



1 The United States of America (“Plaintiff”), seeking to recover unpaid estate taxes,  
2 penalties, and interest, filed the above action on September 16, 2015. Presently before the  
3 Court are motions to dismiss the complaint filed by Defendants Vikki Paulson, Crystal  
4 Christensen, Madeleine Pickens, and James Paulson. (Doc. No. 15, 19, and 36.) Also  
5 pending are motions to dismiss Defendant John Michael Paulson’s cross-claim, (Doc. No.  
6 38), filed by Defendants Vikki Paulson, Crystal Christensen, and Madeleine Pickens.  
7 (Doc. Nos. 40 and 50.)

8 For the reasons set forth below, Madeleine Pickens’ motion to dismiss the  
9 complaint is **GRANTED IN PART** and **DENIED IN PART**; Vikki Paulson and Crystal  
10 Christensen’s motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**; and  
11 James Paulson’s motion to dismiss is **DENIED**. Additionally, Madeleine Pickens’  
12 motion to dismiss John Michael Paulson’s cross-claim is **DENIED**; and Vikki Paulson  
13 and Crystal Christensen’s motion to dismiss the cross-claim is **DENIED**.

#### 14 I. FACTUAL BACKGROUND

15 The following facts are taken from the complaint and construed as true for the  
16 limited purpose of resolving the pending motions. See *Moyo v. Gomez*, 40 F.3d 982, 984  
17 (9th Cir. 1994). On December 23, 1986, Allen Paulson (“Mr. Paulson”) established the  
18 Allen E. Paulson Living Trust (hereafter referred to as “Living Trust”). (Doc. No. 1 ¶ 9.)  
19 In 1988, Mr. Paulson entered into an antenuptial agreement with Madeleine Pickens  
20 (“Ms. Pickens”) in anticipation of marriage. (Id. ¶ 10.) The agreement defined their  
21 respective separate property and established certain gifts for Ms. Pickens in the event of  
22 Mr. Paulson’s death. (Id.) The Living Trust was subsequently amended and restated  
23 several times in early 2000. (Id. ¶ 11.) On July 19, 2000, Mr. Paulson died. (Id. ¶ 21.)

24 The Living Trust provided Ms. Pickens with the power to elect between receiving  
25 property under the antenuptial agreement or under the Living Trust, but not under both.  
26 (Id. ¶¶ 10, 12–15.) The Living Trust also created a Marital Trust for Ms. Pickens’ benefit.  
27 (Id. ¶¶ 13–15.) Under the terms of the Living Trust, the Marital Trust was to receive a  
28 residence and all personal property located at 14497 Emerald Lane in Rancho Sante Fe,

1 California. (Id. ¶ 13.) The Living Trust also gave Ms. Pickens the right to receive a  
2 second residence located in Del Mar, California, as well as all household furnishings,  
3 furniture, and all insurance policies related to the Del Mar property. (Id. ¶ 14.) Finally,  
4 the Living Trust provided that the Marital Trust was to receive 25% of the residue of the  
5 Living Trust. (Id. ¶ 15.) The Living Trust named Ms. Pickens, John Michael Paulson, and  
6 Edward White (or alternatively, Edward White and Nicholas Diaco), as the co-trustees of  
7 the Marital Trust. (Id. ¶ 16.)

8 At the time of Mr. Paulson's death, all of Mr. Paulson's assets were held by the  
9 Living Trust except for his shares in the Gold River Hotel & Casino Corporation. (Id. ¶  
10 24.) The Living Trust's assets, as reported at the time of Mr. Paulson's death included  
11 approximately \$24,764,500 in real estate; \$113,761,706 in stocks and bonds; \$23,664,644  
12 in cash and receivables, and \$31,243,494 in miscellaneous assets. (Id.) Accordingly, the  
13 Estate's assets totaled approximately \$193,434,344 at the time of Mr. Paulson's death.  
14 (Id.)

15 John Michael Paulson ("Michael Paulson") is the son of Mr. Paulson, and served  
16 as the executor of the Estate of Allen E. Paulson ("Estate") after Mr. Paulson's death on  
17 July 19, 2000. (Id. ¶¶ 4, 54.) Nicholas Diaco consented to act as co-trustee of the Living  
18 Trust with Michael Paulson. (Id. ¶ 25.) In April 2001, the Estate filed a Form 4768 with  
19 the IRS, and requested an extension of time to file its Form 706 Estate tax return until  
20 October 19, 2001. (Id. ¶ 26.) Additionally, the Estate requested an extension of time to  
21 pay its taxes until April 19, 2002. (Id.) The IRS approved the Estate's request for both  
22 extensions. (Id. ¶ 26.)

23 On October 23, 2001, the IRS received the Estate's Form 706 Estate tax return,  
24 which was signed by Michael Paulson, as co-executor of the Estate. (Id. ¶ 27.) In  
25 completing the tax return, the Estate elected to use an alternate valuation date of January  
26 19, 2001, under 26 U.S.C. § 2032(a). (Id.) The Estate reported a total gross estate of  
27 \$187,729,626, a net taxable estate of \$9,234,172, and an estate tax liability of \$4,459,051.  
28 (Id. ¶¶ 27–28.) On November 26, 2001, the IRS assessed the originally reported tax of

1 \$4,459,051. (Id. ¶ 28.) The Estate elected to pay part of its taxes and defer the other  
2 portion under a fifteen-year payment plan pursuant to 26 U.S.C. § 6166 of the Internal  
3 Revenue Code.<sup>1</sup> (Id. ¶ 29.) Accordingly, the Estate paid \$706,296 as the amount  
4 unqualified for deferral under § 6166, leaving a deferred balance of \$3,752,755 to be paid  
5 under the installment election. (Id.) On November 15, 2001, the IRS selected the Estate  
6 tax return for examination. (Id. ¶ 31.)

7 While the Estate’s tax return was under review, several personal disputes arose  
8 between Michael Paulson, Ms. Pickens, and the other beneficiaries of the Living Trust.  
9 (Id. ¶ 32.) On February 2, 2003, the parties reached a settlement agreement, which the  
10 California Probate Court approved on March 14, 2003 (“2003 Settlement”). (Doc. No. 1 ¶  
11 33); (Doc. No. 15-5.) Under the 2003 Settlement, Ms. Pickens forewent property under  
12 both the antenuptial agreement and the Living Trust, instead choosing to receive direct  
13 distributions from the Living Trust. (Id. ¶¶ 33–34.) The 2003 Settlement resulted in Ms.  
14 Pickens receiving the Rancho Sante Fe residence, the Del Mar residence, and the stock in  
15 the Del Mar County Club, Inc. (Id. ¶ 33.) As approved by the Probate Court, these  
16 distributions were made directly to Ms. Pickens as trustee of the Madeleine Anne Paulson  
17 Separate Property Trust. (Id. ¶ 35.) During 2004, Michael Paulson, acting as trustee of the  
18 Living Trust, distributed approximately \$5,921,887 in trust assets to various individuals.  
19 (Id. ¶ 36.)

