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**ENDORSED FILED**  
**SAN MATEO COUNTY**

MAR 22 2016

Clerk of the Superior Court  
By S. Peyrot  
DEPUTY CLERK

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF SAN MATEO**

11  
12 **MARIE HATCH,**  
13  
14 Plaintiff,  
15  
16 **v.**  
17 **DAVID KANTZ, an individual, and**  
**DOES 1 - 20, inclusive,**  
18  
19 Defendants.

Case No.: CIV537546

**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT OF**

**MOTION FOR ORDER**  
**TO APPOINT DECEDENT'S**  
**SUCCESSOR IN INTEREST TO**  
**CONTINUE ACTION**

Date: April 19, 2016  
Time: 9:00 a.m.  
Judge: Hon. John L. Grandsaert  
Department: 11  
Courtroom: 2D  
Complaint Filed: February 26, 2016

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 3, 2016, Plaintiff Marie Hatch (“Marie” or “Decedent”) died of heart failure at  
4 the age of 97, as a consequence of enduring several months of debilitating physical and emotional  
5 distress after being notified just before the Christmas holidays that she would be evicted from her  
6 home of 66 years, despite having an agreement from the original landlord that she could live in  
7 the home for her lifetime.

8 On February 26, 2016, Marie filed the underlying action alleging breach of oral  
9 agreement, intentional infliction of emotional distress, and elder abuse against the alleged owner  
10 of the home David Kantz (“David”) and Does 1-20 (collectively, “Defendants”).

11 Marie was promised she could remain for her lifetime in the home located at 625  
12 California Drive in Burlingame, California, by the original owner Vivian Kroeze (“Vivian”) in  
13 exchange for providing care and companionship to Vivian after her husband passed away. After  
14 Vivian died, the promised life estate was honored by her daughter Beatrice Kroeze Matthews  
15 (“Beatrice”), and after Beatrice died, the promise was honored by Vivian’s granddaughter Pamela  
16 Matthews Kantz. After Pamela was tragically killed in 2006, her estranged husband David  
17 collected rent from Plaintiff for ten years. David acknowledged knowing about Vivian’s  
18 promised life estate to Marie, but now claims the house must be sold under the terms of a trust.

19 At the time of her death, Marie had been divorced for decades and had only one son. By  
20 this motion, Decedent’s only son, Gary Hatch, seeks appointment as the successor in interest to  
21 Decedent Marie Hatch, to allow the underlying action to continue.

22 **II. FACTUAL BACKGROUND**

23 Decedent’s complaint arises from the unlawful intention to evict her from the only place  
24 she has called home for over 60 years, along with her 85 year old roommate, Georgia Rothrock  
25 (“Georgia”), who has lived with Marie as a trusted companion for 32 years.

26 Marie had lived on the Peninsula all of her adult life. In the 1940s, Marie moved to  
27 Linden Avenue in Burlingame and had a job at a Burlingame bakery. She became good friends  
28 with Vivian Kroeze who lived in Burlingame with her husband, Robert, and daughter Beatrice.

1 When Robert, Vivian's husband, died in January 1949, Vivian was lonely and needed help so she  
2 invited Marie, her husband, and her young son to move into a home she owned at 625 California  
3 Drive in Burlingame which was closer to Vivian's house. Marie gave up the home in which she  
4 had been living to provide companionship and to help Vivian with her life as she was having  
5 difficulties after the death of her husband. For the next thirty (30) years, Marie cooked, helped  
6 out as needed, and provided companionship to Vivian. The two considered each other family.  
7 As consideration and reward, Vivian promised and agreed that Marie could live in the house for  
8 the rest of her life. There was no need to write down the promise as the two women trusted each  
9 other completely. Vivian repeated her promise to her family, neighbors and many friends.

10 Vivian's contract and promise was important to Marie because she wanted to make sure  
11 that she had a stable and long-term place to live. In the 1950s, Marie had a full-time job and,  
12 although money was difficult, she supported herself. Marie often watched Pamela, Beatrice's  
13 daughter, either at her house or at Beatrice's house, which was near both Vivian and Marie's  
14 houses. Marie considered Beatrice and Pamela family. Beatrice often said that "Marie is a  
15 blessing" for Vivian.

16 When Vivian died in in July of 1980, the house at 625 California Drive, Burlingame,  
17 which Marie called home, was transferred to Beatrice and her husband John as joint tenants  
18 (John died in 2001 and the property became Beatrice's sole property). Beatrice confirmed the  
19 promise of her mother that Marie could live in her home for life. For the next 25 years, until  
20 Beatrice died in May of 2005, Beatrice kept the promise to Marie. Beatrice repeated this  
21 promise to neighbors and friends.

22 In August of 2005, the property was transferred, by deed, to Beatrice's daughter Pamela.  
23 Pamela reaffirmed her grandmother Vivian's agreement that Marie could live in her home until  
24 she died. Tragically, at age 55, on September 2, 2006, Pamela was murdered by a friend who is  
25 now serving time in prison. Pamela had been separated from her husband, David, and in the  
26 process of finalizing their divorce. Although the property remains in Pamela's name, David  
27 collected the rent from Marie for over ten years. Each month, Marie faithfully sent the required  
28 rent to David by mail.

