will suffer loss or injury if
23 Harper continues to serve as trustee. Harper is using the Trust property—specifically the Ranch—
24 for his own benefit, with no benefit accruing to the Trust. Harper has admitted he deposits income
25 from renting the Ranch into non-Trust bank accounts. Harper is evidently making permanent
26 changes to the property, despite agreeing that he will have only limited power to maintain the Ranch
27 until it is sold by the successor co-trustee, under the terms of the Term Sheet. Harper is marketing

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1 the Ranch as a wedding and event venue, offering interested parties four days packages to enjoy the
2 amenities of the Ranch. None of this is appropriate, given the Term Sheet’s provision that Harper
3 may only “maintain” the Ranch, as well as the underlying lawsuit regarding appropriate trusteeship.

4 **C. The Court Should Appoint Richard Munro as Interim Trustee**

5 When the office of trustee is vacant, the court may appoint a successor trustee upon the
6 petition of any trust beneficiary. (Prob. Code, § 15660, subd. (d).) When considering such a petition,
7 the court “shall give consideration to any nomination by the beneficiaries” (*Ibid.*) The court
8 may suspend a trustee and appoint a temporary trustee during the pendency of litigation. (*Schwartz*
9 *v. Labow* (2008) 164 Cal.App.4th 417, 426.)

10 Here, the Trust is in need of a competent trustee who can begin acting immediately, and the
11 Court should consider Petitioners’ nomination of Invenz, Inc., by its Chief Executive Officer,
12 Richard Munro (“**Mr. Munro**”). Under the Term Sheet, Crisara Abrams was given the power to
13 nominate the successor trustee. (Owens Decl., Ex. 1 [Term Sheet], ¶ 4.) Mr. Munro has acted as a
14 court appointed receiver and fiduciary, and has over 30 years of experience managing businesses.
15 He is both an accountant and a real estate broker, and has the necessary qualifications, skill, and
16 experience to prudently administer the Trust. Mr. Munro has also consented to act as Trustee, subject
17 to this Court’s appointment. (Ex. 4 [Munro Consent].)

18 **IV. NOTICE**

19 Pursuant to California Rules of Court, rule 3.1204(b), on October 20, 2022, Petitioners’
20 counsel provided notice by telephone and e-mail to Keith Harper and Diana Fedder. (Owens Decl.,
21 ¶¶ 14–16.)

22 **V. BASIS FOR EX PARTE RELIEF**

23 A party may only request relief on an ex parte basis if exigent circumstances warrant
24 expedited adjudication of the request. (Cal. Rules of Court, rule 3.1202(c).)

25 As set forth above, the Parties executed a Term Sheet setting forth the terms for settlement
26 of this matter. While the long-form settlement agreement contemplated by the Term Sheet was being
27 finalized, Harper unilaterally made long-term changes to the Ranch, including pouring concrete for
28 an RV park. He is marketing the Ranch for weddings and other events, and is continuing to rent the

1 Ranch for his own benefit. The Term Sheet contemplates Harper will have only limited authority to
2 “maintain” the Ranch, and must cooperate with the successor co-trustee to be nominated by Crisara.
3 Harper’s actions are not in accordance with the Term Sheet, and will cause significant issues for the
4 successor co-trustee, once appointed. The Term Sheet must be entered as the final settlement
5 agreement in this matter, which will allow the Parties to determine final details as necessary, but
6 will remove Harper’s authority to take such unilateral and self-serving actions with regard to the
7 Ranch.

8 Alternatively, Harper must be suspended as trustee immediately, and a professional interim
9 trustee appointed, to prevent irreparable harm to the Trust. As set forth above, Harper’s actions
10 benefit only himself, individually, rather than the Trust or the Petitioners, who are 50% beneficiaries
11 of the Trust under the Term Sheet. The Court should suspend Harper and remove his authority to
12 take such unilateral and self-serving actions with regard to the Ranch and the other Trust assets.

13 **VI. CONCLUSION**

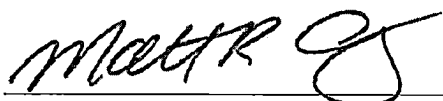
14 Based on the foregoing, the Court should approve the Term Sheet as a complete settlement
15 of this case, and order Harper to perform under the terms set forth therein, including specifically by
16 acting as co-trustee with limited powers to maintain the Ranch. Alternatively, if the Term Sheet is
17 not considered a full settlement of this matter, the Court should immediately suspend Harper as
18 Trustee, appoint Richard Munro as successor trustee, and set this matter for trial.

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Dated: October 20, 2022

Respectfully submitted,

WITHERS BERGMAN LLP

By: 
Matthew R. Owens
Attorneys for Crisara Abrams and Clinton Abrams