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CLERK OF DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER**

**DWIGHT "RANDY" GREEN, KATHY
LEFOR, and GARY GREEN,**)

Plaintiffs,)

vs.)

**JAMES GREEN, as an Individual, as
Trustee of the Ralph Maurice and Jeanne
Green Revocable Inter Vivos Trust, as
Conservator for Jeanne Green, and as
President of Green Enterprises, Inc.;**)
RALPH MAURICE AND JEANNE GREEN)
REVOCABLE INTER VIVOS TRUST;)
JEANNE GREEN, an incapacitated)
individual, and GREEN ENTERPRISES,)
INC., an Idaho Corporation,)

Defendants.)

Case No. **BON CV 2013 1509**

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT
JAMES GREEN'S MOTION FOR
PARTIAL SUMMARY JUDGMENT,
GRANTING DEFENDANT JEANNE
GREEN'S MOTION FOR SUMMARY
JUDGMENT, AND GRANTING
DEFENDANTS' JOINT MOTION TO
STRIKE AFFIDAVITS OF
PLAINTIFFS**

I. BACKGROUND AND PROCEDURAL HISTORY.

This action was initiated on September 13, 2013, by the plaintiffs Dwight "Randy" Green, Kathy Lefor and Gary Green (collectively the plaintiffs) seeking: 1) injunctive relief against defendant James Green to prevent him from dealing in land holdings of defendant Green Enterprises Inc.; 2) declaratory relief that plaintiffs were improperly disinherited from the defendant Ralph Maurice and Jeanne Green Revocable Inter Vivos Trust; 3) declaratory judgment that the TEDRA Action was improper and should be set aside; and 4) costs and fees. Verified Complaint for Declaratory Judgment and Injunctive Relief, pp. 52-53. These claims were based on three alleged counts: Count I, declaratory judgment that James Green's undue influence over Jeanne and Ralph

Green resulted in a “complete disinheritance” of plaintiffs Randy Green, Kathy Lefor, and Gary Green; Count II, declaratory judgment that the gifting of corporate shares to James Green was improper; and Count III, preliminary injunction against James Green and Green Enterprises to preserve corporate property. *Id.*, pp. 48-50.

In 1965, Jeanne Green inherited approximately 400 acres of real property on Lake Pend Oreille in Bonner County, Idaho, which property includes 3,500 feet of shoreline. *Id.*, p. 3, ¶¶ 11, 12. In 1976, Ralph and Jeanne Green formed Green Enterprises, Inc., and Jeanne Green’s inherited property was conveyed to that corporation. *Id.*, p. 3, ¶ 13. Green Enterprises, Inc.’s property includes four cabins and leasable sites for approximately 16 other cabins. Declaration of Tevis Hull, p. 3, ¶ 8. “The cabins on these sites are owned by various private parties who in turn lease the land under their cabins from [Green Enterprises, Inc.]. [Green Enterprises, Inc.] generates income from these leases as well as from logging operations.” *Id.*

Ralph and Jeanne Green had five children, Dwight Randy Green, Kathy Lefor, Gary Green, James Green, and another child who is not a party to this action. Verified Complaint for Declaratory Judgment and Injunctive Relief, p. 2, 3, ¶¶ 1-4, 15. By 1998, they had gifted a 10% interest in Green Enterprises, Inc., to each of the plaintiffs Dwight Randy Green, Kathy Lefor and Gary Green and defendant James Green. Declaration of James M. Green in Support of Defendant James Green’s Motion for Partial Summary Judgment, p. 2, ¶ 7. Also in 1998, Tevis Hull, corporate counsel to Green Enterprises, Inc., prepared the “Ralph Maurice and Jeanne Green Revocable Inter Vivos Trust” (Trust), at the direction of Ralph and Jeanne Green, to hold their shares of Green Enterprises, Inc. Verified Complaint for Declaratory Judgment and Injunctive Relief, p. 4, ¶ 19; Declaration of Tevis Hull, p. 3, ¶¶ 10, 11. The Trust provided that upon the death of both Ralph and Jeanne Green, the Trust was to be distributed equally among

plaintiffs Dwight Randy Green, Kathy Lefor and Gary Green and defendant James Green. Verified Complaint for Declaratory Judgment and Injunctive Relief, p. 4, ¶ 19. Article 25 of the Trust provided that Gary Green was the First Successor Trustee and James Green was the Second Successor Trustee. Declaration of Tevis Hull, Exhibit B. In December 1998, Tevis Hull prepared an “Amendment to Trust”, at the direction of Ralph and Jeanne Green. *Id.*, p. 4, ¶ 14, Exhibit C. In 2008, attorney William Burg prepared the “Second Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green”. *Id.*, p. 4, ¶ 15, Exhibit D.

On April 2, 2010, Green Enterprises, Inc. had a shareholders meeting. *Id.*, p. 5, ¶ 18. According to Tevis Hull, at that meeting “Gary Green, Kathy Lefor, and Randy Green each expressed an interest . . . that the Company’s property going forward should be a revenue-generating asset that would assist with and secure their family finances due to the recession, rising insurance costs, loss of employment, and shrinking retirement funds.” *Id.*, p. 5, ¶ 18.

Following this meeting, Kathy Lefor sought legal guidance from attorney Alan Rubens. Declaration of John F. Magnuson in Support of Defendant John Green’s Motion for Summary Judgment, Exhibit A. In a letter dated September 22, 2010, Alan Rubens wrote Kathy Lefor, setting forth his guidance and suggestions to her regarding her concerns with changes at Green Enterprises, Inc. *Id.* In this letter he summarized her concerns as follows:

My brief summary of the situation is that your dad wishes to change the Corporate structure, so as to effectively eliminate you and two of your brothers from the Board of Directors, so that he, his wife and Jim, who are generally all on the same page, can operate the Corporation without any interference. You have serious concerns about your dad and mom’s mental capacity, which could affect their decision making, and also have serious concerns about whether their proposed actions on behalf of the

Corporation will have a negative effect on your financial interest as a Shareholder.

