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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JOHN GABOR and KAY GABOR,

8 Plaintiffs,

9 v.

10 REBECCA HARRIS and KRISTIN
11 HUMPHREY,

12 Defendants.

NO. 2:18-CV-0312-TOR

ORDER GRANTING PLAINTIFFS'
RENEWED MOTION FOR PARTIAL
SUMMARY JUDGMENT

13 BEFORE THE COURT is Plaintiff's Renewed Motion for Partial Summary
14 Judgment (ECF No. 201). This matter was submitted for consideration without
15 oral argument. The Court has reviewed the record and files herein, the completed
16 briefing, and is fully informed. For the reasons discussed below, Plaintiff's
17 Renewed Motion for Partial Summary Judgment (ECF No. 201) is granted.

18 **BACKGROUND**

19 This case involves 1.3 million dollars Plaintiffs John and Kay Gabor
20 invested in an invalid trust.

ORDER GRANTING PLAINTIFFS' RENEWED MOTION FOR PARTIAL
SUMMARY JUDGMENT ~ 1

1 On October 3, 2019, the Court granted in part Plaintiff’s motion for partial
2 summary judgment, finding Defendants liable on the conversion and unjust
3 enrichment claims and invoked its equitable, remedial powers to return Plaintiffs’
4 property. ECF No. 170 at 6-7. The Court based the findings in part on
5 Defendants’ concession that the assets belonged to Plaintiffs, and Defendants
6 asserted their willingness to transfer the assets to Plaintiffs. *Id.*; ECF No. 170 at 7,
7 ¶ 13. The Court created a constructive trust in favor of Plaintiffs to include all
8 assets traceable to the funds from the Blue Mountain Trust.¹ ECF No. 170 at 9.
9 The parties were directed to provide an accounting of the actual deficiency once
10 the assets traceable to the Blue Mountain Trust were transferred and properly
11 disposed of, including any payments already made to Plaintiffs. *Id.* at 8.

12 The extensive factual background is set forth in the Court’s previous orders.
13 ECF Nos. 127, 170. The following facts are not disputed, except where noted, and
14 address the facts relevant to Plaintiffs’ alleged deficiency.²

17 ¹ Although the “Blue Mountain Trust” is not a valid trust, the Court will refer
18 to it by its name.

19 ² The Court strikes Defendants’ evidence regarding settlement/negotiation
20 discussions as inadmissible and irrelevant. Fed. R. Evid. 408.

1 Prior to August 2, 2012, Plaintiffs received \$205,000 from Ms. Deshler as
2 memorialized in her August 2, 2012 letter. ECF No. 206 at 10-11, ¶ 15. On
3 August 3, 2012, Plaintiffs received a check for \$10,000, reflecting a partial
4 repayment on the amount owed of \$1,323,626.79 to the Blue Mountain Trust. ECF
5 No. 201-1 at 2, ¶ 1.

6 Following Ms. Deshler's death in September 2012, Ms. Harris states that
7 "[i]n December 2012, Kay Gabor called me and told me to stop sending the
8 \$4,000.00 checks that I had been sending her pursuant to Deshler's instructions."
9 ECF No. 170 at 8, ¶ 16; ECF No. 206 at 11, ¶ 16.

10 Between March 2016 and June 2019, Defendants withdrew \$208,651.96
11 from the Home Sanctuary Trust, which was funded by the Blue Mountain Trust, to
12 pay for legal fees arising out of Plaintiffs' lawsuit. ECF No. 201-1 at 2, 4 ¶¶ 3, 9.

13 Following the Court's October 3, 2019 order, Defendants transferred four
14 properties to Plaintiffs that were purchased with funds traceable to the Blue
15 Mountain Trust. ECF No. 201-1 at 3, ¶ 4. Plaintiffs sold these properties and
16 netted \$1,034,004.58 from the sales. *Id.* In addition to these sales, Plaintiffs
17 recovered \$108,582.89 that was loaned to a third-party using Blue Mountain Trust
18 funds. ECF No. 201-1 at 3, ¶ 5. Plaintiffs also received \$21,376.45 in cashier's
19 checks from Defendants. *Id.* In all, Plaintiffs recovered \$1,173,963.92 of the

1 \$1,323,626.79 that was owed to the Blue Mountain Trust as of August 2, 2012.

