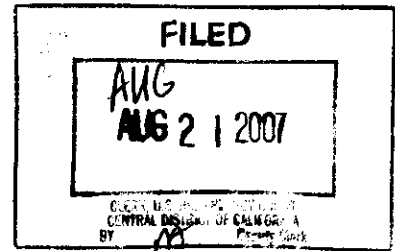


ORIGINAL



1 Baruch C. Cohen, Esq. (SBN 159455)
2 LAW OFFICE OF BARUCH C. COHEN
3 A Professional Law Corporation
4 4929 Wilshire Boulevard, Suite 940
5 Los Angeles, California 9001
6 (323) 937-4501 Fax (323) 937-4503
7 new email: BCC4929@aol.com

8 *Attorney for the William Preston Trust Dated December 1, 1999, by and Through Frederick Wilhelms, III,*
9 *Trustee*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

In re
WILLIAM E. PRESTON TRUST aka
WILLIAM EVERETT PRESTON
Debtor.

Case No. SA-05-50128-TA

Chapter 7

MOVANT'S REPLY TO THE BANKRUPTCY TRUSTEE'S RESPONSE TO MOTION TO SET ASIDE ORDERS CONVERTING PROCEEDINGS FROM CHAPTER 11 TO CHAPTER 7; TO SET ASIDE ADDITIONAL ORDERS GRANTED TO THE BANKRUPTCY TRUSTEE; TO SET ASIDE CERTAIN ACTIONS OF THE BANKRUPTCY TRUSTEE; AND FOR TURNOVER OF DOCUMENTS AND ASSETS AND FURTHER RELIEF

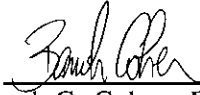
Date: August 28, 2007
Time: 2:00 p.m.
Ctrm: 5B

Movant's Reply need only address the following issues: (1) clearing up certain pervasive misconceptions and mischaracterizations interjected herein by the BANKRUPTCY TRUSTEE and his counsel; (2) bringing to the Court's attention those issues raised, and that relief requested, herein which remain unopposed by the BANKRUPTCY TRUSTEE and are thus conceded and properly granted; (3) pointing out those issues raised by the BANKRUPTCY TRUSTEE and his counsel which are irrelevant and/or raised merely for the purpose of distraction and/or gratuitously maligning Movant and other parties; and (4)

1 addressing those issues raised by the BANKRUPTCY TRUSTEE which are relevant to this discussion, which
2 are few.

3
4 DATED: August 20, 2007

LAW OFFICE OF BARUCH C. COHEN

5
6 By 
7 Baruch C. Cohen, Esq.
8 *Attorney for the William Preston Trust Dated December 1,*
9 *1999, by and Through Frederick Wilhelms, III, Trustee*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES 1

THE BANKRUPTCY TRUSTEE AND HIS COUNSEL ARE OPERATING UNDER, AND INSISTING UPON, THEIR OWN MISCONSTRUCTION OF THESE PROCEEDINGS 1

THIS IS NOT A MOTION TO DISMISS 1

MR. WILHELMS IS *NOT* MRS. MOORE; THE TRUST IS *NOT* PMGI 1

THE BANKRUPTCY TRUSTEE’S POSITION REJECTS DOCUMENTS ACTUALLY BEARING MR. PRESTON’S SIGNATURE IN FAVOR OF UNSUBSTANTIATED SPECULATION AND OTHER IMPROPER MATTER 5

THE BANKRUPTCY TRUSTEE’S FAILURES TO ADDRESS AND OPPOSE SEVERAL MATTERS RAISED AND REQUESTED IN THE MOTION CONCEDE THEIR MERIT 8

THE BANKRUPTCY TRUSTEE’S RESPONSE IS REplete WITH RED HERRINGS, UNWARRANTED CHARACTER ASSASSINATIONS, AND IRRELEVANT MATTER 9

THOSE FEW RELEVANT MATTERS RAISED BY THE BANKRUPTCY TRUSTEE IN OPPOSITION ARE WHOLLY WITHOUT MERIT 12

CONCLUSION 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

In re Center Wholesale, Inc., 759 F.2d 1440, 1448 (9th Cir.,1985) 12

In re Hunt, 1993, 160 B.R. 131 (9th Cir.BAP (Cal.) 1

In re Mosby, 46 B.R. 175 (1985) 1

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 14 (1978) 12

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 12

STATUTES

Federal Rules of Bankruptcy Procedure, rule 1016 1

Federal Rules of Civil Procedure, rule 60 13

FRCP 60(b)(3) 8

FRCP 60(b)(5) 8

FRCP 60(b)(6) 8

Rule 9024 of the Federal Rules of Bankruptcy Procedure 13

1 **1. MEMORANDUM OF POINTS AND AUTHORITIES**

2 a. **THE BANKRUPTCY TRUSTEE AND HIS COUNSEL ARE OPERATING UNDER,**
3 **AND INSISTING UPON, THEIR OWN MISCONSTRUCTION OF THESE**
4 **PROCEEDINGS**

5 i. **THIS IS NOT A MOTION TO DISMISS**

6 The BANKRUPTCY TRUSTEE's arguments are couched in the preliminary assumption that the
7 instant Motion is one to dismiss these proceedings. Clearly, it is not, and Movant was careful in presenting
8 the Motion as the first of many steps in "unwinding" and "untangling," as the Court stated, what has been
9 done in these proceedings, that should not have been done in the first place. The Court will decide what
10 should be undone, what can be undone, and how it is to be undone, and at this point in the proceedings, the
11 Court is the proper arbiter and supervisory authority under which the proceedings can be cured wherever
12 possible.

13 Any discussion of dismissal in Movant's Memorandum of Points and Authorities is for the purpose
14 of demonstrating how fragile these proceedings are, how the parties and entities involved are effected, and
15 how counsel and the Court must exercise the utmost care in proceeding. The point is made that Mr.
16 Preston's filing of this Bankruptcy on behalf of the TRUST was subject to dismissal upon filing (as argued
17 by the OUST; *In re Mosby*, 46 B.R. 175 (1985); *In re Hunt*, 1993, 160 B.R. 131 (9th Cir.BAP (Cal.)), or,
18 even if considered to be filed by Mr. Preston individually, upon Mr. Preston's death. (Federal Rules of
19 Bankruptcy Procedure, rule 1016.)