Id., Exhibit A, p. 1598. In addressing her concerns, Mr. Rubens informed Kathy

Lefor:

. . . . Your parents have no obligation to leave any of their assets to you, and you may find that in pursuing this matter you will be “cut out” of any further inheritance. If as a result of your activity, your parents decide to leave everything to the “favored child(ren)”, your interest will never exceed the ten percent (10%) value that you have now. I point this out to you only so that in considering whether you are better off to fight or to go along with their plan, you should take a look at where you are now and where you might be in the future. . . .

Id., Exhibit A, p. 1600.

On October 22, 2010, the shareholders of Green Enterprises, Inc. had another meeting. Declaration of Tevis Hull, p. 5-6, ¶¶ 19-22. At that meeting the shareholders amended the bylaws to reduce the number of directors from six to three. *Id.*, p. 5, ¶19.

The shareholder then elected Ralph Green, Jeanne Green, and Jim Green to the Board of Directors. *Id.*, p. 5 ¶ 20. Tevis Hull attests, “[t]he meeting closed with Kathy Lefor making allegations of self-dealing against her parents and Jim Green.” *Id.*, p. 5-6, ¶ 20. The plaintiffs, “dispute the characterization of Kathy’s statement about self-dealing.” Memorandum in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 4. According to the plaintiffs, “[a]t the October 22, 2010 meeting, Kathy, Gary and Randy opposed Ralph and Jeanne’s desire to give James a long-term lease on the lake front due to it being an unequal distribution to Shareholders. Kathy’s concern with self-dealing was specifically regarding longer term, heavily discounted lease that only went to James.” *Id.*

Following this meeting, Ralph told Tevis Hull that he and Jeanne Green desired to amend the Trust to make James Green the First Successor trustee instead of Gary

Green. Declaration of Tevis Hull, p. 6 ¶ 23. Hull advised Ralph Green that due to the dissent among the shareholders, they would need to consult with another attorney regarding their estate planning. *Id.*, pp. 6-7, ¶ 24.

In early 2011, Ralph Green sought property management services and professional consultation and advice from Steve Klatt regarding Green Enterprises, Inc.'s property. Declaration of Steve Klatt, p. 3 ¶ 9. Klatt testified his "duties included dealing with lessees of a portion of the Corporation's property, managing the leased sites and the leases, dealing with Bonner County and issues pertaining to potential entitlements applicable to the property and arranging consultations with conservancy groups who might be potential holders of a conservation easement on portions of the Corporation's property." *Id.*

On April 18, 2011, attorney John Finney, then counsel for the plaintiffs, sent letters to the tenants of Green Enterprises, Inc., which provided in part:

This letter is to inform you and to put you on notice that my clients have concerns involving the conduct of certain shareholder, directors and/or officers of the Corporation, specifically including but not limited to Ralph Green and Jeanne Green. The concerns involve, but are not limited to, the competency and/or legal capacity of Ralph Green and/or Jeanne Green to negotiate and/or enter into new leases or renewals of your leases and also the legal authority for anyone to purport to negotiate and/or enter into longer term leases on the property.

Steps are underway to address my clients concerns, but any purported efforts to enter into long term leases or other purported leases, contrary to the existing annual leasing system terms, will be subjected to severe scrutiny, and if necessary, legal action. . . .

Declaration of James M. Green in Support of Defendant James Green's Motion for Partial Summary Judgment, Exhibit D.

On April 29, 2011, Ralph and Jeanne Green met with attorney Richard Wallace. Declaration of Richard P. Wallace in Support of James Green's Motion for Partial Summary Judgment, pp. 2, 3, ¶¶ 3, 7. James Green was present at that meeting. *Id.*,

p. 3, ¶ 8. Richard Wallace attests “[he] understood that [his] client would be Ralph and Jeanne. [He] also understood that [his] responsibility would be to protect Ralph and Jeanne from the conflict with their children and to implement their goals for estate planning.” *Id.*, p. 3, ¶ 12.

Following that meeting, Richard Wallace drafted the “Revocation of Durable Power of Attorney”. *Id.*, p. 4, ¶ 15. Richard Wallace attests:

The request for the preparation of the revocation on behalf of both Ralph and Jeanne was communicated to me by Ralph and was entirely consistent with the feelings made known to me by Ralph and Jeanne at the April 29 meeting. I never discussed the “Revocation of Durable Power of Attorney” with Jim Green before or after his parents signed it. I took no direction from Jim Green with respect to the preparation or execution of the Durable Power of Attorney. I do not recall ever discussing the subject matter with Jim Green.

Id. Wallace testifies that at the request of Ralph and Jeanne Green, he drafted a new “Durable Power of Attorney” and the “Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust”. *Id.*, pp. 4-5, ¶¶ 16, 17, 19. Collectively these documents removed Gary Green as Successor Trustee to the Trust, naming James Green in his place. *Id.*, p. 5, ¶ 19. Richard Wallace attests that prior to drafting the “Revocation of Durable Power of Attorney” revoking the durable power of attorney granted to their son Gary Green, and the “Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust”, “[a]t our April 29, 2011 meeting, Ralph and Jeanne expressed consternation over the contents of Mr. Finney’s [April 18, 2011] letter”, which was drafted on behalf of the plaintiffs to the tenants of Green Enterprises, Inc. *Id.*, pp. 3, 5, ¶¶ 10, 19.

On June 15, 2011, Klatt, on behalf of Green Enterprises, Inc., wrote a letter to Kyler Wolf, the Interim Director and President of the Clark Fork Pend Oreille Conservancy expressing, among other things, the following:

Ralph and Jeanne stated that their first preference in placing this property in a conservation easement would be to work with your organization. That being the case, I think it is very important for your Board and legal counsel to determine whether you wish to proceed with negotiation if the Green family is divided on the subject of conservation easements. I am not certain this will be the case, but there is a real possibility that the four Green siblings, each holding 10% of the corporate shares will not be supportive of this idea.

