



WHISKERS

MOCK TRIAL CASE 2023-24 YOUTH & GOVERNMENT NATIONAL JUDICIAL COMPETITION



WRITTEN BY WASHINGTON STATE
CLARK COUNTY SUPERIOR COURT
JUDGE ROBERT LEWIS
COVER ART BY JAIMIE KIM

INTRODUCTION

The dead are not altogether powerless.

There is some doubt about whether Chief Sealth spoke these words to Governor Isaac Stevens back in 1854, or whether they are the colorful embellishments of a reporter. But in the realm of probate, the quotation reflects a central truth. In most areas of the law, death finishes things. We don't prosecute the dead for crimes or require a business to continue the practices of its deceased founder. Many civil actions do not survive the person who was allegedly wronged.

But when it comes to the disposition of a deceased person's property, their wishes, as expressed in a will or trust, are all-important. If clearly expressed by a competent individual, those desires will be respected, no matter how strange or questionable they may seem to those of us left behind. The key is competence, or what we refer to as testamentary capacity – did the person know what they were doing at the time and did they make their own, independent decision?

This year's case allows both sides to argue capacity, coercion and undue influence at different points in time. If that seems inconsistent, it simply recognizes that people change through the years. The direct and circumstantial evidence will allow each team to argue about when things shifted for Cordelia Lear, whether others manipulated her for their own ends and whether her relationship with a cat rescued from the streets was doting affection, eccentricity or, as one witness expresses it, "batty."

Cats and the dead have one thing in common; they cannot speak for themselves (although the jury is still out on Whiskers). So good attorneys will need to speak for them, to convince the jury that their interpretation of the facts and the law is correct. It will take skill, thorough preparation, and some imagination. But as the Cheshire Cat said in *Alice in Wonderland*, "Imagination is the only weapon in the war with reality."

Thanks to Nolan Martin, Gaby Diamond and the rest of Team Youth and Government. I hope you appreciate their year-round efforts to grow and improve civic education opportunities for students throughout the state. And thanks to Jaimie Kim of Seattle Preparatory School, the winner of our cover art contest. The other submissions, all worthy of honorable mention, are also included in the packet.

Good luck to all!

Judge Robert A. Lewis, October 2023

Petitioner's Witnesses

- (A) Arin Lear, Petitioner and Youngest Child of Cordelia Lear
- (B) Paxton Bailee, Senior Accounts Manager, Alki Amalgamated Bank
- (C) Abbott Lindas, Caregiver
- (D) Willie Downing, Medico-Legal Assessments

Respondent's Witnesses

- (E) Cal Lear, Respondent and Eldest Child of Cordelia Lear
- (F) Bergen Henry, President of Respondent FAIR
- (G) Kenge Tulkinghorn, Attorney at Law
- (H) Quinn Wellbie, MD

Exhibit List

- Exhibit 1 - Excerpts from Will Dated November 17, 2017
- Exhibit 2 - Medical Charts
- Exhibit 3 - Assessment Tools Score Chart
- Exhibit 4 - A Thousand Alders Deed
- Exhibit 5 - Will Dated October 30, 2018
- Exhibit 6 - November 28, 2017--Supplemental Writing

STIPULATIONS:

All statements of the witnesses were given under oath and certified as being true and accurate to the best of that witness' knowledge and memory.

The listed exhibits have been properly authenticated and will be admitted into evidence.

The parties stipulate that handwriting on Exhibits 4, 5 and 6 was written by Cordelia Lear.

Except for the opinions objected to in the pretrial motions, the parties agree that the experts are qualified to express the opinions stated in their respective declarations.

Only objections based on the Mock Trial Rules, and Rules of Evidence, are permitted. Specifically, the parties stipulate that no objections may be made based upon Washington's "Dead Man's Statute" or similar rules of evidence not contained in the kit and case materials.

PLEADINGS



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF PINE

IN RE THE ESTATE OF CORDELIA LEAR)	
)	
ARIN LEAR,)	NO. 19-4-0100-001
)	
Petitioner,)	PETITION FOR
)	WILL CONTEST
vs.)	
)	
CAL LEAR, and FAIR,)	
)	
Respondents.)	

Comes now Petitioner, and for cause of action against Respondents, as interested parties in the Estate of Cordelia Lear, alleges as follows:

1. Petitioner Arin Lear is a resident of Omaha, Nebraska, and the child of Cordelia Lear.

2. Respondent Cal Lear is a resident of Pine County, Washington, and the child of Cordelia Lear. Petitioner Arin Lear and Respondent Cal Lear are the sole surviving heirs of Cordelia Lear. Respondent Cal Lear is the personal representative of the estate of Cordelia Lear, under the terms of a will executed November 17, 2017 and admitted to probate in these proceedings on January 11, 2019.

- 3.. Respondent Feline Assistance Integration and Rescue (hereinafter referred to as FAIR) is a limited liability company and a non-profit organization dedicated to the welfare of feral cats in Pine County, Washington.

4. Cordelia Lear died on December 20, 2018, a resident of Pine County, Washington, leaving real and personal property subject to distribution. The Respondents contend that the will admitted to probate in these proceedings controls the administration of that estate and reflects the intentions of the decedent.

5. Petitioner contests the validity of the will admitted to probate in these proceedings. The Petitioner contends that this will is invalid on one or more of the following grounds:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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IN RE THE ESTATE OF CORDELIA LEAR,)	
)	
ARIN LEAR,)	NO. 19-4-0100-001
)	
Petitioner,)	RESPONSE AND
)	COUNTERCLAIM
vs.)	
)	
CAL LEAR, and FAIR,)	
)	
Respondents)	

Comes now Respondents, and for their response to the claims of Petitioner, allege as follows:

1. Respondents admit the allegations contained in Paragraphs 1, 2 3, 4 and 6 of the Petition.
2. Respondents deny the allegations contained in Paragraph 5 of the Petition and the entire prayer for relief.
3. By way of affirmative defense of the allegations contained in Paragraph 5.c of the Petition, Respondents assert the will executed by decedent on October 30, 2018, is invalid on one or more of the following grounds:
 - a. At the time of the execution of the will, the decedent lacked the capacity to execute a will.
 - b. The will was executed as the result of coercion or undue influence of the decedent.
4. By way of counterclaim against Petitioner, Respondents assert that the decedent’s conveyance of the real property known as A Thousand Alders to Petitioner on October 30, 2018, was invalid on one or more of the following grounds:
 - a. At the time of the conveyance, the decedent lacked the capacity to make a gift of the real property.

b. The conveyance was executed after a confidential relationship was established between the decedent and Petitioner, and the conveyance was the result of coercion or undue influence of the decedent.

WHEREFORE, Respondents respectfully request that the court:

1. Deny Petitioner's challenge to the admission of the will dated November 17, 2017, to probate and to allow administration of the estate to proceed;

2. Grant Respondents' counterclaim and declare the conveyance of real property executed by the decedent to Petitioner on October 30, 2018, to be null and void and declare the real property known as A Thousand Alders to be property of the decedent's estate and subject to administration pursuant to the terms of the will dated November 17, 2017; and

3. For such other relief as the court deems just and equitable.

Dated February 10, 2019.

BY /s/ _____
Attorneys for Respondents

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PINE

IN RE THE ESTATE OF CORDELIA LEAR)	
)	
ARIN LEAR,)	NO. 19-4-0100-001
)	
Petitioner,)	REPLY TO
)	COUNTERCLAIM
vs.)	
)	
CAL LEAR, and FAIR,)	
)	
Respondents.)	

Comes now Petitioner, and in reply to the counterclaim of Respondents, denies the same in full and asks that the court deny the counterclaim in all respects, and to provide such other and further relief as the court deems just and equitable.

Dated February 17, 2019.

BY /s/ _____
Attorneys for Petitioner

JURY INSTRUCTIONS



Jury Instructions for *In re the Estate of Cordelia Lear*

Instruction No. 1

It is your duty to decide the facts based upon the evidence presented to you during trial. You must then apply the law from these instructions to the facts that you decide have been proved, and in this way decide the case.

You are the sole judges of witness credibility, and of the value or weight to be given to the testimony of each witness. In assessing credibility, you must avoid bias, conscious or unconscious. You may properly consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown and the reasonableness of the witness's statements in the context of all of the other evidence.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts and the law, not on sympathy, prejudice, or personal preference. You must act impartially with an earnest desire to reach a proper verdict.

Instruction No. 2

The evidence that has been presented may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something that is at issue. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value. One is not necessarily more or less valuable than the other.

Instruction No. 3

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

A juror is not required to accept a witness's opinion. To determine the credibility and weight to be given to this type of evidence, you may consider the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion, the sources of information used by the witness and the other factors already given to you for evaluating witness testimony.

Instruction No. 4

When it is said that a party has the burden of proof on any proposition by a preponderance of the evidence, it means that you must be persuaded, considering all of the evidence, that the proposition on which that party has the burden of proof is more probably true than not true.

When it is said that a party has the burden of proof on any proposition by clear, cogent, and convincing evidence, it means that the proposition must be proved by evidence that carries greater weight and is more convincing than a preponderance of evidence. Clear, cogent, and convincing evidence exists when occurrence of the proposition has been shown by the evidence to be highly probable. However, it does not mean that the proposition must be proved by evidence that is convincing beyond a reasonable doubt.

Instruction No. 5

Petitioner has the burden of proving one of the following propositions by clear, cogent, and convincing evidence:

P1) That at the time of the execution of the November 17, 2017, Will, Cordelia Lear lacked the capacity to execute a will; or

P2) That at the time of the execution of the November 17, 2017, Will:

a) Cordelia Lear was subject to coercion or the undue influence of another; and

b) The coercion or undue influence of another was a proximate cause of her execution of the Will.

If you find from your consideration of all the evidence that one or more of these propositions has been proved, your verdict should be for Petitioner.

Instruction No. 6

Petitioner has the burden of proving the following proposition by a preponderance of the evidence:

P3) That the Will of the decedent executed on October 30, 2018 revoked and superseded the November 17, 2017 Will.

If you find from your consideration of all the evidence that this proposition has been proved, and that no affirmative defense has been proved, as described in Instruction No 7, then your verdict should be for Petitioner.

Instruction No 7

With regard to the affirmative defenses, Respondents have the burden of proving one of the following propositions by clear, cogent, and convincing evidence:

D1) That at the time of the execution of the October 30, 2018, Will, Cordelia Lear lacked the capacity to make a will.

D2) That at the time of the execution of the October 30, 2018, Will:

a) Cordelia Lear was subject to coercion or the undue influence of another, and

b) The coercion or undue influence of another was a proximate cause of her execution of the Will.

If you find from your consideration of all the evidence that one or more of these propositions has been proved, your verdict should be for Respondents.

Instruction No 8

With regard to the counterclaim, Respondents have the burden of proving the following proposition by clear, cogent and convincing evidence:

D3) That at the time of the execution of the October 30, 2018, Deed, Cordelia Lear lacked the capacity to make a gift of her property.

If you find from your consideration of all the evidence that one or more of these propositions has been proved, your verdict should be for Respondents on their counterclaim.

Instruction No 9

With regard to the counterclaim, Respondents have the burden of proving the following proposition by clear, cogent, and convincing evidence:

D4) That the execution of the October 30, 2018, Deed was procured as the result of coercion or undue influence by Petitioner.

However, if you find that Cordelia Lear and Petitioner were in a confidential relationship at the time of the Deed, then the burden of proof shifts to Petitioner to prove the absence of undue influence by clear, cogent, and convincing evidence.

If you find from your consideration of all the evidence that the proposition has been proved, or if you find that Petitioner was in a confidential relationship

with Cordelia Lear and failed to disprove the proposition, then your verdict should be for Respondents on their counterclaim.

Instruction No 10

A person has testamentary capacity if, at the time of the will's execution, they have sufficient mind and memory (1) to understand the transaction in which they are then engaged, (2) to comprehend generally the nature and extent of the property which constitutes their estate, and (3) to recollect the objects of their bounty.

A person has capacity to make a gift if, at the time of the gift, they have sufficient mind and memory (1) to understand the transaction in which they are then engaged, (2) to intend that a gift be made and (3) to generally understand the nature and extent of the property gifted.

Instruction No 11

The term "proximate cause" means a cause which in a direct sequence produces an event and without which such event would not have happened. There may be more than one proximate cause of an event.

Instruction No 12

Undue influence is influence which, at the time of the testamentary act or gift, controlled the volition of the testator or donor, interfered with her free will, and prevented an exercise of her judgment and choice.

You may consider circumstantial evidence to determine whether undue influence exists. You may consider, among other things, (1) whether a beneficiary of a will or donee of a gift occupied a confidential relation to the testator or donor; (2) whether that beneficiary or donee actively participated in the preparation or procurement of the will or gift; (3) whether that beneficiary received an unusually or unnaturally large part of the estate; (4) the age, condition of health and mental vigor of the testator or donor; (5) the nature or degree of relationship between these parties; (6) the opportunity for exerting an undue influence, and (7) the naturalness or unnaturalness of the will or gift.

Instruction No 13

A confidential relationship exists when one person has gained the confidence of the other and purports to act or advise with the other's interest in mind. A family or friendship relationship is not sufficient, standing alone, to support a finding of a confidential relationship.