2 ECF No. 201-1 at 3, ¶ 6.

3 DISCUSSION

4 A. Summary Judgment Standard

5 The Court may grant summary judgment in favor of a moving party who
6 demonstrates “that there is no genuine dispute as to any material fact and that the
7 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling
8 on a motion for summary judgment, the court must only consider admissible
9 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
10 party moving for summary judgment bears the initial burden of showing the
11 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
12 317, 323 (1986). The burden then shifts to the non-moving party to identify
13 specific facts showing there is a genuine issue of material fact. *See Anderson v.*
14 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
15 of evidence in support of the plaintiff’s position will be insufficient; there must be
16 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

17 For purposes of summary judgment, a fact is “material” if it might affect the
18 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
19 “genuine” only where the evidence is such that a reasonable jury could find in
20 favor of the non-moving party. *Id.* The Court views the facts, and all rational

1 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
2 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
3 “against a party who fails to make a showing sufficient to establish the existence of
4 an element essential to that party’s case, and on which that party will bear the
5 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

6 **B. Disputed Deficiency**

7 Plaintiffs contend there is a \$149,662.87 deficiency they are entitled to
8 recover. ECF 201 at 12- 13. Defendants assert there is no deficiency. ECF No.
9 202 at 7-10.

10 Plaintiffs’ first motion for partial summary judgment sought the return of
11 \$1,323,626.79, the amount Ms. Deshler admitted she owed to the Blue Mountain
12 Trust in August 2012. ECF No. 201 at 13. The Court granted Plaintiffs’ motion in
13 part, and created a constructive trust in favor of Plaintiffs to include all assets
14 traceable to the funds from the Blue Mountain Trust. ECF No. 170 at 9. Since
15 then, Plaintiffs recouped most, but not all, of the amount sought. First, Plaintiffs
16 recouped \$1,034,004.58 from the sale of the properties purchased with funds
17 traceable to the Blue Mountain Trust. ECF No. 201-1 at 3, ¶ 4. Second, Plaintiffs
18 recovered \$108,582.89 that was loaned to a third-party from the Trust. ECF No.
19 201-1 at 3, ¶ 5. Third, Plaintiffs received \$21,376.45 in cashier’s checks from
20 Defendants. *Id.* Fourth, Plaintiffs received \$10,000 from Ms. Deshler on August

1 3, 2012. ECF No. 201-1 at 2, ¶ 1. In all, Plaintiffs have recovered \$1,173,963.92
2 of the \$1,323,626.79 owed. ECF No. 201-1 at 3, ¶ 6. Defendants do not dispute
3 these amounts.

4 However, Defendants assert there is no remaining deficiency because
5 Plaintiffs received \$205,000 from Ms. Deshler and that an unknown amount of
6 monthly checks in the amount of \$4,000 were made to Plaintiffs. ECF No. 202 at
7 7-10. While Defendants assert the \$205,000 amount from Ms. Deshler should be
8 included in the Court's estimate of the current deficiency, it is undisputed that the
9 \$205,000 was paid to the original sum owed of \$1,578,626.79. ECF No. 135-10 at
10 2. The remaining amount of \$1,323,626.79 was owed after the \$205,000 payment
11 was returned. *Id.* Thus, the \$205,000 does not count towards the remaining
12 deficiency.

13 Additionally, Defendants assert the deficiency does not account for an
14 unknown amount of alleged \$4,000 payments made to Plaintiffs. ECF No. 170 at 8
15 (citing ECF No. 138 at 4, ¶ 11). The only evidence cited is the declaration of
16 Rebecca Harris stating “[i]n December 2012, Kay Gabor called me and told me to
17 stop sending the \$4,000.00 checks that I had been sending her pursuant to
18 Deshler’s instructions.” ECF No. 140 at 3, ¶ 5; *see also* ECF 135-10 at 4 (August
19 2012 letter suggesting a plan to pay \$4,000 per month). Defendants offer no
20 evidence that these alleged checks were issued outside of Harris’s own declaration,

1 including any evidence regarding how many checks were sent, the actual amount
2 of any checks, nor whether any checks were cashed. ECF No. 206 at 11, ¶ 11.
3 Defendants fails to create a genuine issue of material fact as to the remaining
4 amount owed.