Declaration of Steve Klatt, Exhibit F. On June 23, 2011, Richard Wallace drafted the “Fourth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”. Declaration of Richard P. Wallace in Support of James Green’s Motion for Partial Summary Judgment, pp. 6, ¶ 22. Richard Wallace claims he prepared the Fourth Amendment to the Trust, at the request of Ralph and Jeanne Green, which they executed, to leave their trust assets to three charitable organizations if the children could not reach an agreement on the conservation easement. *Id.* p. 6 ¶¶ 23, 24. Richard Wallace also prepared the “Fifth Amendment to Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3-26-98”, which revised the first paragraph to clarify this was the fifth time the Trust had been amended. *Id.*, p. 7 ¶ 25.

On September 9, 2011, Kyler Wolf, Interim Director and President of the Clark Fork Pend Oreille Conservancy, and Eric Grace, the Executive Director for the Clark Fork Pend Oreille Conservancy, met with the Green family to provide additional information about the benefits and issues of a conservation easement. Declaration of John Magnuson in Support of Defendant James Green’s Motion for Partial Summary Judgment, Exhibit D. Also, on September 9, 2011, Green Enterprises, Inc. had a shareholder meeting. Declaration of Tevis W. Hull, Exhibit I. At that meeting, Gary Green polled the members, including Ralph and Jeanne Green, on their history of dementia. *Id.* Also during that meeting, Dwight Randy Green attests Jeanne Green withdrew herself from consideration for Board of Directors, and as such, no longer had

a position on the Board, but attempted to continue voting during that meeting. Affidavit of Dwight Randy Green in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 6, ¶¶ 34, 35.

On September 15, 2011, the Clark Fork Pend Oreille Conservancy wrote Ralph Green, James Green and Randy Green to provide them with a proposed “Letter of Intent to Establish Conservation Easement” with the Clark Fork Pend Oreille Conservancy, and requesting each of them sign the letter. Declaration of John Magnuson in Support of Defendant James Green’s Motion for Partial Summary Judgment, Exhibit D. On October 14, 2011, counsel for Ralph Green, Jeanne Green, and James green sent a letter to John Finney, counsel for the plaintiffs, advising them “Ralph and Jim, as Directors, are prepared to execute the [Letter of Intent] on behalf of the Company given that the matter set forth therein are consistent with the long-term goals for which the Company was created and the intentions of Ralph and Jeanne Green in contributing the property to the Company years ago”. *Id.*, Exhibit E. A follow up letter, requesting that Randy execute the letter of Intent was sent on October 19, 2011. *Id.*, Exhibit F.

The Clark Fork Pend Oreille Conservancy withdrew its offer of a conservation easement in a letter dated October 26, 2011, where Eric Grace wrote:

As a conservationist, the hardest thing I am forced to do is turn down a good conservation project. Unfortunately, this is the case that I currently find myself in with the protection of your property.

As you know, the Clark Fork – Pend Oreille Conservancy has been engaged in discussions with shareholders of Green Enterprises, Inc. to find a conservation plan that would serve to protect this property. On September 13, 2011, at the request of the shareholders, the CFPOC sent a Letter of Intent to the officers and shareholders and their respective counsel, seeking a non-binding commitment from the corporation to continue working to see the property protected by a conservation easement.

Subsequent to sending the Letter of Intent, the CFPOC has been actively engaged in conversation with many of the shareholders. This is not uncommon, and I applaud the asking of the difficult question. However, it has become apparent to the CFPOC that there are significant reservations on the part of some of the shareholders over whether to proceed. . . .

Id., Exhibit D.

In October 2011, Richard Wallace attests that prior to the execution of the Sixth Amendment to the Trust, Ralph told him “that he and Jeanne were frustrated and tired of the process of dealing with Gary, Kathy, and Randy. Ralph advised [him] to prepare a Sixth Amendment to the Trust, giving everything to Jim, because Ralph and Jeanne were worried about the other children and thought that Jim was best able to follow his parents’ wishes.” Declaration of Richard P. Wallace in Support of James Green’s Motion for Partial Summary Judgment , pp. 7-8, ¶ 27.

Richard Wallace attests that he did not discuss the preparation, execution or subject matter of the “Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust”, the “Fourth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”, the “Fifth Amendment to Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3-26-98”, the “Sixth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”, or the Last Will and Testaments” with James Green, and he did not take guidance from James Green or anyone other than Ralph and Jeanne Green regarding the documents. *Id.*, pp. 5-9, ¶¶ 17, 19, 24, 25, 26, 28, 29, 34. Richard Wallace further attests that James Green was not present when Ralph and Jeanne Green executed the “Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust”, the “Fourth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”, the “Fifth Amendment to Revocable Trust

Agreement of Ralph Maurice Green and Jeanne Green, 3-26-98”, or the “Sixth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”. *Id.*, pp. 6-9, ¶¶ 22, 24, 26, 28, 31. Wallace also specifically attests that “[t]he Sixth Amendment was executed by Ralph and Jeanne and they confirmed to me, in my presence, that it reflected their intentions and desires. They manifested no appearance of being under the influence of any third-party or person when they executed the document in my presence.” *Id.*, p. 8, ¶ 29. Wallace similarly testified regarding the execution of Jeanne Green’s Last Will and Testament that, “Jeanne Green manifested no indication that she was under the influence of any third-party. Jeanne Green manifested no indication that she was being pressured by anyone to sign the Will.” *Id.*, p. 9, ¶ 33.

On August 28, 2012, more than year after the Sixth Amendment to the Trust was executed, Judge Buchanan addressed the issue of Jeanne Green’s competency in Bonner County Case CV-2012-244, and found she was not incapacitated. Declaration of John Magnuson in Support of Defendant James Green’s Motion for Partial Summary Judgment, Exhibit P.

This present action was initiated by plaintiffs on September 13, 2013, via the filing of the Verified Complaint for Declaratory Judgment and Injunctive Relief.

On August 29, 2014, James Green filed the instant “Motion for Partial Summary Judgment by Defendant James M. Green”, supported by a “Memorandum in Support of Defendant James Green’s Motion for Partial Summary Judgment”, the “Declaration of James Green in Support of Defendant James Green’s Motion for Partial Summary Judgment”, the “Declaration of Richard P. Wallace in Support of Defendant James Green’s Motion for Partial Summary Judgment”, the “Declaration of Steve Klatt”, the “Declaration of Tevis W. Hull” and the “Declaration of John F. Magnuson in Support of

Defendant James Green's Motion for Partial Summary Judgment". On September 9, 2014, Jeanne Green filed "Jeanne Green's Motion for Summary Judgment". On September 23, 2014, she filed a supporting memorandum entitled "Jeanne Green's Reply Brief in Support of Her Motion for Summary Judgment".