WITNESS STATEMENTS



1 STATEMENT OF ARIN LEAR
2

3 This case is not about the money. I am here in court because I know my mother
4 was taken advantage of by the cat zealots she fell in with over at FAIR. My sibling did
5 absolutely nothing to protect her from them, even when it was obvious that she was ill.
6 Once she was free of their spell, she came to her senses and drafted estate planning
7 documents that reflected her true wishes. She wanted to divide the estate between her
8 children and she wanted to keep A Thousand Alders in the family, not mollycoddle a
9 cat. That's why I'm here fighting, to make sure her lifelong desires are upheld.
10

11 I don't need anything handed to me by my parents. I've made my own way in
12 this world, despite being born into privilege. Growing up, it was hard not to feel entitled
13 sometimes. Looking out from my home porch, over our manicured lawn and down on
14 the "commoners" of Alki City below, I felt the pride that comes with being part of the
15 legacy my family had built. Top that off with summers roaming the verdant orchards of
16 our ranch, knowing we've farmed here since statehood, and it was hard not to get a
17 swelled head.
18

19 But Mom and Dad didn't rest on the family's laurels, and they taught Cal and I to
20 earn our place in society. We went to the toughest schools and we were expected to
21 study hard. On the weekends, we trudged along to charity events and community
22 service work, like ivy pulls in the local park or distributing necessities to the houseless.
23 We thought for ourselves and did for others, and Mom pushed those lessons even
24 harder after Dad was gone.
25

26 I graduated from Alki Preparatory Academy, then obtained college degrees in
27 management and economics from Stanford and Yale. After graduation, I originally
28 planned to settle in Pine County, but found that there was too big a shadow of
29 expectations cast by my family and, frankly, by my sibling. Cal was already earning
30 quite a reputation in the local business world and I didn't want to be overshadowed by
31 that success. I wasn't jealous, just anxious to prove that I could do things on my own.
32

33 So I moved to Omaha, Nebraska and became involved in the Midwest's thriving
34 aerospace industry. My family already owned some business interests there and with
35 Mom's help, I was soon managing our companies. After I got my foot in the door, I
36 started a subsidiary business that manufactured specialized products for our main
37 operations. Mom fronted the seed money for that business, not that I needed much
38 help. I paid all those funds back with interest a while ago.
39

1 Over the next nine years, the bustling community of Omaha became my home,
2 and I still view that area as my future. Meanwhile, I visited Washington regularly and
3 spent as much time with Mom and Cal as I could. Things were usually very cordial and
4 pleasant. As a family, we were never the Waltons, but we all loved each other and
5 expressed that love in our own reserved, stoic way.
6

7 During the last two years of Mom's life, I became concerned for her and the
8 direction her life was taking. She was slowing down with age, and I knew that was
9 inevitable. She was still very interested in our businesses and her community work and
10 she was still mentally sharp, but she didn't recognize her own physical limitations. Cal
11 was staying at The Mansion (that's what we called the house), but Cal was always very
12 passive and "hands off" in dealing with Mom and what she wanted to do. When I could,
13 I encouraged her to take things a little easier. Get a relaxing hobby, or a pet to take
14 care of at home. In hindsight, that advice was a mistake.
15

16 Over the years, Mom periodically dove into "niche" charities. She was big on the
17 Hands Across America event in the 80s and donated extra money to convince those
18 who couldn't afford it to get in line and complete the chain. Hurricanes and other natural
19 disasters always got her worked up, although she seldom worked to support a particular
20 area after a year – she was on to the next suffering country by then. She liked assisting
21 local groups, but never joined them as a director or officer. She wouldn't even sign on
22 as a member – she only wanted to help when there was a special event or an
23 emergency. Until FAIR.
24

25 I'll never forget the first time I came back for a visit and immediately got an earful
26 about the problem of feral cats in Pine County. I'm sorry, did I say "feral"? Of course, I
27 meant "community cats", since all cats are basically dependent upon humans for the
28 necessities of their lives, they're not wild, blah, blah, blah. Mom had attended her first
29 FAIR presentation after meeting Bergen Henry during a visit to Dr. Wellbie's office. She
30 was bursting with statistics about the value of trap-neuter-release and the benefits it
31 could ultimately provide to our cities if done on a large enough scale. Less disease,
32 fewer bird deaths, less misery for the poor, vagabond felines – the list went on and on. I
33 listened and nodded, although I was aware that some studies show TNR is largely
34 ineffective without some reduction of the captured population by euthanasia. But Mom
35 seemed happy and motivated, so I let that go unmentioned.
36

37 Each visit after that, Mom was just back from a round-up or out on a feeding
38 event. Even though it obviously wore her out, she was regularly assigned shifts at the
39 Cat Recovery Center, an old warehouse out in Barryton. I went with her a couple of
40 times and met Bergen and some of the other volunteers. They were mostly young and

1 enthusiastic. They reminded me of the organizers you meet on college campuses –
2 rabidly devoted, doctrinaire, suspicious of anyone who wasn't enthusiastic about The
3 Cause. I doubt if any of them had a real job. All of them got on my nerves, especially
4 Bergen Henry. Bergen did not seem devoted to anything but Bergen – in my opinion,
5 money for personal support was what Henry was really interested in.
6

7 The group fawned all over Mom, praising her devotion, suggesting ways that she
8 could help even more. Usually, this involved buying something for the shelter, picking
9 up some food on the way to her next shift, or making a cash donation. Bergen usually
10 made the most blatant suggestions in this regard, always accompanied by a lot of
11 unctuous thanks and praise for her generosity. When I suggested that Mom had done
12 enough, Bergen would often find something for Mom to do at the back of the shelter, so
13 the two of them could talk privately.
14

15 It was during her association with FAIR that I really started to notice the decline
16 in Mom. She would be exhausted from working so hard for the cats. She started to
17 forget things, like medical appointments, which she scheduled and kept on her own. In
18 the past, she could be counted on to remember the name of every person associated
19 with a charity event. Now, as people approached and greeted her, you could tell by her
20 eyes and facial expression that she had no idea who they were. She would nod and
21 make banal conversation, and you could tell that she was trying to avoid saying the
22 person's name.
23

24 When I came for my spring visit in March 2017, there was Whiskers. He was a
25 mess when I first met him, thin and scraggly and hissing at everyone who got near him.
26 Mom had fallen in love with him after a winter round-up event in Barryton and she
27 adopted him even before he had completed a full stay at the Cat Recovery Center. She
28 quickly devoted herself to this new personal project and treated him more like an
29 orphaned child than a pet. Soon, Whiskers had an in-house vet, a dietary consultant
30 and a full-time behavioral therapist – that's right, she hired a cat whisperer to help calm
31 his feline PTSD.
32

33 When I came to Alki City now, I had to sleep in the guest quarters, since my old
34 bedroom had been converted into an elaborate cat gymnasium. It had everything –
35 multiple scratching posts, carpet lined tunnels and climbing walls. There was a machine
36 that randomly displayed points of laser light to chase. In one corner, a wind generator
37 periodically swirled feathers into the air. When I grumbled that it all seemed a bit much,
38 Mom laughed and told me that I was "just jealous of the new baby".
39

1 The attention Whiskers received certainly did him a lot of good. He fattened up,
2 mellowed out a little and his orange and white fur filled in and looked smooth and sleek.
3 He was still ornery at times – he scratched Mom pretty good about 4 months after she
4 adopted him. She was really sick after that – sore all over, swollen lymph nodes, fever,
5 headache. It took her months to finally recover from the acute symptoms. But even
6 after this incident, she seemed even more devoted to reforming her “baby”.

7
8 Even after the swelling and fever subsided, Mom’s mental and emotional health
9 continued to deteriorate. She had more and more trouble remembering things, more
10 incidents of completely blanking out when you talked to her. When I visited her that fall,
11 she was having what can best be described as hallucinations. Increasingly, Whiskers
12 was “telling” her things, either verbally or telepathically. Whiskers didn’t like that person.
13 Whiskers thought I should help out more with FAIR events when I came. Whiskers
14 wanted to sit in the chair that I was sitting in during dinner. When you called her on it,
15 she would stare blankly for a few seconds off into space. Then she would laugh and tell
16 you to stop being silly, that she was just kidding, that cats can’t talk. But that was
17 covering up – I could tell that she meant what she was saying at the time.

18
19 What really aggravated me was Cal’s attitude. Cal was still living at home and
20 was a big help to Mom with her daily activities. Everything that I saw during my visits
21 must have been on full display during the times I wasn’t there. But Cal didn’t lift a finger
22 to curb the situation or to get additional help. Every time I brought her behavior up in
23 conversation, Cal’s attitude was that she was fine and that her eccentricities shouldn’t
24 be a concern.

25
26 Now during most of my trips from Omaha, Bergen Henry was with Mom, trying to
27 monopolize her time and keep me (and everyone else) away from her. Bergen was
28 practically living at The Mansion, there for most meals, rarely leaving Mom to visit with
29 me alone. Whenever I wanted to take Mom somewhere, to get her to do something
30 other than sit around and obsess about cats, Bergen reminded her that there was a
31 meeting or event that Mom had promised to go to at that same time. Mom had grown
32 suspicious about the staff’s care of Whiskers and didn’t want to leave him while she
33 went somewhere. FAIR purchased a special carrier with their branding and gave it to
34 Mom so she could bring Whiskers with her, although I have no doubt that Mom gave the
35 group the money used to purchase this portable cage. Cal was willing to play along
36 with all of this, despite my protests.

37
38 The last straw was the statue. On June 29, 2018, my ride from the airport pulled
39 into The Mansion’s circular driveway. And there it was, towering over the garden – a
40 giant, golden likeness of Whiskers in repose, serenely staring out toward the birdbaths.

1 At first, I was afraid that it was solid gold, the way the surfaces caught the afternoon
2 sun. Fortunately, it was only thin plate, but what a waste of money and space!

3
4 When I confronted Mom about this latest extravagance, she was upset that I did
5 not approve. She told me that Whiskers was sure that I would enjoy the display,
6 especially after the “whole thing” was completed. When I asked her what the cat was
7 talking about -- yes, she had me hearing him by that time - she showed me the
8 drawings she had made for the planned “cat sculpture garden” There were to be
9 hundreds of depictions of cats in all stages of life – eating, playing, sleeping, catching
10 birds and mice. It was a coordinated work, patterned after the Vigeland Park in Oslo,
11 Norway. Except with cats.

12
13 I’ll admit, I was angry. When Cal walked in to find out what the fuss was about, I
14 chewed Cal out in Mom’s presence, for allowing this to happen. Bergen wasn’t there at
15 the time, or I would have included the FAIR president in my tirade – given the amount of
16 time they spent together, I’m sure Bergen knew exactly what was going on. Cal got
17 mad in return, and said if I was so concerned about what was going on, I should show
18 up more than every couple of months. I told them that I intended to do more than that –
19 I was moving back in and taking care of Mom full time. Cal shrugged and said I was
20 welcome to take over and by the time I moved in, my sibling had already moved out.
21 That wasn’t my idea, but I think it was probably for the best.

22
23 The next day, I flew home to Omaha and arranged an extended leave of absence
24 from in-person work (I still did a lot of work by phone and video conference). Then I
25 moved in full-time with Mom and tried to get her physical and mental issues under
26 control. She was very resistant at first, especially when I insisted on more “Whiskers-
27 free events” – she had been taking the cat everywhere. We spent some time at A
28 Thousand Alders and the fresh air and sunshine east of the mountains did her a world
29 of good. She went to fewer FAIR events and Bergen Henry stopped coming around. I
30 did not cut off all of Mom’s contacts with the cat group, but I think it was clear that Mom
31 needed time to just be with me and to concentrate on other things for a while.

32
33 Mom was happier and livelier than I had seen her in over a year. Then one day,
34 as we were sitting in the kitchen planning the day, she broke down crying. When I
35 asked her what was wrong, she told me about the changes in her estate plan and
36 showed me the documents Kenge had prepared. She was afraid that I would be mad,
37 but I told her that I was concerned that she had been tricked into signing something that
38 did not express what she wanted. She cried “they told me it was the only way to be
39 sure Whiskers gets what he needs!” I said “Who told you that?” She said “Whiskers!
40 Bergen! Cal! Kenge! Whiskers! Oh, I don’t know!”

1
2 Immediately, we called Kenge's office and made an appointment. Kenge said
3 Mom should go to another lawyer, given the circumstances. I called a couple of the
4 attorneys Kenge suggested and one of them agreed to meet with Mom in two weeks.
5 Mom immediately seemed calmer, as if she was relieved of a great burden.
6

7 On October 30, 2018, Mom asked me to take her on some errands, including to
8 the downtown branch of the Alki Amalgamated Bank. That wasn't unusual because she
9 liked to do her in-person banking there. I walked over to one of our company's local
10 offices and caught up with a couple of our associates while she was in the bank, so I
11 don't know what transpired inside. But a couple of days later, she told me to cancel the
12 meeting with the lawyer, that she had "already taken care of the matter". She was
13 deliberately vague when I asked her what that meant, but she seemed content so I
14 didn't push her for more details.
15

16 Contrary to what anyone else thinks, Mom was happy and alert right up until the
17 last days of her life. About three weeks after she passed away, I found the will, and the
18 deed she must have recorded. I also came across the supplemental writing that is
19 marked as Exhibit 6. This list demonstrates that she was having some mental
20 difficulties around the time of the first will. Many of the items – the Studebaker, the Sea
21 World plates, Cal's Lego sets – were disposed of years ago. The only "Frank" we ever
22 knew was Dad. And Rosita passed away in 2006, unless she knew somebody else by
23 the name.
24

25 By the time I found these documents, Cal had already started the probate
26 proceeding with the 2017 will and Cal refused to withdraw it and to recognize Mom's
27 obvious change of heart. We had quite an argument when I tried to work out a
28 settlement, and Bergen probably would have torpedoed any agreement Cal and I made
29 to resolve this matter amicably. That left me no other choice but to file this will contest
30 and to assert my right to sole possession of A Thousand Alders.
31

32 I hope the jury will see that Mom's mind was affected by something when she
33 signed the will dated November 17, 2017 and that the later deed and will more closely
34 reflect her intentions. As for Whiskers, Mom should never have been worried – I'll take
35 care of him.

1 STATEMENT OF PAXTON BAILEE

2
3 "Service with a Smile" is our motto at Alki Amalgamated Bank and it was always
4 easy to smile when Cordelia Lear walked in for service. She was such a pleasant
5 person! Even though she was one of our biggest accounts, she was friendly and
6 unpretentious with any staff member, no matter how new. As a senior accounts
7 manager, I always made a point to greet and personally assist her when I could. I was
8 so sorry to hear that she passed away.

9
10 I've been with Alki Amalgamated since 2014, after leaving my first financial
11 industry job, as an accounts manager at Sunshine Credit Union (my cousin, Payton
12 Bailee, still works there). Before that, I graduated from high school and earned my
13 Teller Training Certificate from Alki Community College. Through the Bank's Employee
14 Education Initiative, I was able to complete my Bachelor of Arts in Financial
15 Management online from the University of Phoenix. Since my assignments have been
16 based primarily in Alki's downtown branch, I had the pleasure of knowing Mrs. Lear for
17 several years before her death.

18
19 Cordelia liked to do some of her banking in person, even though most of her
20 accounts were managed electronically, with direct deposits and withdrawals set up for
21 convenience. Early on, when she was more actively involved in business, she would
22 occasionally come down to supervise large transfers, so everyone was clear on which
23 accounts were involved and how funds were to be divided between them. She was
24 very concise in her instructions and savvy about which approach resulted in the best
25 return for her companies. Especially after I finished my degree, I was impressed by her
26 business acumen.

27
28 After she turned most of the daily business operations over to others, including
29 Arin and Cal, Cordelia would still stop by on a regular basis, to deposit a few checks or
30 to transfer some of her extra money into CDs. She would ask about balances and
31 interest rates and had a good handle on where her money was and how it was doing.
32 At least, she seemed knowledgeable – it's always hard to know what a person is
33 thinking and it's not my job to test customers to see if they understand what I'm telling
34 them. After all, the customer is always right!

35
36 Most of the times I saw her in 2017 and 2018, she was accompanied by her cat,
37 Whiskers, who was an adorable little butterball. She obviously fed him pretty well! It
38 was so funny how she would talk to him about what they were doing that day. Whiskers
39 was very opinionated, according to Cordelia. He didn't enjoy the smell in this bakery, or
40 the number of dogs in this park. She would even ask him about which certificates of

1 deposit she should purchase and she always followed his “advice.” Of course, I
2 assumed she was just kidding around, although some of their conversations did seem
3 pretty sincere. If I would break in so we could complete our transaction, she would
4 stare at me for several seconds and then suddenly she was right there with me, all
5 gracious business without missing a beat.

6
7 Until mid-2017, Cordelia usually came in to do her banking alone. I know
8 someone brought her downtown, because she told me that she didn’t drive anymore. I
9 figured that she had a driver or used a limo service – I don’t like to gossip about
10 customers, but she could certainly afford it! Her visits changed around that time, when
11 she appeared to be experiencing some health issues. She looked pale and sore and
12 she just wasn’t as talkative as she was during most of our previous interactions.