20 None of this, however, changes the fact that actions have been taken, orders have been made, and
21 substantial damage done in Movant's absence, and to the detriment of Mr. Preston's legacy. And, for this
22 reason, the fact also remains that certain relief is appropriate and necessary before proceeding further.
23 Clearly, Movant is not requesting dismissal, as doing so at this point may preclude application of the proper
24 remedy and procedure.

25 ii. **MR. WILHELMS IS *NOT* MRS. MOORE; THE TRUST IS *NOT* PMGI**

26 As so much of the BANKRUPTCY TRUSTEE's argument is based upon conduct attributable only
27 to persons other than Mr. Wilhelms, it must be pointed out, and remembered, that Mr. Wilhelms and Mrs.
28 Moore are two separate persons. Much of the BANKRUPTCY TRUSTEE's recitation of alleged facts is

1 directed to the conduct of Mrs. Moore, which the BANKRUPTCY TRUSTEE then uses to assert that the
2 Motion should be denied from some reason or the other, none of which applies to this Movant and the nature
3 of the requested relief. In fact, the contortion is further exacerbated by the BANKRUPTCY TRUSTEE's
4 attribution, in turn, of Mr. Perlman's conduct to Mrs. Moore. There is no agency involved, and the
5 BANKRUPTCY TRUSTEE makes no such assertion. As has always been made clear, Mr. Perlman does
6 not speak for Mrs. Moore, and Mrs. Moore does not speak for Mr. Wilhelms or the TRUST. Mr. Wilhelms
7 is not bound by, nor is he responsible or liable for, the actions of Mr. Perlman and Mrs. Moore.

8 This reality renders almost the entirety of the BANKRUPTCY TRUSTEE's argument irrelevant,¹
9 as based upon false assertions or implications that:

10 a. Movant was aware of the BANKRUPTCY TRUSTEE's actions and this
11 Court's proceedings by virtue of the BANKRUPTCY TRUSTEE having given notice to Mrs. Moore;

12 b. Movant's failure to oppose any of the BANKRUPTCY TRUSTEE's prior
13 requests for relief constitute a waiver or consent binding on Movant;

14 c. Mr. Wilhelms knew about, or had a copy of, any document purportedly in
15 the possession of Mrs. Moore and others;

16 d. Movant, "through Mrs. Moore," controlled and concealed relevant
17 documents from the BANKRUPTCY TRUSTEE and his counsel (see Response, page 3, lines 25-27);²

18
19 ¹It also renders irrelevant much of the declarations attached to the BANKRUPTCY TRUSTEE's Response.
20 BANKRUPTCY TRUSTEE's counsel has presented their own two declarations as well as Victoria Doran's declaration
21 in support of the Response. BANKRUPTCY TRUSTEE's counsel also provides the declarations of Rodena Williams
22 and Bill Hence. To clarify, these declarations bear Mr. Hence's caption, but Ms. Williams has not filed any response,
23 objection, or opposition to Movant's Motion: rather, BANKRUPTCY TRUSTEE's counsel served the declarations with
24 the BANKRUPTCY TRUSTEE's Response. Where counsel, Ms. Doran, Ms. Williams, and Mr. Hence discuss Mrs.
25 Moore's conduct, such paragraphs must be stricken as irrelevant. Ms. Williams's declaration is properly stricken in
26 its entirety, as it expressly states that "[t]he purposes of this declaration are to correct all of the false and misleading
27 statements contained in the Joyce Moore motion . . ." (See paragraph 2.) No such motion is presently before the Court,
28 only Mr. Wilhelms's (as BANKRUPTCY TRUSTEE of the TRUST) Motion. In addition to irrelevant and false matter,
the declarations are rife with all manner of argument, speculation, and conclusory language, and are therefore properly
stricken for those reasons as well.

24 ²For example, the BANKRUPTCY TRUSTEE underlines, for emphasis, the following in argument: "despite
25 having constructive and/or actual notice of the BANKRUPTCY TRUSTEE's intention to administer estate assets and
26 despite receiving repeated requests by the BANKRUPTCY TRUSTEE's Administrator and/or his counsel for turnover
27 of documents regarding the Debtor's financial affairs for not less than one year, neither Mr. Wilhelms nor Mrs.
28 Moore produced material information . . ." (See Response, page 27, lines 6-11; emphasis in original.) Although spoken
of in general terms at this point in the Response, BANKRUPTCY TRUSTEE's counsel makes clear throughout the
pages and pages of "facts" which precede it that the BANKRUPTCY TRUSTEE asserts that only Mrs. Moore and Mr.
Perlman were given notice, and that BANKRUPTCY TRUSTEE's counsel made demands of only Mrs. Moore and Mr.
Perlman. This, then, is the type of "logic" which the BANKRUPTCY TRUSTEE proposes the Court adopt: if A and
B were given notice, and the BANKRUPTCY TRUSTEE made demands of A and B, the Court may fault C, to whom
notice was not given and of whom demand was not made, for failing to comply. The Response contains such reckless

1 e. the instant Motion is a veiled attempt by Mrs. Moore to obtain Mr. Preston's
2 assets, or that Mr. Wilhelms and/or Movant are acting at the behest of Mrs. Moore;

3 f. Mrs. Moore or Mr. Perlman acted on behalf of Mr. Wilhelms in his capacity
4 as BANKRUPTCY TRUSTEE of the TRUST, including any representations made to the BANKRUPTCY
5 TRUSTEE and his counsel;

6 g. Mrs. Moore or Mr. Perlman had or received information on behalf of Mr.
7 Wilhelms, or which could otherwise be imputed to him;

8 h. any testimony provided by any other party, including Mrs. Moore, is binding
9 upon Movant in any manner;

10 i. the BANKRUPTCY TRUSTEE had Mr. Wilhelms's and/or the TRUST's
11 consent to any action taken by the BANKRUPTCY TRUSTEE, including the marshaling or liquidation of
12 assets;

13 j. Movant's actions herein are motivated by any grudge against the
14 BANKRUPTCY TRUSTEE, or as retaliation for any action taken by the BANKRUPTCY TRUSTEE;

15 k. Mr. Wilhelms has a personal interest in Mr. Preston's estate or his legacy;

16 l. there is an "acrimonious feud" (see page 5, lines 13-14) or other personal
17 grudge between Mr. Wilhelms and any member of Mr. Preston's family;

18 m. Movant or Mr. Wilhelms has initiated contact with the press or otherwise
19 disseminated any information concerning this matter to anyone other than the Court, counsel, and the parties
20 involved herein;

21 n. acts, conduct, or documents by which BANKRUPTCY TRUSTEE's counsel
22 attempts (by alleging them against Mr. Perlman and/or Mrs. Moore) to characterize Mr. Wilhelms as
23 unethical, untruthful, at any time exercising undue influence, duress, or coercion against Mr. Preston, or
24 otherwise manipulating and taking advantage of Mr. Preston and/or his estate.

25 By the same token, The William Preston Trust (hereinafter referred to as "the TRUST") and Preston
26 Music Group, Inc. (hereinafter referred to as "PMGI") are two separate entities. Therefore, the

27 _____
28 and improper assertions throughout, and all are properly disregarded.

1 BANKRUPTCY TRUSTEE's arguments presented in subsections "D" and "E" are irrelevant and simply
2 have no place here. Nowhere in the Motion does Movant claim royalties or any other property belonging
3 to PMGI, nor can it. Therefore, any assertions or implications concerning the redirection of mail (the
4 BANKRUPTCY TRUSTEE admits that no mail was directed to Movant in the first place); the turnover of
5 funds collected from the mail; and any alleged efforts by Mrs. Moore to obtain payment of royalties from
6 this parties are irrelevant and frankly cannot be used to impute conduct, waiver, consent, or concession to
7 Movant. The same is applicable to the BANKRUPTCY TRUSTEE's (apparently new) theories regarding
8 his assumptions about the status, ownership, and operations of PMGI.³

9 Mr. Wilhelms, as Trustee of the TRUST, is new to these proceedings, as of the past few months at
10 most. Although the TRUST filed the Bankruptcy, Mr. Preston at that time acted as the *de facto* Trustee, not
11 Mr. Wilhelms. A month after filing, Mr. Preston unexpectedly lapsed into a coma, never again to regain
12 consciousness. And, not anticipating that he would soon be come ill (let alone die), Mr. Preston did not alert
13 Mr. Wilhelms or request that he succeed him at that time. Thereafter, those around Mr. Preston apparently
14 either did not know that Mr. Wilhelms was supposed to take over, or concealed that fact, and the existence
15 of the TRUST, altogether.

16 Removing the irrelevant matter renders the BANKRUPTCY TRUSTEE's arguments with little, if
17 any, factual support as it concerns Movant or Mr. Wilhelms. Mr. Wilhelms's involvement in this matter is
18 severely limited, and largely recent; other than two short telephone calls with Ms. Doran and Ms. Goldman
19 in March and June of 2006, respectively, Mr. Wilhelms has had no personal contact with the
20 BANKRUPTCY TRUSTEE, his staff, or his counsel; other than the single declaration procured by
21 BANKRUPTCY TRUSTEE's counsel in or about June of 2006, and those documents recently filed herein
22 expressly on his behalf, Mr. Wilhelms has not drafted or provided any documents in this matter; Mr.
23 Wilhelms filed a single document, but otherwise did not participate, in the conservatorship actions; and Mr.
24

25
26 ³The BANKRUPTCY TRUSTEE was formerly steadfast in his insistence that PMGI did not exist, did not hold
27 property, did not do business. Now, the BANKRUPTCY TRUSTEE argues that PMGI was a "loan out corporation,"
28 "pass-through," or possibly owned jointly by Mr. Preston and Ms. Williams. And, although clearly told by the Court,
and as previously confirmed as understood by BANKRUPTCY TRUSTEE's counsel in open court, that PMGI's
business was off limits and its assets not property of the estate, the BANKRUPTCY TRUSTEE has renewed his Motion
No. 6 to file tax returns for the corporation (although, in this Response, the BANKRUPTCY TRUSTEE only discusses
Mr. Preston's returns).

1 Wilhelms was given no notice of the BANKRUPTCY TRUSTEE's actions herein.⁴

2 BANKRUPTCY TRUSTEE's counsel does not deny (or make any assertion inconsistent with) the
3 fact that the only contact which Mr. Wilhelms ever had with the BANKRUPTCY TRUSTEE's
4 representatives was in two short telephone calls, one with Ms. Doran in March of 2006, and another with
5 Ms. Goldman in June of 2006. Movant only appeared herein a few months ago, long after the conduct
6 alleged by the BANKRUPTCY TRUSTEE purportedly occurred.

7 The relief requested by Movant herein is the TRUST's to assert and request as its right as a separate
8 entity, and the facts, circumstances, and grounds concerning the Motion are unique to Movant. This is the
9 TRUST's Motion: only the TRUST is the Movant herein.

10 b. **THE BANKRUPTCY TRUSTEE'S POSITION REJECTS DOCUMENTS ACTUALLY**
11 **BEARING MR. PRESTON'S SIGNATURE IN FAVOR OF UNSUBSTANTIATED**
12 **SPECULATION AND OTHER IMPROPER MATTER**

13 The purported evidence which BANKRUPTCY TRUSTEE's counsel has chosen to attach to the
14 BANKRUPTCY TRUSTEE's Response, particularly the declarations, is in and of itself is telling.

15 Throughout the Response, BANKRUPTCY TRUSTEE's counsel argues or implies, at every
16 opportunity, that the documents which bear Mr. Preston's signature are invalid or at least suspect. The
17 BANKRUPTCY TRUSTEE would again mislead this Court into assuming, from the start, that all documents
18 bearing Mr. Preston's signature were nefariously procured, which is not only conjecture, it is contrary to
19 all available evidence, which BANKRUPTCY TRUSTEE's counsel has in their possession. Beyond verifying
20 that the signatures thereon are Mr. Preston's, that Mr. Preston signed them in the absence of undue
21 influence, coercion, and duress, and that Mr. Preston possessed the requisite capacity - which evidence has
22 already been presented and offered to BANKRUPTCY TRUSTEE's counsel on a number of occasions -
23 nothing more should be required to accept the documents as valid.