On September 17, 2014, plaintiffs filed their "Memorandum in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment". It was supported by the "Affidavit of Dwight Randy Green in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment", the "Affidavit of Kathy Lefor in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment", the "Affidavit of Gary Green in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment", and the "Affidavit of Counsel in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment".

On September 23, 2014, James Green filed his "Reply Memorandum in Support of Defendant James Green's Motion for Partial Summary Judgment", and "Objections to, and Motion to Strike, Affidavit Testimony Submitted by Plaintiffs in Opposition to James Green's and Jeanne Green's Motions for Partial Summary Judgment (Jointly Submitted by Defendants James Green and Jeanne Green)."

Oral argument was scheduled for September 29, 2014. On September 26, 2014, plaintiffs filed "Plaintiffs' Motion to Continue the Hearing on Defendant James Green's Motion for Partial Summary Judgment and Defendant Jeanne Green's Motion for Summary Judgment", supported by a "Memorandum in Support of Plaintiffs' Motion to Continue the Hearing on Defendant James Green's Motion for Partial Summary Judgment and Defendant Jeanne Green's Motion for Summary Judgment", and the "Affidavit of Counsel in Support of Plaintiffs' Motion to Continue the Hearing on

Defendant James Green's Motion for Partial Summary Judgment and Defendant Jeanne Green's Motion for Summary Judgment". In response, James Green filed "Declaration of Counsel (John F. Magnuson) in Opposition to Plaintiffs' Motion to Continue". At the September 29, 2014, hearing, the Court heard oral argument on the Motion to Continue and in its discretion granted the motion with the condition that plaintiffs would pay for opposing counsels' time for the September 29, 2014, hearing and would pay for opposing counsel to be present at any depositions conducted by plaintiffs as a result of the Motion to Continue. The Motion for Summary Judgment was rescheduled for November 18, 2014.

On November 4, 2014, plaintiffs filed "Plaintiffs' Supplemental Memorandum in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment", supported by the "Declaration of Cary Vogel RE: Plaintiffs' Supplemental Memorandum in Opposition to Jeanne Green and James Green's Motions for Partial Summary Judgment", the "Declaration of Bennett Blum, M.D., RE: Plaintiffs' Supplemental Memorandum in Opposition to Jeanne Green and James Green's Motions for Partial Summary Judgment", and the "Declaration of Plaintiffs' Counsel in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment". On November 12, 2014, James Green filed "Supplemental Memorandum in Support of Defendant James Green's Motion for Partial Summary Judgment" and Jeanne Green filed "Jeanne Green's Supplemental Reply Brief in Support of Her Motion for Summary Judgment". Also on November 12, 2014, James Green and Jeanne Green jointly filed "Objections to, and Motion to Strike, Declaration of Bennett Blum, M.D., Submitted by Plaintiffs in Opposition to James Green's and Jeanne Green's Motions for Partial Summary Judgment." Oral argument on the motions was held on November 18, 2014.

At the hearing, the Court sustained the objections and granted the motion to strike set forth in the “Objections to, and Motion to Strike, Affidavit Testimony Submitted by Plaintiffs in Opposition to James Green’s and Jeanne Green’s Motions for Partial Summary Judgment (Jointly Submitted by Defendants James Green and Jeanne Green)”, which was filed on September 23, 2014. No response was ever filed by counsel for plaintiffs. The following portions of Dwight “Randy” Green’s Affidavit were stricken: pages 2-3, ¶ 10; page 3, ¶ 16, the first two sentences of ¶ 17; page 4, the fifth and sixth sentences of ¶ 18, the first two sentences of ¶ 22; page 5, the first and last sentences of ¶ 24, the first and last sentences of ¶ 28; page 6, ¶ 30, ¶ 31, the third sentence of ¶ 32, ¶ 33, the fourth sentence of ¶ 35; page 7, ¶ 37, ¶ 38, ¶ 39, the last sentence of ¶ 41, the third sentence of ¶ 42; page 8, the second sentence of ¶ 47, ¶ 48; and page 9, ¶ 53. The following portions of Kathy Lefor’s Affidavit were stricken: page 2, ¶ 6; page 3, the second sentence of ¶ 9, the first two sentences of ¶ 12; page 4, ¶ 14, the second sentence of ¶ 19 and Exhibit C; page 5, the last sentence of ¶ 25 and Exhibit F; page 6, the second sentence of ¶ 27, ¶ 32; page 7, ¶ 34, the second sentence of ¶ 35, the last two sentences of ¶ 38; page 8, the last sentence of ¶ 40; page 9, the second half of the sentence that makes up ¶ 46, the first sentence of ¶ 50, ¶ 51; page 10, the second sentence of ¶ 52; page 11, the first half of the sentence that makes up ¶ 59; page 12, the second sentence of ¶ 65 and Exhibit J, the first half of the first sentence and all of the second sentence of ¶ 66, ¶ 67; page 14, the last sentence of ¶ 77, the second half of the first sentence of ¶ 79. The following portions of Gary Green’s Affidavit were stricken: page 2, the second sentence of ¶ 7, the last sentence of ¶ 8; page 3, the second sentence of ¶ 12, the second sentence of ¶ 14; page 4, the first and last sentences of ¶ 22; page 5, the first sentence of ¶ 23, ¶ 25 and ¶ 26. The basis for sustaining these objections and motion to strike are as set forth in the

“Objections to, and Motion to Strike, Affidavit Testimony Submitted by Plaintiffs in Opposition to James Green’s and Jeanne Green’s Motions for Partial Summary Judgment (Jointly Submitted by Defendants James Green and Jeanne Green).”

