

100 Youts Blvd.
Dallas, Texas 75200

II.

The Court is requested to take judicial notice of the following facts as set forth in, and corroborated by, the Court's file:

2.01 Taylor Chandler Preston died intestate January 3, 2008. Defendant Bailey Preston filed an Application for Letters of Administration was filed with this Court on August 12, 2008, in this entitled and numbered cause. Letters of Administration were issued to Defendant Bailey Preston on September 29, 2008, and he was appointed Administrator of the Estate of Taylor Chandler Preston, Deceased, and he qualified by filing his Oath.

2.02 On September 29, 2008 Defendant Bailey Preston filed his Great Scott! Ins. Co. Bond in the face amount of \$85,000.00. A copy of the Bond is attached hereto as **Exhibit "A,"** and incorporated herein by reference for all purposes, and in and by which Defendant Bailey Preston did solemnly swear to well and truly, faithfully perform all of the duties of Administrator of the Estate, and Defendant Great Scott! Ins. Co., Inc. did, as Surety, firmly bind itself unto the Court that Defendant Bailey Preston would do so.

2.03 Mr. Preston's Inventory, Appraisalment, and List of Claims, filed with the Court on November 2, 2008 and approved on November 14, 2008, listed the value of the Estate as \$95,000. The First Annual Accounting, filed on January 17, 2009 covering the time period from September 29, 2008 to September 30, 2009, listed the opening cash on hand as \$95,000.00. Copies of the Inventory and Annual Accounting are attached as **Exhibit "B"** and **Exhibit "C,"** respectively. On October 20, 2009 the Court approved the Annual Accounting and ratified authorized expenditures in the amount of \$5,000.00. A copy of the Order Approving Annual Accounting and Ratifying Expenditures is as attached as **Exhibit "D."** The remaining balance in the Annual Account was \$90,000.00. On September 30, 2011, Mr. Preston filed his First Amended Account for Final Settlement, including a Verification of Funds showing an ending balance of \$81,200.00. The Court approved same on October 27, 2011. Copies of Final Account and Order Approving Administrator's First Amended Account for Final Settlement are attached as **Exhibit "E,"** and **Exhibit "F,"** respectively. Pursuant to the Order Mr. Preston was to distribute the sum of \$81,200.00 to the heirs of the Estate according to their shares in the Judgment Declaring Heirship dated August 5, 2010. A copy of the Judgment Declaring Heirship is attached as **Exhibit "G."** Mr. Preston has wholly failed to deliver any portion of this Estate to any of the heirs. Bank statements indicate Mr. Preston withdrew most of the funds from the Estate account in December of 2011. Copies of bank statements for the Estate account at Big Money Bank of are attached as **Exhibit "H."** The First Amended Account for Final Settlement and the accompanying Verification of Funds listed the cash on hand as \$81,200.00. However, the bank statements for the Estate account reflect the balance was actually \$1,200.00. It would appear that someone added an "8" to the Verification of Funds after it was signed by the bank. Regardless of how it was accomplished, the former Administrator misappropriated Estate funds and submitted false information to the Court. Both the First Annual Accounting, the Verification, and the First Amended Final Account misstated the cash on hand in the Estate account. The remaining funds were withdrawn by Mr. Preston in January of 2012. Mr. Preston made no distributions to any of the heirs, apparently keeping the funds for himself.

2.04 On May 11, 2012 the Court removed Defendant Bailey Preston and appointed Plaintiff as Successor Administrator. By Order of removal, Defendant Bailey Preston was specifically ordered by the Court to surrender his letters of Administration, and to turn over to Successor Administrator all of the assets of this Estate. A copy of the Court's Order is attached hereto as **Exhibit "I,"** and incorporated herein by

reference for all purposes. Texas Estates Code §359.101 required Defendant Bailey Preston to file a proper annual accounting.

2.05 Defendant Bailey Preston has not surrendered his letters, and he has not filed any proper annual accounting. On May 23, 2006 Defendant Bailey Preston file an annual accounting for January 2005 to December 31, 2005, but same was not approved by the Court.

2.06 Following her appointment and qualification, Plaintiff investigated Defendant Bailey Preston's administration of the Estate. Upon completion of her investigation Plaintiff served upon Defendants a letter demanding delivery of the Estate assets as ordered by the Court in the Removal Order dated May 11, 2012. A copy of the letter dated, is attached hereto as **Exhibit "J,"** and incorporated herein by reference for all purposes. Defendants have wholly failed to deliver the assets of the Estate as demanded by Plaintiff.

2.07 Defendant Bailey Preston, while Administrator, failed in whole or in part to perform the duties imposed upon him by the law under the Texas Estates Code.

2.08 Defendant Bailey Preston, while Administrator, misapplied, and has wholly failed to properly account for all or part of the property committed to the care of Defendant Bailey Preston.

2.09 Defendant Bailey Preston, while Administrator, committed gross misconduct and gross mismanagement in the performance of his duties.

2.10 Defendant Bailey Preston has wrongfully exercised dominion and control over assets of the Estate in a manner inconsistent with the rights of the Estate, and did directly and proximately cause injury and damage to the Estate.

2.11 Because of the nature of Defendant Bailey Preston's appointment, the actions of Defendant Bailey Preston in using all or some of the portions of the Estate assets, created an express oral trust, a resulting trust, or a constructive trust in favor to the Estate on and for said properties. Defendant Bailey Preston was aware, or should have been aware, of the fiduciary relationship with which Defendant Bailey Preston was charged. Defendant Bailey Preston breached the fiduciary duties of Defendant Bailey Preston in whole or in part by converting, retaining, consuming, investing or otherwise wasting the said assets in violation of law, or to his own benefit, use and enjoyment, all to the proximate detriment or damage of the Estate.

