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12 Attorneys for Defendants/Third-Party Plaintiffs Maryland Square
 13 Shopping Center, LLC, the Herman Kishner Trust d/b/a Maryland
 Square Shopping Center, Irwin Kishner, Jerry Engel, and Bank of
 14 America, N.A., as Trustees for The Herman Kishner Trust

15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 PETER J. VOGGENTHALER; et. al.
 Plaintiffs,

18 vs.

19 MARYLAND SQUARE, LLC; et. al.
 Defendants.

Case No.: 2:08-cv-01618-RCJ-GWF

**KISHNER DEFENDANTS' MOTION TO
 SUBSTITUTE PARTY**

(Fed. R. Civ. P., Rule 25 (c))

20 AND RELATED CROSS AND THIRD PARTY
 21 CLAIMS

22 STATE OF NEVADA, DEPT. OF
 CONSERVATION AND NATURAL
 23 RESOURCES, et. al.

Plaintiff,

24 vs.

25 MARYLAND SQUARE SHOPPING CENTER,
 LLC, et. al.

Defendants.

CONSOLIDATED WITH:

Case No.: 3:09-cv-231-RCJ-GWF

26 AND RELATED THIRD PARTY CLAIMS
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1 Defendants and Third Party Plaintiffs MARYLAND SQUARE SHOPPING
2 CENTER, LLC, THE HERMAN KISHNER TRUST d/b/a Maryland Square Shopping Center,
3 IRWIN KISHNER, as Trustee for the Herman Kishner Trust; JERRY ENGEL, as Trustee for
4 the Herman Kishner Trust; BANK OF AMERICA, N.A., as Trustee for the Herman Kishner
5 Trust; (generally “the Kishner Defendants”) by their counsel, Thomas F. Vandenburg of Dongell
6 Lawrence Finney LLP, hereby move the Court for an Order substituting as defendant, herein,
7 Premier Trust, Inc., a Nevada corporation, (“Premier Trust”) as a Trustee for Defendant Herman
8 Kishner Trust, upon the earlier resignation of Defendant Bank of America, N.A., and
9 confirmation of Premier Trust as Trustee for Defendant Herman Kishner Trust.

10 This Motion is brought upon Fed. R. Civ. P., Rule 25 (c), the following
11 Memorandum of Points and Authorities, the attached Declaration of Kishner Defendants’
12 counsel, Thomas F. Vandenburg, the exhibit attached hereto and on what other evidence the
13 Court may adduce at any hearing upon the Request.

14
15 Dated the 2nd day of July, 2014.

DONGELL LAWRENCE FINNEY LLP

17 By: /s/Thomas F. Vandenburg
18 Thomas F. Vandenburg
19 *Attorneys for Defendants/Third-Party Plaintiffs*
20 *Maryland Square Shopping Center, LLC, the*
21 *Herman Kishner Trust d/b/a Maryland Square*
22 *Shopping Center, Irwin Kishner, Jerry Engel, and*
23 *Bank of America, N.A., as Trustees for The Herman*
24 *Kishner Trust*

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MEMORANDUM OF POINTS AND AUTHORITIES

On or about July 12, 2013, the Probate Court of the Eighth Judicial District Court, Clark County, Nevada (“Probate Court”), entered an Order, allowing Defendant Bank of America, N.A., as Trustee for Defendant Herman Kishner Trust, to withdraw as Trustee for Defendant Herman Kishner Trust.

In the same proceeding before the Probate Court, Premier Trust, Inc., a Nevada corporation, was accepted and appointed by the Probate Court as a successor Trustee and was installed as a Trustee for Defendant Herman Kishner Trust.

A copy of the July 12, 2013 Order of the Probate Court is attached hereto and incorporated herein as Exhibit “A.”

Fed. R. Civ. Proc., Rule 25 (c) provides,

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.