At oral argument on November 18, 2014, the Court also heard argument on “Objections to, and Motion to Strike, Declaration of Bennett Blum, M.D., Submitted by Plaintiffs in Opposition to James Green’s and Jeanne Green’s Motions for Partial Summary Judgment”, jointly filed by James Green and Jeanne Green. The Court determines the motion to strike Blum’s opinion must be granted, not because Blum’s opinions would not “...assist the trier of fact to understand the evidence to determine a fact in issue...” (I.R.E. 702), but because Blum’s opinions are not supported by any fact in the record. The entirety of Dr. Blum’s “opinion” as contained in his “Declaration of Bennett Blum, M.D., Re: Plaintiffs’ Supplemental Memorandum in Opposition to Jeanne Green and James Green’s Motions for Partial Summary Judgment” reads as follows:

6. ...it is my opinion:

a. That almost all individuals are susceptible to being manipulated; susceptibility can arise from medical, social, environmental and other contextual factors;

b. That at the times leading up to and including the disinheritance of the Plaintiffs, Mrs. Jeanne Green was susceptible to undue influence as a result of a combination of medical, psychological, social and environmental factors;

c. That at the times leading up to and including the disinheritance of the Plaintiffs, Mr. Ralph Maurice Green was susceptible to undue influence as a result of a combination of medical, psychological, social and environmental factors;

d. That though paltering, commiseration, and exploiting Ralph and Jeanne Green’s vulnerabilities, James Green, individually and through use of others in trusted relationships with Ralph and Jeanne, manipulated and unduly influenced Ralph and Jeanne to believe that only James Green understood and would carry out their wishes with respect to Green Enterprises and the family property that was held by Green Enterprises. Specifically, James Green, individually and through use of others in his charge, led his parents to believe that James Green was the only one of Ralph and Jeanne’s children who would place the property into a Conservation Easement and that the other children were against it; that the Plaintiffs thwarted James Green’s ability to move onto the Green

property to care for Ralph and Jeanne Green in their later years; and that the Plaintiffs were trying to assume control over Ralph and Jeanne's late-in-life planning and security.

e. That at the same time, James Green manipulated the Plaintiffs to believe that James did not support the creation of a Conservation Easement on the subject property; that Ralph and Jeanne did not understand the consequences of the creation of a Conservation Easement; that he believed Ralph and Jeanne could not run Green Enterprises; and that he believed Ralph and Jeanne suffered from mental deficits;

f. That the October 28, 2011 Sixth Amendment of Ralph and Jeanne's Trust resulting in the Plaintiffs being disinherited and James Green receiving Ralph and Jeanne's entire estate indicates a transaction that was the result of James Green's undue influence over Ralph and Jeanne; that such an amendment was contrary to all wishes expressed by Ralph and Jeanne – including just a matter of a few days after what has been characterized as the worst possible conduct engaged in by the Plaintiffs, which was a letter calling into question Ralph and Jeanne Green's competency; and that even at that point, Ralph and Jeanne wished their estate to be split equally among their children.

Declaration of Bennett Blum, M.D., Re: Plaintiffs' Supplemental Memorandum in Opposition to Jeanne Green and James Green's Motions for Partial Summary Judgment, pp. 2-3. For Blum's opinions to be admissible, there must be reasons, or a factual basis to support those opinions. *J-U-B Engineers v. Security Ins. Co. of Hartford*, 146 Idaho 311, 316, 193 P.3d 858, 863 (2008). Blum's affidavit completely fails in this requirement. Blum does not set forth one single fact, one shred of evidence, to support any of his opinions. Admissibility of an expert's opinion depends on the validity of the expert's reasoning and methodology, rather than his or her ultimate conclusion. *Coombs v. Curnow*, 148 Idaho 129, 140, 219 P.3d 453, 464 (2009). Blum's opinion sets forth no reasoning, no methodology. Blum's opinions are entirely baseless. Blum's opinions are the epitome of conclusory. Blum's affidavit is proof that, for a price, any opinion can be obtained. However, simply spending money on a physician's opinion does not alone make the opinions admissible. The joint motion to strike Blum's affidavit is granted.

At the conclusion of oral argument, the motions for summary judgment were taken under advisement. For the reasons set forth below, the Court grants James Green's Motion for Partial Summary Judgment and Jeanne Green's Motion for Summary Judgment.

II. STANDARDS OF REVIEW.

A. Motions to Strike.

"The trial court has discretion to decide the admissibility of expert testimony, and on appeal this decision will not be overturned absent an abuse of that discretion." *Clair v. Clair*, 153 Idaho 278, 290, 281 P.3d 115, 127 (2012). When evidence presented in opposition to a motion for summary judgment is challenged as being inadmissible, the trial court must determine the admissibility of the evidence before ruling on the motion. *Ryan v. Beisner*, 123 Idaho 42, 45, 844 P.2d 24, 27 (Ct. App. 1992); *Suhadolnik v. Pressman*, 151 Idaho 110, 114, 254 P.3d 11, 15 (2011), citing *Dulaney v. St. Alphonsus Regional Med. Ctr.*, 137 Idaho 160, 163, 45 P.3d 816, 819 (2002).

B. Motions for Summary Judgment.

"Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court . . . demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law." *Brewer v. Washington RSA No. 8 Ltd. Partnership*, 145 Idaho 735, 738, 184 P.3d 860, 863 (2008) (quoting *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988) (citing I.R.C.P. 56(c)). The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Finance Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)).

“Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party,” to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)); *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 87, 996 P.2d 303, 306 (2000).

The non-moving party’s case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69 (1996). The non-moving party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); see *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). In construing the facts, the court must draw all reasonable factual inferences in favor of the non-moving party. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). If reasonable people can reach different conclusions as to the facts, then the motion must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979).

