

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

**Case No. DA-24-0469**

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IN THE MATTER OF THE POTTER  
EXEMPTION TRUST:

BETTY N. POTTER,

Petitioner and Appellant,

v.

CAITLIN WALL, AND JAMES STONE, as Co-Trustees  
of the Potter Exemption Trust, E BAR L RANCH, LLP,  
MARY POTTER VERO and WILLIAM S. POTTER,

Appellees and Respondents.

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POTTER EXEMPTION TRUST, CAITLIN WALL,  
and JAMES STONE,

Counter-Petitioners,

v.

BETTY N. POTTER, MARY POTTER VERO,  
WILLIAM S. POTTER, E BAR L RANCH, LLP, and John Does 1-10,

Counter-Respondents.

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**APPELLEES CAITLIN WALL’S AND JAMES STONE’S ANSWER BRIEF**

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On Appeal from the Fourth Judicial District Court,  
Missoula County, Cause No. DG-2021-91,  
The Honorable Shane Vannatta, Presiding

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## **STATEMENT OF THE ISSUES**

1. Whether the District Court erred in concluding that Betty Potter is not entitled to E Bar L Ranch, LLP's confidential financial information?
2. Whether the District Court abused its discretion in refusing to remove Caitlin Wall as a Trustee of the Potter Exemption Trust?
3. Whether the District Court abused its discretion in refusing to appoint a third trustee of Betty Potter's choosing?
4. Whether the District Court erred in approving the current land-use lease between the Potter Exemption Trust and the E Bar L Ranch, LLP?
5. Whether the District Court abused its discretion in refusing to award Betty Potter her attorneys' fees under Montana Code Annotated § 72-38-1004?

## **STATEMENT OF THE CASE**

This appeal arises from a dispute between Betty Potter ("Betty"), a discretionary income beneficiary of the Potter Exemption Trust ("PET"), and the PET's two (2) current co-trustees, Caitlin Wall ("Caitlin") and James Stone ("Jim") (collectively the "Trustees").

In the District Court, Betty sought an order: (1) removing Caitlin as a Trustee; and (2) compelling the Trustees to provide her with certain confidential financial information of the E Bar L Ranch, LLP (the "E Bar L"). *See generally* Dkt. 14. In response, the Trustees resisted Betty's requests and sought an order: (1)



permitting them to proceed without a third trustee; (2) approving the current land-use lease between the PET and E Bar L; (3) and a declaration setting forth Betty's rights under the PET. *See generally* Dkt. 26. E Bar L appeared, defending against Betty's request for its financial information and attempts to invalidate its land-use lease with the PET. Mary Potter Vero ("Mary") and William S. Potter ("Spike"), both beneficiaries of the PET, also appeared, objecting to Caitlin's removal as Trustee.

The Parties conducted voluminous discovery, before filing competing summary judgment motions on all claims. Dkts. 56–57, 59–60, 64–71, 72, 79–81, 84–89, 91. On April 2, 2024, the District Court held a hearing on the pending motions. Dkt. 96. Following the hearing, Betty sought supplemental briefing which the District Court ordered. Dkts. 106–109.

On or about July 11, 2024, the District Court entered its Opinion & Order, entering summary judgment in favor of the PET on all claims. Dkt. 110 ("J.A. 1").<sup>1</sup> Specifically, the District Court concluded: (1) Betty is not entitled to E Bar L's confidential financial information; (2) there are no grounds for removing Caitlin as a Trustee; (3) there is no basis for setting aside the current land-use lease

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<sup>1</sup> Pursuant to Montana Rule of Appellate Procedure 12(5), the Parties have agreed to file a Joint Appendix, referred to herein as J.A.

between the PET and E Bar L; (4) the Trustees can continue without the appointment of a third trustee of Betty's choosing; and (5) no party was entitled to its attorneys' fees. Betty now appeals.

### **STATEMENT OF FACTS<sup>2</sup>**

To understand this appeal, it is necessary to first understand the historical context from which it arises. At its core, this dispute arises out of Betty's improper attempts to obtain control over management of approximately 4,000 acres of undeveloped land near Greenough, Montana referred to herein as the "Trust land." *See* Dkt. 60 at 3, n.1.

Orrin W. Potter Jr.'s ("Bill") family first acquired the Trust land (or at least parts of it) in the 1910's. Dkt. 60 at 3, Ex. A: Dep. Potter 10:8–16, 14:6–17:15. By the mid 1920's, Bill's family had formed the E Bar L guest ranch, which has operated on the Trust land ever since, using it for various operational activities, such as grazing, pasturing, and trail riding. Dkt. 60 at 3, Ex. A: Dep. Potter: 14:6–17:15, 24:12–25:8, 66:24–68:10; Ex. B: Dep. Lindbergh 72:2–73:19. Shortly thereafter, Bill became one of E Bar L's owners, and his interest is currently held by the PET. Dkt. 60 at 3, Ex. A: Dep. Potter: 14:6–17:15, 24:12–25:8, 66:24–

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<sup>2</sup> Although this appeal arises from a summary judgment ruling, the Parties largely agreed to the facts material to their competing motions. Dkt. 81 at 3, Dkt. 84 at 2.

68:10; Ex. B: Dep. Lindbergh 72:2–73:19.

Undeniably, Bill was a pioneering conservationist. Dkt. 60 at 3, Ex. B: Dep. Lindbergh 12:3–14:7; Ex. C: Dep. Goetz 15:10–17:14; *see also* Dkt. 57 at 3. In 1984, Bill married Betty. Dkt. 57 at 2–3. In 1998, Bill encumbered the Trust land with a Conservation Easement (the “Easement”), which forbids certain activities from occurring on the Trust land and vests The Nature Conservancy (“TNC”) with enforcement power. Dkt. 60 at 3–4; Ex. D: The Easement §§ 5, 7–8.

On or about July 7, 2003, Bill formed the Potter Family Trust (the “Family Trust”), transferring the Trust land into it, along with his 26.7% partnership interest in the E Bar L. Dkt. 60 at 4, Ex. A: Dep. Potter 20:24–21:3, 23:25–26:12, Ex. E: The Family Trust, Art. 2, Schedule A: Bill’s Property §§ 1, 5 (“J.A. 3”). Although Betty is also a settlor of the Family Trust, its text clearly expresses Bill’s intent to restrict Betty’s control of the Trust land and the E Bar L, providing that, no matter what occurred, such assets would always be considered his separate property. J.A. 3 at Arts. 1–2.