20 On January 15, 2005, the IRS issued a notice of deficiency to Michael Paulson as  
21 executor of the estate, which proposed a \$37,801,245 deficiency in the estate tax reported  
22 on the return. (Id. ¶ 38.) Michael Paulson petitioned the United States Tax Court  
23 challenging the additional estate tax proposed by the IRS. (Id. ¶ 39.) On December 2,  
24 2005, pursuant to the parties’ stipulation, the Tax Court determined that the Estate owed  
25 \$6,669,477 in additional estate taxes. (Id. ¶ 40.) The Estate elected to pay this additional  
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28 <sup>1</sup> 26 U.S.C. § 6166(a)(1) provides a deferral and payment plan for the value of the tax  
imposed by a closely held business on the adjusted gross estate, under 26 U.S.C. § 2001.

1 tax amount under the same fifteen-year installment period permitted by 26 U.S.C. § 6166.  
2 (Id.)

3 During 2006, Michael Paulson, acting as trustee of the Living Trust distributed an  
4 additional \$1,250,000 from the Living Trust. (Id. ¶ 43.) In March 2009, the Probate Court  
5 removed Michael Paulson as trustee for misconduct. (Id. ¶ 44.) Vikki Paulson and James  
6 Paulson were appointed as co-trustees. (Id. ¶ 44.) In August 2011, Vikki Paulson and  
7 James Paulson reported that the Living Trust had assets worth \$13,738,727. (Id. ¶ 44.)

8 On May 7, 2010, in response to one or more missed installment payments, the IRS  
9 issued the Estate a notice of final determination stating that the extension of time for  
10 payment under § 6166 no longer applied to the Estate's tax obligations. (Id. ¶ 46.) On  
11 June 10, 2010, the Probate Court removed James Paulson as a co-trustee for breach of  
12 court orders. (Id.) Accordingly, Vikki remained as the sole trustee of the Living Trust.  
13 (Id.)

14 On August 5, 2010, the Estate filed a petition in United States Tax Court  
15 challenging the IRS's proposed termination of the Estate's § 6166 installment payment  
16 election. (Id. ¶ 47.) On February 28, 2011, Crystal Christensen ("Ms. Christensen") was  
17 appointed as co-trustee of the Living Trust. (Id. ¶ 48.) At that time, the Living Trust held  
18 assets worth approximately \$8,802,034. (Id.) In May 2011, the Tax Court entered a  
19 stipulated decision sustaining the IRS's decision to terminate the Estate's installment  
20 payment election. (Id. ¶ 49.)

21 Between June 28, 2011, and July 7, 2011, the United States recorded notices of  
22 federal tax liens against the Estate in the property records of San Diego and Los Angeles  
23 Counties. (Id. ¶ 50.) On April 16, 2012, Vikki Paulson and Ms. Christensen, as successor  
24 co-trustees of the Living Trust filed a petition for review of the Estate's collection due  
25 process rights with the United States Tax Court. (Id. ¶ 51.) The Tax Court dismissed the  
26 petition on April 18, 2013, for lack of jurisdiction because Michael Paulson, who was the  
27 court-appointed executor at the time the petition was filed, had not signed the petition.  
28 (Id.)

1 From approximately 2007 through 2013, several disputes arose between Michael  
2 Paulson, Vikki Paulson, Ms. Christensen, James Paulson, and other interested parties in  
3 the Living Trust. (Id. ¶ 52.) The parties eventually settled the disputes, and on June 3,  
4 2013, the California Superior Court formalized the settlement through issuance of an  
5 order and a general release (“2013 Settlement”). (Id.)

6 As part of the 2013 Settlement, Michael Paulson obtained the Living Trust’s  
7 ownership interest in Supersonic Aerospace International, LLC, as well as its ownership  
8 interests in the Gold River Hotel & Casino Corporation and the Gold River Operation  
9 Corporation. (Id. ¶ 53.) Additionally, as part of the 2013 Settlement, Michael Paulson  
10 resigned as executor of the Estate, effective January 15, 2013. (Id. ¶ 54.)

11 As of July 10, 2015, the Estate had an unpaid estate tax liability of \$10,261,217.  
12 (Id. ¶ 55.) On September 16, 2016, the United States filed a complaint seeking judgment  
13 against the Estate for the unpaid estate taxes, penalties, and interest. (Doc. No. 1.) The  
14 United States seeks judgment against the defendants in either their representative or  
15 individual capacities, or both, for unpaid estate taxes. Several defendants named in the  
16 complaint have filed motions to dismiss. (See Doc. Nos. 13, 19, 36.) Michael Paulson  
17 filed an answer to the complaint, in addition to cross-claims for indemnification against  
18 Ms. Pickens, Vikki Paulson, and Ms. Christensen. (Doc. No. 38.) Ms. Pickens, Vikki  
19 Paulson, and Ms. Christensen then moved to dismiss the cross-claims. (Doc. Nos. 40, 44.)  
20 Following briefing on all pending motions, the Court determined the motions were  
21 suitable for determination on the papers.

## 22 **II. LEGAL STANDARD**

23 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff’s  
24 complaint. See *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “A court may  
25 dismiss a complaint as a matter of law for (1) lack of cognizable legal theory or (2)  
26 insufficient facts under a cognizable legal claim.” *SmileCare Dental Grp. v. Delta Dental*  
27 *Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (internal citation omitted). However, a  
28 complaint will survive a motion to dismiss if it contains “enough facts to state a claim to

1 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
2 In making this determination, a court reviews the contents of the complaint, accepting all  
3 factual allegations as true, and drawing all reasonable inferences in favor of the  
4 nonmoving party. *Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497  
5 F.3d 972, 975 (9th Cir. 2007).

6 Notwithstanding this deference, the reviewing court need not accept legal  
7 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a  
8 court to assume “the [plaintiff] can prove facts that [he or she] has not alleged.”  
9 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S.  
10 519, 526 (1983). However, “[w]hen there are well-pleaded factual allegations, a court  
11 should assume their veracity and then determine whether they plausibly give rise to an  
12 entitlement to relief.” *Iqbal*, 556 U.S. at 679. A “motion to dismiss is not the appropriate  
13 procedural vehicle to test the merits of Plaintiff’s complaint.” *Walker v. City of Fresno*,  
14 No. 1:09cv1667, 2010 WL 3341861, at \*4 (E.D. Cal. Aug. 23, 2010) (citing *Navarro*,  
15 250 F.3d at 732).