13
14 During this period, Cordelia would come in with Bergen Henry, who I did not like
15 very well. Bergen was so pushy, always in a hurry to be somewhere else. Cordelia
16 would try to be gracious, but whenever she started to engage one of us in a
17 conversation, her companion would remind her that they had things to do “for the poor
18 cats” and urge her to complete her business. It seemed as though Bergen was afraid to
19 let others break through the isolating cocoon that Bergen had spun around Cordelia.

20
21 Each time they came in together, Cordelia would always get some cash or a
22 cashier’s check, usually several thousand dollars, in addition to her other banking. She
23 would hand this money directly to Bergen Henry and say “For the cats”. Then she
24 would look into the cat carrier and say “Was that enough, Whiskers?” We would all
25 laugh at that, since Whiskers never answered. Bergen would thank them both for being
26 so generous. I didn’t go back to look at the withdrawal records, but it seems to me that
27 Cordelia was a little more generous every time.

28
29 The winter of 2017-18 was especially cold, with lots of wind and snowy weather
30 and I hardly saw Cordelia during that time. She started to come in more during the
31 spring and she seemed much better. She told me that she was over her illness and her
32 animated conversations with Whiskers resumed. But she never came in alone
33 anymore, since she was walking slower and was less steady on her feet. Bergen was
34 with her a lot, but Cal Lear was also with her quite a bit. Once, she and Cal came in just
35 to get a current listing of all her bank balances. She didn’t do any other banking that
36 day and the two of them had quite a conversation about the information on the way out
37 the door. When I asked how Whiskers was doing, she just smiled and nodded and
38 didn’t say anything. Cal gave me the most exaggerated eye roll and looked
39 exasperated that I would ask after the welfare of a cat. But I was just trying to be
40 friendly, since I knew how much that furry little cutie meant to her.

1
2 Then suddenly everything changed. Bergen, Cal and Whiskers all disappeared
3 and the only person who ever accompanied Cordelia to the bank was Arin Lear.
4 Although Arin may have come in at some earlier point, I do not recall meeting Arin
5 before 2018. Arin was very friendly and patient and encouraged Cordelia to take her
6 time and to talk to whoever she wanted. It was almost like the bank was a field trip and
7 Arin wanted her to enjoy the full experience. I didn't see anything in their interaction
8 that would cause me any concern that Arin was abusing or bullying her.
9

10 On October 30, 2018, Cordelia came in to the downtown branch by herself. That
11 was unusual, so I immediately left my office and hurried over to greet her. She was
12 walking a little slower than usual, and I noticed that her speech was harder to
13 understand. It seemed slurred and she was only using one side of her mouth to talk.
14 But she half-smiled when I greeted her and we chit-chatted for several minutes. She
15 told me that she expected a bumper crop from her Thousand Alders orchard this year
16 and she thought the weather conditions would make the apples especially sweet and
17 juicy. She was obviously very proud of that and she mentioned several times that the
18 place had been in her family for generations and that she planned to keep it that way.
19

20 After our initial conversation, Cordelia opened a zippered leather document folder
21 and brought out a couple of pieces of paper. She wanted to know if the bank had
22 notary service, although I knew she had used a notary at this branch several times
23 before. I told her the bank had several notaries and that I was one of them and would
24 be glad to help her. We went back to my office, so we could lay the documents out on
25 the desk and she could sign them in privacy.
26

27 The first document was the deed to A Thousand Acres Ranch, which I recognize
28 as Exhibit 4. She smiled when I mentioned that we had just been talking about the
29 place. Cordelia said it was time "to get the orchard into family hands that will take care
30 of it." She said this firmly, as if she had been practicing the response and had it
31 memorized, in case someone questioned her about the deed. As she repeated this
32 statement, almost word for word, she looked back toward the entry door, even though
33 there was no one there. Then she signed the deed and I notarized it on the spot.
34

35 The second document was the will form which I recognize as Exhibit 5. I told
36 Cordelia that she would need to have a couple of witnesses watch her sign this
37 document and that I would be notarizing their signatures on the self-proving affidavit
38 section. She seemed a little confused by this at first, sort of anxious about having so
39 many people around. Then she said that Lola and Lana, two longtime employees of the

1 bank, knew her and should be able to serve as witnesses. I buzzed them in and both of
2 them were available to join us.

3

4 Lola and Lana greeted Cordelia and the three of them conversed for several
5 minutes about when they had seen each other last, some transactions they had been
6 involved in together and what each of their children had been up to since they had last
7 seen each other. Cordelia participated in the conversation, although Lana told me later
8 that Cordelia had mixed up the details of two of the transactions they were discussing.
9 Cordelia spoke with pride about both of her children's accomplishments, although she
10 mentioned that she and Cal were currently "on the outs" over something – she didn't
11 specify what it was.

12

13 Finally, Cordelia said that she had another appointment and needed to get going.
14 I asked her if she understood the document she was signing and if she was declaring it
15 to be her Last Will and Testament in the presence of these two witnesses. I assumed
16 that she had executed a will before this and I asked her if she knew that this will would
17 take the place of any prior documents. She answered yes to all of my questions and
18 didn't seem to have any difficulty or confusion. She initialed each page of the will and
19 then signed it and Lana and Lola signed the witness attestation. I notarized the
20 signatures and Cordelia thanked us and stood up to leave.

21

22 As I was walking her out, I realized that she did not have her cat with her again
23 today. I said, "Cordelia, what is Whiskers up to these days?" She grew sullen and
24 snapped "That cat didn't want me to come. He can't tell me what to do!" And before I
25 could say anything else, she quickened her pace and shuffled to the door. I watched
26 her until I could see that she was safely in the car across the street, which was being
27 driven by Arin Lear that morning. Unfortunately, I never saw Cordelia again after that
28 last meeting.

1 STATEMENT OF ABBOTT LINDAS

2
3 Sometimes, the sins of the children are visited on the parent, rather than the
4 other way around. If Arin and Cal Lear hadn't escalated their petty argument into a full-
5 blown family rift, I could have continued as Cordelia's caregiver and helped her through
6 the rough period she was having. I'm convinced she would be alive today if this whole
7 dispute about Whiskers and the statue hadn't erupted. As you can tell, I'm not a big fan
8 of either of the children, but Arin subpoenaed me to testify, so I'll tell you what I know.
9

10 I have provided in-home care for the elderly for nearly twenty (20) years.
11 Because my parents were both personal assistants, you could say that my interest in
12 providing this service was instilled in me at an early age. Most of my assignments are
13 arranged through a local employment agency, because the work is usually short term.
14 Some clients only need help while they are recovering from illness or a bad fall. Other
15 folks start in independent living, then deteriorate and need to transfer to an assisted
16 living facility. Because I deal with the elderly, some of my clients have passed away
17 while I was working for them. I've had hundreds of satisfied customers in my care
18 during my long career.
19

20 Each assignment is different, both in length and in the type of service I perform.
21 I help clients with all aspects of daily living, including household chores, physical
22 therapy and medication management. Depending on the need, I can also serve as a
23 driver, scheduler, companion and cook. For each person I assist, I try to be an
24 advocate and a friend. I'm not a trained medical provider, but I know and understand the
25 physical and emotional needs of my clients and how best to meet them.
26

27 The one thing I won't help with is pet care, because I'll admit that I am not fond of
28 animals. I recognize the therapeutic value of a furry companion for the elderly and
29 almost every one of my customers has had a pet or hopes to get one. But my focus
30 needs to be on the human client and I am not personally interested in interacting with
31 these lesser creatures. The written contract I provide to each employer is very up front
32 about this limitation and I always advise clients to either take care of the animal
33 themselves, as a beneficial activity, or to have a separate pet care contractor when they
34 can afford it.
35

36 My employment with Cordelia Lear started in 2015, when I was hired through a
37 temporary employment agency to assist her after she had fallen and sprained her ankle.
38 While I was providing these services, I learned that her previous housekeeper had
39 relocated to another state and that she was looking for permanent general assistance.

1 Cal Lear had been providing some interim help, but Cordelia told me that work and
2 other responsibilities kept Cal from acting as her sole support.

3
4 Cordelia and I proved to be very compatible with each other and she was very
5 easy to work with – all of the staff thought so. When I first came to work for her full time,
6 Cordelia could handle many daily activities on her own and she enjoyed being self-
7 sufficient. She couldn't drive, but she was very active in the community and always
8 wanted to go places. For some excursions, she was accompanied by Cal, who still lived
9 in the house and was very accommodating to "Mom". On other occasions, I would ferry
10 her around and stand by while she attended a broad range of meetings and events.

11
12 Like most people her age, Cordelia required regular medical care and I would
13 often take her to these appointments. Unlike some of my patients, she did not need me
14 to go in with her and listen to the doctor's instructions. After each appointment, she
15 would tell me the options provided and could explain why she chose a particular course
16 of care or medication regimen. Her decisions seemed to make sense, although I
17 couldn't tell you if she was relating the options accurately, because I wasn't in the
18 examination room.

19
20 At one of her appointments with Dr. Wellbie, Cordelia met Bergen Henry in the
21 patient waiting area. The two of them chatted politely at first, then Henry launched into
22 what sounded like an "elevator" speech about the perils facing community cats. By the
23 time Cordelia went in for her exam, she had a FAIR brochure and Henry's contact
24 information. Henry left right after that -- it seemed like Bergen was just hanging around
25 in the waiting room in case some rich elderly person showed up. I didn't talk to Henry
26 on that occasion, so I can't say for sure what was going on.

27
28 Shortly after that meeting, Cordelia decided to attend a FAIR event and she
29 became more and more hooked on their charitable organization. At times, she would
30 attend events several times a week. At first, either Cal or I would give her a ride, or she
31 would have an Uber or Lyft driver take her over. After a few months, Bergen Henry
32 would arrange the transportation or pick Cordelia up in the "FAIR-mobile" -- a fancy
33 sedan with the group's logo prominently featured on the doors and the hood. That was
34 a brand-new car – I'm not sure where FAIR found the money to buy that sweet ride.

35
36 Sometimes Cordelia overdid it at these activities – I told her she should leave
37 the heavy lifting at round-ups and feeding runs to the younger people. She seemed to
38 enjoy the company of the other volunteers and the attention that Henry and the group
39 gave to her. Cordelia was involved with several other charities, so I didn't see anything
40 unusual or concerning about her participation with FAIR. I could see why she enjoyed

1 Henry's company – the FAIR president gave her a lot more attention than her kids. Cal
2 was always at the office and Arin rarely visited more than once every couple of months.

3
4 During the course of my employment, Cordelia gradually became more frail and
5 started having more “senior moments,” when she would forget a name or an
6 appointment. She was still in good health, but her ability to independently do things
7 around the house diminished. So I wasn't thrilled when she showed up one day with
8 Whiskers in a cardboard carrier and happily announced that she had a new pet.

9
10 She hadn't consulted with me, so I reminded her right away that I was not
11 involved in pet care. Cordelia said that would not be a problem, because she planned
12 to hire a separate caregiver to assist her with the cat. She did that and then some –
13 Whiskers had a caregiver, a personal vet, an in-house therapist and an activities
14 director, in charge of designing games and fun environments just for him. He even had
15 a masseuse for a while, until everyone (including the masseuse) learned very quickly
16 that Whiskers was not into massage.

17
18 It is fair to say that Cordelia went batty over that cat. That's not a professional
19 diagnosis – it's just a fact. Whiskers went everywhere with her, sometimes with his
20 entourage of assistants, in case he needed to be checked or counseled while he was
21 out. He was a regular at FAIR events and her need to take him limited her ability to
22 work with other charities, since not everyone was cat friendly. Within a few months,
23 Whiskers had a seat at the dining room table, which he liked to walk on during meals.
24 He had more and more rooms devoted to him in The Mansion and a special enclosure
25 was built so he could – on a single occasion – enjoy the serenity of A Thousand Alders.

26
27 All of that nonsense I wrote off to the eccentricities of the rich. Whiskers is
28 certainly not the first cat someone has gone goofy over – check out the internet if you
29 don't believe me. But I was more concerned about the conversations Cordelia began to
30 have with Whiskers about her own life decisions. Whiskers didn't like particular food, or
31 company stocks, or people. One of the gardeners was fired because Whiskers stared
32 at him and, according to Cordelia, “could see the decay in his soul.” Then one day I
33 noticed Whiskers staring at me – what was that little bugger telling Cordelia about my
34 inner workings?

35
36 Bergen Henry seemed to egg Cordelia on in this idea that she should consult
37 with Whiskers before she made a decision. Henry made a habit of stopping by for
38 lunch, or dinner, or just to find out what Cordelia and Whiskers were doing. Had they
39 talked about that new equipment for the recovery center yet? What did Whiskers think
40 would be a good level of permanent staffing? Cal Lear laughed their conversations off

1 when I mentioned my concerns. But their conversations with that cat gave me the
2 creeps.

3

4 The whole thing was becoming some surrealistic Murakami dream. You can only
5 be around someone who thinks a cat talks for so long before you start to hear the voice.
6 Sometimes Cordelia supplied the voice, switching to a squeaky tone to tell me that
7 “Whiskers says the pate was divine tonight!” But sometimes, I swear I could hear the
8 voice when only the cat was there.

9

10 Cordelia took a real turn for the worse in the summer of 2017, after Whiskers
11 scratched her. She was bedridden with soreness and fever for a few weeks and took a
12 couple of months to fully get back to normal activities. Even after that, she talked to
13 Whiskers every day and was devoted to him. But outside of her feline companion, she
14 was perfectly normal and she interacted with me and other people in her life in the same
15 way as when I first started performing care services for her.

16

17 I was surprised when the Whiskers statue went up, but apparently not as
18 surprised as Arin Lear, who seemed like a pretty level-headed person during most of
19 the visits from Omaha. To say that Arin hit the roof would be an understatement. Arin
20 and Cal had a real donnybrook over how Cal could have let this happen. Sure, I heard
21 it – I’d guess that everyone in the Heights heard the commotion, which spilled out onto
22 the lawn. Cal ended up storming off and Arin immediately booked a flight back to
23 Omaha, in preparation for moving back and “taking care” of Cordelia. I never saw the
24 two of them together after that.

25

26 All of this occurred in front of Cordelia and she was heartbroken. She told me
27 later that she just wanted her family to be happy. She said, “Whiskers will only be
28 around for a little while. I just wanted the statue as a symbol, to remind us all of the
29 suffering community cats around the world.” I don’t think she ever recovered from the
30 shock of that scene between her two children.

31

32 I stayed on for a few more weeks after Arin moved into the Mansion. To be fair,
33 Arin really cared about Cordelia and devoted a lot of time to weaning her away from her
34 Whiskers fetish. Arin convinced “Mom” to spend more time at parties and charity
35 functions where the cat wouldn’t be welcome. Although her heart didn’t really seem to
36 be in these activities, and she often told me that she missed Henry and the gang at
37 FAIR, I do think these changes were starting to do her some good.