The Family Trust also contains the following relevant provisions:

- Bill and Betty would serve as Trustees of the Family Trust. J.A. 3 at Arts. 1, 15.

- When either Bill or Betty died,<sup>3</sup> the Family Trust would be divided into three (3) new trusts, including the Survivor’s Trust, the Marital Trust, and the PET. J.A. 3 at Art. 6(A).
- The Survivor’s Trust, which is revocable, would hold all of the property the surviving spouse placed into the Potter Family Trust (i.e. Betty’s property). J.A. 3 at Arts. 6(C), 9(C).
- The Marital Trust, which is irrevocable, would hold the minimum amount of property necessary to eliminate any federal estate tax. J.A. 3 at Arts. 6(D), 9(C).
- The PET, which is irrevocable, would hold everything else. J.A. 3 at Arts. 6(E), 9(C).
- Upon either Bill’s or Betty’s death, the surviving spouse would only remain trustee as to the Survivor’s Trust and the Marital Trust but not the PET. J.A. 3 at Art. 15(A).
- Upon Betty’s or Bill’s death, Bill’s long-time friends, Land Lindbergh (“Land”), James J. Masar (“James”), and Henry Goetz (“Hank”), would serve as the initial trustees of the PET. J.A. 3 at Art. 15(A); *see also* Ex. B to Dkt. 60: Dep. Lindbergh 29:1–9; Ex. C to Dkt. 60: Dep. Goetz 14:18–15:7, 25:22–27:7.
- Upon Betty’s or Bill’s death, the Trustees of the PET shall disburse any net income or principal that, in the Trustees’ discretion, is necessary for the surviving spouse’s health, education, support, and maintenance. J.A. 3 at Art. 7(F).
- Upon Betty’s or Bill’s death, the Trustees shall ensure that the surviving spouse can live in the Potter House, located on E Bar L land, for as long as they want. J.A. 3 at Art. 6(G).

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<sup>3</sup> Although they could not predict the future, because Betty was much younger than Bill, the natural expectation was that Bill would die first. Appellant’s Opening Br. at 5, n.1, Jan. 17, 2025 (“Opening Br.”).

- Once Betty and Bill have both died, all property of the Marital Trust and any undisposed property of the Survivor's Trust shall flow to the PET. J.A. 3 at Art. 8(B)–(C).
- Once Betty and Bill have both died, the PET shall be administered as follows:
  - The Trustees shall manage the PET's assets “in a manner consistent with any supportive of the historic land management practices and philosophy of the Settlers.” J.A. 3 at Art. 8(F)(1).
  - The Trustees shall maintain a reserve to care for the PET's assets but may distribute any excess income or principal to Bill's children, Mary and Spike, or their heirs. J.A. 3 at Art. 8(F)(2).
  - Once Mary and Spike both die, or if they consent to it prior to their deaths, the Trustees can terminate the PET, and disperse the PET's assets to Mary, Spike, or any of their heirs. J.A. 3 at Art. 8(F)(3).
  - Alternatively, the Trustees can sell the Trust land to the Montana Forest and Experiment Station or anyone else the Trustees believe “will care for and operate the property in a manner consistent with and supportive of the land management practices and philosophy of the Settlers.” J.A. 3 at Art. 8(F)(5).
  - The proceeds from the sale of the PET's assets must be distributed as follows: 1/3 to the University of Montana; 1/3 to the TNC; and 1/3 among Bill's heirs. J.A. 3 at Art. 8(F)(5).
- The trustees of the PET are afforded the exclusive power to designate their successors. J.A. 3 at Art. 15(A).
- All decisions made by the PET's trustees must be unanimous. J.A. 3 at Art. 15(C).

- If a trustee cannot participate in “trust activities,” then the remaining trustees may act and shall petition a court for authority to proceed without the unavailable trustee. J.A. 3 at Art. 15(D).

Following the Family Trust’s creation, Bill and Betty served as trustees for several years. Among other things, Bill and Betty, acting as Trustees, took steps to preserve E Bar L’s historical use of the Trust land, by entering into a series of land-use leases with it, including a five-year lease, running from 2010 to 2015. Dkt. 60 at 4, Ex. A: Dep. Potter 206:1–207:24; Ex. B: Dep. Lindbergh 23:2–22.

Bill died in 2013. Dkt. 60 at 4, Ex. C: Dep. Goetz 25:9–11. As such, the PET was created—Land, James, and Hank became its trustees (the “Initial Trustees”)—and the Trust land, along with Bill’s 26.7% partnership interest in the E Bar L, flowed into it. Dkt. 60 at 4–5, Ex. A: Dep. Potter 32:19–33:17; Ex. B: Dep. Lindbergh 29:1–9; Ex. C: Dep. Goetz 14:18–15:7, 25:22–27:7. Betty, however, did not adjust well to the changes occasioned by the PET’s creation, including the loss of her decision-making power over the E Bar L and the Trust land. Dkt. 60 at 5, Ex. B: Dep. Lindbergh 52:20–53:21; Ex. C: Dep. Goetz 41:2–5; J.A. 3 at Art. 7(F).

Conflict frequently emerged between the Initial Trustees and Betty, especially when they went against her input on a land management decision related to the E Bar L. Dkt. 60 at 5, Ex. B: Dep. Lindbergh 55:6–58:3, 94:4–95:17, Ex. C: Dep. Goetz 32:9–33:15, 41:6–43:15. Relevant to this case, Betty accused the

Initial Trustees of disloyalty whenever they disagreed with her input, expected them to participate in her longstanding conflict with the E Bar L, and to do whatever she wanted with respect to the Trust land's management. Dkt. 60 at 5, Ex. B: Dep. Lindbergh 55:6–58:3, 94:4–95:17, Ex. C: Dep. Goetz 32:9–33:15, 41:6–43:15. Betty raised frequent and continual concerns with the Initial Trustees regarding E Bar L's use of the Trust land and complained about not being included enough in their decision-making process. Dkt. 60 at 5–6, Ex. B: Dep. Lindbergh 55:13–57:7, 61:6–62:5, 109:25–111:21; Ex. C: Dep. Goetz 44:16–46:10.