### 16 **III. DISCUSSION**

#### 17 **A. Judicial Notice**

18 As an initial matter, the parties moving to dismiss the complaint attach numerous  
19 documents to their respective motions. (See, e.g., Doc. Nos. 15-2–15-14; 19-2–19-7.)  
20 Only Vikki Paulson and Ms. Christensen formally request the Court take judicial notice  
21 of certain documents attached, (Doc. No. 19-2), although Ms. Pickens similarly argues  
22 consideration of the attached documents is appropriate. (See Doc. No. 25, n.3.)

23 In opposition, Plaintiff argues that consideration of documents extrinsic to the  
24 complaint is improper on a motion to dismiss, and converts a motion to dismiss into one  
25 for summary judgment. (Doc. Nos. 21 at 11–13; 27 at 15.) Plaintiff requests the Court  
26 permit a reasonable time for discovery prior to ruling on the present motion if the Court is  
27 inclined to consider the attached materials. (Id.) Plaintiff also contests whether the  
28 documents attached to Ms. Pickens, Vikki Paulson, and Ms. Christensen’s motions are

1 the most recent versions of, and amendments to, relevant Trust documents. (Doc. No. 21  
2 at 11) (arguing Ms. Pickens failed to attach amendments to the Living Trust that are  
3 “critical to her status as trustee of the Marital Trust”).

4 Federal Rule of Evidence 201 allows a court to take judicial notice of facts that can  
5 be “accurately and readily determined from sources whose accuracy cannot reasonably be  
6 questioned.” Fed. R. Evid. 201(b)(2); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442  
7 F.3d 741, 746 n.6 (9th Cir. 2006); *Hohu v. Hatch*, 940 F. Supp. 2d 1161, 1166 (N.D. Cal.  
8 2013). The court may take judicial notice of documents that are matters of public record.  
9 See *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (noting a district  
10 court may take “judicial notice of matters of public record outside the pleadings” when  
11 determining whether a complaint fails to state a claim); *Grant v. Aurora Loan Servs.*,  
12 *Inc.*, 736 F. Supp. 2d 1257, 1264 (C.D. Cal. 2010) (“Matters of public record are  
13 generally proper subjects of judicial notice.”).

14 Judicial notice of the Probate Court documents is appropriate, as documents  
15 publicly available and not subject to reasonable dispute. See *In re Tower Park Properties,*  
16 *LLC*, 803 F.3d 450, 452 (9th Cir. 2015) (taking judicial notice of documents filed in  
17 probate court proceedings); *Gillette v. Wilson Sonsini Grp. Welfare Ben. Plan, No.*  
18 *3:14CV00222*, 2014 WL 5511337, at \*2 (D. Or. Oct. 31, 2014) (taking judicial notice of  
19 various documents filed in probate court); *In re Tower Park Properties, LLC, No. CV 13-*  
20 *1518*, 2013 WL 3791462, at \*1 (C.D. Cal. July 18, 2013) (same). Accordingly, the Court  
21 will take judicial notice of the Probate Court documents attached to the present motions  
22 to dismiss.<sup>2</sup> However, for the reasons detailed below, the Court declines to interpret or  
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24 <sup>2</sup> Documents properly the subject of judicial notice include Appendix C, the Estate’s Tax  
25 Return dated October 19, 2001, (Doc. No. 15-4); Appendix E-1, the Grant Deed to the  
26 Del Mar Residence, (Doc. No. 15-6); Appendix E-2, the Grant Deed to the Rancho Sante  
27 Fe Residence; (Doc. No. 15-7); Appendix G, the IRS Tax Audit dated October 13, 2004,  
28 (Doc. No. 15-9); Appendix H, the tax court decision reflecting the stipulated additional  
tax liability in excess of six million dollars, (Doc. No. 15-10); Appendix I, the  
memorandum decision removing Michael Paulson as trustee, (Doc. No. 15-11); and



1 otherwise determine the applicability or validity of those documents in the context of a  
2 motion to dismiss. The remaining formal or informal requests for judicial notice are  
3 therefore **DENIED**.<sup>3</sup>

4 B. Ms. Pickens' Motion to Dismiss

5 Ms. Pickens asserts several grounds in support of dismissal, the majority  
6 of which are directed at the merits of Plaintiff's claims. "When there are well-pleaded  
7 factual allegations, a court should assume their veracity and then determine whether they  
8 plausibly give rise to an entitlement to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962,  
9 970 (9th Cir. 2009) (citing *Iqbal*, 555 U.S. at 664.) Additionally, all reasonable inferences  
10 must be drawn in favor of the nonmoving party. *Western Reserve Oil & Gas Co. v. New*,  
11 765 F.2d 1428, 1430 (9th Cir. 1985); *Usher v. City of Los Angeles*, 828 F.2d 556, 561  
12 (9th Cir. 1987). As such, "[t]he issue is not whether the plaintiff ultimately will prevail,  
13 but whether he is entitled to offer evidence to support his claim." *Usher*, 828 F.2d at 561  
14 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). Accordingly, challenges to whether  
15 a party may ultimately be held liable or whether Plaintiff will succeed in establishing  
16 liability under various theories of recovery are not appropriate at this stage in the  
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19 Appendix L, the tax court order reflecting Michael's role as court appointed executor,  
20 (Doc. No. 15-14).

21 <sup>3</sup> These documents include Appendix A, Amendment to and Complete Restatement of  
22 Declaration of Trust, Allen E. Paulson Living Trust, (Doc. No. 15-2); Appendix B,  
23 Amendment to Declaration of Trust, Allen E. Paulson Living Trust, (Doc. No. 15-3);  
24 Appendix D, the 2003 Settlement and Release to the extent the parties dispute the  
25 application and meaning of provisions contained therein, (Doc. No. 15-5); Appendix F,  
26 Amended and Restated Declaration of Trust of the Madeleine Anne Paulson Separate  
27 Property Trust, (Doc. No. 15-8); Appendix J, the 2013 Settlement Agreement to the  
28 extent the parties dispute the application and meaning of the provisions contained therein,  
(Doc. No. 15-12); and Appendix K, the stipulation and release reflecting the 2013  
Settlement, (Doc. No. 15-13). Vikki Paulson and Crystal Christensen's request for  
judicial notice of the reporter's transcript of March 21, 2011, proceeding is similarly  
**DENIED**. The transcript supports the contention that Plaintiff delayed in seeking a tax  
lien against Defendants, but is otherwise irrelevant to resolution of the pending motions.