1 In December 2015, right before Christmas, Marie learned that Defendants intended to  
2 evict her from her house. She was distraught and turned to a friend and neighbor to contact  
3 Defendants to try to work out an agreement to preserve Marie's ability to remain in the house as  
4 Vivian agreed and promised. Defendants' attorney refused to consider letting Marie stay.  
5 Instead, on February 11, 2016, Defendants' Attorney Michael Liberty served Marie and Georgia  
6 with a Sixty Day Notice to Quit, demanding that they move out of the house, despite the fact that  
7 Marie's life estate was honored by three generations of women and heard by family, neighbors  
8 and others, and was a valid contract. Indeed, David **admitted and confirmed** that he knew of  
9 Vivian's promise to Marie in the *San Francisco Chronicle* of February 21, 2016, entitled  
10 "Burlingame woman, 97, being evicted after 66 years."

11 The threat in December of 2015 of having to move out of the home where she was  
12 promised she could live for the rest of her life caused Marie extreme worry, anxiety and stress  
13 and exacerbated her existing physical infirmities. David's actions would be traumatic for any  
14 person. But for Marie, who was 97 years old and suffered from agoraphobia and a host of  
15 medical issues, including cancer, the efforts and threats to remove her from her home of over 60  
16 years caused her enormous harm. In fact, after being served with the 60 Day Notice to Quit by  
17 David's attorney, Marie had an attack of severe heart palpitations and had to be rushed to the  
18 Emergency Room, where she was treated and monitored for six hours. Her roommate Georgia  
19 has suffered similar harm.

20 Moreover, the Sixty Day Notice to Quit stated that David or his agents would enter  
21 Marie's home on March 3, 2016, to conduct an inspection and appraisal. As the date loomed,  
22 Marie became increasingly distraught, physically sick, and bed-ridden for days, until her son  
23 rushed her to the hospital, where she was admitted into the ICU and treated for days. In the early  
24 evening of March 3, 2016, Marie was discharged from the hospital and returned to the home she  
25 believed she was being evicted from. Within hours, Marie Hatch died in her bed while her son  
26 held her hands.

27 ///

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1 **III. LEGAL ARGUMENT**

2 **A. An Elder Abuse Claim Survives The Death Of The Elderly Plaintiff**

3 The Legislature has provided for the protection of elderly persons, even in death. A cause  
4 of action for or against a person is not lost by reason of the person's death. Code Civ. Proc.  
5 § 377.20, *et seq.* Specifically, under the Welfare & Institutions Code, "the death of the elder or  
6 dependent adult does not cause the court to lose jurisdiction of a claim for relief for abuse of that  
7 elder or dependent adult." Wel. & Inst. Code § 15657.3(c). As the statute makes expressly clear,  
8 the right to continue an elder abuse action "*shall pass* to an intestate heir whose interest is  
9 affected by the action" or to the "decedent's successor in interest, as defined in Section 377.11 of  
10 the Code of Civil Procedure." Wel. & Inst. Code § 15657(d)(1)(A) & (B). Indeed, upon petition  
11 or motion, the court in which the action or proceeding is pending, may make an order concerning  
12 the parties that is appropriate to ensure the proper administration of justice in the case pursuant to  
13 Section 377.33 of the Code of Civil Procedure." Wel. & Inst. Code § 15657(e); Code Civ. Proc.  
14 §§ 377.20, *et seq.*

15 Thus, even in death, Marie Hatch's claim against Defendants for elder abuse survives  
16 under Welfare & Institutions Code Sections 15600, *et seq.* (The Elder Abuse and Dependent  
17 Adult Protection Act).

18 **B. Decedent's Son Is The Proper Successor In Interest To Continue The Action**

19 A cause of action that survives the death of the person entitled to commence the action  
20 passes to the decedent's successor in interest. Code Civ. Proc. § 377.30. Procedurally, on motion  
21 after the death of a person who commenced an action, the court *shall allow* a pending action to be  
22 continued by the decedent's successor in interest. Code Civ. Proc. § 377.31. Here, Marie's only  
23 son, Gary Hatch, is her successor in interest. *See* Declaration of Gary Hatch pursuant to Code  
24 Civ. Proc. § 377.32. *See Exarhos v. Exarhos* (2008) 159 Cal.App.4<sup>th</sup> 898, 905 (decedent's  
25 successor in interest has authority to act with respect to the particular causes of action to which he  
26 succeeds, rather than the entirety of the decedent's estate); *San Diego Gas & Elec. Co. v. Superior*  
27 *Court* (2007) 146 Cal.App.4<sup>th</sup> 1545, 1553; *Parsons v. Tickner* (1995) 31 Cal.App.4<sup>th</sup> 1513, 1523-  
28 24 (daughter had standing as her late musician father's successor in interest to sue his former

1 business managers for allegedly converting his catalog of songs).

2 **IV. CONCLUSION**

3 For the foregoing reasons, Decedent Marie Hatch's son Gary Hatch respectfully requests  
4 that this Court grant this motion and issue an order appointing him successor in interest to his  
5 mother's claim for violation of The Elder Abuse and Dependent Adult Protection Act (Wel. &  
6 Inst. Code §§ 15600, *et seq.*).

7 Dated: March 22, 2016

**COTCHETT, PITRE & McCARTHY, LLP**

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By:   
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