24 Instead, the BANKRUPTCY TRUSTEE and his counsel opt to disregard these documents - the only
25

26
27 ⁴BANKRUPTCY TRUSTEE's counsel asserts that Mr. Wilhelms should have filed a Request for Special
28 Notice, but does not explain how Mr. Wilhelms would have known that he should file such a document, considering
his contact with BANKRUPTCY TRUSTEE's counsel provided him with no information as to the BANKRUPTCY
TRUSTEE's actions or intentions. In any case, even after Mr. Wilhelms had filed a Request for Special Notice in this
action, BANKRUPTCY TRUSTEE's counsel still failed to properly serve Mr. Wilhelms's counsel with notice.

1 ones in which Mr. Preston himself expresses his wishes and feelings - in favor of those of the nature of Ms.
2 Williams's and Mr. Hence's declarations.

3 BANKRUPTCY TRUSTEE's counsel has been made aware of Mr. Preston's relationship with Ms.
4 Williams, and the fact that Mr. Preston wanted Ms. Williams or other family members (with the exception
5 of his sister Gwen) to have no part in either the management or receipt of any of his assets. Mr. Preston's
6 sentiments are unequivocally stated in a letter bearing his signature, and witnessed.⁵ As is clear from Mr.
7 Preston's own correspondence, it was apparent to Mr. Preston that Ms. Williams did not act in his best
8 interests, and often acted to his detriment, and he acted upon his experiences and beliefs in excluding her
9 from all matters concerning himself and his estate. This also demonstrates the paradox of BANKRUPTCY
10 TRUSTEE's counsel's acceptance of Ms. Williams as the "debtor": the "authority" on which Ms. Williams
11 is accepted as Administrator of Mr. Preston's estate is tainted, at the very least, as it was obtained by both
12 Ms. Williams's and Mr. Hence's perjured petition.

13 BANKRUPTCY TRUSTEE's counsel have also been made aware of Mr. Hence's multiple, and
14 disqualifying, conflicts of interests, punctuated by the fact that Mr. Hence has in the past, and continues,
15 to disclose confidential communications between himself and Mr. Preston, in service of Ms. Williams's (his
16 mother-in-law's) interests, not those of Mr. Preston.

17 Both declarations contain false and/or misleading matter.

18 Mr. Hence asserts that the Arizona conservatorship was denied because there was no exigency (see
19 paragraph 14), when it was denied because Mrs. Moore had a valid power of attorney which appointed her
20 to act in that capacity. The assertion that Mr. Preston amended his estate planning to "leav[e] everything to
21 MOORE" (see paragraph 18), and that Mrs. Moore claims to be the "sole heir of Billy's fortune" (see
22

23 ⁵Similarly, BANKRUPTCY TRUSTEE's counsel dismisses, without disclosing, the fact that there are two
24 witnesses to certain documents, both respected and esteemed physicians. BANKRUPTCY TRUSTEE's counsel's
25 attempts to imply that because these were Mr. Preston's treating physicians, all signatures were orchestrated by Mrs.
26 Moore in a hospital room are, as counsel well knows, wholly frivolous and wild speculation. Mr. Preston was not in
27 hospital at the time (as BANKRUPTCY TRUSTEE's counsel either knows or can easily verify), but requested that these
28 documents be witnessed (when none of them require witnessing to be valid) because he knew they would be challenged.
He also carefully chose his witnesses: Dr. Kelley was his psychiatrist, who treated him for years; Dr. Mariano,
formerly a Navy Admiral, was Director of the White House medical unit and served as the White House Physician to
both Presidents Clinton and Bush, Sr., and later joined the Mayo Clinic and founded the Center for Executive Medicine,
exclusively serving patients of similar caliber. Both are beyond reproach. The fact also remains that, although the
BANKRUPTCY TRUSTEE questions the validity of these documents, nothing is asserted regarding the original
TRUST, which was properly notarized. Thus, although such details are not mentioned, the BANKRUPTCY
TRUSTEE's arguments do nothing to disturb the validity of the TRUST itself.

1 paragraph 19) demonstrates that Mr. Hence has either not read the relevant documents, or should not be
2 practicing probate law, or both. It is clear that Mrs. Moore is not a beneficiary of any of Mr. Preston's estate
3 planning; Mr. Preston left his estate to various charitable organizations. Mr. Hence also boldly states that
4 he has "never represented any family member against Billy nor have I threatened it" (see paragraph 25),
5 when paragraphs 9 through 24 discuss Mr. Hence's representation of Ms. Williams in her attempts to obtain
6 control over Mr. Preston's assets through a conservatorship (which representation also includes a substantial
7 period of time well before Mr. Preston became hospitalized, during which several unsuccessful efforts were
8 made to solicit testimony from third parties that Mr. Preston was incompetent). Further, Mr. Hence states
9 that when a dispute arose between Mr. Preston and his nephew, Henry "Rusty" Sloan (Ms. Williams's son
10 and Mr. Hence's brother-in-law), "I did advise Rusty that I could not represent him and referred him to
11 another attorney." This is untrue, as demonstrated by Mr. Hence's own letter dated July 3, 2004, in which
12 he threatens litigation against Mr. Preston and Mrs. Moore on behalf of Mr. Sloan.⁶

13 Ms. Williams, in her declaration, asserts that she and Mr. Preston had the same parents, and that
14 George Preston was her father (see paragraph 3), when Ms. Williams's own letter to Mr. Preston (attached
15 to the Motion) acknowledges that this is untrue. All in all, both Mr. Hence and Ms. Williams's declarations
16 are based upon the assertion that Mrs. Moore is demanding Mr. Preston's estate for herself, which puts into
17 question their understanding of Mr. Preston's wishes, the nature of these proceedings, this Motion, and the
18 relief requested herein.

19 In submitting these declarations to the Court, BANKRUPTCY TRUSTEE's counsel has also allowed
20 still more documents containing falsehoods and mischaracterizations to be presented to the Court. Movant
21 maintains that, considering the boldfaced nature of the assertions and the ease with which they are shown
22 to be false by reference to documents in BANKRUPTCY TRUSTEE's counsel's possession, that
23 BANKRUPTCY TRUSTEE's counsel's actions in presenting false matter to the Court was done knowingly.