1 proceedings. Accordingly, what Defendants cite to as “uncontested facts” throughout  
2 their moving papers are not dispositive of Plaintiff’s claims. Cf., Fed. R. Civ. P. 12(b)(6)  
3 with Fed. R. Civ. P. 56. As noted below, the Court will refrain from adjudicating the  
4 merits of Plaintiff’s claims in resolving the pending motions.<sup>4</sup>

5 As a further preliminary matter, Plaintiff’s opposition to Ms. Pickens’ motion  
6 narrows the issues raised in the motion to dismiss. For example, Ms. Pickens argues that  
7 the Government’s claim as to tax assessed in November 2001 is time barred by the  
8 applicable ten-year statute of limitations. (Doc. No. 15 at 22–25.) In opposition, Plaintiff  
9 argues that it is not seeking to collect any of the estate tax initially assessed in November  
10 2001. (Doc. No. 21 at 31) (noting the complaint “makes no claim against any Defendant  
11 for th[e] original tax assessed on November 26, 2001”). Instead, Plaintiff acknowledges  
12 that the original tax and related interest were paid through previous partial payments  
13 made by the Estate and the Living Trust. (Id.) Plaintiff’s present claim stems from the  
14 additional estate tax assessed on January 30, 2006, in the amount of \$6,669,477. (Id.)  
15 Since the Plaintiff’s action is not based on the estate tax assessed in 2001, Ms. Pickens’  
16 request to dismiss Plaintiff’s claims as untimely is **DENIED**.

17 Ms. Pickens also argues she is not personally liable for the estate tax under 31  
18 U.S.C. § 3713. (Doc. No. 15-1 at 14.) In response, Plaintiff indicates it is not presently  
19 pursuing a claim against Ms. Pickens for personal liability under § 3713. Accordingly, to  
20 the extent the complaint can be read as stating a claim against Ms. Pickens under § 3713,  
21 that claim is **DISMISSED**.

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26 <sup>4</sup> Plaintiff concedes the scope of liability established is likely to decrease following  
27 discovery and resolution of factual disputes. (See Doc. No. 27 at 16) (noting the “United  
28 States does not care which of the Defendants is deemed to be the executor or  
administrator so long as someone appears in this case as a representative of the Estate of  
Allen E. Paulson so that a judgment can be sought and entered against the Estate”).

1 Having addressed the correct scope of review in resolving the present motions, as  
2 well as those issues rendered moot through the parties' briefing, the Court now turns to  
3 Ms. Pickens' remaining arguments advanced in support of dismissal.

4 **1. 26 U.S.C. § 2002**

5 Ms. Pickens argues that she is not liable for estate tax under 26 U.S.C. § 2002 in  
6 her capacity as a "statutory executor" of Mr. Paulson's Estate because she was never  
7 appointed, and never served as the executor of the Estate. (Doc. No. 15-1 at 13.) As  
8 support for this position, Ms. Pickens notes that Michael Paulson was the court-appointed  
9 executor and the 2013 decision of the tax court rejected Vikki Paulson and Ms.  
10 Christensen's claim that they were "executors" under § 2203. (Id.)

11 In opposition, Plaintiff argues that Michael Paulson was the court-appointed  
12 executor, but resigned from that position as of January 15, 2013. (Doc. No. 21 at 13); (see  
13 also Doc. No. Doc. No. 1 ¶¶ 53, 54) (noting that as part of the 2013 Settlement Michael  
14 Paulson resigned as executor of the estate, effective January 15, 2013).

15 26 U.S.C. § 2001 imposes tax liability on the executor of an estate in that  
16 individual's representative capacity. Section 2203 defines the term "executor" as "the  
17 executor or administrator of the decedent, or, if there is no executor or administrator  
18 appointed, qualified, and acting within the United States, then any person in actual or  
19 constructive possession of any property of the decedent."

20 Here, the complaint alleges that although Michael Paulson was once the court-  
21 appointed executor of the Estate, he resigned in 2013, with his resignation effective  
22 January 15, 2013. (Doc. No. 1 ¶¶ 53, 54.) Additionally, the complaint alleges that Ms.  
23 Pickens currently possesses property that belonged to Mr. Paulson. (Id. ¶¶ 87–92.) Ms.  
24 Pickens' reliance on the 2013 tax court order noting that Michael Paulson was the court-  
25 appointed executor was based on Michael Paulson's status as the executor at the time the  
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1 petition was filed.<sup>5</sup> Following Michael Paulson’s resignation, there was no court-  
2 appointed executor, thus making “any person in actual or constructive possession of any  
3 property of the decedent” the “executor” for the purposes of imposing representative  
4 liability under § 2002.

5 In reply, Ms. Pickens argues the position advanced by Plaintiff would render every  
6 beneficiary of an estate the “statutory executor” when the appointed, qualified, and acting  
7 executor resigns. (Doc. No. 25 at 5.) Ms. Pickens also contends that Michael Paulson  
8 never resigned and that Plaintiff fails to allege that Michael Paulson resigned. (Id.)

9 Considering the allegations in the complaint, including that Michael Paulson  
10 resigned as the court-appointed executor, and that Ms. Pickens received property from  
11 Mr. Paulson’s estate, Plaintiff has sufficiently stated a claim under § 2002. Ms. Pickens’  
12 assertion that Michael Paulson never actually resigned as the court-appointed executor is  
13 contrary to the allegations in the complaint, which are entitled to a presumption of truth at  
14 this stage in the proceedings.<sup>6</sup> Accordingly, Ms. Pickens’ request that the § 2002 claim  
15 against her in her representative capacity as statutory executor be dismissed is **DENIED**.

16 **2. 26 U.S.C. § 6324(a)(2)**

17 Ms. Pickens next argues that she is not liable for estate tax under 26 U.S.C. §  
18 6324(a)(2) as a trustee of the Marital Trust. (Doc. No. 15-1 at 15.) Ms. Pickens contends  
19 that it is undisputed that although she was nominated to serve as co-trustee of the Marital  
20 Trust, she never accepted that nomination. (Id.) Additionally, because Ms. Pickens chose  
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22 <sup>5</sup> Vikki Paulson and Ms. Christensen filed the petition on April 16, 2012, nearly eight  
23 months before Michael Paulson’s January 2013, effective date of resignation. (See Doc.  
24 No. 1 ¶¶ 51, 54.)

25 <sup>6</sup> Presumably, Ms. Pickens takes issue with Michael Paulson’s alleged failure to provide  
26 an accounting as required when a court-appointed executor resigns. (See Doc. No. 44-1 at  
27 18) (Vikki Paulson and Ms. Christensen’s motion to dismiss arguing Michael Paulson’s  
28 resignation was never completed because he failed to provide an accounting as required  
by California Probate Code section 10952). However, such challenges are more  
appropriately considered following the opportunity for discovery, and at a time when the  
Court is not required to assume the truth of Plaintiff’s factual allegations.

1 to bypass the Marital Trust altogether, the Marital Trust was never funded. (Id.)

2 Accordingly, Ms. Pickens asserts that Plaintiff has failed to state a claim against her in  
3 her capacity as the trustee of the Marital Trust. (Id.)