38

39 After Arin found out about the will changes Cordelia had made with Kenge’s help,
40 Arin apparently felt that I should have known what was going on. I knew that Cordelia

1 was seeing an attorney, but Cal and Bergen Henry drove her to those appointments.
2 She never discussed things like that with me, except to say that she would assure that
3 Whiskers was taken care of and then her estate would be available to help a broader
4 range of cats. As for her children, she told me that they would receive things of family
5 value, but that “they really don’t need anything from me – they’ve made it on their own.”
6

7 In October 2018, Arin advised me that my services were no longer required. I
8 know that Arin’s heart was in the right place, but I really think Cordelia needed a
9 professional caregiver during that time, not someone always busy on a call to Omaha.
10 Services such as mine can make a big difference in terms of a client’s longevity.
11 Certainly, Cordelia would have been happier if she had the help she needed – and if
12 Arin, Cal and Whiskers could have all learned to get along.

1 STATEMENT OF WILLIE DOWNING

2
3 Unfortunately, I never had the pleasure of meeting Cordelia Lear. She sounds
4 like a remarkable woman, with a big heart and a lively personality. She thought of
5 others, including the welfare of animals in our community. My research indicates that
6 she was sharp and intelligent right up until the end of her life. Based on my review of
7 available materials, however, it is my opinion that, due to health considerations,
8 Cordelia Lear lacked testamentary capacity and could not execute a will during the
9 period from September, 2017 through June, 2018. During that time, she was highly
10 susceptible to undue influence and coercion.

11
12 These opinions are based upon my background in both the medical and legal
13 fields. Blessed with the support of my family, I was able to pursue advanced degrees in
14 both these areas. My first passion was medicine, so after I earned a Bachelor of Arts
15 and Sciences from the University of Thermopolis in Wyoming, I studied medicine at
16 Wyoming State. I completed the requirements for the basic degree, including a
17 residency at a local hospital. The grind of that internship definitely convinced me that I
18 did not want to make my career in direct patient care.

19
20 At lunch one day, some of the doctors and nurses were complaining about their
21 experiences testifying in court on various subjects. They expressed their frustration with
22 the sneaky attorneys who twisted and distorted their answers and the judges who were
23 too ignorant about medicine to stop them. That session piqued my interest and I began
24 to pay more attention to the interaction between the law and the medical profession.
25 There are so many areas where this interface arises -- negligence, medical malpractice
26 and in the criminal field, insanity or diminished capacity caused by a medical or
27 toxicological condition.

28
29 By the time my residency was complete, I had decided not to immediately seek a
30 license to practice medicine. Instead, I studied law at the University of Idaho and
31 obtained my juris doctor. My career plan was now fully formed, at least in the recesses
32 of my mind. My goal was to help judges and juries understand the medical aspects of
33 the cases before them, so they can appropriately apply the legal standards to the
34 evidence presented. Immediately after graduation, I started my independent consulting
35 firm, Medico-Legal Assessments in Spokane, Washington.

36
37 To do my job, I became a member of the Washington State Bar Association and
38 obtained a license to practice medicine in the state. Because law and medicine can
39 connect through so many different types of controversies, I am not a specialist in any
40 field. Specifically, I am not a psychologist, psychiatrist or neurologist. But I regularly

1 attend continuing education necessary to maintain my medical and legal licenses. And I
2 regularly review the current literature on developments in my field, although I haven't
3 written any peer-reviewed articles myself. I am able to translate these latest advances
4 for parties not familiar with the terminology and medical techniques involved. Based on
5 my experience and training, I am fully familiar with the standards and expectations of
6 professionals in both the medical and legal fields.

7
8 The issue of testamentary capacity should be anticipated and addressed at the
9 time estate planning documents are executed, through a recorded interview process
10 that ideally involves the individual, their immediate family members and medical
11 professionals. This process must be specifically focused on capacity issues, not on
12 other generalized health or mental concerns. This approach will yield the most reliable
13 snapshot of capacity when wills are signed, due to the variation in neuropsychological
14 functioning over time. Our firm performs this type of assessment on a regular basis.
15 Unfortunately, that type of process was not done in this case, so here the court must
16 rely on another method, the retrospective capacity analysis. We also perform this
17 service for family members, beneficiaries and legal professionals contemplating an
18 action against a legal practitioner who did not assess capacity prior to document
19 preparation.

20
21 When a case of this type comes into my office, I assess the factual information
22 available, including testimony, witness statements, medical charts and the results of
23 various tests and assessments. On occasion, I will meet with a subject and complete
24 an independent medical examination or perform my own tests. Examination is solely for
25 the purpose of diagnosis and assessment; I do not treat patients. Similarly, although I
26 may meet with someone to discuss their legal issues and how their health may affect
27 those issues, I do not offer these individuals separate legal advice. Often, my work
28 involves using existing information and entering it into various assessment tools. My
29 methods are generally recognized in the forensic community as an appropriate way to
30 proceed.

31
32 Like all professionals, I am paid for my services, with the understanding that the
33 fact of payment will not lead to a favorable conclusion for any particular person involved
34 in a dispute. In this case, our standard rate of \$500 per hour was utilized – this applies
35 to both initial assessment and review, completing and scoring various tools and
36 testimony in court. I would estimate a total of 45 hours of work performed in this matter,
37 not including my testimony today.

38
39 For my analysis in the Lear matter, I reviewed all of the witness statements and
40 exhibits, including the medical charts which are marked as Exhibit 2. Because Cordelia

1 Lear passed away several years ago, I obviously did not independently examine her or
2 assess her capabilities. However, I was able to enter available information into a couple
3 of different assessment tools, which are normally filled out completely with a patient
4 while they are alive and able to respond.
5

6 Because testamentary capacity is a legal construct, there are only a few
7 instruments available to do formal assessments in the clinical setting. In this case, I
8 used the Testamentary Capacity Instrument, or TCI, which assesses a testator's
9 knowledge of four conceptual elements (1) what a will is, (2) nature and extent of
10 assets/property; (3) possible heirs/claimants to property, and (4) plan to distribute
11 assets to heirs or others after death. Various responses are entered and scored. The
12 initial studies of this instrument indicate a measurable difference between cognitively
13 intact older adults and older adults with AD dementia.
14

15 Normally, the TCI would be completed with the subject and all responses would
16 be entered. In this case, I was able to complete and score 80 per cent of the responses
17 using statements made by Cordelia to various individuals, including her attorney,
18 relatives and friends, her caregiver and her doctor, during the period around October,
19 2017 and during the period from September-October, 2018. Neither TCI was
20 completely filled out and some of the statements Cordelia made to others had to be
21 subjectively interpreted by me to fit the conceptual elements. All of this should be taken
22 into account and qualify the reliability of the results. But the TCI's scores were
23 consistent with other information available to me, so I felt confident in considering these
24 results in reaching my conclusions.
25

26 The Testamentary Capacity Assessment Tool (TCAT) is another short tool
27 developed for assessment of capacity for patients with dementia. TCAT consists of four
28 subtests, assessing memory (orientation, biographical memory and realistic perception
29 of beneficiaries); absence of serious psychopathology; knowledge of financial
30 parameters (asset value, everyday life products, bills); and intention (vignettes, theory of
31 mind). The studies of TCAT have focused exclusively on dementia, and Cordelia did
32 not show any indication of dementia during her lifetime. But I calculated the TCAT
33 score, again interpreting the partial information available to me. I considered these
34 partial scores in forming my expert opinions.
35

36 For the periods I assessed, consisting of 4-month blocks from January, 2017
37 through December, 2018, I am of the opinion that Cordelia generally possessed
38 sufficient understanding of the nature and extent of her estate and who she wanted to
39 give it to. She showed an ability to decide who should receive various specific portions
40 of her property, including her Alki City residence and her family's orchard. For most of
41 this time (except possibly the last 30 days of her life, when she did not execute any

1 estate planning documents), she could comprehend the materials she was reviewing –
2 in fact, the indications are that she prepared the final estate planning documents
3 herself. Although her medical records show some decline in cognitive function over
4 time, this slight deterioration would not affect her ability to proceed with estate planning.
5

6 The only period of time where the assessment scores and her responses to
7 others demonstrated a marked and significant decline of functioning is noted in the
8 period from September, 2017 to June, 2018. During this period, the information
9 available to me shows substantial confusion and loss of cognitive ability. Although this
10 decline was especially acute in the early stages of this period, Cordelia’s cognitive
11 function was persistently lower until Arin Lear returned to Alki City and began to take a
12 more active role in Cordelia’s care. After she was freed from regular contact with
13 Bergen Henry and Cal Lear, she showed a rapid recovery of her cognitive function.
14

15 The MMSEs administered to Cordelia do not clearly show the decline and
16 recovery I observed. But the partial TCI and TCAT scores generated show this distinct
17 pattern. These scores are displayed in Exhibit 3, in both a data table and chart. As
18 modified by the responses available, a partial TCI score of 6.8 or below indicates an
19 impairment of capacity. Similarly, any partial TCAT score of 6.6 or less would denote
20 incompetence to execute even simple legal documents. I would note that the scores for
21 the final period (September 1, 2018 through December 15, 2018) are derived from even
22 less data than the other time periods and should be viewed with caution in their
23 interpretation. I would not use those final scores to support an opinion on capacity.
24

25 The TCI and TCAT are based on a wider range of data and responses than the
26 “quick and dirty” MMSE scores. For that reason, I can understand why Quinn Wellbie,
27 who is not a trained forensic legal-medical analyst, would not be able to discern these
28 patterns. But combined with other direct and circumstantial evidence available to me,
29 the pattern of decline is both obvious and pronounced.
30

31 Another telling indication of the confusion Cordelia was experiencing during this
32 period is the supplemental writing she drafted, which is available to the jury as Exhibit 6.
33 This writing is supposed to provide direction to the personal representative on how
34 Cordelia wants specific personal property distributed. More than half the items listed
35 were not owned by Cordelia at the time of the writing and several of the beneficiaries
36 may have been deceased, although the garbled nature of the bequests makes it difficult
37 to tell. Contrast this “plan” with the clear distribution of the orchard property made in
38 2018 and you can see that Cordelia’s cognitive abilities were much better during that
39 subsequent time period.
40

41 There are several possible reasons for a short-term decline in cognitive
42 functioning of this type. A person often becomes confused and incapacitated during a
43 time of acute illness; that is why “hospital bed wills” are inherently suspect. Cordelia was
44 struggling with several health concerns during this time. One particularly significant
45 medical issue during this period was the severe puncture scratch that she received from
46 her cat, Whiskers. Although the condition was not diagnosed by Dr. Wellbie, the

1 symptoms complained of by Cordelia after this incident have all the hallmarks of cat
2 scratch fever.

3
4 Cat scratch disease is a bacterial infection transmitted by a cat's scratch or bite.
5 Fleas infect cats with the bacteria (*B. henselae*) and some cats inadvertently pass the
6 disease along to us, even though the feline does not suffer the same symptoms.
7 Human reactions commonly include rash or bumps on the skin, swollen lymph nodes
8 and, as the common name implies, a fever. The disease is relatively uncommon and
9 most symptoms usually resolve in a few weeks or months.

10
11 The persistence of symptoms in an older adult would cause confusion, irritation
12 and anxiety. Someone suffering through the effects of the illness would be more open
13 to allowing others to influence their decisions, because the patient simply doesn't feel
14 like dealing with complex problems while they're hurting. Of course, in a few individuals,
15 this general feeling of malaise might have the opposite effect and make them paranoid
16 and suspicious of others, but there is no indication that occurred in Cordelia's case.

17
18 In addition, studies have shown that in some cases, cat scratch fever has been
19 associated with neurological and ophthalmological effects, including hallucinations,
20 schizophrenia, partial paralysis and changes in the retinal lining of the eye.
21 These are admittedly rare, but a person experiencing these hallucinations and mental
22 issues would not be capable of understanding intricate legal documents with trust
23 provisions. Dr. Wellbie did not order the tests needed to determine whether Cordelia
24 Lear was suffering neurological problems due to cat scratch fever, but the charts and
25 other information seems to indicate this was a diagnosis that should have been (and
26 wasn't) ruled out.

27
28 Although the exact medical issue that caused the decline in cognitive function –
29 cat scratch fever, stress caused by external pressures, acute medical issues –is
30 unknown, the result of one or more of these factors is clear. Cordelia Lear suffered a
31 severe transitory decline in her mental functioning during the time period when she was
32 presented with a complicated will with detailed trust provisions. She did not have the
33 capacity to understand and execute this will of her own volition. Since she could not
34 make her own decision to sign the document, the only logical conclusion is that she
35 signed the November 2017 will as the result of coercion and undue influence.

1 STATEMENT OF CAL LEAR

2
3 This case is not about the money. I personally would be better off if the court
4 were to declare that my mother died intestate, that all her wills and deeds were invalid.
5 There might be adverse tax consequences from that result, but at least then I could take
6 my share and go on about my business, free and clear of all this conflict with Arin. But
7 my mother wanted to leave a substantial legacy to help solve the community cat
8 problem in Pine County. And she wanted me to manage her estate, including the
9 Thousand Alders orchard, so that her goals could be accomplished. So that's what I'm
10 here, fighting to make sure her desires are upheld.

11
12 I'd like to tell you that this situation is a novel one in our family, but that wouldn't
13 be true. Arin has always wanted to control whatever is going on. When we were kids,
14 Arin chose the games we played, the television programs we watched, which sports and
15 activities took priority. Arin's preferences even shaped our lives when we were adults.
16 The Lear family had a minimal presence in Omaha until Arin decided that was the
17 greatest city in America. Now, more of our company's operations have shifted to the
18 Gateway to the West, so my sibling can keep a thumb in them.

19
20 For the most part, I've been fine with Arin taking the wheel. Sure, I have my own
21 ideas and opinions, and I can stand up for myself when necessary. But I'm not looking
22 for a fight, especially when it involves someone else's life and activities. That's how I
23 felt about Mom and the cats. She spent a lifetime building the business and improving
24 on the legacy that she and Dad inherited. No one told them how to spend their money
25 or what charities they wanted to assist. If she decided to turn her focus to a single
26 cause, or to lavish her attention on a pet, who am I to tell her no?

27
28 A lot of people would regard the idea of leaving money to a cat in their will as
29 insane, something that only an eccentric wealthy person would consider. In reality, pet
30 trusts are an increasingly common provision in estate planning documents. According to
31 my internet research, legal experts recommend them for any pet owner who cares
32 about their animal. A pet trust is a benefit for the surviving family members, because
33 they don't have to devote their own resources to the animal's care. Any good lawyer
34 (like Kenge Tulkinghorn) can add clear and inexpensive provisions to an estate plan
35 that detail pet care options. Every state in America, except Minnesota, has laws on the
36 books detailing pet trusts and their enforcement, to help simplify things.