Troublingly, many of Betty's concerns reflected her desire to fuel unnecessary conflict with the E Bar L and Bill's family. For example, Betty demanded that the Initial Trustees take action to prevent Bill's granddaughter, Juanita Vero ("Juanita"), from being married on the Trust land and ensure that no inch of a personal vehicle parked on E Bar L land hang over onto the Trust land. Dkt. 60 at 5, Ex. B: Dep. Lindbergh 111:15–114:13. As Land put it, in relation to E Bar L, Betty was "constantly looking for issues to criticize" and "was always looking for trouble." Ex. B to Dkt. 60: Dep. Lindbergh 112:19–23. As Hank put it, "[t]he good Lord himself could've been a partner in E Bar L and Betty would've found something the matter[.]" Dkt. 80 at 12, Ex. 4: Dep. Goetz 141:11–13.

Betty's desire for conflict with E Bar L placed the Initial Trustees in an impossible position, as the PET is an owner of E Bar L and the E Bar L has used

the Trust land for recreational activities for over 100 years. In 2018, because of Betty's incessant demands and concerns, the Initial Trustees decided to resign and appoint successor trustees. Dkt. 60 at 6, Ex. C: Dep. Goetz 49:25–54:4. The Initial Trustees carefully considered who to appoint as their successors and were particularly concerned about securing replacements who understood the historical relationship between the Trust land and the E Bar L and who would not just “do whatever [Betty] wanted [them] to do.” Dkt. 60 at 6, Ex. C: Dep. Goetz 54:17–58:9. Selecting successor trustees was particularly difficult because, by this time, “word had gotten around about how difficult Betty could be as the [PET's] primary beneficiary.” Ex. B to Dkt. 60: Dep. Lindbergh 115:9–23.

James chose Jim as his replacement—an individual fully familiar with the historical background and with a strong and lifelong relationship with Betty. Dkt. 60 at 6, Ex. C: Dep. Goetz 66:5–67:1. Land chose George Hirschenberger (“George”) as his replacement—an expert in forest management who was fully familiar with Bill's goals for the Trust land. Dkt. 60 at 6, Ex. B: Dep. Lindbergh 83:12–25; Ex. C: Dep. Goetz 67:2–24.

Hank chose Caitlin, an E Bar L employee, as his replacement. She was the perfect candidate, having a pre-existing relationship with Betty and having worked alongside Bill on the Trust land for years. Dkt. 60, Ex. B: Dep. Lindbergh 85:2–87:2. Importantly, Caitlin was also viewed as an “objective” person able to



navigate the often-difficult balance between advancing the interests of the PET, and its beneficiaries, while also preserving and protecting the PET's partnership interest in the E Bar L. Ex. B to Dkt. 60: Dep. Lindbergh 84:9–85:10; Ex. C to Dkt. 60: Dep. Goetz 68:10–69:7.

Although Hank and Land had concerns regarding Caitlin's simultaneous employment with E Bar L and service as a Trustee, they ultimately concluded it would be a benefit to the PET, not a detriment. Dkt. 60, Ex. B: Dep. Lindbergh 84:9–85:10; Dkt. 60, Ex. C: Dep. Goetz 68:10–69:7, 72:23–74:11. Caitlin was honored to be considered and, after careful consideration, accepted. Dkt. 60, Ex. C: Dep. Goetz 72:5–15, 74:12–75:20; Ex. A: Dep. Lindbergh 87:14–20; Ex. C to Dkt. 81: Dep. Caitlin Wall 59:4–60:12. Importantly, Caitlin holds no ownership interest in the E Bar L, acting instead as an assistant ranch manager, overseeing its kitchen, chefs, servers, and cleaning crews. Dkt. 81 at 15.

George died in April 2022 and Caitlin and Jim have been operating as Co-Trustees ever since. Dkt. 60 at 8 n. 2. Importantly, Jim has never seen Caitlin take any action as Trustee that favors the E Bar L over the PET, and Betty admitted she has no evidence that has ever occurred. Dkt. 60 at 9–10, Ex. A: Dep. Potter 79:7–81:14, Ex. G: Dep. Stone 123:21–125:12. Betty has never sought to remove Jim as a Trustee (or George, when he was alive) although he has unanimously agreed with

all decisions Betty now asserts justify Caitlin's removal and/or constitutes a breach of trust. Dkt. 60 at 10.

Betty has unilaterally refused to communicate with Caitlin regarding PET issues, speaking with Jim instead and demanding that Caitlin resign as Trustee whenever they interact. Dkt. 60 at 8; Dkt. 81 at 6–7. Nonetheless, both Caitlin and Betty remain willing to repair any communication issues between them. Dkt. 60 at 8. The Trustees continue to respond almost daily to Betty's frequent concerns regarding the PET's administration, including whether the Easement is being violated by E Bar L (the TNC has repeatedly concluded it does not), or whether a dry pen fence on the Trust land should be placed in Betty's preferred location. Dkts. 60 at 8; 88 at 6.

As required by the PET, the Trustees have also taken steps to ensure Betty can continue to live in the Potter House—which is on E Bar L land—by brokering a five-year land-use lease with E Bar L (the “Lease”). Dkt. 60 at 9. The Lease restricts E Bar L's use of the Trust land; requires the E Bar L to pay significant rent that increases over time; obligates it to comply with the Easement and establish an annual operating plan approved by the Trustees; preserves the PET's timber-harvesting rights; and forces E Bar L to fund certain capital improvements. Dkt. 60 at 7.

Tellingly, the only informational stand the Trustees have ever taken with Betty—over E Bar L’s financial information—resulted in litigation. Specifically, the Trustees have unanimously refused to provide such information on the advice of counsel and based on the E Bar L’s partnership decision to limit such information to Partners only. Dkts. 65 at 15–16; 81 at 5–6. In the District Court, Betty largely argued she needed such confidential financial information for tax purposes and because she would find it “interesting.” Dkt. 65 at 12. The District Court denied her request and this appeal ensued.

### **STANDARD OF REVIEW**

This Court reviews the District Court’s entry of summary judgment *de novo*. *Cole ex rel. Edgar C. Cole Revocable Trust v. Cole*, 2003 MT 229, ¶ 8, 317 Mont. 197, 75 P.3d 1280. In doing so, the Court undertakes the same analysis as the District Court—determining whether the undisputed material facts entitle the Trustees to judgment as a matter of law. *Edie v. Gray*, 2005 MT 224, ¶ 11, 328 Mont. 354, 121 P.3d 516.