III. ANALYSIS.

A. Undue Influence Claims Against James Green.

Generally, the plaintiff must prove four elements to establish a claim of undue influence: “(1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence.” *Gmeiner v. Yacte*, 100 Idaho 1, 6-7, 592 P.2d 57, 62-63 (1979) (quoting 25 Am.Jur. 2d Duress and Undue Influence § 36 at 397 (1966)). Each of these elements

will be discussed in turn below. Moreover, to determine whether undue influence existed at the time of the grant, the court should consider the following factors:

. . . the age and physical and mental condition of the one alleged to have been influenced, whether he had independent or disinterested advice in the transaction, the providence or improvidence of the gift or transaction, delay in making it known, consideration or lack or inadequacy thereof for any contract made, necessities and distress of the person alleged to have been influenced, his predisposition to make the transfer in question, the extent of the transfer in relation to his whole worth, failure to provide for his own family in the case of a transfer to a stranger, or failure to provide for all of his children in case of a transfer to one of them, active solicitations and persuasions by the other party, and the relationship of the parties.

Id. at 7, 592 P.2d at 63 (quoting 25 Am.Jur.2d Duress and Undue Influence § 36 at 397 (1966)).

1. Susceptibility to Undue Influence.

“Susceptibility, as an element of undue influence, concerns the general state of mind of the testator: whether he was of a character readily subject to the improper influence of others.” *Id.* The court examines transactions where it appears the testator or grantor was “aged, sick or enfeebled.” *Id.* Specifically, “the court will manifest concern for a grantor who has been proven incapable of handling his or her own business affairs, who is illiterate, or who has undergone marked deterioration of mind and body shortly before the grant, or who has suffered the trauma of recent death in the family.” *Id.* (citing *McNabb v. Brewster*, 75 Idaho 313, 272 P.2d 298 (1954); *In re Lunders' Estate*, 74 Idaho 448, 263 P.2d 1002 (1953)).

James Green argues the plaintiffs are collaterally estopped from challenging the competency of Jeanne Green in this case because on August 28, 2012, more than a year after the Sixth Amendment to the Trust executed, Judge Buchanan addressed the issue of Jeanne Green’s competency in Bonner County Case CV-2012-244 and found she was not incapacitated. Memorandum in Support of Defendant James Green’s

Motion for Partial Summary Judgment, p. 29. While plaintiffs are collaterally estopped from challenging Judge Buchanan's finding that Jeanne Green was not incapacitated on August 28, 2012, a lack of capacity is not the same as not being susceptible to undue influence. Jeanne Green not being incapacitated is evidence that she was not susceptible to undue influence. Also, the time period is different. Most of the pertinent events of the alleged undue influence occurred in 2011, but there is no evidence at all that would support an inference that Jeanne Green was anything other than not incapacitated at all times before August 28, 2012.

Moreover, James Green maintains there are no disputed issues of material fact that demonstrate Jeanne Green was susceptible to undue influence. *Id.*, p. 32. While he admits Jeanne Green was aged, he claims there is no evidence Jeanne Green was sick or enfeebled, was uneducated, suffered the trauma of a recent death in her family, or was illiterate when she executed the Sixth Amendment to the Trust. *Id.*, p. 34. He contends "there is no evidence of anything that would support a determination to disregard the prior decision of Judge Buchanan." *Id.*

In response, plaintiffs argue "the inquiry is not whether or not Ralph and Jeanne could make decisions about their person or property, but whether or not their decision to give James control of the property was actually their own." Memorandum in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment, p. 10. They claim their challenge to the modification of the Trust is not based on Ralph or Jeanne Greens' competency to execute a trust, but rather that the substance of the modifications resulted from James Green's undue influence. *Id.*, p. 11. They claim Ralph and Jeanne Green were susceptible to undue influence because their physical and mental health was deteriorating. *Id.*, p. 13. Specifically, the plaintiffs allege Jeanne

Green was cognitively impaired because she “was no longer capable of her bookkeeping duties [and] no longer paid the household bills.” *Id.*, p. 16 (citing the Affidavit of Kathy Lefor in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, pp. 6, 9, ¶¶ 9, 30, 31, which states: “9. . . . About 2009 my father told me she could no longer pay their personal bills 30. About the time of the October 2010 meeting, my mother relinquished her role as the corporate bookkeeper. Mr. Hull informed us at the Board meeting that the accountant who handled the corporate taxes would take over the bookkeeping. 31. My parents began to use a bookkeeper to track Green Enterprises’ expenses, a job that was traditionally performed by my mother. . . .”). Moreover, plaintiffs contend Ralph and Jeanne Green were unable to handle their business affairs. *Id.* (citing the Affidavit of Kathy Lefor in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 13, ¶ 69; the Affidavit of Dwight Randy Green in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 6, ¶¶ 34, 35, which state: “34. . . . my mother withdraws her name from the ballot thus placing Jim and my father on the Board. This is the first time I’ve seen my mother relinquish control. In the past she has always insisted on being on the Board. 35. During the remainder of the Board of Directors meeting, my mother continues to vote on each motion as if she was still on the Board. She is asked several times if she understands that she is not on the Board and she says she understands. My mother keeps voting anyway. . . .”).

Plaintiffs also claim James knew his parents were susceptible to undue influence because “James observed that his parents were easily influenced by people of positions of trust.” Plaintiffs’ Supplemental Memorandum in Opposition to James Green and Jeanne Green’s Motions for Partial Summary Judgment, p. 5. In support of this

claim, plaintiffs cite to the following excerpt from the deposition of James Green taken on October 20, 2014, which provides:

Q. Did you ever come to know your father to not be willing to talk about the future, for planning for the future?

A. My father would not -- he would talk about the future, but in terms of accepting other people's within the family's direction on how that should occur, he wouldn't go there.

Q. He would talk about estate planning, but would it take you or someone within the family or Tevis Hull to actually get him to sit down and document --

A. It would take -- I'm sorry. Did -- I probably cut you off. I didn't mean that.

Q. Go ahead.

A. It would take someone they trusted to move that agenda forward, and that was not their four children.

Q. They didn't trust their four children?

A. I don't think so. Not the -- we were children.

Declaration of Plaintiffs' Counsel in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, Exhibit A, p. 81, Ls. 15-25 through p. 82, Ls. 1-5. The Court specifically finds this is not evidence that Ralph or Jeanne Green were susceptible to undue influence. The fact that Ralph and Jeanne Green trusted an attorney such as Tevis Hull is not evidence that Ralph or Jeanne Green were susceptible to undue influence. In fact, it is evidence of Ralph's and Jeanne's competence, and it is evidence of the fact that they probably did not trust their four children on estate planning issues. One of the most common reasons any person would seek legal advice from an attorney for estate planning issues is because that person trusts that attorney whom they are paying a good deal of money for advice, and that person does not, for whatever reason or reasons, want to involve, let alone trust, the likely beneficiaries of that plan; that is, that person's children.