5 Therefore, the Court finds there remains a deficiency in the amount of
6 \$149,662.87.

7 **C. Constructive Trust**

8 Plaintiffs move for summary judgment on the grounds that they are entitled
9 to the deficiency for traceable legal fees and costs, elder abuse, and as a matter of
10 equity. *See* ECF No. 201. Defendants oppose all of these grounds to recoup the
11 deficiency. *See* ECF No. 202.

12 Here, the Court already granted summary judgment in favor of Plaintiffs on
13 the conversion and unjust enrichment claims, and invoked equitable, remedial
14 powers to return Plaintiffs' property by creating a constructive trust. ECF No. 170
15 at 6-7, 9 (citing Restatement (First) of Restitution § 160 (1937); Constructive
16 Trust, Litigating Business and Commercial Tort Cases § 7:16). Sitting in equity,
17 the Court "may fashion broad remedies to do substantial justice to the parties and
18 put an end to litigation." *Hough v. Stockbridge*, 150 Wash. 2d 234, 236 (2003)
19 (internal citation and quotation marks omitted). A deficiency judgment will make
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1 Plaintiffs whole as it is the remaining amount that was taken and kept from
2 Plaintiffs by Ms. Deshler and Defendants as of 2012.

3 Plaintiffs alternatively seek to recoup the remaining deficiency on the
4 grounds that the amount is traceable to the misuse of legal fees defending this
5 action. ECF No. 201 at 16-18. Defendants assert that they were entitled to use
6 trust assets to defend the legal action. ECF No. 202 at 10-13.

7 It is undisputed that Defendants withdrew \$208,651.96 from the Home
8 Sanctuary Trust, which was funded by the Blue Mountain Trust, to use as legal
9 fees associated with Plaintiffs' action. ECF No. 201-1 at 2, ¶ 3. Plaintiffs request
10 that Defendants be ordered to pay the full legal fees, or at least up to the amount of
11 the deficiency. ECF No. 201 at 18. Defendants assert they were entitled to use
12 trust assets to defend any lawsuits against them in their capacities as trustees and/or
13 personally for actions taken on behalf of the trusts. ECF No. 202 at 11. Generally,
14 trusts bear the costs of administration of the trust, including expenses of necessary
15 litigation. *Allard v. Pac. Nat'l Bank*, 99 Wash. 2d 394, 408 (1983).³ However,

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18 ³ The parties do not engage in a choice of law analysis but recognize that
19 Washington and California law are the same. ECF No. 202 at 11; ECF No. 205 at
20 8-9. The Court applies the law of this forum where there is no dispute the trusts

1 where litigation is necessitated by the inexcusable conduct of the fiduciary, the
2 fiduciary individually must pay those expenses. *Id.*

3 The Court finds the legal fees are directly traceable to the Blue Mountain
4 Trust and that Defendants were not entitled to draw the funds on the grounds that
5 the present litigation is necessitated by their inexcusable conduct where the Court
6 already found them liable for conversion and unjust enrichment. The Court notes
7 that attorney fees are in excess of the remaining deficiency but Defendants are
8 nonetheless independently liable to pay those expenses individually. *Allard*, 99
9 Wash. 2d at 408.

10 Therefore, as a matter of equity, the Court orders Defendants to pay the
11 deficiency of \$149,662.87. Based on this finding, the Court declines to address
12 Plaintiffs' other bases to recover the deficiency.

13 As a final note, in their opposition, Defendants ask the Court to dismiss "all
14 remaining claims against Harris and Humphrey" on the grounds that Plaintiffs have
15 been made whole as a result of the transfer of trust assets. ECF No. 202 at 19.

16 While the Court finds to the contrary, Plaintiffs moved only for partial summary
17 judgment and there remains numerous claims against Defendants that make

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19 were formed and are domiciled in Washington, provide Washington law governs,
20 and the trustees are residents of Washington. RCW 11.98.005(1)(A).

1 dismissal of all claims unwarranted even where Plaintiff is made whole from the
2 deficiency. *See* ECF No. 99.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 4 1. Plaintiff's Renewed Motion for Partial Summary Judgment (ECF No.
5 201) is **GRANTED**.
- 6 2. Defendants, Rebecca Harris and Kristin Humphrey, jointly and severally,
7 are **ORDERED** to pay the deficiency in the amount of \$149,662.87 to
8 Plaintiffs, John Gabor and Kay Gabor.

9 The District Court Executive is directed to enter this Order and furnish
10 copies to counsel.

11 DATED December 3, 2021.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge