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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10
11 In Re the Conservatorship of

CASE NO. BP168417

Assigned to the Honorable Judge Clifford L. Klein for all purposes.

12
13
14 Ellen Frenkel

DECLARATION OF PETER FELDER

DATE: November 30, 2015
TIME: 10:30 am
DEPT: 9

By Fax

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16
17 Proposed Conservatee.

18 I, Peter Felder, declare:

19
20 I am the son of Ellen’s only sister, Ilse, and so have known Ellen Frenkel since the day I was born,
21 70 years ago.

22 Our families were close and we all lived in Melbourne. Whilst I was a University undergraduate I
23 would stop off at Ellen & Erwin’s home on my way home about twice a week.

24 I am a retired chemist with a Ph.D. in Chemistry from Monash University in Melbourne.

25 I had my own chemical manufacturing and consulting business for most of my career.

26 We remained close but all lead busy lives and did not meet all that often. I can safely say however that
27 we probably saw each other at least once a month or so, for family birthdays and other family events.

28 On March 21, 1991, Ellen appointed me as one of her three agents under an Enduring Power of

1 Attorney, which included the requisite text: “I DECLARE that this Power of Attorney shall continue to
2 operate and have full force and effect notwithstanding that I may subsequently become incapable.”

3 Under the Enduring Power, which appointed Ellen’s two children and me as her agents, each agent
4 could act alone on Ellen’s behalf.

5 A tribunal in Australia temporarily suspended my powers and David Frenkel’s powers in February
6 2015, at our request, because we asserted that we could not execute our duties in light of Miriam’s
7 defalcations and other misconduct.

8 David Frenkel told me (that Ellen’s solicitor told him) that Ellen executed a Last Will and Testament
9 appointing me as her executor. I have no idea when Ellen executed that Will.

10 In the early 1990’s, Ellen told me that she did not like her son-in-law, Kush Fehring, and would never
11 want to live with him. To the best of my recollection, she told me that she thought he was anti-semitic.

12 Ellen also told me, in the early 1990’s (and I think she told me several times) that she did not ever want
13 to live in America.

14 Ellen did not say why she did not ever want to live in America, but Ellen was quite emphatic more than
15 once in saying that she did not ever want to live in America.

16 During my mother, Ilsa’s fight with cancer about 8 years ago (approximately 2007), I was with Ellen
17 possibly 4 days a week, sharing the family responsibilities. Ellen went to my mother’s home to visit
18 and help out typically every other day or so, and I often saw her there.

19 Around 4 or 5 years ago (2010 or 2011), I took Ellen to a hearing specialist doctor and to her primary
20 care physician. I sat in on the appointment with her primary care physician.

21 At about that time, I began helping Ellen to handle some financial matters (at her request), paying bills,
22 car maintenance, house maintenance, etc. She was just beginning to find things a little more difficult,
23 and my assistance made things easier for her. But back then, she seemed quite independent and capable
24 of handling things on her own. Banking on the internet was difficult for her.

25
26 Late in the evening on 21 December 2010, we received a phone call from Ellen requesting help, which
27 was unusual. We went to her, about a 25 minute drive, found her in trouble and called the ambulance.

28

1 With help from other family and friends, I arranged for her hospital admission, doctors, rehab,
2 organised a team to support her coming home. Ellen's granddaughter, Michelle Frenkel, was the
3 family member who helped me the most to organise this. Indeed Michelle, who was very close to her
4 grandmother, was surprised that Ellen called me first to request help, but since I was living closer to
5 Ellen, it was quite reasonable that Ellen called me first.

6 At my request, Ellen had a combination lock installed on her door so that, in an emergency, others
7 could enter her home to help her, e.g., if I were to receive another telephone call from Ellen indicating
8 that an ambulance was needed, I would be able to give the combination to the ambulance authorities
9 when I called them to go to Ellen's home.

10 We also agreed that we would give other people, who were providing supportive care to Ellen, the
11 combination, so that they too could enter her home as needed to provide care to her. Those people

12 (Ellen's care team) included:

- 13 1. Granddaughter, Michelle Frenkel;
- 14 2. Niece, Lynn Felder and her husband John Bye
- 15 3. Marlene Frenkel (David's first wife);
- 16 4. Charley Vallins (Ellen's close friend of many years);
- 17 5. Me; and
- 18 6. Others who visited, such as Gill Foks Portingale (close family friend who became Michelle's
19 godmother), Jack Foks (close family friend who became Michelle's godfather) and Sandi
20 McCullough (a nurse who took care of Ellen's husband for years before he died, enabling him
21 to remain home for about 10 years, before he was moved into a 24 hour care facility
22 approximately 5 years before he died).

23 There was a second hospitalisation on 6 October 2012, which was due in part to problems that arose
24 from the failure of Miriam's temporary care plan, established when Miriam left Australia on May 1,
25 2012 for a planned vacation of two weeks, which became an unplanned six months. That vacation
26 triggered a life threatening problem for Ellen because we (Ellen's family and friends, hereinafter
27 "Ellen's Supporters") had accepted Miriam's proposal that she be Ellen's primary caregiver ("carer" in
28 Australian English) and that she be the sole point person who communicated with the doctors.

When Miriam left Australia on May 1, 2012 for a planned vacation of two weeks, which became an

1 unplanned six months, Miriam told us (Ellen's Supporters) that she (Miriam) had arranged for various
2 nursing and support services nurses to take care of Ellen while she (Miriam) was away for two weeks.

3 Those nursing and support services included, for example:

- 4 1. District Nurses (nurses provided by the Victorian Public Health system). The nurses' job was to
5 make sure that Ellen was healthy and taking her medications
- 6 2. Meal deliveries (provided by a local fast food service selling e.g., fish and chips, mostly fried
7 food, although there was the occasional souvlaki or something else -- most of which Ellen
8 would not eat and remained uneaten in the refrigerator -- so, when we visited, we provided
9 Ellen with healthy food she liked and ate [and we cleaned the refrigerator]);
- 10 3. Council support services: people who clean the care recipient's home.

11 Since Miriam allegedly was only going to be away for two weeks, she left without formalising any
12 schedule for custodial care visitation by Ellen's Supporters, or any hired carers. But when it became
13 clear to us (Ellen's Supporters) that Miriam was going to be away for much longer than the two weeks
14 she said she would be away, I set up a somewhat formal schedule of visitation for Ellen by Ellen's
15 Supporters, so that Ellen was visited every day by one or more people, for various numbers of hours at
16 a time. I was on the phone as necessary to make alternate arrangements to accommodate changes in
17 people's (Ellen's Supporters') schedules, but most of the time people stuck to their schedules.

18 Despite our visiting Ellen daily, what we (Ellen's Supporters) did not know was that:

- 19 1. Ellen cancelled the District Nurses' services;
- 20 2. Miriam (who insisted on being the sole point person in contact with health care providers) was
21 not monitoring the furnishing of District Nurses' services to Ellen;
- 22 3. Because Miriam was not monitoring that, Miriam did not know that Ellen had cancelled the
23 District Nurses' services;
- 24 4. Therefore, we (Ellen's Supporters, who had agreed to let Miriam alone be the point contact with
25 medical services) did not know that Ellen had cancelled the District Nurses' services;
- 26 5. Miriam (of course) did not tell us that Ellen had cancelled the District Nurses' services;
- 27 6. Ellen stopped taking her Aricept and other medications that she absolutely needed; and
- 28 7. Ellen developed a serious urinary tract infection (and an allergy which caused a rash on her
body) -- for which Ellen had to be hospitalised in a very confused condition.

Ellen never fully recovered from the "insult" caused by the failure to take her medication + the urinary
tract infection, i.e., her average mental functioning after the hospitalization was appreciably lower than

1 before the crisis that led to the hospitalization. Ellen could no longer be safely left alone during her
2 waking hours; so we hired custodial caregivers to provide companionship and supervise her. In
3 addition, she was often off in her own world and could not maintain participation in a conversation. All
4 activities requiring concentration showed impairment, e.g., her ability to watch television, read
5 newspapers, etc. She previously read a lot, but almost stopped reading entirely.

6
7 I went to Ellen's house while she was in hospital and in respite care to meet the service provider who
8 removed the bird nest on the roof which was the doctors suspected was causing Ellen to have an
9 allergic reaction to bird lice.

10
11 As I indicated above, I maintained the visitor roster that Miriam had left for Ellen's Supporters to use,
12 when Miriam returned to USA in May 2012 (which we used to ensure that Ellen was not left alone for
13 significant periods of time).

14
15 When Miriam returned to Australia (October 24, 2012), Miriam again took control of Ellen and
16 deterred almost everyone from visiting and/or calling. Sandi McCullough (who had been the nurse for
17 Ellen's deceased husband) and her husband Shaun got along with Miriam. I do not know if there was
18 anyone else who did get along with her. Everyone else was discouraged from visiting and/or calling.

19
20 About 3 years ago, I and other family members were becoming concerned about Ellen being able to
21 continue living independently. So I suggested to Ellen that she consider moving into the Emmy
22 Monash Aged Care facility ("Emmy Monash"), where Ellen had placed her own mother, years earlier.

23
24 Emmy Monash was established in 1948 by a Melbourne Jewish organisation called the Mutual Help,
25 which purchased an old boarding house to serve as a home and a vital part of Jewish communal life for
26 elderly Jewish people. Emmy Monash is now Melbourne's leading Jewish aged care facility,
27 accommodating more than 90 residents.