24 If assumptions are to be made going forward, they should be made based upon, first, those
25 documents which actually bear Mr. Preston's signature. Those documents which should not be accepted on
26 their face include any which make statements which are contradicted by documents to which Mr. Preston

27
28 ⁶A true and correct copy of Bill Hence's letter of July 3, 2004 is attached hereto as Exhibit "1" and
incorporated herein by this reference.

1 put his hand. Similarly, those persons who would attest contrary to such authenticated documents should be
2 regarded as suspect and not credible.

3 c. **THE BANKRUPTCY TRUSTEE'S FAILURES TO ADDRESS AND OPPOSE**
4 **SEVERAL MATTERS RAISED AND REQUESTED IN THE MOTION CONCEDE**
5 **THEIR MERIT**

6 The BANKRUPTCY TRUSTEE does not deny that this Court is vested with the authority to grant
7 the orders requested herein.

8 Although the BANKRUPTCY TRUSTEE argues in opposition to setting aside certain orders based
9 upon mistake, surprise, and invalidity, the BANKRUPTCY TRUSTEE does not oppose the remaining bases
10 for setting aside the orders herein: fraud, misrepresentation, or other misconduct of an adverse party (FRCP
11 60(b)(3)); the judgment is no longer equitable (FRCP 60(b)(5)); and other reasons justifying relief from the
12 operation of the judgment. (FRCP 60(b)(6).)

13 Other than dismissing Movant's assertions of fraud out of hand, the BANKRUPTCY TRUSTEE does
14 not respond to Movant's rather comprehensive factual recounting which evidences fraud. Movant provided
15 the Court with ample evidence of fraud, which conclusion is also supported by the BANKRUPTCY
16 TRUSTEE's admitted failure to give proper notice to Movant throughout. Simply because such an assertion
17 may be "cynical" (as BANKRUPTCY TRUSTEE's counsel characterizes it), that does not establish that it
18 is false, and BANKRUPTCY TRUSTEE's counsel make little effort to cite, let alone contradict, the evidence
19 presented by Movant.

20 As discussed more fully above, BANKRUPTCY TRUSTEE's counsel's misinterpretation of the
21 entire Motion precluded any appreciation of the import of Movant's discussion of the various authorities
22 governing dismissal of Bankruptcy proceedings.

23 Most importantly, BANKRUPTCY TRUSTEE's counsel refuses to address Mr. Preston, Mr.
24 Preston's legacy, Mr. Preston's careful planning, or the best interests which must be served herein. The
25 obvious pains taken by Movant in drafting the Motion now before the Court was to finally, and completely,
26 disclose to the Court who Mr. Preston was, and who he still is to those who cherish his memory. It also
27 demonstrates, very clearly, what Mr. Preston wanted, by use of documents which he personally signed, and
28 also shows the sophistication and deliberate nature of his plans for his legacy. The underlying truth is Mr.

1 Preston's wishes, and what is in the best interests of Mr. Preston and the legacy he spent all of his life
2 creating and protecting, have all been absent from these proceedings. It is hoped that now that the Court,
3 and all involved, finally have Mr. Preston before them, this matter can move toward serving those interests -
4 and no others. The BANKRUPTCY TRUSTEE's failure to respond to such matters is indicative of a
5 disconnect, disrespect, and disregard of Mr. Preston and his legacy, and reveals the BANKRUPTCY
6 TRUSTEE's misplaced focus, so far removed from his duties and responsibilities in this matter.

7 By not presenting adequate responses to these issues and grounds as discussed in the Motion, the
8 BANKRUPTCY TRUSTEE and his counsel are impliedly admitting that they have no opposition thereto,
9 largely because their conduct to date defies reasonable explanation, let alone justification. The same may
10 be said of the BANKRUPTCY TRUSTEE's, and BANKRUPTCY TRUSTEE's counsel's, new and errant
11 theories of the case, which are similarly specious and find no support in the law or the relevant facts.

12 d. **THE BANKRUPTCY TRUSTEE'S RESPONSE IS REplete WITH RED**
13 **HERRINGS, UNWARRANTED CHARACTER ASSASSINATIONS, AND**
14 **IRRELEVANT MATTER**

15 As discussed above, the majority of the BANKRUPTCY TRUSTEE's Response is dedicated to the
16 discussion of irrelevant matter, in an attempt to charge a new party with the alleged conduct of other parties,
17 which occurred prior to the new party's participation in the action. Such assertions include veiled, and not
18 so veiled, accusations against Mrs. Moore as it concerns Mr. Preston and his assets, by which
19 BANKRUPTCY TRUSTEE's counsel wishes to similarly malign and prejudice Movant and Mr. Wilhelms
20 before the Court. And, also as previously discussed, the Court properly disregards the BANKRUPTCY
21 TRUSTEE's argument concerning PMGI's business, royalties, and mail (see Response, subsections "D" and
22 "E").

23 As it concerns the TRUST itself (which BANKRUPTCY TRUSTEE's counsel asserts as "alleged"
24 in the Response, apparently for the first time), the BANKRUPTCY TRUSTEE and his counsel represent
25 (as they have already done in the new adversary complaint), that the BANKRUPTCY TRUSTEE can revoke
26 the TRUST. No authority is cited for such a concept. Basically, the BANKRUPTCY TRUSTEE asserts that,
27 although he has denied its existence and now will only go so far as to concede that it is "alleged," if the
28

1 TRUST in fact does exist, he can still decide that it does not.⁷ Movant is unaware of any authority of the
2 BANKRUPTCY TRUSTEE which allows him eliminate or terminate the existence of a debtor entity, or to
3 invalidate or change an individual debtor's estate planning. Could the BANKRUPTCY TRUSTEE execute
4 a codicil? Make himself a beneficiary of the estate? Dissolve a corporation in Bankruptcy? Decide that the
5 debtor no longer exists? At a whim? Assuming, arguendo, that the BANKRUPTCY TRUSTEE had any
6 authority to revoke the TRUST, it would apparently be only by virtue of his standing in Mr. Preston's shoes.
7 Therefore, the BANKRUPTCY TRUSTEE cannot revoke or otherwise change the TRUST, as it became
8 irrevocable by its own terms upon Mr. Preston's death.⁸ The Court and the parties are already aware that
9 the BANKRUPTCY TRUSTEE has acted well beyond his proper authority, unilaterally and not unlike a
10 judicial officer, but this latest proposition (more a threat, really), to single-handedly and at his whim
11 eradicate Movant altogether certainly tops all else.