37
38 Not all owners are created equal, so I have read about some pet directives that
39 seemed a little crazy to me – how often a dog is taken for a walk on a particular street,
40 what brand of baby food a squirrel has to be fed, things like that. Personally, I thought
41 Mom went overboard on Whisker's care during life – even she recognized the pet
42 masseuse was a mistake – but her will doesn't list a lot of specific provisions for

1 Whiskers, only that his care be consistent with what he had been receiving during his
2 life. The rest of the trust corpus will be preserved and I will appropriately manage it until
3 Whiskers passes. Then the estate is divided between Arin and I, with a substantial
4 portion passed directly to FAIR, the charity she held in such high regard.
5

6 Working with FAIR on the community feline problem gave Mom such a sense of
7 purpose during the final years of her life. She would have a positive glow each time she
8 participated in one of their events. Mom could describe each cat they helped in detail,
9 right down to the food that animal liked or the distinct sound of their thankful mewls.
10 When she and Bergen Henry sat at the table and planned how to make their efforts
11 more useful, more meaningful, I've never seen her happier. Sure, she donated a lot to
12 that group, both time and money, but I considered it well spent, considering what she
13 received in return.
14

15 Arin never understood the importance of FAIR to our mother, even when she
16 tried to explain it during their infrequent visits. She would invite Arin to go with her on
17 round-ups or feeds, but my sibling thought the whole thing was a big waste of time.
18 Part of the problem was distance – Arin's life was in Omaha and you couldn't really
19 appreciate the positive effects of the events on Mom unless you were around her
20 regularly. Bergen Henry didn't help matters – when Arin came to visit, I think Bergen
21 was concerned that Arin's negative attitude would rub off on Mom. So Bergen seemed
22 to make a point of taking her to events alone during these periods, isolating Mom from
23 both Arin and myself.
24

25 I was content to help Mom in any way I could, as long as she was happy. After
26 Dad passed and Arin moved away, she struggled with loneliness for years. At one
27 point, I thought she might sell The Mansion and the memories it held. Maybe I should
28 have let her downsize, but I think she would have eventually regretted the loss of that
29 lifestyle and the things she built with our father. So I convinced her to hang on to the
30 place and to spend more time out in the community, as a way to help fill the void.
31

32 During this period, I was transitioning from active management of our business
33 interests to a role that better suited my artistic passions. I was still a working member of
34 the management team, but my primary focus shifted to the graphic arts division of our
35 public relations and marketing department. I enjoy the creative process and working
36 with a skilled team to bring fresh approaches to our advertising. My significant other
37 and I separated around that time and I offered to move in and keep Mom company.
38 Even after my personal life stabilized, we decided that the arrangement worked for both
39 of us and I didn't seek out my own place. That was a big help for me financially as well.
40

1 Sometimes I would take Mom to appointments, but usually she found a ride or
2 hired a driver when she wanted to see Dr Wellbie, attend an event or help the cook with
3 produce selections – she loved to be involved in the kitchen. After Whiskers showed
4 up, she shopped even more frequently, because she wanted to be sure he had the
5 freshest food, made from scratch. “No prepackaged meals for my little kitty!” It was one
6 of her quirks – she thought nothing of eating something prepared with packaged
7 ingredients, but that would never do for the cat.

8
9 As for Whiskers, I’ll admit that I am not a cat person and I was not particularly
10 enamored with him – certainly not like Mom! I would have preferred a dog, but that
11 would not allow her baby to have the full run of The Mansion. To please Mom, I tried to
12 interact and pet Whiskers, but I got the feeling he viewed me as a rival for his owner’s
13 affection. The little scamp even nicked me a couple of times with those sharp front
14 claws, usually when I tried to brush him off the table while we were eating. Fortunately,
15 it was just a scratch, so I washed it out, put a bandage on and went on with life.

16
17 FAIR was a big part of Mom’s life, so it was natural that she and Bergen Henry
18 spent a lot of time together. Bergen basically took over driving her for a while, to “save
19 her the expense of a chauffeur.” Most of the time, they were headed to the same
20 destination – the CRC, an event, a pet-friendly restaurant. When Mom tried to pay for
21 gas, Bergen would laugh and tell her to “give it to the cause”. I’m sure that strategy
22 worked – FAIR probably got far more in extra donations than Bergen ever spent on gas.

23
24 In the fall of 2017, Bergen took Mom to most of the appointments with Kenge
25 Tulkinghorn about the changes in her will and estate plan. The two of them would sit at
26 the big dining room table and work over the details of the drafts. Bergen would make
27 suggestions on how to improve the documents. Mom would smile and nod her head,
28 scratching Whiskers on the stomach while Bergen prattled on, marking the draft up with
29 a red pencil. She had just gone through a nasty illness, but she had recovered from all
30 that before the will revision process began. Anyone who thinks she was addled or
31 infirm during that time obviously didn’t know my mother.

32
33 I briefly scanned the drafts a couple of times, so I knew that Mom was planning
34 on leaving something to FAIR, but I didn’t pay attention to the fine details. Based on the
35 discussions that I overheard, I would have guessed that she was giving them a specific
36 amount of cash, not the Mansion or a percentage of a trust remainder. I advised her to
37 run any proposed changes by Kenge and to listen to our attorney about the potential tax
38 and business consequences of revoking or modifying her previous estate plan, She
39 promised that she would and I felt confident in her ability to make the correct decisions.
40 Ultimately, it was her money, so I wasn’t really that concerned.

1
2 Mom must have dreamed up that statue of Whiskers around the time she
3 changed her will – I know something like that would take a while to sculpt. She didn't
4 share her plans and I was as surprised as anyone when the artist's crew pulled up on
5 the lawn and placed *Safe from the Streets* – that's the official name of the piece - on its
6 pedestal. My first thought was that she had gone off the deep end with "Golden
7 Whiskers" – that's what I call the statue.

8
9 But then Mom told me that she viewed Whiskers as a symbol of the type of
10 animal FAIR was helping and that she eventually hoped to have the statue stand in front
11 of a new home for the organization. She didn't mention that the home she had planned
12 for them was The Mansion – I found that out later when I read her will. But her
13 explanation showed me that she had given the statue a lot of thought. She never
14 mentioned the cat sculpture garden to me. Arin was the first to get that idea out of her
15 during their argument and she seemed sort of paranoid about showing us anything that
16 had to do with the plan.

17
18 The statue's unveiling in mid-June 2018 was bad timing, because Arin arrived a
19 couple of weeks later. Arin planned to spend a week with Mom as part of the July 4th
20 holiday and we had agreed to spend some family time at A Thousand Alders. But Arin
21 took one look at Golden Whiskers and hit the roof. I've never seen my sibling scream at
22 Mom that way and I told Arin that it wasn't appropriate – Mom was an adult and could
23 make her own decisions. Then we got into quite an argument about how I could have
24 allowed this to happen. Right on the spot, Arin announced plans to come back home
25 and live with Mom until "things are set straight." I don't think she was too thrilled with
26 the idea, especially the way Arin was acting. But she was bullied into agreeing to the
27 plan, although I'm sure Arin didn't see it that way. My blood was up, and I impulsively
28 told Arin that there was no need for the both of us at the Mansion. Arin agreed and so I
29 made plans to stay at one of our company's guest accommodations once Arin was
30 settled in and ready to work remotely with the Omaha businesses.

31
32 Things were very tense those last few months, and I didn't see much of Mom
33 during that time. Now I regret standing down; I should have been available to help Mom
34 when she needed it. But Arin made it clear that no one was welcome during the
35 adjustment process. Mom and Arin did everything on their own during that time and
36 when I did talk to Mom, she seemed happy. She did not sound distressed or confused.
37 She told me that Arin was nearby during those visits, but the two of us didn't speak,
38 even by phone. I can't say that I heard any indication that she was being bullied or
39 manipulated. But given her isolation, I can't say what she was thinking or feeling during
40 that time.

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Given the circumstances, and the workload in the graphics department, I didn't see Mom between mid-October and a week before her death. On December 13, 2018, Arin called to let me know that Mom was in the hospital and not doing well. She experienced symptoms consistent with a massive stroke and she wasn't expected to recover. Arin and I both spent a lot of time at her bedside, although we agreed to alternating shifts to avoid each other. On December 18, I was sitting alone with Mom and she had been sleeping calmly for a couple of hours. Suddenly, she opened her eyes wide and had a look of absolute panic on her face. She stared at me and said "Don't let Arin do it! Take care of the Alders! And take care of Whiskers – he didn't mean to scratch us!" Then she closed her eyes and she never spoke to me again.

About a week after Mom died, I went to Kenge Tulkinghorn, retrieved her will and worked with Kenge to start this probate proceeding. Arin found the supplementary writing somewhere in The Mansion – Exhibit 6 is her handwriting and I will try to honor the wishes she expressed there, although she didn't own some of that stuff at the time of her death. I think Rosita was one of her co-workers at FAIR, although Mom never mentioned her – I learned that from Bergen. I don't know where Arin drummed up the will and deed that are Exhibits 4 and 5. I'd never seen them before this case and Mom never mentioned them to me in our telephone conversations.

Anyone who knew Cordelia Lear would never believe that she disposed of her substantial estate, and blew up a carefully thought-out estate plan, with a couple of form documents from a preprinted kit. At least, she wouldn't do that of her own accord if she was in her right mind. Mom was very proud of Arin and the successful life my sibling built in Omaha. I know they had mutual love and respect for one another. That's why it hurts me to see Arin suggest that Mom couldn't make up her own mind and that her final wishes should be ignored.

1 STATEMENT OF BERGEN HENRY
2

3 Cordelia Lear was a great friend to the cats of Pine County and a good friend of
4 mine. No one needed to persuade her that resources should be used to alleviate the
5 suffering of felines, a suffering caused by human beings, who have forced them to
6 subsist in an unforgiving, hostile environment. Anyone who contends otherwise either
7 didn't spend much time with the woman, or has another agenda for the estate she left
8 behind.

9
10 Since 2010, I have served as the president and chief financial officer of Feline
11 Assistance Integration and Rescue, commonly known as FAIR. This non-governmental
12 organization has been around since 1993, when it was founded locally by a group of
13 former SPCA volunteers. These visionaries wanted to focus their efforts on assisting
14 the local community cat population, especially since SPCA leadership had largely been
15 taken over by a bunch of bird lovers from the Audobon Society.

16
17 Cats are a popular pet in the United States. Between 25 and 34 percent of
18 American households own cats, with an average of 1.8 cats per home. That's a total of
19 58 to 76 million cats. The vast majority of owned cats – approximately 87% -- have
20 been spayed or neutered, but they may have had one or more litters—intended or
21 accidental—before being sterilized. In underserved communities, rates of sterilization in
22 owned cats tend to be much lower, with the cost of surgery and transportation the
23 biggest barriers to veterinary service access.

24
25 Approximately 68% of owned cats are kept indoors. But that still leaves a sizable
26 population of free-roaming cats to mix, mingle and share diseases with unowned
27 community cats. This is particularly a concern because owners who let their cats roam
28 are more likely not to spay or neuter them. These owners are also far less likely to care
29 for the litters that their cats produce – they may not even know about them.

30
31 By “community cats,” I mean domestic feline breeds that live outdoors in a
32 community and are cared for by one or more people who feed them and who may
33 occasionally also provide some temporary shelter and needed medical care. These
34 caretakers don't usually consider the cats to be owned, but the cats are not “feral” –
35 they are completely dependent upon humans to survive. Very few cats live in a wild
36 state and subsist on hunting for rodents and birds, despite what other organizations
37 may assert.

38
39 Community cats may live alone or in pairs or they may congregate in larger
40 colonies. These groups can grow exponentially if the cats are not spayed and neutered.

1 Colonized cat behavior may range from fearful and unsocialized to friendly and open to
2 human interaction. Many of these cats, especially the social ones, are considered to be
3 “at home” by area residents. These cats have their own personalities, their own souls.
4 They are every bit as deserving of a good life as a cat that is fortunate enough to have a
5 caring, stable owner.

6
7 Few animal-related issues are more difficult to deal with than managing a
8 burgeoning outdoor cat colony. That’s understandable, since local officials usually only
9 address the issue in response to complaints. Effectively addressing a population takes
10 advanced planning and can be costly and time-consuming. For many officials, the cats
11 are viewed as a nuisance, not as living, sentient creatures. Dissent often arises over
12 how to proceed between our organization, neighbors, animal control officers and wildlife
13 advocates. Whether by choice or by regulation, Pine County animal care agencies
14 respond to community cats only when there is a specific problem and their go-to
15 “solution” in these instances is to catch and destroy the cats. Officially, this policy is
16 known as Trap and Remove or T&R.

17
18 FAIR, on the other hand, advocates for an alternative strategy that has been
19 proven to be effective and equitable – Trap, Neuter and Return or TNR. Community cat
20 round-ups are conducted regularly, in a way that minimizes the time the animals spend
21 away from their home environment. Cats are also brought to us by local officials and by
22 private shelters and rescuers. During their “vacation” from the streets, the cats are
23 sterilized, treated for disease and vaccinated. Then they are released back into the
24 area where they were captured, to complete their life cycle without increasing the local
25 population through breeding.

26
27 Well-managed TNR programs offer a humane way to resolve long-term wildlife
28 conflicts, reduce populations and prevent disease outbreaks. Believe me, I’ve heard all
29 the arguments against our programs. Re-abandoning cats outdoors leaves them to
30 suffer and die painfully, just as dependent on sporadic human contact as before their
31 capture. TNR reinforces the belief among many cat owners that it is okay to abandon
32 their pets – by the way, we support education initiatives which teach exactly the
33 opposite. But mostly, the complaints ultimately come back to the mindset that these
34 cats are an invasive predator, not a normal part of the landscape, and that TNR allows
35 them to continue harassing native species – in other words, the bird-lovers’ argument.

36
37 Despite the criticism, facts are facts. T&R is now widely recognized as cruel and
38 mostly ineffective, especially in larger communities like metropolitan Alki City, where the
39 cat population is reproducing at higher rate than the number of animals killed. Well-
40 managed, high intensity TNR programs can reduce the rate of increase and reduce the

1 cat population. That is our ultimate goal here in Pine County and that is why I will
2 continue to advocate for TNR as president of FAIR.

3
4 As you can imagine, a TNR program is expensive if it is done on a scale that is
5 sufficient to address the problem. Although we get a few government grants, the bulk of
6 our income comes through private donations from individual members and foundations.
7 FAIR has struggled over the years because of sporadic income, which is not unusual for
8 a charitable non-profit. I was brought in originally to clean up the mess made by the
9 original group of non-professional leaders, who had difficulty with tax documents and
10 record keeping.

11
12 I empathized with those folks. I had my own troubles with the IRS early in my
13 career. After I graduated from Boulder City College with a degree in non-profit
14 administration, I worked for a Colorado charity that ran several food pantries. I didn't
15 pay attention in paperwork class in college, and the charity missed some filing deadlines
16 under my watch. The organization was convicted of some misdemeanor crime as a
17 result and had to pay a fine and serve a one-year term of monitored probation. I wasn't
18 held personally liable, but I felt responsible, and we agreed to a mutual parting of the
19 ways after a couple of years.

20
21 My next job involved an NGO in Idaho, which provided supplemental services to
22 veterans. After three years in their employment, I was asked to take over at FAIR and I
23 have been there ever since. Although I do participate with the volunteers in various
24 aspects of our substantive work, my primary focus is on fundraising, community and
25 government relations and outreach programs.