4 Plaintiff argues the complaint alleges that the Living Trust “names” Ms. Pickens as  
5 a co-trustee of the Marital Trust and that the version of the Living Trust attached to Ms.  
6 Pickens’ motion supports this contention. (Doc. No. 21 at 17–18.) Plaintiff also argues  
7 that the Living Trust does not require Ms. Pickens to formally accept her nomination as  
8 co-trustee of the Marital Trust. (Id.)

9 Although Plaintiff and Ms. Pickens dispute the terms of the Living Trust as related  
10 to the creation and designation of trustee(s) for the Marital Trust, as alleged in the  
11 complaint, the Marital Trust was never funded. Accordingly, it is unclear how Plaintiff  
12 can plausibly articulate a claim for relief against Ms. Pickens based on a role that she  
13 never assumed by virtue of the Marital Trust never being funded.<sup>7</sup> Thus, Plaintiff has  
14 failed to state a claim against Ms. Pickens based on her role as the trustee of the Marital  
15 Trust. Accordingly, that claim is **DISMISSED**.

16 Next, Ms. Pickens asserts that she is not liable under § 6324(a)(2) as a beneficiary  
17 of the Living Trust. (Doc. No. 15-1 at 16.) Ms. Pickens contends that governing law is  
18 well-settled, and trust beneficiaries are not liable for estate taxes under § 6324(a)(2).  
19 (Doc. No. 15 at 16.) In support of this position, Ms. Pickens cites cases finding that trust  
20 beneficiaries are not “transferees” or “beneficiaries” as those terms are defined by §  
21 6324(a)(2). (Id.) Plaintiff argues § 6324 encompasses beneficiaries of trusts that are  
22 included in the gross estate, and disagrees with the line of authority cited by Ms. Pickens.  
23 (Doc. No. 21 at 22–26.)

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26 <sup>7</sup> The Court notes that the parties disagree about what was required of Ms. Pickens to  
27 become the trustee of the Marital Trust. However, because that Trust was never funded,  
28 the Court need not interpret her obligations under the Living Trust with respect to her  
role as trustee of the Marital Trust.

1           26 U.S.C. § 6324(a)(2) imputes personal liability for federal estate taxes to certain  
2 individuals who receive property from an estate at the time of a decedent’s death. Under  
3 § 6324(a)(2), “if the estate tax. . . is not paid when due, then the spouse, transferee,  
4 trustee. . . person in possession of the property by reason of the exercise, nonexercise, or  
5 release of a power of appointment, or beneficiary, who receives, or has on the date of the  
6 decedent’s death, property included in the gross estate” is personally liable for the tax “to  
7 the extent of the value, at the time of the decedent’s death, of such property[.]” To  
8 establish personal liability under § 6324, a plaintiff must demonstrate that the estate tax  
9 was not paid when due, and the person against whom liability is asserted is one described  
10 in the section. See *Garrett v. C.I.R.*, T.C. Memo. 1994-70, 1994 WL 52379 at \*12;  
11 *Groetzing v. Commissioner*, 69 T.C. 309, 316 (1977). Definitions for the enumerated  
12 categories are not provided in the statute, so federal courts have developed a body of  
13 federal law for analyzing liability under § 6324(a)(2). *U.S. v. Johnson*, Case  
14 2:11cv00087, 2013 WL 3925078, at \*5 (D. Utah, July 29, 2013) (quoting *Schuster v.*  
15 *C.I.R.*, 312 F.2d 311, 315 (9th Cir. 1962)).

16           The complaint alleges that Ms. Pickens is either trustee or beneficiary. A trustee  
17 is understood to be the trustee of a trust, within the common use of the term. *Johnson*,  
18 2013 WL 3925087 at \*5 (defining trustee as the person who received the estate’s  
19 property and held legal title, control, or possession of such property). The term  
20 “beneficiary” within the meaning of § 6324, however, has been more narrowly construed  
21 to include only the beneficiary of a life insurance policy. See *id.* at \*8 (citing *Garrett v.*  
22 *C.I.R.*, T.C., 1994 WL 52379 at \*12–14 (examining the legislative history and case law  
23 of § 6324(a)(2) to conclude “beneficiary” identifies the beneficiary of a life insurance  
24 policy). Plaintiff disputes this definition, providing its own analysis of the statutory text  
25 (Doc. No. 21 at 23–26); (Doc. No. 27 at 31–32.)

26           Despite the arguments advanced by Plaintiff, the Court finds *Johnson* persuasive  
27 and declines to depart from the reasoning articulated therein. Although Plaintiff argues  
28 that *Johnson* is incorrectly decided and contrary to Congressional intent, there is little

1 authority supporting Plaintiff's position. (See Doc. No. 21 at 24) (citing *United States v.*  
2 *Bevan*, Case No 07cv1944, 2008 WL 5179299 (E.D. Cal. Dec. 10, 2008)). However, the  
3 position advanced by Ms. Pickens is consistent with other court's interpretations of a  
4 "beneficiary" under § 6324. See *Baptiste v. C.I.R.*, 63 T.C.M. (CCH) 2649 (T.C. 1992),  
5 *aff'd*, 29 F.3d 1533 (11th Cir. 1994); *Schuster v. Commissioner*, 312 F.2d 311 (9th Cir.  
6 1962).

7 The complaint does not allege that Ms. Pickens is a beneficiary of a life insurance  
8 policy, or any insurance policy, at the time of Mr. Paulson's death. The bare assertion of  
9 Ms. Pickens is a "beneficiary" is insufficient in light of authority defining who constitutes  
10 a beneficiary under § 6324. For these reasons, the arguments advanced by Plaintiff  
11 regarding statutory construction, numerical symmetry within the statute and  
12 congressional intent are unpersuasive. (See Doc. No. 21 at 24–26.) Accordingly, Plaintiff  
13 has failed to allege facts sufficient to state a claim against Ms. Pickens as a beneficiary  
14 under § 6324.

15 The same is true with respect to any allegation that Ms. Pickens is liable as a  
16 trustee under § 6324. (*Id.* at 24–25 n.8) (arguing that if Ms. Pickens is not a beneficiary  
17 of the trust, "the trustee will always be personally liable under Section 6324(a)(2) for the  
18 date of death value of the trust assets held on the date of the decedent's death or received  
19 later by such trustee"). To the extent Plaintiff argues Ms. Pickens is a trustee of the  
20 Living Trust, the complaint lacks plausible factual allegation to support such a theory.  
21 (See Doc. No. 15-1 at 16 n.13.) Accordingly, Plaintiff's claims for liability against Ms.  
22 Pickens based on her role as a beneficiary or trustee of the Living Trust are  
23 **DISMISSED.**

24 Finally, with respect to alleged liability under § 6324(a)(2), Ms. Pickens argues  
25 that she is not liable as the trustee of the Madeleine Anne Paulson Separate Property  
26 Trust. (Doc. No. 15-1 at 20.) Ms. Pickens contends property from the Estate was  
27 transferred to her in her capacity as a creditor or beneficiary of the Madeleine Anne  
28 Paulson Separate Property Trust. (*Id.*) Thereafter, Ms. Pickens relies on the same

1 arguments set forth above predicated on her contention that she is neither a “transferee”  
2 nor a “beneficiary” as those terms are defined by § 6324. (Id.)