2.12 The aforementioned acts and omissions of Defendant Bailey Preston constitute neglect of the type contemplated by Texas Estates Code §361.051 - §361.053, and §362.051 - §362.053. Defendant Bailey Preston has failed and refused to abide by or comply with the obligations and duties imposed upon him by law, and has directly and proximately caused damage to the Estate. Defendant Bailey Preston is liable to the Estate for loss caused to the Estate for his failure to account for all of the assets, in the approximate sum of \$77,777.77, plus interest.

2.13 The aforementioned neglect by Defendant Bailey Preston of the duties and obligations imposed upon him by law has directly and proximately resulted in his removal for cause, and in the incurring of expenses and costs for such removal, and for obtaining compliance of Defendant Bailey Preston with the duties and obligations imposed by law. More specifically, Successor Administrator has, by reason and by nature of her appointment, been required to file Inventories and Appraisals, accountings, and take actions to recover from Defendant Bailey Preston the amounts otherwise owned by and owed to the Estate. In accordance with Texas Estates Code §351.003, Successor Administrator does respectfully

request that each and all of the costs incurred and to be incurred by Successor Administrator, including reasonable attorney's fees, be adjudged against Defendant Bailey Preston and the Surety on Defendant Bailey Preston's Bond.

2.14 Further, the acts and omissions of Defendant Bailey Preston, as set forth above, constitute violations of specified statutory duties and obligations as set out in Texas Estates Code §351.003 (Certain Costs Adjudged Against Personal Representative), §351.003 (Duty of Care), §359.101 (Penalty for Failure to File Annual Account), §351.102 (Possession of Personal Property and Records), §351.151 (Ordinary Diligence Required), §362.052 (Liability for Failure to Deliver Estate Property) §359.102 (Penalty for Failure to File Exhibit or Report), and require imposition upon Defendant Bailey Preston and the Surety of the specified fines and penalties this Plaintiff Successor Administrator does seek to collect.

2.15 Defendant Bailey Preston had a trust or fiduciary responsibility to the Estate. Defendant Bailey Preston did wrongfully convert the assets of the Estate, failed and refused to comply with Court orders, failed and refused to comply with statutory and common law duties, and interfered with the performance of said duties by Successor Administrator. Such acts by Defendant Bailey Preston were done with knowledge and were fraudulent and willful and wanton in character. The aforementioned conduct of Defendant Bailey Preston, both before and after his removal, was intentional, malicious, in breach of statutory and common law duties, in violation of court orders, and in bad faith. Defendant Bailey Preston should be held liable for punitive or exemplary damages in an amount to be determined by the Court, to punish the unconscionable actions of Defendant Bailey Preston, and to deter such action in future by him, or by other parties who may otherwise be encouraged by their actions to commit similar acts. Accordingly, Plaintiff seeks and is entitled to recover exemplary damages in a sum which the Court considers sufficient to attain the goals of punishment and deterrence.

III.

3.01 As a result of any or all of the foregoing causes of action, which are set forth separately, Plaintiff, on behalf of the Estate, is entitled, in addition to any remedies or relief previously requested herein, to any and all of the following remedies against Defendant Bailey Preston and Defendant Great Scott! Ins. Co. for the wrongful conduct of Defendant Bailey Preston toward the Estate, and for the damage done by Defendant Bailey Preston to the Estate.

3.02 To recover from Defendant Bailey Preston and Defendant Great Scott! Ins. Co. all assets of the Estate which would have existed but for the improper conduct of Defendant Bailey Preston, as stated in the foregoing Paragraphs, and all interest on any Estate funds which were or should have been available.

3.03 Plaintiff also seeks to recover from Defendant Bailey Preston and Defendant Great Scott! Ins. Co., Inc. any and all amounts which were or should have been produced by the assets as income, interest or profit, and seeks to recover the profits or other proceeds which did or should have come from the assets purchased with the proceeds of the sale, mortgage, or exchange of those assets. Plaintiff would show that she is entitled to the imposition of a constructive trust upon any and all of the assets as can be traced into the possession of Defendant Bailey Preston in unaltered form, or, for a constructive trust upon the proceeds from or products of such of the assets as can be traced into the possession of Defendant Bailey Preston or others.

3.04 To aid in the recovery of assets, or the proceeds of the assets, or investments purchased with assets not specifically traceable in kind or for full value, Plaintiff is entitled to an equitable lien against Defendant Bailey Preston on all such assets, proceeds, or investments purchased with said assets or

BEFORE me, the undersigned authority, on this day personally appeared Deborah Doright, known to me to be the person whose name is subscribed to the foregoing instrument and, being by me first duly sworn, upon oath declared that the statements contained therein are true and correct, and within her personal knowledge except as otherwise stated.

Deborah Doright

SUBSCRIBED AND SWORN to before me by Deborah Doright this ____ day of ____, 20 ____, to certify which witness my Hand and seal of office.

Notary Public, State of Texas

CERTIFICATE OF SERVICE

On this ____ day of _____, 20 ____, a true copy of the above and foregoing Original Petition was delivered in accordance with the Texas Rules of Civil Procedure as follows:

Mr. Ad Vocate
Attorney at Law
432 W. 9th Street
Fort Worth, Texas 76102

Via E-service: AdVocate@AdVo.com

Mr. Vinny Gambini

Via E-
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Deborah Doright