Because the District Court’s summary judgment ruling involved adjudication of discretionary issues, those rulings are reviewed for an abuse of discretion. *Id.* This encompasses the District Court’s refusal to remove Caitlin as a Trustee, to appoint a third trustee of Betty’s choosing, or to award Betty her attorneys’ fees. *See In re Baird*, 2009 MT 81, ¶ 11, 349 Mont. 501, 204 P.3d 703; *United Nat. Ins.*

*Co. v. St. Paul Fire & Marine Ins. Co.*, 2009 MT 269, ¶ 13, 352 Mont. 105, 214 P.3d 1260. “A district court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or in excess of the bounds of reason resulting in substantial injustice.” *St. Paul Fire*, ¶ 13.

After applying the foregoing standards, the Court should affirm the District Court’s entry of summary judgment in the Trustees’ favor on all issues and award the Trustees their attorneys’ fees under Montana Code Annotated § 72-38-1004.

### **ARGUMENT SUMMARY**

Betty has not established any grounds for reversal. First, Betty is not entitled to E Bar L’s financial information under Montana Code Annotated § 72-38-813, especially in light of its confidential nature and the circumstances surrounding the request. Second, the District Court properly refused to remove Caitlin as a Trustee, as no grounds exist to do so and her removal would not be in the interest of all PET beneficiaries. Third, the District Court was well within its authority to refuse to appoint a Trustee of Betty’s choosing, which would be contrary to the PET’s text and only paralyze the PET’s ability to function. Fourth, there is no basis for setting aside the Lease. Finally, the District Court properly denied Betty’s request for attorneys’ fees and, the District Court should award the PET the attorneys’ fees incurred in this appeal.

## **ARGUMENT**

Betty has raised five (5) issues on appeal, each of which is discussed in turn below.

### **I. The District Court Correctly Concluded Betty Is Not Entitled To E Bar L's Confidential Financial Information.**

Montana law requires the Trustees to keep the beneficiaries “reasonably informed” about PET’s administration and to provide them with the “material facts,” necessary to protect their interests under the PET. Mont. Code Ann. § 72-38-813(1). This includes an obligation to “promptly respond to a qualified beneficiary’s request for information that is reasonably necessary to enable” them to “enforce the[ir] rights . . . under the trust or to prevent or redress a breach of trust.” Mont. Code Ann. § 72-38-813(1). Upon request, the Trustees must also provide copies of any “applicable income, estate, or transfer tax returns relevant to the administration of the trust.” Mont. Code Ann. § 72-38-813(3).

However, these informational obligations are not unfettered, and there is a difference between the information available to the Trustees and the information that must, in turn, be shared with a beneficiary. The Official Comments to Montana Code Annotated § 72-38-813 confirm this, providing that a trustee need not make disclosures “forbidden by other law” or that are “unreasonable under the circumstances.” The Official Comments also confirm the limited scope of a

beneficiary's informational rights, noting that a trustee's informational obligations can largely be met by providing the beneficiary with a copy of the trust's "annual report" or a copy of the "trust's income tax returns and monthly brokerage account statements." With this in mind, the District Court correctly rejected Betty's request for E Bar L's financial information.

The Trustees cannot lawfully share E Bar L's confidential financial information. Outside disclosure of E Bar L's tax return is forbidden by state and federal law. Mont. Code Ann. §§ 15-31-101(1), 15-31-511(1); 26 U.S.C. § 6103. As a Partner, the PET also owes its fellow partners a fiduciary obligation not to disclose sensitive financial information. *See* Mont. Code Ann. § 35-10-405(5); *see also Jackpot Farms, Inc. v. Johns Farms, Inc.*, 2020 MT 311, ¶ 17, 402 Mont. 250, 477 P.3d 320. And, it is undisputed the E Bar L has restricted dissemination of such information to its partners only. Dkt. 65 at 15–16; Dkt. 81 at 5–6, Ex. C: Dep. Wall 170:8–183:19. This fiduciary obligation becomes especially important here as it is undisputed Betty has been in a longstanding feud with the E Bar L and the Trustees are validly concerned she will use such confidential information "in not such a nice way." Dkt. 84 at Ex. B: Dep. Stone 147:7–23. This alone justifies the District Court's decision on this issue.

Betty casts these issues aside, arguing that she needs such information to act as a watchdog over the PET, making sure the PET is getting its fair partnership

distribution from the E Bar L and that the E Bar L is passing enough income to the PET so that the Trustees can make discretionary income distributions. Opening Br. at 17–19. However, as a beneficiary, Betty is not permitted to scrutinize every piece of information the Trustees receive. Even then, discretionary income distributions to Betty have never been at risk—with Betty even requesting the Trustees lower the amount of the distributions they have decided to give her. Dkt. 60 at 16–17. As such, it appears Betty really wants such information just so she can fight with the E Bar L.

Further, the information is already available to Betty in other, non-confidential formats. This includes the PET’s own tax return, its entire Quickbooks file, the K-1 it receives from the E Bar L, and its monthly bank account statements. Dkt. 81 at 5, 9. As such, dissemination of E Bar L’s confidential financial information is improper and, under the circumstances, would be unreasonable, not to mention inequitable. *See* Mont. Code Ann. § 72-38-106 (“principles of equity supplement” Montana’s Uniform Trust Code).

It is undisputed the Trustees provide Betty with far more information than any beneficiary could possibly be entitled to, including daily communications regarding every aspect of the Trust land and its management. *See, e.g.*, Dkt. 60 at 9, Ex. A: Dep. Potter 142:2–145:22; Dkt. 88 at 6, Ex A: Collection of Emails. For Betty, it appears nothing short of total unfettered access to every piece of

information available to the trustees will ever be enough. Dkt. 57 at 13 (arguing “it is difficult to conceive of any information regarding the Trust to which Betty would not be entitled”) (emphasis added). Troublingly, Betty has boldly asserted that none of the PET’s other beneficiaries—Bill’s heirs—should receive any information about the PET at all. Dkt. 60 at 9–10. These unreasonable positions only further underscore the unreasonableness of her informational requests. Accordingly, the District Court correctly concluded that Betty’s rights under Montana Code Annotated § 72-38-813 do not extend to E Bar L’s confidential financial information.