As a corporate fiduciary and Trustee, by Order of the Probate Court, Premier Trust steps into the same position as Trustee for Defendant Herman Kishner Trust, as was its predecessor, Bank of America, N.A.

Wherefore, Kishner Defendants hereby move this Court for an Order to allow the substitution of these parties, namely, Premier Trust as Trustee for Defendant Herman Kishner Trust, and therefore a defendant, herein, instead of its predecessor, Defendant Bank of America, N.A.

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1 Further, Kishner Defendants seek the Court's Order directed to the Clerk of the
2 Court that the caption and all of the records of this case be changed to show that Premier Trust is
3 now substituted for its predecessor, Bank of America, N.A. as Trustee for Defendant Herman
4 Kishner Trust, and as defendant, herein.

5
6 Dated the 2nd day of July, 2014.

DONGELL LAWRENCE FINNEY LLP

7
8 By: /s/Thomas F. Vandenburg
9 Thomas F. Vandenburg
10 *Attorneys for Defendants/Third-Party Plaintiffs*
11 *Maryland Square Shopping Center, LLC, the*
12 *Herman Kishner Trust d/b/a Maryland Square*
13 *Shopping Center, Irwin Kishner, Jerry Engel, and*
14 *Bank of America, N.A., as Trustees for The Herman*
15 *Kishner Trust*

16 **ORDER**

17 IT IS SO ORDERED.

18 DATED: July 28, 2014

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20 GEORGE FOLEY, JR.
21 United States Magistrate Judge
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DECLARATION OF THOMAS F. VANDENBURG

I, Thomas F. Vandenburg, declare and state as follows:

1. I am an attorney licensed to practice law before all courts in the State of California, and *pro hac vice* before the State Courts in Nevada, and am a partner in the law firm of Dongell Lawrence Finney LLP (“DLF”), and attorney of record for the parties we have all come to refer to as “the Kishner Defendants” in this action. I make this Declaration of my own personal knowledge, and could and would testify to the facts stated herein in a Court of law if called upon to do so.

2. I prepared the foregoing Motion to substitute parties. It is true and correct to my personal knowledge, and where applicable, I assert I believe it to be true.

3. I maintain and supervise the day-to-day maintenance of my offices’ records, such that I am the Custodian of Records for my offices. I can attest that the attached Order, attached as exhibit “A”, is a true and correct copy of the Order as entered by the Court, having been provided the copy of the Order by co-counsel for Kishner Defendants, Steven J. Parsons of The Law Offices of Steven J. Parsons.

I declare under penalty of perjury that the foregoing is true and correct.

Dated the 2nd day of July, 2014.

By: /s/Thomas F. Vandenburg
Thomas F. Vandenburg

EXHIBIT A


CLERK OF THE COURT

1 **ORDER**
2 MARK A. SOLOMON, ESQ.
3 Nevada State Bar No. 00418
4 E-mail: msolomon@sdfnvlaw.com
5 JORDANNA L. EVANS, ESQ.
6 Nevada State Bar No. 11716
7 E-mail: jevans@sdfnvlaw.com
8 SOLOMON DWIGGINS & FREER, LTD.
9 Cheyenne West Professional Centre
10 9060 West Cheyenne Avenue
11 Las Vegas, Nevada 89129
12 Phone: (702) 853-5483
13 Facsimile: (702) 853-5485

14 *Attorneys for Petitioners / Co-Trustees,*
15 *Irwin Kishner, Jerry Engel and*
16 *Bank of America, N.A.*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 In the Matter of the
14 Private Trust of:

15 HERMAN KISHNER,
16 Deceased.

Case No.: P-74-004284-E
Dept. No.: 26

Hearing Date: July 12, 2013
Hearing Time: 9:30 a.m.