3 Plaintiff argues that Ms. Pickens received assets that were transferred from the  
4 Living Trust to the Madeleine Anne Paulson Separate Property Trust. (Doc. No. 21 at  
5 20.) As the trustee of that Trust, Plaintiff contends Ms. Pickens is liable in her individual  
6 capacity for the value of the transferred assets. (Id.)

7 The complaint clearly alleges that Ms. Pickens was the trustee of the Madeleine  
8 Anne Paulson Separate Property Trust, and that she received assets from the Living  
9 Trust. (See Doc. No. 1 ¶¶ 33–35.) This is sufficient to state a claim against Ms. Pickens  
10 based on her alleged role as the trustee of the Madeleine Anne Paulson Separate Property  
11 Trust. As such, Ms. Pickens request for dismissal of the § 6324(a)(2) claim based on her  
12 receipt of assets from the Living Trust as the trustee of her separate property trust is  
13 **DENIED.**

### 14 **3. Indemnification**

15 Ms. Pickens also moves to dismiss Plaintiff’s claim for indemnification, arguing  
16 that she is not liable to the Estate for any estate taxes based on the indemnification  
17 provision of the 2003 Settlement. (Doc. No. 15-1 at 21.) Additionally, Ms. Pickens  
18 argues that Plaintiff is not a third-party beneficiary to the 2003 Settlement and Plaintiff’s  
19 claim for breach of that agreement necessarily fails. (Id. at 21–22.) Plaintiff argues Ms.  
20 Pickens’ interpretation of the 2003 Settlement is self-serving and insufficient to conclude,  
21 as a matter of law, that Plaintiff is not a third party beneficiary. (Doc. No. 21 at 27.) As  
22 support for its position, Plaintiff cites portions of the 2003 Settlement, under which Ms.  
23 Pickens is responsible for payment of estate taxes stemming from the distribution of  
24 assets to her from the Living Trust. (Id. at 28.)

25 As alleged in the complaint, and assumed as true for the purposes of this motion,  
26 Plaintiff has stated a claim for indemnification against Ms. Pickens, either directly under  
27 the 2003 Settlement or through a third-party beneficiary theory. The Court will not  
28 engage in the contractual interpretation and determination of the merits as urged by the



1 parties. See Gardner v. RSM & A Foreclosure Servs., LLC, No. 12CV2666, 2013 WL  
2 1129392, at \*3 (E.D. Cal. Mar. 18, 2013) (“It is inappropriate at the motion to dismiss  
3 stage for this Court to interpret the parties’ contract and evaluate the viability of  
4 Plaintiff’s claims based on the terms of the contract.”). For these reasons, Ms. Pickens’  
5 motion to dismiss the claims for indemnification in the complaint is **DENIED**.

#### 6 **4. Interest**

7 Lastly, Ms. Pickens argues that she is not liable for prejudgment and post-  
8 judgment interest under 26 U.S.C. §§ 6901, 6601, and 6621. (Doc. No. 15-1 at 22.) This  
9 argument is predicated on Ms. Pickens’ contention that she has no liability for estate tax  
10 under 26 U.S.C. § 6324(a)(2). (Id.) Because the Court has not yet adjudicated whether  
11 Ms. Pickens is liable for the estate tax, it would be premature to dismiss Plaintiff’s claims  
12 for interest. Accordingly, Ms. Pickens’ request to dismiss the claims for prejudgment and  
13 post-judgment interest is **DENIED**.

14 For the reasons detailed above, Ms. Pickens’ motion to dismiss is **GRANTED** as  
15 to any purported claim under § 3713, as well as any claim under § 6234(a)(2) stemming  
16 from Ms. Pickens’ role as trustee of the Marital Trust, as beneficiary of the Living Trust,  
17 or as transferee of the Living Trust. As to all other asserted grounds, the motion to  
18 dismiss is **DENIED**.

#### 19 **C. Vikki Paulson and Ms. Christensen’s Motion to Dismiss**

20 Vikki Paulson and Ms. Christensen assert several of the same arguments as Ms.  
21 Pickens in support of dismissal. (See generally Doc. No. 19-1.) Plaintiff similarly  
22 opposes dismissal. (Doc. No. 27.) To the extent the parties’ arguments with respect to this  
23 motion mirror those presented above, they are incorporated by reference as if fully  
24 restated herein.

#### 25 **1. 26 U.S.C. § 2002**

26 Vikki Paulson and Ms. Christensen argue they were never “statutory executors” of  
27 the Estate and cannot be held liable under § 2002. (See Doc. No. 19-1 at 10–11.) Having  
28 already concluded the complaint sufficiently alleges Michael Paulson resigned as

1 executor of the Estate, and for the reasons set forth more full above, this argument is  
2 rejected. Accordingly, Vikki Paulson and Ms. Christensen’s request to dismiss the § 2002  
3 claim is **DENIED**.

4 **2. 28 U.S.C. § 6324(a)(2)**

5 Vikki Paulson and Ms. Christensen argue that they are not liable for estate taxes as  
6 either transferees or trustees because they did not have or receive any property of the  
7 Estate on the date of Mr. Paulson’s death. (Doc. No. 19-1 at 13.) Vikki Paulson and Ms.  
8 Christensen similarly rely on Johnson, but focus on the requirement that a transferee or  
9 trustee be in possession of the Estate property or receive Estate property “on the date of  
10 the decedent’s death.” (Id. at 14.) Plaintiff argues the clear language of § 6324 does not  
11 require that a transferee receive property on the date of the decedent’s death under the  
12 statute. (Doc. No. 27 at 24–25.)

13 The Court similarly finds Johnson and the reasoning set forth therein persuasive  
14 with respect to whether Plaintiff must allege that the transferee received property  
15 immediately upon the date of decedent’s death. See Johnson, 2013 WL 3925078, at \*5  
16 (“Because section 6324(a)(2) may be interpreted in multiple ways, it is ambiguous and  
17 must be interpreted in favor of the Heirs. The court concludes that in order for a person to  
18 be a transferee under section 6324(a)(2), the person must have or receive property from  
19 the gross estate immediately upon the date of decedent’s death rather than at some point  
20 thereafter.”); see also Miller v. Standard Nut Margarine Co., 284 U.S. 498, 508 (1932)  
21 (noting that ambiguities as to the meaning of a tax statute are interpreted in favor of the  
22 taxpayer). The complaint does not allege that Vikki Paulson or Ms. Christensen were in  
23 possession of Estate property or received such property immediately after Ms. Paulson’s  
24 death. For these reasons, Plaintiff has failed to state a claim against Vikki Paulson or Ms.  
25 Christensen as trustees or transferees under § 6234(a)(2). Accordingly, those claims are  
26 **DISMISSED**.