12 But the BANKRUPTCY TRUSTEE also contradicts himself by arguing that when the Bankruptcy
13 was filed, the TRUST was rendered "by operation of law ineffective" (see Response, page 31, lines 11-15).
14 That is to say, again without citation to authority, that the BANKRUPTCY TRUSTEE believes that where
15 a non-business trust files a Bankruptcy, that trust become "ineffective," and the settlor thereof then becomes
16 the debtor (contrary to all authority which unequivocally provides otherwise). Movant submits that these
17 inconsistent assertions, cannot be said to have been advanced in good faith by BANKRUPTCY TRUSTEE's
18 counsel as alternative theories: neither are valid, neither finds support in the law, and BANKRUPTCY
19 TRUSTEE's counsel makes no attempt to find such support, instead throwing it in amongst all of the other
20 irrelevant and improper attempts to impute to Movant the conduct of others. BANKRUPTCY TRUSTEE's
21 counsel no doubt putting it all out there in hopes that the Court will accept one, Movant maintains that the
22 Court may properly reject all.

23 The BANKRUPTCY TRUSTEE also, quite disingenuously, asserts that granting the relief requested
24 herein would be "unfair," and, apparently, ontologically intolerable. Not so. The nature of existence is
25

26 ⁷This is reminiscent of the BANKRUPTCY TRUSTEE's decisions to seize and withhold property not of the
estate, even after the Court directed him to cease doing so and return such property.

27 ⁸If the BANKRUPTCY TRUSTEE's counter-argument is that it was still revocable because the
28 BANKRUPTCY TRUSTEE, standing in Mr. Preston's shoes, did not die, the BANKRUPTCY TRUSTEE will surely
have outdone himself.

1 examining what is truthful and real, not unlike the law. The entry of orders without (proper) notice, the
2 seizure of property and documents beyond the BANKRUPTCY TRUSTEE's reach, and the maintenance
3 of assertions based upon flawed information and logic - these are the unfair distortions of the process which
4 must be set aside in favor of clarity. Only if the Court sets aside its previous orders, as it deems necessary,
5 can a place be found for the Court to start remedying and restoring what has been damaged and destroyed,
6 and proceed from there. Denial of the instant motion would only allow the BANKRUPTCY TRUSTEE to
7 continue to tie the knot tighter, just as the Court warned him not to do, so as to prevent not only the parties,
8 but the Court itself, from correcting the circumstances.⁹

9 BANKRUPTCY TRUSTEE's counsel's Response is yet another compilation of accusations and
10 speculation - a riddle befitting *The Looking-Glass*: only by blurring the parties (Mr. Perlman, Mrs. Moore,
11 PMGI, Mr. Wilhelms, the TRUST), the nature of the relief requested (set aside, dismissal), the relevant
12 documents (the original TRUST, amendments, pleadings, declarations), statements, testimony, the Court's
13 own orders and directions, the BANKRUPTCY TRUSTEE's role, and even the timeline, has "support" been
14 found for the BANKRUPTCY TRUSTEE's position in Response.¹⁰ The Court, seeing without the
15 distractions, distortions, and disorientation, will appreciate that very little, if anything, supports the
16 BANKRUPTCY TRUSTEE's position, and that it is not only appropriate, and necessary, to undo and
17 remedy the actions of the BANKRUPTCY TRUSTEE.

18 This "shotgun" approach is no better demonstrated than the BANKRUPTCY TRUSTEE's latest
19 adversary complaint against the Moores, Mr. Wilhelms, and the TRUST. All of the same factual allegations
20 which the Court has seen several times before (including in the instant Response) are again numbered and
21 incorporated into no less than 13 causes of action. The BANKRUPTCY TRUSTEE argues that this
22 distraction, filed on the heels of the Court's previous orders of July 12, 2007, should be adjudicated first
23 before the Court rules on this Motion. Again, without citation to authority and contrary to the documentation

24
25 ⁹Similarly, the BANKRUPTCY TRUSTEE argues, on the erroneous assumption that this is a motion to
26 dismiss, that creditors will be cheated if the motion is granted. Again, the improper inference is that by virtue of some
27 alleged act or acts on the part of others, Mr. Wilhelms is a criminal of some ilk. Although this is not a motion to
dismiss, Movant replies that Mr. Wilhelms cannot be so cast, and like the BANKRUPTCY TRUSTEE, he is a
fiduciary, is responsible and accountable to all creditors of the estate, and procedures and remedies exist under the law
to enforce those obligations.

28 ¹⁰"'Contrariwise,' continued Tweedledee, 'if it was so, it might be; and if it were so, it would be; but as it
isn't, it ain't. That's logic.'" Lewis Carroll, *Through the Looking-Glass: and What Alice Found There*

1 and information well known to BANKRUPTCY TRUSTEE's counsel, the BANKRUPTCY TRUSTEE
2 continues to use any device to avoid not only the factual, but legal, realities presented, all of which are
3 grounded in the breadth and limits of the BANKRUPTCY TRUSTEE's own responsibilities and obligations,
4 in his overreaching and overzealous conduct, in his compliance, or noncompliance, with the rules of
5 procedure and the substantive law. To stay this Motion would be to give the BANKRUPTCY TRUSTEE
6 exactly what counsel had calculated in filing the action: to keep the Court, indefinitely, from its remediation
7 which, to date, has not proceeded with the ease which BANKRUPTCY TRUSTEE's counsel enjoyed in the
8 earlier ("unopposed") applications for relief, and has certainly not provided the BANKRUPTCY TRUSTEE
9 with the Court's acquiescence, let alone approval, of the challenged actions. The fact remains that what the
10 BANKRUPTCY TRUSTEE has done herein should not have occurred in the first place, and must be set
11 aside and corrected. Such matters must take precedence and be dealt with before the parties and the Court
12 even begin to entertain the BANKRUPTCY TRUSTEE's new litigation, which would likely be wholly
13 unnecessary if the BANKRUPTCY TRUSTEE and his counsel were to come to the table in good faith.