18 **ORDER GRANTING PETITION FOR APPROVAL OF THE 2006 TO 2013**
19 **ACCOUNTINGS AND REPORTS OF CO-TRUSTEES FOR THE HERMAN KISHNER**
20 **TRUST B-1; PETITION FOR PAYMENT OF TRUST RELATED EXPENSES, TRUSTEE**
21 **FEES, AND ATTORNEYS' FEES AND COSTS; AND PETITION FOR APPROVAL OF**
22 **DISCHARGE OF BANK OF AMERICA, N.A. AS CO-TRUSTEE AND CONFIRMING THE**
23 **APPOINTMENT OF PREMIER TRUST OF NEVADA, INC., AS SUCCESSOR CO-**
24 **TRUSTEE**

25 The verified Petition for Approval of the 2006 to 2013 Accountings and Reports of Co-Trustees
26 for the Herman Kishner Trust B-1; Petition for Payment of Trust Related Expenses, Trustee Fees, and
27 Attorneys' Fees and Costs; and Petition for Approval of Discharge of Bank of America, N.A. as Co-
28 Trustee and Confirming the Appointment of Premier Trust of Nevada, Inc., as Successor Co-Trustee
("Petition") filed by IRWIN KISHNER, JERRY ENGEL and BANK OF AMERICA, N.A.,

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1 ("Petitioners" and/or "Co-Trustees"), of the HERMAN KISHNER TRUST, dated October 17, 1969
2 ("KISHNER TRUST" and/or "Trust"), having come on for regular hearing on the 12th day of July,
3 2013, before the undersigned Court; the law firm SOLOMON DWIGGINS & FREER, LTD., having
4 appeared as counsel for the Petitioners, the Court having examined the evidence in this matter finds
5 that due and legal notice of the time and place of hearing of said Petition has been given in the manner
6 required by law; and good cause appearing therefore:

7 **IT IS HEREBY ORDERED** that the Petition is GRANTED in its entirety;

8 **IT IS HEREBY FURTHER ORDERED** that the seven annual accountings and reports, filed
9 by Petitioners, for the collective periods of January 1, 2006 through December 31, 2012 are approved
10 by this Court;

11 **IT IS HEREBY FURTHER ORDERED** that the first quarterly accounting and report, filed by
12 Petitioners, for the period from beginning on January 1, 2013 and ending on March 31, 2013 are
13 approved by this Court;

14 **IT IS HEREBY FURTHER ORDERED** that all actions taken by Petitioners in connection
15 with the administration of the Trust and all sub-trusts created thereunder, as set forth in the Petition,
16 are confirmed, ratified and approved by this Court;

17 **IT IS HEREBY FURTHER ORDERED** that payment of fees and expenses totaling
18 \$792,160.00, to Co-Trustee, IRWIN KISHNER, incurred in performing the duties of a co-trustee,
19 during the accounting periods commencing on January 1, 2006 through March 31, 2013 are approved
20 and confirmed by this Court;

21 **IT IS HEREBY FURTHER ORDERED** that payment of fees and expenses totaling
22 \$792,160.00, to Co-Trustee, JERRY ENGEL, incurred in performing the duties of a co-trustee, during
23 the accounting periods commencing on January 1, 2006 through March 31, 2013 are approved and
24 confirmed by this Court;

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1 **IT IS HEREBY FURTHER ORDERED** that payment of fees and expenses totaling
2 \$680,279.53, to Co-Trustee, BANK OF AMERICA, N.A., incurred in performing the duties of a co-
3 trustee, during the accounting periods commencing on January 1, 2006 through March 31, 2013 are
4 approved and confirmed by this Court;

5 **IT IS HEREBY FURTHER ORDERED** that payment of fees and costs totaling \$8,210.00, to
6 the accountant, Bob McKnight, CPA, incurred in the preparation and filing of income tax returns for
7 the KISHNER TRUST, during the accounting periods commencing on January 1, 2006 and ending on
8 or around April 30, 2012 are approved and confirmed by this Court;

