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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 JOHN MICHAEL PAULSON, et al.,  
15 Defendants.  
16

Case No.: 18-CV-1048 AJB (NLS)

**ORDER GRANTING CO-  
TRUSTEES' MOTION TO REMAND  
THE PROBATE PETITION TO  
STATE COURT**

(Doc. No. 5)

17  
18 Presently before the Court is Vikki E. Paulson and Crystal Christensen's  
19 (collectively referred to as "Co-Trustees") motion to remand to state court. (Doc. No. 5.)  
20 As explained below, the Court **GRANTS** Co-Trustees' motion to remand the Probate  
21 Petition.

22 **BACKGROUND**

23 Vikki E. Paulson and Crystal Christensen are the current co-trustees of the Allen E.  
24 Paulson Living Trust (the "AEPLT"). The Co-Trustees filed a Probate Petition under  
25 California Probate Code Section 17200 to the probate division of the Superior Court for  
26 the State of California, County of San Diego. The Probate Petition seeks the following  
27 relief from the Probate Court: "(1) an order for final distribution instructing the Co-Trustees  
28 on how to dispose of the AEPLT's remaining assets so that all creditors' claims may be

1 addressed at once rather than in the piecemeal, sequential fashion that the Government’s  
2 approach entails; (2) an order discharging the Co-Trustees; and (3) an order terminating  
3 the insolvent AEPLT, which has failed in its essential purpose and costs more to administer  
4 than can be justified by its financial condition.” (Doc. No. 5 at 11; *see* Davidson Decl., Ex.  
5 A, ¶¶ 1–5.)

6 Previously, the United States of America instituted an action to recover unpaid estate  
7 taxes, penalties, and interest from the Estate of Allen E. Paulson in front of this Court.  
8 (Doc. No. 1, Case No. 15-CV-02057-AJB-NLS.) On May 25, 2018, the United States  
9 removed the Co-Trustees’ Probate Petition from the Superior Court of California on the  
10 basis of 28 U.S.C. § 1441 and 28 U.S.C. § 1442. (Doc. No. 1.) Co-Trustees have now filed  
11 a motion to remand the Probate Petition back to state court. (Doc. No. 5.)

## 12 **LEGAL STANDARD**

13 Federal courts are courts of limited jurisdiction, having subject matter jurisdiction  
14 only over matters authorized by the Constitution and Congress. *See Kokkonen v. Guardian*  
15 *Life Ins. Co.*, 511 U.S. 375, 377 (1994). A defendant may remove a civil action to federal  
16 court only if the district court would have original jurisdiction over the matter. 28 U.S.C.  
17 § 1441(a). “[R]emoval statutes are strictly construed against removal.” *Luther v.*  
18 *Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008). There is a  
19 “strong presumption” against removal jurisdiction, and the party seeking removal always  
20 bears the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564,  
21 566 (9th Cir. 1992). If there is any doubt as to the propriety of removal, federal jurisdiction  
22 must be rejected. *Id.* at 566–67.

## 23 **DISCUSSION**

24 First, the United States bases removal of the Probate Petition on 28 U.S.C. § 1441(a)  
25 because it presents a substantial question of federal law. (Doc. No. 1 at 4.) A state law  
26 claim is said to arise under federal law if it states a federal claim or if the federal issues are  
27 “actually disputed and substantial, which a federal forum may entertain without disturbing  
28 any congressionally approved balance of federal and state judicial responsibilities.” *Grable*

1 & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005). The  
2 determination as to whether there are substantial questions of federal law must be made  
3 “by reference to a well-pleaded complaint.” *Merrell Dow Pharms. Inc. v. Thompson*, 478  
4 U.S. 804, 808 (1986).

5 Plaintiff asserts that the Probate Petition does not assert any claim created by federal  
6 law, but rather the Probate Petition was brought under California Probate Code Section  
7 17200. (Doc. No. 5-1 at 15.) The Court agrees, and the United States does not appear to  
8 argue that any claim was created by federal law.