## **II. The District Court Did Not Abuse Its Discretion By Refusing To Remove Caitlin As A Trustee.**

Montana law permits the removal of a trustee only under specific circumstances, none of which are present here. *See* Mont. Code Ann. § 72-38-706. First, a trustee may be removed if they have “committed a serious breach of trust.” Mont. Code Ann. § 72-38-706(2)(a). Second, a trustee may be removed if they have “persistent[ly]” failed “to administer the trust effectively and impartiality,” but only if “the court determines that removal of the trustee best serves the interests of all the beneficiaries.” Mont. Code Ann. § 72-38-706(2)(c). Finally, removal may occur where “there has been a substantial change of circumstance,” but, again, only if “removal of the trustee best serves the interests of all of the



beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.” Mont. Code Ann. § 72-38-706(2)(d). The District Court properly rejected Betty’s attempt to remove Caitlin on all three grounds, each of which is discussed in turn below.

**A. The District Court did not abuse its discretion in determining that removal was unwarranted under Montana Code Annotated § 72-38-706(2)(a).**

The only “serious breach of trust” Betty points to is the Trustee’s unanimous refusal to provide Betty with E Bar L’s confidential financial information. Dkt. 57 at 15–16; Opening Br. 25–26. Because Betty is not entitled to such information, the District Court’s refusal to remove Caitlin on this basis should be affirmed.

Even presuming this Court concludes Betty is entitled to such information, however, it does not automatically follow that Caitlin has committed a breach of trust so serious to warrant removal. *In re Baird*, ¶¶ 12–13 (holding “not every breach of the trust requires removal of the trustee”). Betty has effectively conceded this—seeking only Caitlin’s removal, not Jim’s, even though the Trustees’ withholding decision was unanimous (as all PET decisions must be).

The undisputed facts also confirm any withholding of information does not justify removal. The Trustees did not withhold E Bar L’s financial information from Betty for any improper purpose, but instead on the advice of counsel and in adherence to the fiduciary obligations they owe to the E Bar L’s other Partners.

Dkt. 81 at 7–9. Critically, the Trustees argued in the District Court that “judicial guidance on this issue is necessary to ensure Betty receives what she is entitled to and the PET does not violate any fiduciary obligations it owes the E Bar L.” Dkt. 81 at 10–11. Moreover, Betty has no evidence that Caitlin alone made that decision or that it was motivated by any improper purpose. As such, no abuse of discretion occurred when the District Court refused to remove Caitlin on this basis.

**B. The District Court did not abuse its discretion in determining that removal was unwarranted under Montana Code Annotated § 72-38-706(2)(c).**

In the District Court, Betty offered two (2) arguments in favor of Caitlin’s removal under Montana Code Annotated § 72-38-706(2)(c), which she reiterates on appeal, including that: (1) Caitlin’s simultaneous employment with E Bar L and service as Trustee constitutes an impermissible conflict of interest; and (2) Caitlin has favored other beneficiaries over Betty. Dkt. 57 at 16–17; Opening Br. 26–31. The District Court correctly rejected these arguments, concluding that Betty had failed to establish the existence of a conflict of interest or that Caitlin had otherwise improperly favored certain beneficiaries over Betty. J.A. 1 at 16–22. The conclusions should be affirmed.

**i. No conflict of interest exists.**

Under Montana law, the Trustees have a duty of loyalty, requiring them to “administer the trust solely in the interests of the beneficiaries.” Mont. Code Ann.

§ 72-38-802(1); *see also* Official Comment to Mont. Code Ann. § 72-38-802(1) (adding that, consistent with Mont. Code Ann. § 72-38-103(9), “[t]he ‘interests of the beneficiaries’ to which the trustee must be loyal are the beneficial interests as provided in the terms of the trust.”). Recognizing this, Montana’s Uniform Trust Code generally renders voidable, those transactions “affected by a conflict between personal and fiduciary interests,” especially those between a trustee and any entity “in which the trustee . . . has an interest that might affect the trustee’s best judgment.” Mont. Code Ann. § 72-38-802(2)–(3). The District Court correctly concluded no conflict was present in this case.

Critical to this entire analysis are the following undisputed facts:

- (1) The PET is a Partner in the E Bar L;
- (2) Bill’s family founded the E Bar L; and
- (3) The E Bar L has been operating on Trust land for over 100 years and depends on the Trust land for its continued operation.

Any conflict-of-interest analysis must flow from the unique and longstanding historical relationship existing between the Trust land and the E Bar L. Indeed, when the Trustees interact with the E Bar L, they are interacting with an entity whose continued existence benefits the PET. There is nothing improper about this and, indeed, the Trustees are required to “take reasonable steps to . . . protect the trust property,” including its ownership interest in the E Bar L. Mont. Code Ann. §

72-38-809; *see also* Dkt. 60 at 14. In this way, there is no conflict between the PET's interests and the E Bar L's interests at all whatsoever.

Notably, Bill (along with Betty), continually brokered leases between the Family Trust and the E Bar L, permitting the E Bar L to use the Trust land for its operation. Only recently has Betty advanced any claim regarding a conflict of interest, despite the fact that when negotiating with E Bar L on behalf of the Family Trust, Bill was negotiating with an entity that his family founded and that he himself had held an ownership interest in.

Further, it is undisputed that Caitlin holds no ownership interest in the E Bar L, and instead works there as its assistant ranch manager, overseeing certain staff. Dkt. 81 at 15, Ex. G: Dep. Knox 57:16–58:10, 66:20–67:3. As such, Caitlin's "interest" in the E Bar L, if one could even call it that, is less than the PET's own actual ownership interest in the E Bar L. Relevant here, courts have refused to remove a trustee in situations where both a trust, and a trustee of that trust, hold equivalent interests in a subject corporation. *In re 1996 JBL Trust*, 30 A.D.3d 1131, 1132 (N.Y. App. Div. 2006) (removal of trustee not required just because trustee personally owned stock in same corporation that trust owned stock, absent showing that dual ownership was "detrimental to the trust").