9 **IT IS HEREBY FURTHER ORDERED** that payment of attorney's fees and costs totaling
10 \$92,456.07, to Marquis Aurbach & Coffing, incurred performing the legal duties of an attorney for
11 the Trust, during the accounting periods commencing on January 1, 2006 and ending on or around
12 February 17, 2012 are approved and confirmed by this Court;

13 **IT IS HEREBY FURTHER ORDERED** that payment of attorney's fees and costs totaling
14 \$279,307.93, to Solomon Dwiggin & Freer, Ltd., incurred performing the legal duties of an attorney
15 for the Trust, during the accounting periods commencing on or around February 15, 2008 through
16 March 31, 2013 are approved and confirmed by this Court;

17 **IT IS HEREBY FURTHER ORDERED** that the Co-Trustees are authorized to pay any and
18 all reasonable administrative expenses from the Trust as they become due and payable;

19 **IT IS HEREBY FURTHER ORDERED** that the resignation of BANK OF AMERICA, N.A.
20 as Co-Trust of the Trust is accepted by this Court;

21 **IT IS HEREBY FURTHER ORDERED** that BANK OF AMERICA, N.A. is wholly and
22 absolutely discharged and released from any and all duties and responsibilities as a Co-Trustee of the
23 Trust, as well as any liability for any acts or omissions as Co-Trustee of the Trust to the Trust or its
24 beneficiaries;
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1 IT IS HEREBY FURTHER ORDERED that IRWIN KISHNER and JERRY ENGEL are
2 released and discharged from any liability for acts or omissions as Co-Trustees of the Trust to the
3 Trust or its beneficiaries for the period commencing on January 1, 2006 through March 31, 2013;


4 IT IS HEREBY FURTHER ORDERED that the Co-Trustees' nomination for PREMIER
5 TRUST OF NEVADA, INC. to serve as the independent corporate trustee in the place and stead of
6 BANK OF AMERICA, N.A. is approved by this Court; and

7 IT IS HEREBY FURTHER ORDERED that PREMIER TRUST OF NEVADA, INC., is
8 confirmed by this Court as a Successor Co-Trustee of the Trust, to serve in the place and stead of
9 BANK OF AMERICA, N.A. along with IRWIN KISHNER and JERRY ENGEL.
10

11 DATED this 12th day of July, 2013.

12 
13 _____
14 DISTRICT COURT JUDGE *See*

15 Respectfully Submitted by:
16 SOLOMON DWIGGINS & FREER, LTD.

17 
18 By: _____
19 MARK A. SOLOMON, ESQ.
20 Nevada State Bar No. 00418
21 JORDANNA L. EVANS, ESQ.
22 Nevada Bar No. 11716
23 9060 W. Cheyenne Avenue
24 Las Vegas, Nevada 89129

25 *Attorneys for Attorneys for Petitioners / Co-Trustees,*
26 *Irwin Kishner, Jerry Engel and Bank of America, N.A.*
27
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1 **PROOF OF SERVICE**

2 IT IS HEREBY CERTIFIED THAT:

3 I, the undersigned, am a citizen of the United States of America, am over the age
4 of 18 and not a party to the within action. My business address is 707 Wilshire Boulevard, 45th
5 Floor, Los Angeles, CA 90017-3609. On July 2, 2014, I served a copy of the foregoing
6 document described as follows:

7 **KISHNER DEFENDANTS' MOTION TO SUBSTITUTE PARTY**

8 **(Fed. R. Civ. P., Rule 25 (c))**

9
10 served:

11 [X] Electronically in accordance with United States District Court of the District
12 of Nevada Electronic Filing Procedures, Section IV Service, B. Electronic
13 Service.

14 I declare that I am employed in the office of an attorney who has been admitted
15 *pro hac vice* for the purpose of this case only to the bar of this court at whose direction the
16 service was made.

17 Under penalty of perjury, I declare the aforesaid to be true and correct.

18 Executed on July 2, 2014.

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21 By: /s/ Sheryl R. Douglas
22 Sheryl R. Douglas
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