26
27 Some days stick out in your recollection and I treasure the memory of my first
28 meeting with Cordelia Lear, on April 10, 2016. I was waiting to speak to Dr. Wellbie,
29 although I didn't have an appointment scheduled for that day. Cordelia and Cal Lear
30 came in and she walked over and sat down in the seat next to me. I was leafing
31 through the latest issue of *Cat Companion*, the member newsletter I was producing as
32 promotional material at the time. Cordelia looked over and mentioned that she'd never
33 seen that magazine before. She asked what it was about and I introduced myself and
34 launched into my impromptu presentation about FAIR and its goals. She was very
35 interested and took me "off-script" asking a number of questions about strategies and
36 issues in groups of our type. She was a great conversationalist and I was struck by how
37 well we hit it off. She took my card and a brochure and promised to look FAIR up
38 sometime. I was so excited, I forgot why I wanted to talk to Wellbie and I left shortly
39 after Cordelia went in for her appointment.

40

1 Cordelia came to a FAIR meeting about three weeks later and our friendship
2 began in earnest. Even though there was quite a difference in our ages, I felt that we
3 were kindred spirits, we shared so many interests and activities. She was enthusiastic
4 about FAIR operations and eventually came to almost every scheduled event. I even
5 had to talk her down from some of the heavy lifting and physical activities that go with
6 rounding up, feeding and caring for cats. I told her to let younger volunteers like Rosita
7 handle those chores. But she kept trying to handle every job – What a volunteer!
8

9 In addition to her time, Cordelia was very generous with donations of funds and
10 materials to our cause. Again, she was a dream donor – she did not need to be
11 solicited to give. She would ask what was needed during meetings and strategy
12 sessions. If she asked how she could help, I would suggest things that needed to be
13 purchased and holes in our budget that needed to be filled. But the impulse to give was
14 hers alone. She also helped me implement new marketing techniques, designed to
15 increase the revenue received from other donors. Cal Lear helped in that area as well,
16 with some beautifully designed logos and graphics for our promotional materials.
17

18 Over the next couple of years, Cordelia and I became good friends and spent
19 quality “non-cause” time together. We would go to movies or plays or attend other
20 events in the community. Sometimes I would just hang out with her at The Mansion on
21 the Heights and we would have a meal, play chess or talk about life. What a beautiful
22 setting, but so lonely! Even though Cal Lear lived there, they did not spend much
23 intimate time together. Cal was often gone on business and social activities and their
24 interaction was quiet and distant when Cal has home. Arin Lear lived in Omaha and was
25 even less of a presence in Cordelia’s life. Arin was only home around holidays and
26 seldom called in between visits. Arin really had no idea what was going on in Cordelia’s
27 life.
28

29 One of the tenets of the TNR approach is not to get attached to the cats you
30 round up, because they will be released within a few weeks of capture. But once in a
31 while a unique stray will catch a volunteer’s heart, so adoptions from our program are
32 not unheard of or prohibited. After all, these folks volunteer at FAIR because they like
33 cats. So I was not surprised when Cordelia glommed onto Whiskers and decided to
34 adopt him. She was obviously looking to fill some empty spaces in her life left by the
35 loss of her husband and her distant relationship with her adult children.
36

37 I must say, she certainly was gaga over that cat. It must have been quite a
38 shock for Whiskers, transformed from a street urchin’s existence to a life of pampered
39 luxury and constant attention in such a short time. But except for a few scratching
40 incidents, they adjusted to each other and became inseparable after a while. But she

1 recognized that he was a cat and that he couldn't actually talk. She was just being
2 creative in her interactions with him. Imagination is the only weapon we have in our war
3 with mundane reality.
4

5 Whenever I wasn't busy with FAIR business, I would drive Cordelia to events and
6 appointments when she requested a ride. I drove her to see her attorney, Kenge
7 Tulkinghorn, on several occasions in the fall of 2017. She talked to him about changes
8 in her estate plan, including making a bequest to FAIR. I may have participated in some
9 of the initial meetings, just to let Tulkinghorn know what type of organization we were,
10 for tax planning purposes. When she showed me a draft of the will, I made some
11 suggestions based upon other donors who made specific gifts to us after death. I didn't
12 know whether she had Tulkinghorn change the draft in response to my suggestions. I
13 didn't look over the final documents before she signed them and I did not force her to
14 make any type of bequest to our group – given her big heart and devotion to the cause,
15 there was no need for any persuasion on my part.
16

17 Things were going along fine, until one day in early July, 2018, when I received
18 an angry phone call from Arin Lear. Arin was ranting and raving about a cat statue that
19 I had somehow manipulated Cordelia into erecting in her front yard – I had no idea what
20 Arin was talking about, although I had seen a landscape contractor doing something out
21 front when I visited her in late June. Arin accused me of planting Whiskers with
22 Cordelia to influence her and seemed to imply that the cat was providing me with
23 intelligence reports! I was told in no uncertain terms not to come to the house again
24 and that Arin would be there personally if I dared to show up. It was all very intimidating
25 – I can only imagine the effect it had on poor Cordelia, who I could hear crying in the
26 background.
27

28 I thought about calling Adult Protective Services, but I didn't have any real
29 evidence of abuse, so I just respected the family's stated wishes and stayed away. I
30 wish now that I had called, because Cordelia was left in a terrible physical, mental and
31 emotional place, once Cal and I bowed to Arin's wishes. I never saw my friend again
32 before she died. I'm so sorry that I let her down and I'm angry that Arin is trying to strike
33 down the legacy Cordelia obviously wanted to leave to this community. I hope the court
34 will allow the initial will to stand, so The Mansion on the Heights can ultimately become
35 a shining paragon of the virtue of acting humanely toward helpless animals.

1 STATEMENT OF KENGE TULKINGHORN

2
3 This is one of the saddest situations I have been involved with during all my
4 years as a practicing attorney. The Lears were longtime clients and neighbors of mine
5 up on the Heights. They crafted an estate plan that preserved their family’s legacy in
6 this community. When Cordelia Lear decided to devote a substantial portion of her
7 assets to the cause of animal welfare, I worked hard to ensure that her wishes would be
8 carried out. I am sorry to see her two children embroiled in a dispute about the estate –
9 that is the last thing that Cordelia wanted.

10
11 Frank and Cordelia Lear married on June 20, 1957. Frank was the grandson of
12 Edmond Lear, one of the founders of Alki City. Cordelia was a member of the Cook
13 family and she had just inherited her family’s ranch and apple orchard in Central
14 Washington, A Thousand Alders. Suffice it to say, they were well off from the start and
15 could have lived off their holdings and investments in relative ease up in The Mansion,
16 built by Edmond Lear during the peak of the “Roaring Twenties.”

17
18 But Frank and Cordelia were doers, and together they built their own substantial
19 holdings, riding the Cold War space boom in Pine County. Frank was the president and
20 CEO of AirTek, which designed and manufactured high altitude aircraft. Cordelia was a
21 pioneer in her own right, the first woman to found and manage a major air shipping
22 business. In their “spare time”, they were heavily involved in community activities and
23 charitable causes. And they raised two children, Arin and Cal, and helped them
24 succeed as adults.

25
26 Their joint estate planning spanned the course of many years and I was involved
27 in most of that process . I met the Lears shortly after I became a junior partner in my
28 firm, which specializes in estates and trusts. My background includes a bachelor’s
29 degree in political science from the University of Utah and a Juris Doctor from Moab
30 State School of Law. Most of my continuing legal education has focused on my chosen
31 field of practice, so I believe that I am well qualified to assist clients with the creation
32 and necessary modification of estate planning documents.

33
34 Initially, Cordelia and Frank executed a simple community property agreement,
35 designating all property owned or later acquired by them as jointly owned. Later, with
36 my assistance, they created a revocable living trust, designated “The Lear Family
37 Trust.” This instrument named the two of them as co-trustees and beneficiaries of the
38 trust assets. Each spouse was designated as survivor trustee and sole beneficiary
39 upon the death of the first spouse. Their two children were the residual beneficiaries
40 and they were to receive the remainder of their assets, in equal shares, after the second
41 spouse died.

42
43 The trust was revocable by mutual agreement while they were alive and by the
44 survivor after the death of the first spouse. This gave the two of them maximum
45 flexibility to change their plans, to buy and sell assets and to make subsidiary

1 arrangements outside the main trust, if that was advantageous from a tax or business
2 standpoint. The Lears transferred almost all of their property into the trust, including the
3 Mansion on the Heights. Cordelia also included A Thousand Alders in the trust,
4 although she maintained and actively managed the orchard operation throughout her
5 life.

6
7 After Frank passed away in June 2010, Cordelia continued to manage their
8 companies, and the living trust, for several years. She would often come to me for tax
9 or legal advice, although she was a very capable and shrewd entrepreneur. She was
10 independent in her thinking and had definite ideas about how things should be done.
11 Early on, she involved both of her children in the family's business dealings and she
12 gradually turned more of the day-to-day operations over to them after Frank's death.
13 She relied mainly on Cal Lear to assist her, although Arin had a big role in the
14 company's Nebraska operations.

15
16 As I mentioned, Cordelia was active in community affairs and charity work. It
17 was not unusual for Frank and Cordelia to make donations of cash or other assets to a
18 worthy cause, and they would work with me to maximize the tax advantages of their
19 gifts. Cordelia continued this generosity after Frank's death, but her interest narrowed
20 to one particular cause – dealing with what she described as the explosion of houseless
21 cats on the streets of Alki City, Barryton and the surrounding suburbs. During our
22 frequent meetings, she described this situation in dire terms and would occasionally
23 break into tears over the plight of these poor creatures. She also worried about the
24 effect of so many stray cats on the local bird population and the increased potential for
25 disease transmission.

26
27 The Lear family had its share of pets over the years, especially when the children
28 were growing up. I think they owned a few cats, although I don't remember any of them
29 by name. So I was surprised when Cordelia came to my office in July, 2017,
30 accompanied by Bergen Henry, and carrying Whiskers in a top-of-the-line cat carrier.
31 Our offices aren't really designed to be pet-friendly, but fortunately the cat stayed in the
32 carrier throughout our appointment and only occasionally hissed or meowed.

33
34 Cordelia didn't look like she was feeling well, but we didn't spend much time
35 discussing her health. She was all business that day and got right to the point of her
36 visit. She informed me that she had decided to revoke the living trust, to take charge of
37 all her assets personally, and to make a new will in line with her current desires. I was
38 taken aback and mentioned to her that the new plan that she outlined might have some
39 significant tax and business implications, especially after her death. When she
40 described her new distribution plan, I strongly advised her to discuss her ideas with Cal
41 and Arin, to make it less likely that either of them would challenge her decision to
42 diminish their shares of her estate. Cordelia said she would think about that, but based
43 upon this litigation it appears that she did not follow my counsel on this point.

44
45 The drafting of the new estate instruments took several sessions. I'll admit that I
46 slowed the process down to some extent because I was concerned that Cordelia was

1 acting rashly in her decision to revoke the living trust. I continued to mention the
2 adverse tax consequences of this decision to Cordelia, but she was firmly committed to
3 this approach, so I drafted the revocation consistent with her wishes. In addition, I
4 wanted to make sure she really wanted to follow through with new distribution scheme
5 and that her judgment had not become clouded with age and her obvious attachment to
6 Whiskers, Bergen Henry and the FAIR organization. She often came to my office
7 accompanied by Bergen Henry, although Cal Lear brought her a couple of times.
8 Cordelia often looked to Bergen when we discussed details and several times, I felt the
9 FAIR president was resentful when I probed the reasons for the radical change in the
10 estate plan.

11
12 I held several sessions with Cordelia alone, especially when we went over the
13 details of the final documents. We went over these provisions thoroughly and I asked
14 her many questions to test her cognitive ability and her recall of the extent of her
15 holdings. These sessions alleviated my concerns about her decision-making
16 capabilities, although I still harbored doubts about the wisdom of her decisions. She
17 demonstrated excellent recall of the previous estate documents that she and Frank had
18 executed and understood the effect of the changes she was making. I was convinced
19 by her responses that she knew exactly what she was doing. I had one of my paralegals
20 sit in with us during these discussions and he came to the same conclusion.

21
22 Cordelia made multiple changes to the drafts I prepared and modified the
23 distribution details several times. But the basic outline of the new estate plan remained
24 the same. The result was the Last Will and Testament dated November 17, 2017;
25 portions of this lengthy document are included in the record as Exhibit 1. The will
26 begins with some specific bequests to various individuals and organizations, including
27 personal mementoes to Arin and Cal. Another provision allows for a separate writing to
28 deal with other minor personal property transfers. The rest of the estate – a substantial
29 sum – is to be held in trust during Whisker’s lifetime, to assure that he will be properly
30 cared for. Cal Lear was designated as personal representative and trustee, with Bergen
31 Henry as the alternate if Cal was unable and unwilling to serve. After Whiskers dies,
32 the remaining trust corpus is distributed – 15% to Arin Lear, with title to A Thousand
33 Alders included in this distribution, 35% to Cal Lear and 50% to FAIR, including title to
34 The Mansion on the Heights. The family residence is to be preserved for use as a
35 home for Whiskers during his lifetime and then the property is to be transferred to FAIR
36 on the condition that the organization uses the property as a feral animal rescue shelter.
37 If they decline to use the property in this way, title reverts to Cal Lear.

38
39 Cordelia told me that Arin and Cal were both capable adults and that she was
40 proud of both of their accomplishments. “They don’t need my money; Whiskers and the
41 cats do.” She wanted the orchard to eventually go to Arin, so it would stay in the family
42 and because Arin fondly remembered spending summers there. But she wanted all her
43 holdings available to Whiskers until he was gone, so the cat would be secure and
44 happy. As to The Mansion, Cordelia said neither of her children planned to live there,
45 that it had seen better days and that its new use would be of great benefit to the

1 community. I wasn't crazy about the idea of a cat shelter in my neighborhood, but the
2 client's wishes are paramount, so I bit my tongue.

3
4 We went over these provisions multiple times, including on the day the
5 documents were signed. Only one of her responses caused me a moment's concern.
6 During one drafting session, she overruled a change to the trust provision, limiting
7 expenditures on The Mansion, because "Whiskers told me not to do that." When I
8 asked her if the cat actually spoke to her, she looked at me blankly for several seconds.
9 Then she laughed heartily and said "Of course not, Kenge. Cats can't talk!" As I said,
10 the woman had a quick wit.

11
12 Cordelia came to my office for the last time in October 2018. She was in the
13 company of Arin Lear and her age had clearly caught up with her. She was very frail
14 and slow and appeared to be losing weight. She spoke haltingly and was very hard to
15 hear, although she would become quite irritated when I asked her to repeat something.
16 Arin had to help her get around, even though she still had the walker she had been
17 using for several years.

18
19 She told me that she made a mistake by altering her estate plan and that she
20 had been tricked by Bergen Henry and Cal Lear into revoking the living trust. She
21 basically accused me of being in on their scheme and implied that I should not have
22 drafted the will as she requested. She wanted the documents "repealed" at once.
23 During these accusations, she constantly looked at Arin for confirmation. Arin would
24 say "I'm sure Kenge was just trying to help, Mom. Just say what you want now, without
25 dwelling on the past."