And, as Montana law teaches, no conflict of interest arises when "the trustee establishes that" their conduct as trustee is "not affected by a conflict between

personal and fiduciary interests.” Official Comment to Mont. Code Ann. § 72-38-802. Before the District Court, the Trustees did just that, offering undisputed evidence that Caitlin has never taken action as a Trustee that was influenced by her employment with E Bar L. Dkt. 60 at 13–14, Dkt. 81 at 15–16. Betty herself confirmed she had no evidence Caitlin had ever let her employment with E Bar L affect her Trustee decision making. Dkt. 60 at 10. Recognizing all of this, the District Court correctly concluded that Caitlin’s employment interest in the E Bar L was not sufficient to rise to the level of a conflict of interest that would render her continued service as a Trustee improper.

Nonetheless, Betty argues that Caitlin’s mere employment with E Bar L is sufficient to warrant her removal as a Trustee. Opening Br. 26–30. In doing so, Betty relies on various out-of-jurisdiction authority, none of which compels the result she seeks here. Opening Br. at 28. For example, Betty relies on the Pennsylvania Supreme Court’s decision in *In re Holmes’ Trust*. There, the Pennsylvania Supreme Court affirmed removal of a trustee who was employed by an entity that was in direct competition with a business entity in which the trust held an interest. 139 A.2d 548, 552 (Pa. 1958). Here, unlike *Homes*, Caitlin is employed not by a competitor. Rather, she is employed by the very entity in which the PET holds an interest.

In *Brown v. Batt*, the Oklahoma Court of Appeals affirmed dismissal of a trustee who brokered, on behalf of the trust, “an imprudent and unnecessarily risky venture,” by leasing trust property to a farmer on a crop basis, and then “was hired by the [farmer] after he leased the farm.” 631 P.2d 1346, 1348–49 (Ok. Ct. App. 1981). Here, unlike *Brown*, it is undisputed that Caitlin’s employment with the E Bar L precedes her appointment as a Trustee, and Betty put forward no evidence that Caitlin ever pushed the PET into “an imprudent and unnecessarily risky venture” and then was hired by the party on the other side of that transaction. *Id.*

In *In re Conservatorship of J.R.*, the Montana Supreme Court disavowed a conservator’s purchase of personal property, owned by the very person they had been appointed to protect. 2011 MT 62, ¶ 59, 360 Mont. 30, 252 P.3d 163. Similarly, in *Quinn v. Central Company*, the Ninth Circuit concluded that a trustee violated its duty of loyalty by selling its own bonds to the trust. 104 F.2d 450, 453 (9th Cir. 1939). The Arkansas Supreme Court, in *Hosey v. Burgess*, concluded that trustees had violated their fiduciary obligations to a beneficiary by continuing to lease trust land to themselves individually, and then subleasing the trust land for a profit. 890 S.W.2d 262, 266–67 (1995).

The principle espoused by these cases is uncontroversial—a trustee cannot “self-deal” and obtain a direct personal benefit from a trust transaction by selling their own property to the trust or acquiring a trust asset for their own personal

purposes. None of that has occurred here. In fact, the Restatement Second of Trusts echoes this fiduciary prohibition, but as the District Court recognized, extends it to more attenuated situations where a trustee “sells trust property to a firm of which he is a member or to a corporation in which he has a controlling or substantial interest.” Restatement (Second) of Trusts § 170, cmt. c (emphasis added) (1959); J.A. 1 at 19–20. Caitlin has no personal ownership interest in the E Bar L, let alone a controlling or substantial one.

Perhaps recognizing this, in attempting to establish a conflict-of-interest Betty points out the obvious—that E Bar L’s continued existence benefits Caitlin through continued employment (as long as she continues to work there). But E Bar L’s continued existence confers an even more direct benefit on the PET’s beneficiaries for several reasons. First, the PET obligates the Trustees to ensure Betty can continue living on E Bar L land as long as she wishes—something that is only rendered possible by E Bar L’s continued existence and continued leasing of the Trust land. Second, lease income from the E Bar L is what renders, in part, income distributions to Betty (and, eventually, the other beneficiaries) possible. Finally, the E Bar L’s continued existence ensures that the PET retains an income-producing asset.

Really, Betty merely speculates that Caitlin’s simultaneous employment by the E Bar L and service as a Trustee, may potentially create a conflict of interest.

But it is well established that the mere potential for a conflict of interest is not sufficient “to state a claim for breach of the duty of loyalty.” *See Anderson v. Intel Corp. Inv. Policy Comm.*, 579 F. Supp. 3d 1133, 1156 (N.D. Cal. 2022) (citing *Kopp v. Klien*, 894 F.3d 214, 222 (5th Cir. 2018); *see also Claypool v. Wilson*, 6 Cal. Rptr. 4th 646, 677 (Cal. Ct. App. 1992); *In re Betty A. Luhrs Trust*, 443 N.W.2d 646, 651 (S.D. 1989) (holding a court should “never remove [a trustee] for potential conflict of interest but only for demonstrated abuse of power detrimental to the trust”). In short, the District Court correctly concluded that Caitlin’s employment as an assistant ranch manager with E Bar L did not, in and of itself, constitute an impermissible conflict of interest.

**ii. Betty has no evidence that Caitlin has favored any beneficiary.**

Alternative to her conflict-of-interest argument, Betty also argues Caitlin’s removal is warranted under Montana Code Annotated § 72-38-706(2)(c) because she has favored other beneficiaries over Betty. Opening Br. 30–31. In the District Court, Betty speculated favoritism was occurring because Mary and Spike possibly receive E Bar L information from Mary’s daughter, Juanita, while the Trustees are withholding that information from Betty. Dkt. 57 at 16–17. Tellingly, however, Betty did not put forward even a scintilla of evidence this was occurring, let alone that it was occurring with Caitlin’s approval. Based on this absence of evidence,



the District Court rejected this argument, J.A. 1 at 21, and the Court should do so again on appeal.