The plaintiffs further argue, "James also observed that he could get what he wanted by leading his parents to believe that he would abide by their wishes." Plaintiffs' Supplemental Memorandum in Opposition to James Green and Jeanne Green's

Motions for Partial Summary Judgment, p. 5. Incredibly, in support of this claims, the plaintiffs cite to the following excerpt from the deposition of James Green taken on October 20, 2014, which provides:

Q. And you say then, "If I have a comfortable relationship with them now, it's only because I've tried to comply with their wishes late in their life. Our history has been characterized by discordance. I'd like to have it end in a happy note." Right?

A. Yes, sir.

Q. So that's why you were going along, to get along with your folks. That's why you were investing into the cabin, telling them you're ready to move in up there.

A. Yes. They were in their late 80s, and it had been be a very conflicted relationship throughout, and I thought here was an opportunity for everyone to come to some sort of tranquility late in their life.

Declaration of Plaintiffs' Counsel in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, Exhibit A, p. 150, Ls. 21-25 through p. 151, Ls. 1-8. This is not evidence that Ralph or Jeanne Green were susceptible to undue influence. It is evidence that Ralph and Jeanne knew full well the difficulties all four children presented, and it is evidence of why they sought out legal advice from various attorneys over time to deal with those difficulties. It is evidence that it is human nature for us to prefer harmonious relationships, and disfavor conflict. The fact that James Green was "going along" to "get along" with his folks is not evidence of his parents being susceptible to undue influence. There is nothing "undue" about getting along with people.

Moreover, plaintiffs contend, "James also came to learn that in order to get what he wanted from Ralph and Jeanne, and to gain their appreciation he should not question them." Plaintiffs' Supplemental Memorandum in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, p. 6. In support of this claim, plaintiffs cite to the following excerpt from the deposition of James Green taken on October 20, 2014, which provides:

Q. Did you feel like she needed medical treatment based upon your observations of her on January 13th or 14th?

A. I personally would have liked her to have done that and know more about what her problem was. That would be my personal sentiments.

Q. Did you agree or disagree with her decision -- well, let me ask you this: Did you agree or disagree with her decision not to follow your recommendation?

A. I disagreed with it, but I also knew from my parents that you suggested and you never insisted, and once the suggestion was not taken, that was the end of the subject.

Q. Is that -- is that kind of how you learned to grow up with your parents?

A. Yes.

Q. You didn't push anything with them?

A. That was, I thought, the most productive method.

Q. You go along to get along?

A. Not always.

Q. What would the exceptions be?

A. For much of my life I went head-to-head with them, particularly my father.

Q. Going head-to-head with your parents, did you learn that you got what you wanted?

A. No. I never got what I wanted, and that's why I stopped interacting.

Q. And that was a period of time when you stopped interacting with your folks and weren't spending a lot of time at the lake, or are you saying that's when you changed your approach with working with your parents?

A. No. I think it's one of those life maturation things, you end up with other interests, other responsibilities. And the things that they really care about and you disagree with, what's the point in fighting with them?

Q. So at some point you hit this maturation and you decided to make it work, you just let them do what they wanted to do?

A. Yes.

Q. Did you also find that if you told them you would go along with what they did, that they would be appreciative of your involvement?

A. I think you -- just telling them, no.

Q. Would they be appreciative of your going along their wishes?

A. I think they appreciated people agreeing with them and doing things the way they wanted, yes.

Declaration of Plaintiffs' Counsel in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, Exhibit A, p. 59, Ls. 11-25 through p. 61, Ls. 1-8. This is not evidence that Ralph or Jeanne Green were susceptible to undue influence. Just as with the argument just above, the fact that James wouldn't question his parents and his parents in turn appreciated that is not evidence of being susceptible to undue influence. There is nothing "undue" about not questioning people.

Finally, plaintiffs claim, “James also pandered to his parents – leading them to believe he would follow their wishes when he had no intention of doing so, or leading them to follow half-truths.” Plaintiffs’ Supplemental Memorandum in Opposition to James Green and Jeanne Green’s Motions for Partial Summary Judgment, p. 6. In support of this claim, plaintiffs cite to the following excerpt from the deposition of James Green taken on October 20, 2014, which provides:

Q. Prior to a guardian being appointed for your mother, did you have an understanding from your mother what her wishes were for the property?

A. Yes.

Q. And what are or were her wishes that were conveyed to you?

A. She would like it to stay forever the way it was.

Q. Is that what Green Enterprises intends to do with the property?

A. No.

Declaration of Plaintiffs’ Counsel in Opposition to James Green and Jeanne Green’s Motions for Partial Summary Judgment, Exhibit A, p. 26, Ls. 21-25 through p. 27, Ls. 1-5. This might be evidence of the fourth element under *Gmeiner*, “a result indicating undue influence”, but it is in no way evidence that Ralph or Jeanne Green were susceptible to undue influence.

The parties appear to agree that Jeanne Green was competent when she executed the Sixth Amendment to the Trust. However, when viewing the evidence and inferences in light most favorable to the plaintiffs, a genuine issue of material fact exists as to whether Jeanne Green was capable of handling her business affairs. This is the *only* evidence which even indicates she may have been susceptible to undue influence. Based on the Affidavit of Dwight Randy Green, Jeanne Green withdrew herself from consideration for Board of Directors, and as such, no longer had a position on the Board, but attempted to continue voting during that meeting. Affidavit of Dwight Randy Green in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 6, ¶¶ 34, 35. This occurred on September 9, 2011, shortly before Jeanne

Green executed of the Sixth Amendment to the Revocable Trust on October 28, 2011. See Declaration of Tevis W. Hull, Exhibit I; see Declaration of Richard P. Wallace in Support of Defendant James Green's Motion for Partial Summary Judgment, Exhibit G. That evidence alone arguably creates a genuine issue of material fact concerning Jeanne Green's susceptibility to undue influence.