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Our family has a long history of involvement with Emmy Monash.

I was on the board of directors for about 14 years; my mother was on the board of directors for about 30 years; my grandmother (Ellen’s mother) was a resident there, and my grandfather helped with the financial accounting on a volunteer basis. All of our services were voluntary.

We had all been quite satisfied with the quality of care that Ellen’s mother received at Emmy Monash.

At that time (when Ellen was considering moving into Emmy Monash), I was a recent past president of Emmy Monash.

Ellen and I made several “inspection” visits to Emmy Monash together, and Ellen decided that she liked the idea of moving there while she was still able to make the move independently. She was quite happy about the idea of moving into Emmy Monash. So we set a date that was about 3 weeks ahead for her to move into Emmy Monash.

If Ellen had moved into Emmy Monash, which is about 25 minutes drive from my house:

1. My sister and I would have continued visiting with Ellen at least once a week;
2. A group of friends and relatives would have continued visiting Ellen in collaboration to ensure that at least one person visited her each day. The friends and relatives to whom I refer include, for example, Charley Vallins, Jack Foks, Sandi McCullough (who used to nurse Ellen’s husband, Erwin), Mani, Bob, Tim, and Kerry Allan (friends), Lynn Felder Bye, my wife Helen, me, our children (Michael and Jenni) with their children, Michelle Frenkel and her mother Marlene Frenkel, Gill Foks Portingale and others. To the best of my recollection, they all indicated to me that Miriam inhibited them from visiting with Ellen. Some gave up, and some persisted in attempting to visit with Ellen, to varying extent
3. Ellen would have visited with, and gotten visits from other people already residing in Emmy Monash whom she knew for many years, and the people who visited them. A lot of the Jewish community visits Emmy Monash often. When Ellen and I visited Emmy Monash, Ellen indicated to knew various people residing there.

To the best of my recollection, Ellen indicated to me that she intended to sell her home in order to fund her admission bond at Emmy Monash. All people being admitted to Emmy Monash must post an “admission bond” which was in the vicinity of \$400,000.

1
2 On October 24, 2012, about one week after Miriam heard about Ellen's planned move, Miriam returned
3 to Australia and persuaded Ellen to defer her move into Emmy Monash, and to allow Miriam to provide
4 supportive care so that Ellen could continue to reside in her own home.

5
6 On October 28, 2012, Miriam, David, Lynn and I met in a coffee lounge in Bentleigh, Australia to
7 discuss Ellen's financial management by the 3 appointed agents, to wit, Miriam, David and I. We
8 agreed that if Miriam needed to make any expenditure on Ellen's behalf (out of Ellen's funds), in
9 excess of \$1,000, Miriam would send an email to us (David and me) before making the expenditure,
10 soliciting our agreement to the expenditure. We also agreed that no expenditure of Ellen's funds, in
11 excess of \$1,000 would be made without all 3 of us agreeing that the expenditure should be made.

12 It was not until about 6 or 12 months had elapsed that I learned that Miriam had immediately proceeded
13 to ignore the agreement we made, and that Miriam proceeded to consistently:

- 14 1. Embezzle large sums of money from Ellen; and
- 15 2. Expend large sums of money refurbishing Ellen's home in furtherance of Miriam's plan to
16 prepare the home to be rented out -- a plan which was:
 - 17 a. Inconsistent with Ellen's wish (before Miriam arrived) to move into Emmy Monash; and
 - 18 b. Unknown to Ellen's Enduring Power agents, David and me.

19 When I learned of those expenditures and misappropriation, I had many email exchanges with Miriam
20 and with David about those expenditures and misappropriations.

21 I did not discuss those expenditures and misappropriations with Miriam during my visits to Ellen
22 because Miriam declined to discuss those things in Ellen's home. I acknowledge that there were some
23 home expenditures of which I had knowledge (but did not consent to them) before I learned of the large
24 extent of Miriam's breach of our agreement to not make expenditures in excess of \$1,000 with the
25 agreement of all 3 agents.

26 To the best of my recollection, I did make a few fruitless attempts to discuss those expenditures and
27 misappropriations with Miriam on the telephone. To the best of my recollection, Miriam simply
28

1 maintained that she had the right to do as she deemed fit.

2
3 Once a week, unless Ellen was unwell, we would go out for cake and coffee, often with my sister Lynn
4 Felder, who spent more time with Ellen than I did, and who was a very close friend of Ellen's.
5 I found it uncomfortable and irritating to stay home with Ellen with Miriam in the room.

6
7 After Miriam arrived, I continued seeing Ellen but not as frequently because of Miriam's behavior.
8 Miriam generally dominated the conversation, effectively preventing Ellen from having a conversation
9 with me. In other words, Ellen and I would sit quietly while Miriam would hold forth at length.