9 Rather the United States asserts that there is a federal question that must be resolved  
10 in order to determine the claims in the Probate Petition. (Doc. No. 7 at 6.) The United States  
11 contends that the Probate Petition “is a direct attempt to challenge (or end run) the United  
12 States’ claims against them for personal liability under 26 U.S.C. § 6324(a)(2).” (Doc. No.  
13 7 at 8.) However, the Probate Petition does not assert the same claims as the federal  
14 collection action pending in front of this Court. The Probate Petition does not raise any  
15 federal issues. The Court finds the reasoning in *White v. Connell*, No. C 17-03177 WHA,  
16 2017 WL 3535033 (N.D. Cal. Aug. 17, 2017) to be compelling. In *White*, the party argued  
17 that “the probate petition plaintiff filed in state court is ‘inextricably intertwined’ with the  
18 related RICO complaint that he subsequently filed.” *Id.* at \*3. The court held that the fact  
19 that the party “raises federal issues in a separate action does not change the analysis.” *Id.*  
20 The same is true here. The United States has raised federal issues in the federal collection  
21 action, however, that does not simply mean that federal issues are thus raised in the Probate  
22 Petition.

23 The United States next contends that the probate exception would further not apply  
24 because of the priority rights of the United States under 31 U.S.C. § 3713. (Doc. No. 7 at  
25 8–10.) However, the Probate Petition seeks an order “[d]irecting Petitioners how to satisfy  
26 all competing claims on the Trust’s remaining assets with an order for final distribution.”  
27 (Doc. No. 1-1 at 34.) California Probate Code § 11420(a) preserves the priority of the  
28 United States pursuant to federal law or state law. Accordingly, the United States’ priority

1 does not raise a substantial federal issue.

2       Next, the United States argues that removal was proper under 28 U.S.C. § 1442.  
3 (Doc. No. 7 at 10.) 28 U.S.C. § 1442 applies when a civil action is against or directed at  
4 the United States. “An entity seeking removal under § 1442(a)(1) bears the burden of  
5 showing ‘that (a) it is a ‘person’ within the meaning of the statute; (b) there is a casual  
6 nexus between its actions, taken pursuant to a federal officer’s directions, and plaintiff’s  
7 claims; and (c) it can assert a ‘colorable federal defense.’” *Goncalves v. Rady Children’s*  
8 *Hospital San Diego*, 865 F.3d 1237, 1244 (9th Cir. 2017). Here, the Government does not  
9 address this standard in either its notice of removal or its opposition to the Co-Trustees’  
10 motion to remand. Rather, the Government simply alleges that because the United States  
11 is a party to the action removal is proper. The Government does not address what “colorable  
12 federal defense” it can assert. The Court agrees with the Co-Trustees that the Probate  
13 Petition does not seek a judgment against the United States, but rather would compel acts  
14 by the Co-Trustees. Therefore, the United States would not assert a colorable federal  
15 defense in the probate action. Accordingly, the Court does not find that removal is  
16 warranted by 28 U.S.C. § 1442.

17       Finally, the probate exception applies in this matter. A federal court may not exercise  
18 jurisdiction that would require it to “interfere with the probate proceedings or assume  
19 general jurisdiction of the probate or control of the property in the custody of the state  
20 court.” *Markham v. Allen*, 326 U.S. 490, 494 (1946). “[T]he probate exception reserves to  
21 state probate courts the probate or annulment of a will and the administration of a  
22 decedent’s estate; it also precludes federal courts from endeavoring to dispose of the  
23 property that is in the custody of a state probate court. But it does not bar federal courts  
24 from adjudicating matters outside those confines and otherwise within federal  
25 jurisdiction.” *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006). The United States  
26 contends that the AEPLT is not part of a dependent or supervised probate estate and  
27 therefore, the probate exception does not prevent removal. (Doc. No. 7 at 3.) However,  
28 “[t]he probate court has general power and duty to supervise the administration of trusts.”


1 *Schwartz v. Labow*, 164 Cal. App. 4th 417, 427 (Cal. Ct. App. 2008). Further, the United  
2 States provides no case law for the assertion that the exception is limited to the  
3 administration of a “probate estate.” And most importantly, the Probate Court has  
4 previously been supervising the AEPLT by *sua sponte* removing Michael Paulson as  
5 trustee and the imposition of periodic trustee reports. (Doc. No. 1-1 at 17–18, 23.)  
6 Accordingly, the Court finds that the probate exception applies and removal to this Court  
7 is not warranted.

8 **CONCLUSION**

9 Based on the foregoing, the Court **GRANTS** Co-Trustees’ motion to remand the  
10 Probate Petition, only. The Court retains jurisdiction over the pending federal collection  
11 action. Defendants are ordered to serve all notice, pleadings and other matters filed in the  
12 Probate Action upon Plaintiff United States of America.

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14 **IT IS SO ORDERED.**

15 Dated: March 29, 2019

16   
17 Hon. Anthony J. Battaglia  
United States District Judge