14 e. **THOSE FEW RELEVANT MATTERS RAISED BY THE BANKRUPTCY TRUSTEE**
15 **IN OPPOSITION ARE WHOLLY WITHOUT MERIT**

16 The BANKRUPTCY TRUSTEE argues that Movant's assertions that the Court's prior orders are
17 void is without support in law or fact. Yet, the BANKRUPTCY TRUSTEE concedes that "Mr. Wilhelms
18 may assert that HE did not receive the scope/manner of the notice of the case that Mrs. Moore did. Standing
19 alone, that statement is correct." (See Response, page 5, footnote 1.) As Movant's Motion clearly states,
20 it is well-established that "A judgment ... is void only if the court that rendered judgment lacked jurisdiction
21 of the subject matter, or of the parties, or if the court acted in a manner inconsistent with due process of
22 law." (*In re Center Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir., 1985); see also *Memphis Light, Gas &*
23 *Water Division v. Craft*, 436 U.S. 1, 14 (1978); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.
24 306 (1950).) Movant was afforded no opportunity to respond to, let alone oppose, any of the relief obtained
25 herein by the BANKRUPTCY TRUSTEE, as no notice was given. Therefore, the Court was without
26 jurisdiction over Movant to make orders necessarily effecting it, and such orders are void.

27 The BANKRUPTCY TRUSTEE also concedes that Movant's assertions of mistake or surprise may
28 be valid, but nonetheless argues that the BANKRUPTCY TRUSTEE was not the cause thereof. Movant

1 disagrees, given the fact that although BANKRUPTCY TRUSTEE's counsel was aware of Mr. Wilhelms,
2 the TRUST, and Mrs. Moore's continuing claims that Mr. Wilhelms was the BANKRUPTCY TRUSTEE
3 of the TRUST (although she had no documents to verify such claims at the time), the BANKRUPTCY
4 TRUSTEE did not give notice to Movant.

5 The BANKRUPTCY TRUSTEE also disagrees that Movant may base the instant Motion on the
6 discovery of new evidence, notwithstanding the fact that the BANKRUPTCY TRUSTEE concedes that
7 Movant was not served with notice of the BANKRUPTCY TRUSTEE's requests for relief herein. Such
8 requests included disclosures of procedural and substantive facts and evidence, including documents; the
9 same may be said of any oppositions, responses, or objections to such requests; hearings on such requests
10 would provide even further information as to the progress of the matter; and the resulting orders would
11 establish the outcome of those requests. Having not been properly served, Movant only recently became
12 aware of these matters, documents, hearings, and orders.


13 Additionally, when allowed the opportunity, and having initiated the contact in order to obtain
14 certain information, BANKRUPTCY TRUSTEE's counsel provided Mr. Wilhelms with no information
15 whatsoever. Any excusable neglect, mistake, inadvertence, surprise, and late discovery of evidence on
16 Movant's part was a direct result of the neglect of the BANKRUPTCY TRUSTEE and his counsel.

17 **2. CONCLUSION**

18 The BANKRUPTCY TRUSTEE has not convincingly opposed Movant's Motion with relevant and
19 substantive authority and factual argument, indicating that there is some agreement with the Court's prior
20 comments that certain actions taken herein by the BANKRUPTCY TRUSTEE must be "unwound" and
21 corrected. On this basis, and as more fully argued in Movant's original Motion, Movant respectfully requests
22 that the Court grant the instant Motion, and the relief sought pursuant to Federal Rules of Civil Procedure,
23 rule 60, as incorporated into these proceedings through Rule 9024 of the Federal Rules of Bankruptcy
24 Procedure.

25 DATED: August 20, 2007

LAW OFFICE OF BARUCH C. COHEN

26
27 By 
Baruch C. Cohen, Esq.

*Attorney for the William Preston Trust Dated December 1,
1999, by and Through Frederick Wilhelms, III, Trustee*

1 PROOF OF SERVICE

2 I, Baruch C. Cohen, declare as follows:

3 I am, and was at all times herein mentioned, a citizen of the United States, a resident of the County
4 of Los Angeles, State of California, over the age of 18 years and not a party to this action or proceeding.
5 My business address is 4929 Wilshire Boulevard, Suite 940, Los Angeles, California 90010.

6 Upon this day, I served the within **MOVANT’S REPLY TO THE BANKRUPTCY TRUSTEE’S**
7 **RESPONSE TO MOTION TO SET ASIDE ORDERS CONVERTING PROCEEDINGS FROM**
8 **CHAPTER 11 TO CHAPTER 7; TO SET ASIDE ADDITIONAL ORDERS GRANTED TO THE**
9 **BANKRUPTCY TRUSTEE; TO SET ASIDE CERTAIN ACTIONS OF THE BANKRUPTCY**
10 **TRUSTEE; AND FOR TURNOVER OF DOCUMENTS AND ASSETS AND FURTHER RELIEF** on
11 all interested parties in this action through their attorneys of record by placing a true and correct copy
12 thereof, addressed as per the attached service list.

13 X VIA FIRST CLASS MAIL [C.C.P. §§ 1012a, et seq., & Local Bankruptcy Rule 7004-1(2)(b)]. I
14 deposited said document(s) into the United States mail at Los Angeles, California, in a sealed
15 envelope with postage fully prepaid. My practice is to collect and process mail on the same day as
16 shown on this declaration. Under that practice, all correspondence is deposited with the US Postal
17 Service on the same day that it is placed for collection and processing, in the ordinary course of
18 business.


19 _____ VIA HAND DELIVERY/PERSONAL SERVICE (C.C.P. §§ 1001, et seq., & Local Bankruptcy
20 Rule 7004-1(2)(c)]. I directed a courier to personally deliver said document(s) to each addressee.

21 _____ VIA FEDERAL EXPRESS/OVERNIGHT/NEXT BUSINESS DAY DELIVERY SERVICE (C.C.P.
22 §§ 1011, 1012, & Local Bankruptcy Rule 7004-1(2)(d)]. I enveloped, properly labeled, and caused
23 to be deposited into a Federal Express pick-up receptacle as per the regular practice of my office.