10 Miriam's behavior discouraged my sister and me from visiting as often as we would have otherwise.
11 But after a few months of seeing Ellen less often than once per week, we decided that we should not
12 allow Miriam to cut Ellen off from us.

13 So we resumed making a point of taking Ellen out at least once a week for coffee and cake.

14
15 Miriam kept the house cold through air conditioning, and it was virtually always too cold for me, and
16 evidently too cold for Ellen, who was always either covered by a blanket when I visited, or
17 exceptionally warmly dressed.

18 When I suggested to Miriam that the house was too cold, clearly intimating that it was too cold for
19 Ellen too, Miriam replied by saying that Ellen was appropriately covered against the cold, The
20 message Miriam conveyed was fairly consistently that she decides how things are going to be, and that
21 any effort to try to persuade her to accept some change would be perceived by her as an attempt to push
22 her around, which she would resist resolutely.

23
24 My perception was that Miriam did not do much cooking, and primarily was feeding Ellen and herself
25 with prepared foods that were purchased from fast food stores (such as fish and chips stores),
26 restaurants and some meals on wheels providers for elderly people.

27 Based on my review of bank statements, Miriam spent a lot of money for food from fast food stores and
28

1 restaurants -- food that I did not think was appropriate for an elderly such as Ellen. Miriam used
2 Ellen's money to pay for all the food, including Miriam's food and possibly others. I do not have
3 reason to believe that Miriam paid for any of it.

4
5 Shortly before the first VCAT hearing (early 2014), Miriam changed the combination lock on the door,
6 preventing me and the rest of Ellen's care team from having free access to Ellen's home
7 Miriam no longer would allow me to enter the home unless she was there.

8
9 When I spoke on the phone with Ellen on Friday, August 28, 2015, Ellen asked me when she was going
10 to see me, as though I lived nearby and could drop in.

11 During one of my sister Lynn's calls to Ellen, Ellen asked Lynn when she (Lynn) was going to drop in
12 for a cup of tea, i.e., Ellen was manifesting her ignorance of the fact that she and Lynn were in two
13 different countries during the call.

14 Since the legal issues commenced about 18 months ago I was never left alone with Ellen at home,
15 although I could take Ellen out.

16 When Miriam was away visiting America there were at least two occasions when Ellen had to be
17 admitted to hospital. I organised both events and the doctors, rehab and the return to home.

18 I was also very involved in ensuring Ellen's care was maintained in Miriam's absence.

19 Over the last 2 or 3 years my sister Lynn and myself took Ellen out every Thursday afternoon for a
20 couple of hours for afternoon tea somewhere.

21 Ellen and I are related and also close friends.

22
23 The matters stated in the foregoing document are true of my own knowledge except as to
24 those matters, which are stated on information and belief, and with respect to those matters I
25 believe them to be true.

26 I declare under the penalties of perjury under the laws of the State of California, that the
27 foregoing is true and correct, and that this declaration was executed today, November 26,

1 2015, at Wheelers Hill, Victoria, Australia.

2 See signature on
3 subsequent page

Signed: _____

4 Peter Felder

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1 2015, at Wheelers Hill, Victoria, Australia.

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3 Signed:



4 Peter Felder
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PROOF OF SERVICE CCP § 1013(a)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of **Los Angeles**, State of California

I am over the age of 18 and not a party to the within action; my business address is: **Post Office Box 3668, Beverly Hills, California 90212**

On **November 25, 2015**, I served the following document(s) (hereinafter "Documents Served") described as:

- 1) **[Signed] Declaration of Peter Felder**
- 2)

By: <input checked="" type="checkbox"/> Email shortly after 8:51 PM	<input type="checkbox"/> Facsimile shortly after 8:51 PM	<input type="checkbox"/> Federal Express or equivalent	<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> Certified, Registered or Return Receipt Requested
<input type="checkbox"/> Personal delivery	<input type="checkbox"/> Personal delivery	<input type="checkbox"/>	<input type="checkbox"/> Fax and Email per stipulation	

By: by placing the original a true copy thereof enclosed in sealed envelopes.

The Documents Served were addressed as stated on the **attached Service List**. as follows:

Miriam Fehring: miriamclaireff@gmail.com	Larry Dushkes, Esq. larry.dushkes@dushkeslaw.com

I deposited such envelope with postage thereon fully prepaid in the mail at **Beverly Hills, California**.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at **Beverly Hills, California** in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

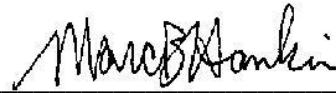
**** (BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this was executed on **November 25, 2015** at **Beverly Hills, California**.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Marc B. Hankin

Type or Print



Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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