Betty's favoritism argument also rings hollow from an equitable standpoint. For example, even though the Trustees respond to Betty's nearly constant inquiries regarding management of the Trust land, she testified that no other beneficiary, including Bill's heirs, should receive that same information. Dkt. 60 at 9–10. In fact, although Betty testified she should have a say in how PET decisions are made, she boldly testified that all other beneficiaries should not be afforded any say, whatsoever. *Id.* Evidence was also revealed during the District Court proceedings regarding the concrete steps Betty has taken to ensure Bill's heirs never receive anything from the PET. Dkt. 86 at 3–4. This includes her attempt to obtain trustees that will refuse to provide Bill's heirs with distributions upon her death. *Id.*

To this end, even if Betty's argument regarding Caitlin's partiality were supported by any evidence (which it is not), removal would be foreclosed based on the desires of the PET's other beneficiaries. Mont. Code Ann. § 72-38-706(2)(c) (removal based on partiality concerns can only occur if "the court determines that removal of the trustee best serves the interests of the beneficiaries"). Predictably, based upon Betty's open animosity against Bill's heirs and attempts to deprive them of any benefit under the PET, they strongly opposed Caitlin's removal and

argued that doing so would be contrary to their interests. Dkt. 86 at 8. The Trustees agree. As such, even if this Court concludes that Caitlin has failed to act impartially, it should affirm the District Court’s refusal to remove her because doing so would not be in the best interests of all beneficiaries.

**C. The District Court did not abuse its discretion in determining that removal was unwarranted under Montana Code Annotated § 72-38-706(2)(d).**

Betty contends that a “substantial change in circumstances”—namely the “irreparably broken relationship” between herself and Caitlin, justifies Caitlin’s removal as Trustee. Opening Br. 31–35. The District Court concluded that any tension currently existing between Caitlin and Betty was not so severe as to warrant removal. J.A. 1 at 24. This conclusion should be affirmed.

Generally, for removal of a trustee to be justified based upon conflict between a beneficiary and a trustee, such conflict must be so severe that it “impair[s] the proper functioning of the trust.” Restatement (Third) of Trusts § 37, cmt. (e)(1) (2003). Even then, removal may be unwarranted if any conflict is derived from a beneficiary’s resentment of a trustee’s decision making, or if the beneficiary is the source of the conflict. *Id.* This makes sense, as it would be inequitable to remove a trustee simply because a beneficiary refused to speak with them. *See, e.g., Wolosoff v. CSI Liquidating Trust*, 500 A.2d 1076, 1082 (N.J. Super. Ct. App. Div. 1985) (“The general rule is that mere friction or hostility

between a beneficiary and a trustee is not necessarily a sufficient ground for removal. If not, a beneficiary who otherwise lacks sufficient grounds for removal of a trustee could nevertheless compel that removal simply by instigating a fight”).

It is undisputed that Betty unilaterally chose to exclude Caitlin from any PET-related communications, instead preferring to speak to Jim. Dkt. 60 at 8. Caitlin continually attempts to speak with Betty about PET-related issues, but admitted, understandably, that her relationship with Betty was complicated by Betty’s lawsuit seeking her removal. Dkt. 60 at 8–9, Ex. F: Dep. Wall 77:15–78:24. This was largely driven by Betty’s demand that Caitlin resign as Trustee whenever they interacted and accusation that she was “wasting the trust’s money” by not doing so. Dkt. 81 at 6–7, 17. Ultimately, both Caitlin and Betty testified that they were not unwilling to repair any issues that have arisen in their long-standing and once-harmonious relationship by virtue of Betty’s litigation. Dkt. 60 at 8, Ex. A: Dep. Potter 138:7–140:9. This alone justified the District Court’s refusal to remove Caitlin.

Specifically, the District Court correctly concluded there was no evidence Caitlin was responsible for any communication breakdown, nor was there evidence that any communication issues were impairing the PET’s administration. On the contrary, even during litigation Caitlin repeatedly interacted with Betty on various trust-related issues. *See, e.g.*, Dkt. 88 at 6. And, despite any communication issues

Betty perceived, she continues to receive her distributions under the PET. Dkt. 60 at 16–17. Moreover, Jim, Caitlin’s fellow-Trustee, who Betty does not want removed, must approve any decisions made by Caitlin on the PET’s behalf. In short, the District Court correctly concluded that any friction between Caitlin and Betty is not so severe as to warrant removal.

Even then, as noted above, such removal must “best serve[] the interests of all of the beneficiaries” and “a suitable . . . successor trustee” must be available. Mont. Code Ann. § 72-38-706(2)(d). Recognizing this, the District Court pointed out that “Betty is the only beneficiary who objects to Caitlin continuing as trustee.” J.A. 1 at 24. In light of this, and in combination with Betty’s concerted effort to take control of the PET for purposes of ensuring Bill’s heirs receive no benefit from it, the District Court correctly concluded that, even assuming a sufficient conflict was present, removal would not serve the best interests of all the PET’s beneficiaries.

Because of this the District Court did not address whether a suitable successor trustee was available. This issue is discussed at length in the next section.

### **III. The District Court Did Not Abuse Its Discretion By Refusing To Appoint A Third Trustee Of Betty’s Choosing.**

In the District Court, Betty sought the appointment of a new trustee of her

exclusive choosing. Dkts. 57 at 19–20; 84 at 19–20. To this end, Betty identified three (3) potential candidates, Scott Gordon, Curt Friede, and Baiba Eastlick. *Id.* The District Court correctly refused to appoint a third trustee of Betty’s choosing, concluding that “Betty is not entitled to nominate successor trustees, nor are the Trustees required to designate Betty’s successor trustee nominations.” J.A. 1 at 26.

As an initial matter, the District Court correctly concluded there was no textual source in the PET that would permit the appointment of a trustee of Betty’s choosing. The PET makes clear that the Trustees have the sole and exclusive authority to designate their successors. J.A. 3 at Art. 15(A). Betty, along with the other beneficiaries, has no textual appointment power. Even assuming she did, there was sufficient justification for the District Court to refuse Betty’s chosen candidates.

First, Scott Gordon made clear he would not serve as a trustee. Dkt. 60 at 18–19. Curt Friede was specifically suggested by Betty when the Initial Trustees resigned, but they refused to appoint him, concluding he knew nothing about management of the Trust land and feared he would “do whatever [Betty] wanted him to do.” Dkt. 60 at 18. Finally, Baiba Eastlick testified she was uncertain if she would even agree to serve as a trustee and certainly would not do so until conflict between Betty and E Bar L was resolved, something that may never happen. Dkt. 60 at 18–19, Ex. K: Dep. Eastlick 78:3–81:20. In light of the foregoing, the

District Court did not abuse its discretion by refusing to appoint any of Betty's chosen candidates.