24 X VIA FACSIMILE & EMAIL (C.C.P. §§ 1012.5, & Local Bankruptcy Rule 7004-1(2)(e)]. I caused
25 the said document(s) to be transmitted by facsimile machine and email to the number indicated after
26 the address(es) noted herein. I received written confirmation that the facsimile and email
27 transmission was received by the addressee.

28 I declare that I am a member of the State Bar of this Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct. Executed at Los Angeles, California on August 20, 2007.

23 
24 Baruch C. Cohen

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OUST

Office of the United States Trustee
c/o Nancy Goldenberg, Esq.
411 West Fourth Street, Suite 9041
Santa Ana, CA 92701

CHAPTER 7 TRUSTEE

R. Todd Neilson, Esq.
Law Office of R. Todd Neilson
2049 Century Park East, # 2300
Los Angeles, CA 90067

via fax: 310-556-0766

COUNSEL FOR R. TODD NEILSON,
CHAPTER 7 TRUSTEE

Amy L. Goldman, Esq., & Scott Lee, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
221 North Figueroa Street, Suite 1260
Los Angeles, CA 90012-2601

via fax: 213/250-7900
via email: goldman@lbbslaw.com

TRUSTEE OF THE WILLIAM E. PRESTON
TRUST

Fred Wilhelms, Esq.
Law Offices of Fred Wilhelms
4831 Briarwood Drive
Nashville, TN 37211

COUNSEL FOR THE WILLIAM E. PRESTON
TRUST

Baruch C. Cohen, Esq.
Law Office of Baruch C. Cohen, APLC
4929 Wilshire Boulevard, Suite 940
Los Angeles, CA 90010

COUNSEL FOR JOYCE MOORE, SAMUEL
MOORE AND PRESTON MUSIC GROUP

Barbara C. Stief, CLS-B
Law Office of Barbara C. Stief
1901 First Avenue, Suite 216
San Diego, CA 92101

via email: bankruptcy2005@aol.com,
Stiefbarb@aol.com,

COUNSEL FOR SHARMONT MULDROW,
TINA & GERALDINE WOOLFORK

Ronald E. Ostrin, Esq.
Law Office of Ronald E. Ostrin
11377 West Olympic Boulevard, Suite 900
Los Angeles, CA 90064

via fax: (310) 914-7907

REQUEST FOR SPECIAL NOTICE

Raymond H. Aver, Esq.
Law Offices of Raymond H. Aver
12424 Wilshire Boulevard, Suite 700
Los Angeles, CA 90025

via fax: (310) 571-3512
via email: ray@averlaw.com

Exhibit “1”

HENCE, CODRINGTON & WAYNE, LLP



BILL HENCE, JR.
CAROL D. CODRINGTON
CARL ANTHONY WAYNE

ATTORNEYS AT LAW
3255 WILSHIRE BOULEVARD
SUITE 1500
LOS ANGELES, CALIFORNIA 90010-1414
OFFICE: (213) 388-8692 / (213) 384-2731
FAX: (213) 384-2083

July 3, 2004

Via Facsimile and U.S. Mail

William E. Preston
5410 W. 61st Street
Los Angeles, CA 90056

Joyce Moore
7119 E. Shea Blvd., No. 109
Scottsdale, AZ 85254

Re: Contract Between William E. Preston a.k.a. Billy Preston and Henry Sloan
a.k.a. Rusty Sloan

Dear Mr. Preston and Ms. Moore:

This office has been asked by Henry Sloan (hereinafter, Rusty) to protect his interests in the written contract signed with and by Billy Preston to serve as Mr. Preston's personal assistant during the American leg of the Eric Clapton tour. As you know, this contract calls for Rusty to provide service to Mr. Preston, such as insuring his presence for dialysis treatments, generally being on call to provide Mr. Preston with whatever assistance he may need medically and/or personally, pack and insure the transport of Mr. Preston's luggage, and other enumerated services and conditions, for the entire length of the tour. In exchange, Rusty is to be paid \$1,500.00 per week, plus bonuses. Rusty has performed all of the conditions precedent under the terms of the contract. Nevertheless, it appears that Mr. Preston, by and through his personal representative, Ms. Moore, is now attempting to breach this agreement.

Rusty has been informed by Ms. Moore that he will not be accompanying Mr. Preston on the remainder of the tour. It is important to note that the contract specifically states that only Eric Clapton may replace Rusty on the tour. While Rusty has been informed that he will not continue on as Mr. Preston's assistant, no mention has been made about fulfilling the remainder of the contract respecting the salary due to Rusty. Therefore, this letter shall serve as an invitation to avoid the lawsuit against both of you that will surely follow if the contract between Preston and Sloan is breached.

Rusty has provided diligent and faithful service to Mr. Preston, abiding by each and every condition of contract imposed upon him. In addition, Rusty was set to start a job in the service department of Ford Motor Company when he was asked to accompany Mr. Preston

Henry Sloan v. William E. Preston and Joyce Moore
Preston and Moore Letter of Compromise
Page Two

on tour. Rusty on the Ford Motor Company job to assist his uncle. Now, in order to avoid litigation one of the following events must occur. Either Rusty will be restored to the tour as Mr. Preston's personal assistant, or in some other capacity, at the same rate of pay, or, Mr. Preston may buy out the remainder of the contract for \$12,500.00 in a lump sum payment.

Please contact this office as soon as possible with the course of action that you have chosen. If I have not heard from either Mr. Preston, or Ms. Moore by the close of business on Wednesday, July 7, 2004, I will assume that your intention is to breach the contract and not make Rusty whole. Should you elect to ignore this attempt at peaceful resolution, Rusty will exercise any and all legal and equitable remedies available to him.

Given the above, I am looking forward to hearing from you.

Very truly yours,

HENCE, CODRINGTON & WAYNE, LLP

Bill Hence, Jr.
Bill Hence, Jr.

cc: Rusty Sloan

*Nicole 2:55pm 7/7/04
cc: Bill Hence to respond
that it's been turned over
to our lawyers &
tomorrow will provide
him office our lawyer's
info*