26
27 I told Cordelia that I would not change the documents again unless she had a
28 medical examination that demonstrated that she was competent to execute any new
29 documents. Given her accusations, I told her that it would probably be better if she
30 retained a new attorney to make these arrangements and I gave her the names of
31 several lawyers who might be able to assist her. Both of them thanked me for the
32 information and left the office. I never heard from either of them again until this
33 litigation.

34
35 There is no way I would have recommended the use of the form will and deed
36 that Cordelia apparently executed after she left my office. Exhibits 4 and 5 will
37 undoubtedly result in new adverse tax consequences for the estate, in the event the
38 court approves them. Because of my concerns about her mental condition, I wouldn't
39 feel confident in allowing her to execute any additional documents in October 2018,
40 unless she had a thorough medical examination as I suggested. I do not know whether
41 Cordelia Lear was competent at the time she executed the October will and deed. But I
42 do know that she was competent to make her own decisions in November 2017, or I
43 would not have allowed her to sign the will and trust revocation in my presence, or in the
44 presence of my staff.

1 STATEMENT OF QUINN WELLBIE, M.D.
2

3 It was a real pleasure to serve as Cordelia Lear's primary care physician
4 beginning in 2009. Because she was careful about her health, I saw her on a regular
5 basis during the last ten years of her life, both for scheduled examinations and for
6 emergent medical issues. Based on these contacts, I am the professional in the best
7 position to express an opinion about her cognitive abilities during that time. Except for
8 the last couple months of her life, she was always smart, interesting, intelligent and
9 involved with her own medical care. Until my last visits with her, I did not see any
10 evidence of a decline in her high level of cerebral functioning.
11

12 I have only testified on a couple of occasions in legal proceedings, always about
13 a current or former patient. I have never been asked to serve as an expert witness,
14 trying to assess the health and behavior of a person I haven't even met – that seems
15 like a dishonest way to make a living as a medical professional! My focus is on
16 diagnosis and treatment, and I value my personal interactions with patients. That's why
17 I went to medical school at the University of South Carolina and why I served my
18 residence at one of the top treatment hospitals in that state – I wasn't interested in a
19 research fellowship with no practical care component.
20

21 Next, I volunteered for a two-year assignment with Doctors without Borders in
22 Africa. That experience proved to be a little too exciting for me, so I decided not to stay
23 for the second year of my commitment. Instead, I returned to the states and joined my
24 current health maintenance organization in 2008. Cordelia Lear was one on the first
25 patients assigned to me, although she had been a patient with our HMO for a number of
26 years – her previous physician retired about the same time I was hired. To continue my
27 employment, I have maintained my medical license and I regularly attend continuing
28 education courses.
29

30 When I first met Cordelia, she was 72 years old -- her records indicate that she
31 was born on July 10, 1937. But you would not have known it by looking at her. I would
32 have guessed that she was in her late 50s or early 60s. She was in great shape and
33 immediately put me at ease during our first meeting with her warmth and gentle humor.
34

35 I have access to all of Cordelia Lear's medical records at our HMO and I have
36 reviewed them periodically over the course of her care. I certainly didn't commit them to
37 memory – that's why we maintain records. Some of the records are marked as Exhibit 2
38 and I recognize them as notations that I made during the medical appointments listed.
39

1 The records confirm what I remember independently - a generally healthy
2 individual, with few complaints of substance over the years. Like many adults, she had
3 some blood pressure problems and was pre-diabetic. She was on low-dose
4 medications for those conditions over the years, but none of these drugs would have
5 known cognitive side effects. She mostly managed these problems through diet and
6 exercise and did a good job. My recollection is that she did not start regular diabetes
7 medication until shortly before I started to care for her.

8
9 She came in for regular checkups, flu shots, things of that nature over the years.
10 She broke her ankle once playing tennis with Frank – I think that was one of their last
11 attempts at the sport (he died about a year later). As the years progressed, she
12 developed arthritis, which increasingly affected her mobility. She chose to stop driving
13 completely in 2013, because her knees were bothering her and her eyesight was
14 degenerating. She started to use a walker around that time, but only for occasional
15 support while resting.

16
17 Emotionally, there were no major concerns. Her charts indicate that she suffered
18 from post-partum depression after the birth of each of her children, but that apparently
19 resolved quickly. Depression reoccurred after the death of her husband Frank in 2010
20 and that took longer to resolve. I remember that as a very difficult period for her and we
21 tried various medications and techniques to resolve the issue. I would say that time,
22 activities in the community and her resilient spirit finally conquered the depression – she
23 was not on any medication for that condition after 2015.

24
25 As for her mental abilities, they were remarkably good. I guess I shouldn't say
26 remarkable, because cognitive impairment is no longer considered a normal and
27 inevitable part of the aging process. In older patients, cognitive functioning is especially
28 likely to decline during illness or injury. Although older adults are at higher risk of certain
29 conditions that cause cognitive changes, the norm for most individuals is to maintain the
30 same level of mental ability throughout his or her life. That is why we regularly test for
31 changes in these conditions, because a difference indicates a problem that can often be
32 addressed through medication or other treatments.

33
34 The primary test that most physicians use to check a patient's cognition is the
35 Mini-Mental Status Examination or MMSE. This tool can be used to systematically
36 assess mental status. It is an 11-question measure that tests five areas: orientation,
37 registration, attention and calculation, recall, and language. The patient is asked to
38 name common items, recall three objects, follow simple directions, draw things. The
39 entire process takes 5 to 10 minutes to administer and it can be used repeatedly,
40 although obviously I don't perform an MMSE every time I see a patient.

1
2 The maximum score on the MMSE is 30. A score of 23 or lower is indicative of
3 cognitive impairment and the severe impairment can be indicated by scores below 15.
4 When used repeatedly, the instrument is able to measure changes in cognitive status
5 that may benefit from intervention. Like every screening tool, the MMSE has its
6 limitations. You cannot diagnose the cause of any changes in cognitive function with an
7 MMSE; that would require a complete clinical assessment of mental status, including
8 neurological testing when warranted. The assessment could include use of some of the
9 tools described in Willie Downing's declaration, although those are more specialized
10 tools designed to address forensic questions. I referred Cordelia for a clinical
11 assessment of her cognition that last time I saw her, although I don't have any record
12 that she was assessed prior to her death.

13
14 I need to note that MMSE scores can be overemphasized by some providers. A
15 high MMSE score does not necessarily mean that you don't have cognitive impairment.
16 For example, a highly educated person with dementia might still score well, especially
17 early in their disease. Similarly, a low score does not necessarily mean that you have
18 dementia or other forms of chronic impairment – there may be other physical or
19 environmental factors that can contribute to a decline. Neurology is not my primary area
20 of practice, and I would refer a patient with cognitive concerns for assessment by
21 others. Until late 2018, I never observed anything about Cordelia that would cause me
22 to make such a referral.

23
24 Typically, I administered the MMSE at Cordelia's annual checkups. Scores from
25 the period from 2015 to 2018 are included in Exhibit 2. She consistently scored in the
26 29-30 range through 2015. In March 2016, her score was 27, still well within the normal
27 range. In April 2017, her MMSE score was 24, still within the range of normal cognitive
28 function, but the continuing decline caught my eye. Cordelia remarked that she "wasn't
29 as sharp as I used to be." She was also suffering some soreness and fever during that
30 visit, which may have contributed to her performance on the test. As a precaution, I
31 prescribed five milligrams of Aricept, a drug that is often attempted to improve cognition.
32 Although Aricept in higher doses is used to control and improve behavior in dementia
33 patients, I want to be clear that I did not diagnose Cordelia in any stage of dementia – in
34 my notes, I characterized the change as "very mild cognitive impairment."

35
36 I would strongly disagree with Willie Downing's assessment that Cordelia Lear
37 was in severe decline at this point in her life. The mental assessments and
38 examinations that I gave her simply don't bear that out. I'm not a forensic expert and I
39 wasn't familiar with the assessment tools that Downing used to support these opinions.
40 But even a cursory glance at them indicates that they have limited validity if they are not

1 filled out completely with the patient. Scoring these tools after the fact and picking and
2 choosing the responses you want to adapt for inclusion in each instrument is simply not
3 a proper way to do any assessment, forensic or otherwise.
4

5 As for “cat scratch fever,” that is a real reach of a diagnosis. Although it is
6 technically possible to read the symptoms Cordelia experienced after the scratch as
7 consistent with a bacterial infection, those symptoms are consistent with a number of
8 other, more common maladies. Cat scratch disease, when it occurs at all, is most
9 common in young children. And neurologic complications from *B. henselae* infection
10 are infrequent, occurring in around 2–7% of infected individuals. These extremely rare
11 complications, which usually involve seizures and delirium, are more likely to occur in
12 children 5-14 years of age and people with weakened immune systems. Cordelia had a
13 good immune system and did not experience any reported seizures.
14

15 Like everyone else in Cordelia Lear’s life, I met Whiskers after she adopted him
16 in February 2017. She brought him to several appointments, although he stayed in the
17 cat carrier throughout her examinations. He would meow plaintively and she would talk
18 to him about what was going on during our interactions. Several time, she would tell me
19 that Whiskers had reminded her to bring up something about her health, or to seek my
20 advice about this or that medical issue. She was obviously very attached to Whiskers
21 and she doted on him in the same way that many elderly patients dote on their pets. I
22 never believed for a moment that she thought that the cat was speaking to her, or that
23 their “talks” were symptomatic of a serious mental issue. By the way, Whiskers never
24 said anything in my presence.
25

26 My notes confirm that I treated Cordelia for a deep puncture wound and scratch
27 on her left hand in July or August 2017, and she told me that Whiskers had dug his
28 claws into her while they were playing. The area around the wound was red and
29 swollen and she also had some swelling in her lymph nodes. The patient complained of
30 a headache and of feeling feverish and irritable. I prescribed some antibiotics and
31 topical medications and told her to rest. I did not perform an MMSE during that visit, as
32 there was no need. My treatment apparently worked, because she did not come back
33 for a follow-up appointment and the issue was resolved when next I examine her in
34 December 2017.
35

36 Bergen Henry was with Cordelia during that appointment, and that had also
37 become a common occurrence. Bergen and Cordelia apparently met in my office
38 waiting room, although I did not introduce them. Bergen was a patient of mine, although
39 confidentiality prevents me from discussing how often I saw Bergen or the reasons for
40 our consultations. During 2017-18, Bergen would often drive Cordelia to her

1 appointments and Cordelia would occasionally ask me to have Bergen come in during
2 the wrap-up, to hear about new medications or diagnoses. I should note that this is not
3 an unusual request from older patients and Cordelia would make similar requests when
4 Arin or Cal drove her to the office. Cordelia and Bergen did appear to be close and
5 Cordelia relied on Bergen for assistance and advice on a more frequent basis as their
6 relationship progressed.

7
8 The March 2018 annual examination was consistent with previous visits,
9 although Cordelia's mobility was definitely declining and her blood pressure medicine
10 needed to be adjusted upward. Her MMSE was 25, but I recommended that we
11 increase the Aricept from 5 to 10 milligrams, still a very low dosage, merely as a
12 precaution. Cordelia decided not to increase both her medications at the same time.
13 She jokingly promised that "Whiskers and I will practice and do better on your test next
14 time." Because she seemed as sharp as ever, I agreed to leave the Aricept dosage at
15 the 5-milligram level.

16
17 The biggest changes in Cordelia's condition were from late August 2018 through
18 our last visit in November 2018. I saw her several times during this period and became
19 increasingly concerned about her physical and emotional well-being. She was very
20 anxious and reserved --- the depression she had experienced after Frank's death had
21 definitely returned. Despite her mobility problems, I would never have described her as
22 frail before these visits. Now, as she would slowly shuffle into my office, I was amazed
23 at how much she had aged in such a short time.

24
25 Arin Lear was the only one to bring her to these appointments. She seemed to
26 be estranged from Cal Lear, and Bergen Henry was nowhere to be seen. Whiskers
27 stopped coming to the visits. When I asked about him, she would look anxiously at the
28 door and snap "Never mind!" Once, she told me that "Whiskers and Arin don't get
29 along." Arin always came in for the wrap-up on these appointments and was very
30 helpful and patient with Cordelia. For her part, she seemed to leave the tasks of
31 understanding instructions and making decisions to Arin now.

32
33 My last appointment with Cordelia was November 29, 2018. She had a stomach
34 ailment, which she attributed to "my kids fighting all the time." Her affect and demeanor
35 were very concerning – unhappy, tearful, confused and forgetful throughout the
36 appointment. I decided to do an MMSE at the visit and at first she was resistant, telling
37 me that she was "sick of that stupid test!" Then she apologized and went through the
38 assessment with me, although you could tell that her heart wasn't in the process. She
39 scored a 15, indicative of severe cognitive decline. Although the result could be
40 attributed to stress factors in her environment, I gave Arin a referral to a local

1 neurologist for a full examination and told Arin that the appointment should be
2 scheduled as soon as available. I don't believe that any additional medical care was
3 provided to Cordelia until she entered the hospital on December 13, 2018 following a
4 massive stroke and heart failure. These conditions were the causes of her death on
5 December 20, 2018.

6
7 I cannot speak to Cordelia Lear's mental state on October 30, 2018, because I
8 did not see her during that month. I can only say that she had suffered a continuing
9 decline in her general functioning from August through November and that was having a
10 pronounced effect on her mental acuity during that time period.

EXHIBITS



EXHIBIT 1

[Excerpts from Last Will of Cordelia Lear]

KNOW ALL BY THESE PRESENTS: That I, Cordelia Lear, of Pine County, Washington, being of lawful age, possessed of sound mind and memory and not under the influence of any persons whomsoever, but realizing the uncertainties of life, do make and declare this instrument to be my Last Will and Testament, hereby revoking all Wills or Codicils previously made.

I have two (2) children, namely, Arin Lear of Omaha, Nebraska and Cal Lear of Alki City, Washington, both of whom have attained majority. I also have my beloved kitty, Whiskers, who is still a baby. Except as provided in this instrument, I leave nothing to my children or to any other child or children born to or adopted by me subsequent to the execution of this, my Last Will and Testament.

I hereby appoint Cal Lear to be and act as Personal Representative of my Last Will and Testament, and direct that said Personal Representative be allowed to serve without bond. In the event that Cal Lear shall fail for any reason to qualify and act as Personal Representative, or having so qualified and acted, shall cease to act in that capacity, then I appoint my friend, Bergen Henry, as alternate, to be and act as Personal Representative, with the same authority as my first-named nominee, and direct that said alternate be allowed to serve without bond. I further direct that this Will shall be construed as a Non-intervention Will and that it shall be settled without the intervention of any Court or Courts with the exceptions in and as provided by Chapter 11.68, Revised Code of Washington.