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1                   **3. California Probate Code § 19001**

2           Vikki Paulson and Ms. Christensen move to dismiss Plaintiff’s claim predicated on  
3 California Probate Code section 19001. (Doc. No. 19-1 at 19.) In support of dismissal,  
4 Vikki Paulson and Ms. Christensen argue that § 19001(a) does not apply to estate taxes,  
5 and therefore cannot serve as a basis for liability for unpaid estate taxes incurred after a  
6 settlor’s death. (Id. at 19–20.) Plaintiff argues that it has stated a claim because § 19001  
7 includes “expenses of administration of the estate” as well as “all other proper charges  
8 against the trust estate, including taxes.” (Doc. No. 27 at 21) (quoting Cal. Prob. C. §  
9 19001(f), (b).) Lastly, Plaintiff cites California Probate Code Section 11420, which states  
10 the priority to be assigned to debts, claims, and costs of administration to argue the estate  
11 taxes owed are entitled to the highest preference in order of payment. (Id. at 22.)

12           California Probate Code section 19001(a) states, “Upon the death of a settlor, the  
13 property of the deceased settlor . . . is subject to the claims of creditors of the deceased  
14 settlor’s probate estate and to the expenses of administration of the probate estate to the  
15 extent that the deceased settlor’s probate estate is inadequate to satisfy those claims and  
16 expenses.” The portion of statutory text relied upon by Vikki Paulson and Ms.  
17 Christensen, Section 19000(a)(2) defines a “claim” as “a demand for payment for . . .  
18 [l]iability for taxes incurred before the deceased settlor’s death, whether assessed before  
19 or after the deceased settlor’s death[.]”

20           Considering the cited statutory text and the allegations in the complaint, the Court  
21 concludes Plaintiff has adequately stated a claim under § 19001. (See Doc. No. 1 ¶¶ 7, 18,  
22 66.) Whether the estate tax constitutes an expense of administration, a debt, or a claim as  
23 encompassed by section 19001, can be appropriately determined when the Court is not  
24 bound by the allegations in the complaint. Therefore the request to dismiss the claims  
25 based on California Probate Code § 19001 is **DENIED**.

26                   **4. Third-Party Contractual Claims**

27           Vikki Paulson and Ms. Christensen lastly move to dismiss the claim that they are  
28 liable for breach of a third party contract. (Doc. No 19-1 at 20.) Vikki Paulson and Ms.

1 Christensen contend the complaint alleges that they breached an unspecified third party  
2 contract, but lacks factual allegations to support that theory of liability. (Id.)

3 Plaintiff's opposition clarifies that the third party beneficiary theory stems from  
4 Vikki Paulson and Ms. Christensen's roles as the current trustees of the Living Trust.  
5 (Doc. No. 27 at 19.) Plaintiff cites the terms of the Living Trust, which obligate the  
6 trustees to pay all estate taxes owed by the Estate as support for its position. (Id.)

7 Considering the allegations in the complaint as a whole, including the allegations  
8 that Vikki Paulson and Ms. Christensen are the current co-trustees of the Living Trust,  
9 Plaintiff has stated a claim under a third party beneficiary theory. Accordingly, the  
10 motion to dismiss is **DENIED** as to this claim.

11 D. James Paulson's Motion to Dismiss

12 Defendant James Paulson is proceeding pro se in this litigation, and has similarly  
13 moved to dismiss the complaint. (See Doc. No. 36.) James Paulson challenges the  
14 propriety of the deferred payment election pursuant to § 6166, as well as the timeliness of  
15 Plaintiff's actions to collect the estate taxes owed.<sup>8</sup> (Id.) James Paulson also argues there  
16 is no evidence that he was ever the executor of the Estate. (Id. at 7.)

17 Like the other defendants, the complaint asserts a claim against James Paulson in  
18 his representative capacity as a potential statutory executor of the Estate under 26 U.S.C.  
19 § 2203. In opposition to James Paulson's motion, Plaintiff acknowledges that it "merely  
20 seeks to obtain a judgment against the Estate by naming its executor or administrator in a  
21 representative capacity" to "reduce the estate tax liability to a judgment under 26 U.S.C.  
22 § 7402, and to extend the statute of limitations for collection of that tax under 26 U.S.C. §  
23 6502." (Doc. No. 42 at 5) Plaintiff also acknowledges that the defendant deemed to be the  
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25  
26 <sup>8</sup> Whether the § 6166 election was proper is not appropriate for consideration in the  
27 instant context as it is not a challenge to the adequacy of the factual allegations in the  
28 complaint. Additionally to the extent James Paulson's motion challenges the truth of the  
factual allegations underlying Plaintiff's complaint, those arguments are premature for  
consideration in the instant context.

1 actual executive or administrator is of little consequence, so long as someone appears in  
2 the case as a representative of the Estate. (Id. at 6.)

3 As with the other defendants, the Court finds there are sufficient facts alleged,  
4 when taken as true, to state a plausible claim for relief against James Paulson as the  
5 statutory executor of the Estate. In addition to alleging Michael Paulson resigned as the  
6 court-appointed executor, the complaint alleges James Paulson acted as a co-trustee of  
7 the Living Trust. (Doc. No. 1 ¶ 44.) These allegations are sufficient to state a claim  
8 against James Paulson as a statutory executor.

9 Plaintiff also asserts a claim against James Paulson for personal liability under §  
10 6324(a)(2), because he served as a co-trustee of the Living Trust and received assets that  
11 were included in the gross estate. (Doc. No. 1 ¶¶ 73–77); (Doc. No. 42 at 7.)<sup>9</sup> Upon  
12 review, the Court finds the claim for personal liability under § 6324(a)(2) based on James  
13 Paulson’s role as a co-trustee of the Estate is sufficiently alleged.

14 For these reasons, James Paulson’s motion to dismiss is **DENIED**.

15 E. Ms. Pickens’ Motion to Dismiss Cross-Claim

16 Defendant Michael Paulson did not move to dismiss the claims asserted in the  
17 complaint, instead filing an answer and cross-claim. (Doc. No. 38.) Michael Paulson  
18 asserts he is entitled to indemnification from Ms. Pickens based on a provision in 2003  
19 Settlement agreement. (Id. at 21.)<sup>10</sup> Ms. Pickens has moved to dismiss the cross-claim  
20 citing various sections of the 2003 Settlement, arguing that any indemnification by Ms.  
21 Pickens relates only to estate tax payable because of distributions made pursuant to the  
22 2003 Settlement. (Doc. No. 40-1 at 3.) Ms. Pickens contends that Michael Paulson’s  
23 cross-claim fails to state a claim because there has been no estate tax liability assessed  
24 because of distributions made to Ms. Pickens, as all distributions qualified for the marital  
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26 <sup>9</sup> James Paulson does not address this claim in his motion to dismiss, but Plaintiff  
27 addresses it in opposition. (See Doc. No. 42 at 10.)