Of course, because the Trustees have to act unanimously, the appointment of a third trustee of Betty's choosing would likely impair the functioning of the trust and result in additional removal proceedings. *See* Mont. Code Ann. § 72-38-706(2)(b). This separate and distinct basis for refusing to appoint a third trustee of Betty's choosing similarly counsels in favor of affirming the District Court's decision on this issue. In short, the District Court's decision to keep Caitlin and Jim as the only Trustees was not an abuse of discretion.

#### **IV. The District Court Correctly Approved The Lease.**

In response to Betty's operative Petition, the Trustees sought a ruling from the District Court approving the Lease the PET had recently entered into with the E Bar L, for E Bar L's use of the Trust land. Dkt. 26 at ¶¶ 24–28. At the summary judgment stage, Betty argued that she had the right to void the Lease, under Montana Code Annotated § 72-38-802(2), based on Caitlin's alleged conflict of interest. Dkt. 57 at 18–19. Betty argued that once she obtained the confidential E Bar L information she sought, then she would determine whether she wanted to exercise her voiding power. Dkt. 57 at 19.

As an initial matter, and as discussed at length above, the District Court correctly concluded that Caitlin's employment with E Bar L does not present a

conflict of interest within the meaning of Montana Code Annotated § 72-38-802(2). As such, Betty has no power to void the Lease and the Court's analysis need not proceed further. Even then, however, presuming a conflict of interest exists, the District Court correctly approved the Lease under Montana Code Annotated § 72-38-802(b).

The following undisputed facts regarding the Lease were put before the District Court:

1. Betty herself entered into a long-term five-year lease with the E Bar L when she was the Trustee of the Family Trust. Dkt. 60 at 4, Ex. A: Dep. Potter 206:1–207:24; Ex. B: Dep. Lindbergh 23:2–22.
2. By entering the Lease, the Trustees secured Betty's continued residence in the Potter House, as required by the PET. Dkt. 60 at 9.
3. The Lease requires E Bar L to pay \$50,000 in annual rent, subject to annual increases. Dkt. 60 at 6–7, J.A. 4 at § 3, 5–6, 8–9 (“J.A. 4”).
4. The Lease preserves the PET's right to use the Trust land for timber harvesting and block management revenue, two of its primary sources of income, beyond the Lease payment. Dkt. 60 at 7–8, J.A. 4 at § 4.
5. E Bar L can only use the Trust land for specific guest ranch activities (which it has been doing for 100 years) and only in strict conformance with the Easement encumbering the Trust land. Dkt. 60 at 7–8, J.A. 4 at § 4.
6. E Bar L must fund all capital improvements associated on the Trust land. Dkt. 60 at 7–8, J.A. 4 at § 6(c).
7. E Bar L must abide by all conservation encumbrances on the Trust land and make the Trust land available for inspection to ensure

compliance with such encumbrances. Dkt. 60 at 7–8, J.A. 4 at §§ 8, 10.

8. The Parties must develop an annual operating plan, setting forth their respective responsibilities, which includes employment of a land manager to care for the Trust land. Dkt. 60 at 7–8, J.A. 4 at §§ 9, 12.

The District Court concluded that such provisions were more than sufficient to justify approval of the Lease and noted that Betty had offered no argument regarding how such terms were inappropriate from a land use perspective. J.A. 1 at 31. On appeal, Betty still offers no argument in this regard.

Instead, Betty asserts that she and her expert, licensed CPA Baiba Eastlick, need E Bar L’s confidential financial information so they can determine whether the Lease payment is “reasonable.” Opening Br. 37–40. On this point, the District Court correctly concluded that “[w]hether the Lease fee is otherwise reasonable is for the Trustees to consider in administering the Trust and, at the time, all three Trustees did so unanimously.” J.A. 1 at 31. Indeed, the District Court correctly recognized that, in fulfillment of their duty to preserve the PET’s property, “the continued existence of E Bar L” may very well outweigh the PET’s need “for a higher lease fee.” J.A. 1 at 31 n.2.

Betty wrestles with none of this on appeal, instead simply reiterating that she needs E Bar L’s confidential information so she can offer an opinion on whether she thinks the Lease is reasonable. In this way, Betty argues the District Court



should have permitted her to obtain information, to which she is not entitled, so that she could determine whether she wanted to void a lease that she has no power to void. There was nothing erroneous about the District Court's refusal to do so.

**V. The District Court Did Not Abuse Its Discretion In Refusing To Award Betty Her Attorneys' Fees And The Trustees Should Be Awarded The Attorneys' Fees Incurred In This Appeal.**

In the District Court, no party was awarded their attorneys' fees. J.A. 1 at 33–35. On appeal, Betty argues that the District Court's decision on this issue should be reversed, based upon her arguments that the remainder of the District Court's decisions were erroneous. Opening Br. 40–41. As discussed at length above, however, the District Court committed no error and should be affirmed in full.

The Trustees, however, should be awarded the attorneys' fees they have incurred in defending against this appeal, pursuant to Montana Code Annotated § 72-38-1004. This statute permits an award of attorneys' fees in trust proceedings, "as justice and equity may require." *Id.* This is especially true where, as here, such an award is necessary to "protect trust assets from being depleted by the litigation." *In re Osorio Irrevocable Trust*, 2014 MT 286, ¶ 12, 376 Mont. 524, 337 P.3d 87. The PET has few income producing assets and under its terms, the Trustees have little to no liquidation options to fund ongoing litigation. In such a situation, "the equities tip in favor of an award." *Id.* Consequently, the Trustees

respectfully request that they be awarded the attorneys' fees and costs incurred in defending against this appeal.

### **CONCLUSION**

Based on the foregoing, this Court should affirm the District Court's entry of summary judgment in the PET's favor on all issues and award it the attorneys' fees incurred in this appeal.

DATED this 21st day of April, 2025.

LAIRD COWLEY, PLLC

By: /s/ Riley M. Wavra  
Riley M. Wavra  
Attorney for the Trustees of the Potter  
Exemption Trust

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that Appellee's Answer Brief is printed in a proportionally spaced Times New Roman text typeface of 14 points; is double spaced; and word count calculated by Word for Microsoft 365 Version 2502 is 8540 words, excluding the Table of Contents, the Table of Authorities, the Certificate of Service, and this Certificate of Compliance.

DATED this 21st day of April, 2025.

LAIRD COWLEY, PLLC

By: /s/ Riley M. Wavra  
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