[Specific bequests of property or money to various individuals and organizations is listed here – by stipulation, not listed in this Exhibit]

Pursuant to RCW 11.12.255 and RCW 11.12.260, I may prepare and sign a writing whereby I provide for the disposition of household goods and furniture, personal effects and other items of tangible personal property. I expressly reserve the right to revoke, alter and amend said extrinsic writing from time to time. I hereby authorize and direct my Personal Representative, in making distribution under my Last Will, to deliver possession of the personal property specified in such extrinsic writing to the persons named therein. I further absolve my Personal Representative from all responsibility and liability in locating, marshalling and accounting for such personal property. All of my personal property not specifically distributed shall pass under the residuary clause.

I give, devise and bequeath all of the rest, residue and remainder of my property, real, personal or mixed, and wherever situate, and all of my interest in any property of every kind, make or description to my Personal Representative in Trust, for the uses and benefits of the beneficiaries named herein. My Personal Representative as Trustee shall have the powers, duties and rights imposed and granted by the laws of Washington State, including the following:

presence of us, and each of us, who at her request, and in her presence, and in the presence of each other, and who being of the opinion that she at the time of executing this Will, was of sound and disposing mind and memory, and was not acting under duress, menace, fraud, or undue influence of any person, have subscribed our names as witnesses thereto.

/s/ Hannah Montana, RESIDING AT Barryton, Washington.

/s/ Kenge Tulkinghorn, RESIDING AT Alki City, Washington.

SUBSCRIBED AND SWORN to before me this 17th day of November, 2017.

/s/ True Sojak
Notary Public in and for the State of
Washington, residing at Alki City
My appointment expires: 12-31-19

EXHIBIT 2

2015-2018 MEDICAL CHART NOTES – CORDELIA LEAR

Date: March 11, 2015

Temperature (T): 99.2 Blood Pressure (BP): 121/78 Pulse(P): 74

Purpose of Visit: Annual Exam

Exam Notes and Diagnosis: MMSE 29. Continued Joint Stiffness. BP Reg through meds. No issues.

Plan and Followup: Return as needed. Sched annual exam for next year.

#

Date: March 18, 2016

(T): 98.5 (BP): 124/81 (P): 70

Purpose of Visit: Annual Exam

Exam Notes and Diagnosis: MMSE 27. Jt. Pain w/limited exertion. BP Reg through meds.

Plan and Followup: Topical med for pain when needed. Meds as prescribed. No issues.
Followup appt if pain persists. Schedule annual.

#

Date: April 25, 2017

(T): 101.2 (BP): 130/83 (P): 73

Purpose of Visit: Annual Exam, Review pain/fever

Exam Notes and Diagnosis: MMSE 24. Very mild cognitive impairment. Htnd Fever/Soreness last 2 weeks. May contribute to cog decline, pt repts “not as sharp” even w/o fever. BP at higher limits.

Plan and Followup: Aricept 5 mg Daily; OTC for fever, topical for pain.
Leave BP med until stabilized. Call for followup.

Date: July 31, 2017

(T): 103.1 (BP): 138/83 (P): 85

Purpose of Visit: Puncture Wound Care (Animal Scratch)

Exam Notes and Diagnosis: Wound red/swollen, sore to touch. Pt irritable, feverish, persistent headache. Lymph nodes slightly swollen. Wanted me to know cat was sorry, didn't mean it.

Plan and Followup: Antibiotics by mouth. OTC for fever, soreness, plus topical for addtl pain. Call for followup in 2 wks if symptoms do not resolve.

#

Date: December 10, 2017

(T): 98.9 (BP): 121/80 (P): 72

Purpose of Visit: Joint Pain and Fatigue

Exam Notes and Diagnosis: Pt otherwise in good health. Repts symptoms after exertion at cat rodeo.

Plan and Followup: Rest and try not to overdo it. Sched. Followup if symptoms persist.

#

Date: March 29, 2018

(T): 98.8 (BP): 130/84 (P): 80

Purpose of Visit: Annual Exam

Exam Notes and Diagnosis: MMSE 25. Less jt pain, but reduced mobility. BP persistently high. Balance issues at times, Pt. notes some inc. confusion/memory concern – more "senior" moments.

Plan and Followup: Rec inc BP med dosage. Pt accepts adjustment. Rec inc Aricept to 10mg – Pt declines at this time, will rev aft BP med adjustment. Set exam for next year.

Date: August 18,2018

(T): 99.2 (BP): 130/70 (P): 78

Purpose of Visit: Anxiety and emotional state

Exam Notes and Diagnosis: Pt repts depressed, anxious and reserved. Symptoms feel similar to past depression. Fatigued, bored. Recent wt loss despite no change in diet. Noticable mobility concerns.

Plan and Followup: Resume prev depress meds. Followup in three weeks.

#

Date: September 8,2018

(T): 99.1 (BP): 134/72 (P): 74

Purpose of Visit: Anxiety and emotional state

Exam Notes and Diagnosis: Pt repts still depressed, anxious and reserved. Symptoms from previous visit unresolved.

Plan and Followup: Increase prev depress meds. Followup in six weeks.

#

Date: November 19, 2018

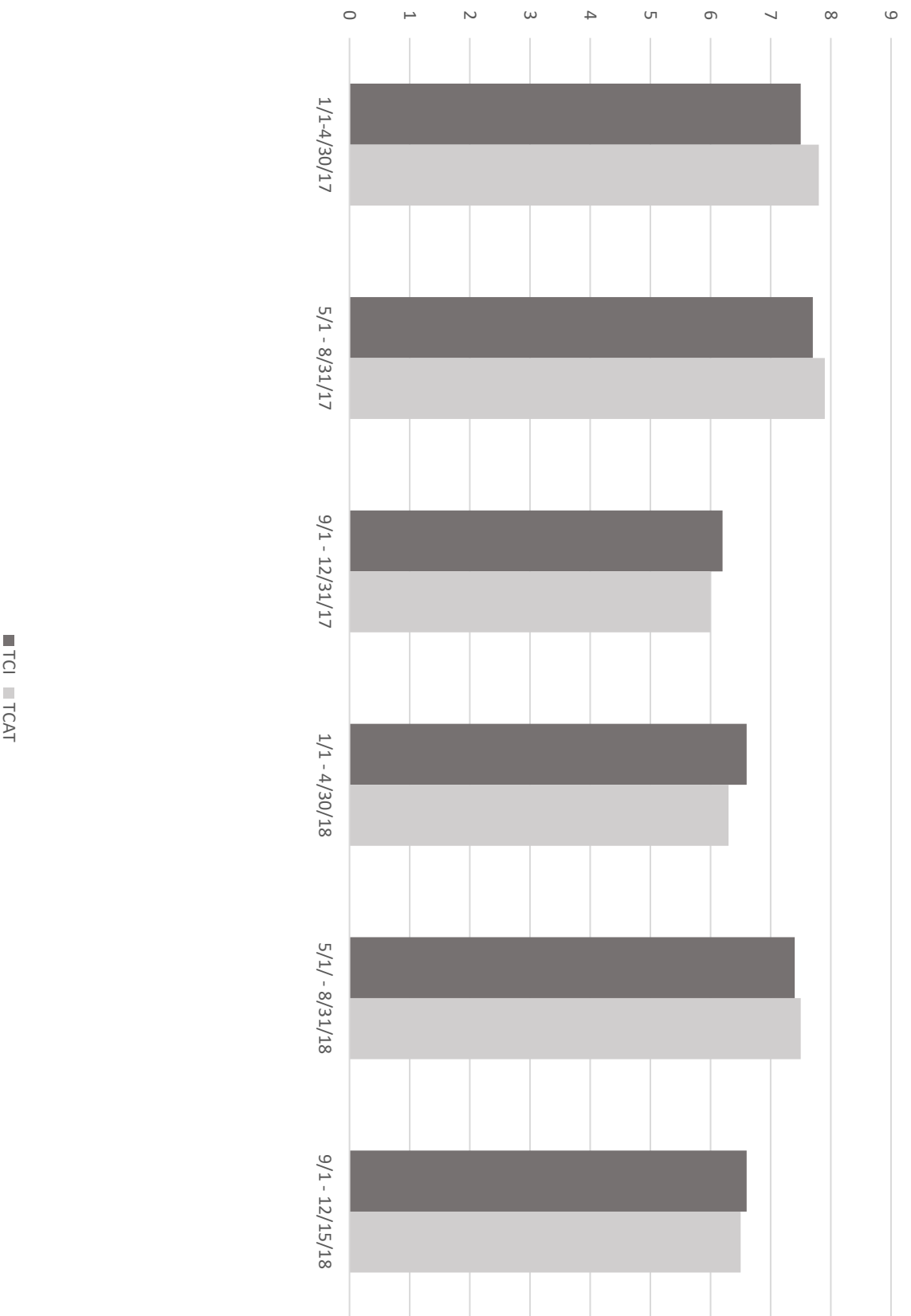
(T): 99.1 (BP): 136/80 (P): 78

Purpose of Visit: Continued physical and emotional issues

Exam Notes and Diagnosis: Pt repts stomach cramping and bloating, attributes to “kids fighting all the time”. Marked decline in visible condition. Tearful, confused and forgetful throughout appointment. Initially resistant to MMSE, minimal effort. MMSE 15, severe cognitive decline, although may be temporary (stress/environmental) factors. BP consistently high, speech difficulty and unable to follow directions. Missing meds.

Plan and Followup: Depression meds changed, as stomach issues may be related to them. Maintain other meds. Refer to neurologist for complete exam, given MMSE. Followup after that appt.

EXHIBIT 3 -- ASSESSMENT TOOL SCORES



	TCI	TCAT
1/1-4/30/17	7.5	7.8
5/1 - 8/31/17	7.7	7.9
9/1 - 12/31/17	6.2	6
1/1 - 4/30/18	6.6	6.3
5/1/ - 8/31/18	7.4	7.5
9/1 - 12/15/18	6.6	6.5

RECORDED:

NOVEMBER 7, 2018

20181107000154

Records of Pine County, WA

QUIT CLAIM DEED

THE GRANTOR(S) Cordelia Lear, a widow, as her separate estate

for and in consideration of Luv and Affection and Helping Me

in hand paid, conveys and quit claims to My Child, Arin Lear, GRANTEE,

to the following described real estate, situated in the County of Apple, State of Washington together with all after acquired title of the grantor(s) herein:

A THOUSAND ALDERS RANCH, Parcels 1 and 2, according to the plat thereof, recorded in Book 5 of Plats, records of Apple County, Washington, EXCEPT any easements of record thereon.

Abbreviated Legal: (Required if full legal not inserted above.)

Dated: October 30, 2018

Cordelia Lear

GRANTOR

State of Washington

County of Pine

This record was acknowledged before me on 10/30/2018 by Cordelia Lear

Porton Bailee

Notary Public

My commission expires: 6/30/2020

EXHIBIT 4

EXHIBIT 5

DIY - Washington Last Will and Testament

Pursuant to Title 11 RCW (Probate and Trust Law)

I, Cordelia Lear, resident in the City of Alki County of Pine, Washington being of sound mind, not acting under duress or undue influence, and fully understanding the nature and extent of all my property and of this disposition thereof, do hereby make, publish, and declare this document to be my Last Will and Testament, and hereby revoke any and all other wills and codicils heretofore made by me.

I. EXPENSES & TAXES

I direct that all my debts, and expenses of my last illness, funeral, and burial, be paid as soon after my death as may be reasonably convenient, and I hereby authorize my Personal Representative, hereinafter appointed, to settle and discharge, in his or her absolute discretion, any claims made against my estate.

I further direct that my Personal Representative shall pay out of my estate any and all estate and inheritance taxes payable by reason of my death in respect of all items included in the computation of such taxes, whether passing under this Will or otherwise. Said taxes shall be paid by my Personal Representative as if such taxes were my debts without recovery of any part of such tax payments from anyone who receives any item included in such computation.

II. PERSONAL REPRESENTATIVE

I nominate and appoint Arin Lear of Home/Now County of Pine Washington as Personal Representative of my estate and I request that (he/she) be appointed temporary Personal Representative if (he/she) applies.

III. DISPOSITION OF PROPERTY

I devise and bequeath my property, both real and personal and wherever situated, as follows:

1st Beneficiary

Arin Lear, currently of Here, my child
[relation] with the following property:

55% of my estate, for helping me?



Handwritten signature or initials.

2nd Beneficiary

Cal Lear, currently of Also here, my child [relation] with the following property:

(C) 45% of my estate, that's enough!

If any of my beneficiaries have pre-deceased me, then any property that they would have received if they had not pre-deceased me shall be distributed in equal shares to the remaining beneficiaries.

If any of my property cannot be readily sold and distributed, then it may be donated to any charitable organization or organizations of my Personal Representative's choice. If any property cannot be readily sold or donated, my Personal Representative may, without liability, dispose of such property as my Personal Representative may deem appropriate. I authorize my Personal Representative to pay as an administration expense of my estate the expense of selling, advertising for sale, packing, shipping, insuring and delivering such property.

IV. BOND

No bond shall be required of any fiduciary serving hereunder, whether or not specifically named in this Will, or if a bond is required by law, then no surety will be required on such bond.

V. CONTESTING BENEFICIARY

If any beneficiary under this Will, or any trust herein mentioned, contests or attacks this Will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this Will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me.

VI. GENDER

Whenever the context permits, the term "Personal Representative" shall include "Executor" and "Administrator," the use of a particular gender shall include any other gender, and references to the singular or the plural shall be interchangeable.

VII. GOVERNING LAW

This document shall be governed by the laws in the State of Washington.

I, the undersigned, do hereby declare that I sign and execute this instrument as my last Will, that I sign it willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on this October 30, 2018.

Eordelia Lear
Testator Signature

CL
Testator (Printed Name)



The foregoing instrument, was on this October 30, 2018, subscribed on each page and at the end thereof by Cordelia Lear, the above-named Testator, and by (~~him~~/her) signed, sealed, published and declared to be (~~his~~/her) LAST WILL AND TESTAMENT, in the presence of us and each of us, who thereupon, at (~~his~~/her) request, in (~~his~~/her) presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto.

Lola Wang
Witness Signature

Barryton, Washington
City

Lana Anderson
Witness Signature

Abbe City, Washington
City

Subscribed and sworn to before me by the said testator and the said witnesses, this Oct 30, 2018.

Paxton Bailee
Notary Public

My Commission expires: 6/30/2020

EXHIBIT 6

Supplemental to Will

1959 Hudson to Frank

Lego Sets to Cal

Sea World Plates to Whiskers

Arin gets tractor + Aladers tools

Silverware to Rosita

Dining Table and Chairs to Bergen

Kenge - Gets "Dogs Playing Poker" Back

Teakwood Patio Set to Sonya + Bill

~~Toy Box to Cal~~

Mountains Paintings - Alki Art Museum

November 28, 2017

\$5,000 - SPCA

\$5,000 - Hands Across America

Snow Globes - Cindy

~~Back to Cats~~

~~Red~~

HONORABLE MENTIONS

CAT COVER CONTEST 2023



Amelia Rice
Columbia River



Avery Berg
Seattle Academy



Heidi Morris
Hockinson



Marysville



Jessie Truong
Franklin



Jasmine Santo
Maysville



Jeremy Noble
Tacoma SOTA

Thank you to everyone who entered the contest . The State Office looks forward to next years submissions.

Washington



YMCA MOCK TRIAL