28 <sup>10</sup> Additionally, Michael Paulson asserts he is entitled to indemnity as trustee of the  
Living Trust and as co-executor of the Estate. (Id.)

1 deduction. (Id. at 4.) In opposition, Michael Paulson urges the Court not to dismiss the  
2 cross-claim until liability for the estate taxes at issue has been determined.

3 The Court agrees that dismissal of Michael Paulson’s cross-claim for  
4 indemnification would be premature at this stage. Additionally, the parties rely on  
5 different provisions of the 2003 Settlement agreement as support for their respective  
6 positions regarding indemnification. For example, Ms. Pickens relies on paragraph 21 of  
7 the 2003 Settlement, while Michael Paulson suggests indemnification is appropriate  
8 under paragraph 4.<sup>11</sup> In the limited context of ruling on a motion to dismiss, the Court  
9 declines to decide which provision governs. For these reasons, Ms. Pickens’ motion to  
10 dismiss the cross-claim is **DENIED**.

11 F. Vikki Paulson and Ms. Christensen’s Motion to Dismiss Cross-Claim

12 Michael Paulson similarly asserts a cross-claim against Vikki Paulson and Ms.  
13 Christensen for indemnification stemming from the 2013 Settlement. (Doc. No. 38 at 21.)  
14 In opposition, Michael Paulson similarly requests the Court decline to dismiss the claim  
15 for indemnification until liability has been established. (Doc. No. 51 at 5.)

16 Vikki Paulson and Ms. Christensen assert several grounds for dismissal, including  
17 that they are not executors of the Estate, that Michael Paulson released any claim for  
18 indemnification as part of the 2013 Settlement, and that the portion of the Settlement  
19 relied upon by Michael Paulson omits crucial language. (Doc. No. 44 at 7.) Vikki Paulson  
20 and Ms. Christensen also filed a second request for judicial notice with their motion to  
21 dismiss the cross-claim and seek judicial notice of several documents pursuant to Rule  
22 201 or the doctrine of incorporation by reference. (Doc. No. 44-2.) The arguments in  
23 support of dismissing Michael Paulson’s claim for indemnification rely largely on  
24  
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27 <sup>11</sup> Michael Paulson alternatively argues paragraph 21 of the 2003 Settlement is  
28 ambiguous and cannot be interpreted as a matter of law to preclude his claim for  
indemnification.

1 testimony before the Probate Court regarding the 2013 Settlement and the terms of the  
2 agreement itself. (See, e.g., Doc. No. 44-1 at 9–11.)

3 For many of the same reasons articulated above, the Court declines to dismiss  
4 Michael Paulson’s claim for indemnification against Vikki Paulson and Ms. Christensen  
5 at this time. First, Michael Paulson objects to the request for judicial notice, arguing the  
6 documents are irrelevant in ruling on the motion to dismiss. (Doc. No. 51 at 6 n.4.)  
7 Michael Paulson also argues that the Probate Court transcript has been highly edited in an  
8 attempt to demonstrate that Michael Paulson knew he was releasing any claim for  
9 indemnification. (Id.) Although the Court could properly consider the transcript in its  
10 entirety, it declines to do so where the meaning and effect of 2013 Settlement agreement  
11 is disputed. As noted in opposition, “it is unclear whether any of the [Plaintiff’s] claims  
12 against Michael Paulson arise out of the 2013 Settlement Agreement.” (Id.) If liability is  
13 determined, then a claim for indemnification could possibly arise based on the facts  
14 alleged in the cross-claim. Dismissal of the claim when the underlying grounds for  
15 liability have not yet been adjudicated is premature.

16 Additionally, Vikki Paulson and Ms. Christensen rely on the argument that they  
17 are not statutory executors of the Estate in support of dismissal. As set forth above, the  
18 complaint states plausible grounds for finding they were executors of the Estate following  
19 Mr. Paulson’s resignation. With respect to resignation, Vikki Paulson and Ms.  
20 Christensen now assert Michael Paulson never completed his resignation because he did  
21 not file an accounting or deliver the Estate to a successor personal representative. (Doc.  
22 No. 44-1 at 18.) Again, factual allegations contrary to those in the complaint and that are  
23 directed at the merits of a claim are not appropriate for consideration. For these reasons,  
24 the Court declines to dismiss Michael Paulson’s cross-claim, and Vikki Paulson and Ms.  
25 Christensen’s motion is therefore **DENIED**. Because the Court will not consider the  
26 documents attached to the request for judicial notice to the extent suggested by the  
27 parties, the request for judicial notice is also **DENIED**.

28 ///

1           **IV. CONCLUSION**


2           For the reasons set forth above, the Court orders as follows:

- 3           1. Ms. Pickens' motion to dismiss the complaint, (Doc. No. 15), is **GRANTED**  
4           as to any claim under § 3713, and as to any claim based on her role as the  
5           trustee of the Marital Trust. The motion is **DENIED** on all other grounds.
- 6           2. Vikki Paulson and Ms. Christensen's motion to dismiss the complaint,  
7           (Doc. No. 19), is **GRANTED IN PART** and **DENIED IN PART**. The  
8           request for judicial notice filed in connection with the motion to dismiss the  
9           complaint, (Doc. No. 19-2), is **GRANTED IN PART** and **DENIED IN**  
10          **PART**.
- 11          3. James Paulson's motion to dismiss, (Doc. No. 36), is **DENIED**.
- 12          4. Ms. Pickens' motion to dismiss the cross-claim, (Doc. No. 40), is **DENIED**.
- 13          5. Vikki Paulson and Ms. Christensen's motion to dismiss the cross-claim,  
14          (Doc. No. 44), is **DENIED**. The request for judicial notice filed with the  
15          motion to dismiss the cross-claim, (Doc. No. 44-2), is also **DENIED**.

16           If Plaintiff may plausibly allege additional facts to cure the deficiencies noted  
17 herein, Plaintiff may file an amended complaint only as to the dismissed claims within  
18 fourteen (14) days of the date of this order. Defendants are otherwise ordered to file an  
19 answer to the complaint or cross-claim, as applicable, within fourteen (14) days of the  
20 date of this order or within fourteen (14) days of an amended complaint being filed,  
21 whichever is later.

22  
23 **IT IS SO ORDERED.**

24 Dated: September 6, 2016

  
25 Hon. Anthony J. Battaglia  
26 United States District Judge