2. Opportunity to Exert Undue Influence.

Under this element, the Court looks to whether the alleged undue influencer had opportunity to take unfair advantage of the grantor. *Gmeiner*, 100 Idaho at 8, 592 P.2d at 64.

James Green maintains he had no opportunity to exert undue influence over Ralph or Jeanne Green with respect to the execution of the Sixth Amendment to the Trust or the Last Will and Testaments of Ralph Green and Jeanne Green. Memorandum in Support of Defendant James Green's Motion for Partial Summary Judgment, p. 35. In support of this, he asserts Richard Wallace was hired by Ralph and Jeanne Green to counsel them on their estate planning. *Id.* He contends Ralph and Jeanne Green were the only individuals to provide Richard Wallace with guidance on these matters. *Id.* He alleges Wallace "personally met with Ralph and Jeanne on numerous occasions, went over their estate planning documentation and the Trust amendments, in person, verified that the intended the terms thereof and understood the same, and witnessed their signatures. *Id.*, p. 36. During this time, James Green contends he never provided Richard Wallace with direction or discussed Ralph and Jeanne Greens' estate planning issues with Richard Wallace. *Id.* As such, James Green contends there are no facts to establish he exerted undue influence over Ralph and Jeanne Green. *Id.*

Plaintiffs claim James Green had an opportunity to exert undue influence over Ralph and Jeanne Green because “he was around his parents and in communication with those who were providing objective advice to them.” Memorandum in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 10. Specifically, they claim James Green was in constant contact with Ralph and Jeanne Green as the only other member of the Board, they claim he “was able to have many private conversations and meetings with Ralph and Jeanne, and they claim he met with Richard Wallace, the attorney planning the Greens’ estate. *Id.*, pp. 18, 19. They also contend “James stayed close to his parents and was certain to keep the sense of discord alive. His siblings would engage in conduct (no matter how benign) and James was quick to have private conversations with his parents about it – encouraging discord with biased views and commiseration.” Plaintiffs’ Supplemental Memorandum in Opposition to James Green and Jeanne Green’s Motions for Partial Summary Judgment, p. 10. Based on this, the plaintiffs maintain “James had the opportunities, and did in fact take those opportunities, to influence his parents.” Memorandum in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 19.

Plaintiffs also contend:

By April 7, 2011, James is exchanging emails with corporate attorney Tevis Hull and [Steve] Klatt about his parents’ susceptibility and need for guidance so as to avoid his siblings taking control. James portrayed his siblings in a threatening light and used Ralph and Jeanne’s trusted advisors to carry out his own plan. James played into his parents’ fear of losing control of the corporation and knowing that such fear would cause them to act.

Plaintiffs’ Supplemental Memorandum in Opposition to James Green and Jeanne Green’s Motions for Partial Summary Judgment, p. 10. In support of this, they cite to an email written by James Green to Steve Klatt and Tevis Hull on April 7, 2011, and an

excerpt from the deposition of James Green taken on October 20, 2014. The email provides:

Hello Steve and Tevis,

I know my siblings, when they were on the Board, toyed with the idea of not electing Mom and Dad as officers or electing others, but the issue was always moot because they realized how short lived a coup like that might be. Now, as Mom become[s] more infirm and my Dad more aged they are probably more likely to consider such a move. I thought that by having them become Board members again it might be a way to soothe feelings but I am concerned they might concoct something outrageous which the bylaws would let them formulate.

I think they see things just as a matter of time now.

At this meeting Mom and Dad are going to have to declare their majority opinion strongly in order to prevail. I can nominate them, but one or the other will have to second the nomination. They will then have [to] vote affirmatively to carry the vote. This will be by one (1) year. Then, we'll do it again in another year.

It's quite depressing.

Jim

Declaration of Plaintiffs' Counsel in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, Exhibit 2 attached to Exhibit A, p. 246. The cited excerpt from the deposition of James Green taken on October 20, 2014, provides:

Q. Was the fear of taxes something that you came to know motivated your parents to act?

A. Yes. They formed a corporation to that – about that concern.

Q. Did your parents also have concerns with losing control of the corporation?

A. Yes.

Declaration of Plaintiffs' Counsel in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, Exhibit A, p. 78, Ls. 14-20. Neither the email nor the quoted language from the deposition of James Green rebuts the testimony of Richard Wallace that he was not in communication with James Green regarding the preparation of documents for the Greens.

Richard Wallace attests that “[he] understood that [his] client would be Ralph and Jeanne. [He] also understood that [his] responsibility would be to protect Ralph and Jeanne from the conflict with their children and to implement their goals for estate planning.” Declaration of Richard P. Wallace in Support of Defendant James Green’s Motion for Partial Summary Judgment, p. 3, ¶ 12. He first met with Ralph and Jeanne Green on April 29, 2011. *Id.*, pp. 2, 3, ¶¶ 3, 7. James Green was present at that meeting. *Id.*, p. 3, ¶ 8. Following that meeting, Richard Wallace drafted the “Revocation of Durable Power of Attorney”. *Id.*, p. 4, ¶ 15. Richard Wallace attests:

The request for the preparation of the revocation on behalf of both Ralph and Jeanne was communicated to me by Ralph and was entirely consistent with the feelings made known to me by Ralph and Jeanne at the April 29 meeting. I never discussed the “Revocation of Durable Power of Attorney” with Jim Green before or after his parents signed it. I took no direction from Jim Green with respect to the preparation or execution of the Durable Power of Attorney. I do not recall ever discussing the subject matter with Jim Green.

Id. He testifies that at the request of Ralph and Jeanne Green, he drafted a new “Durable Power of Attorney”, the “Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust”, the “Fourth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”, the “Fifth Amendment to Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3-26-98”, the “Sixth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”, and separate “Last Will and Testaments” for Jeanne Green and Ralph Green. *Id.*, pp. 4-8, ¶¶ 16, 17, 19, 22, 25, 27, 30. He also attests that he did not discuss the preparation, execution or subject matter of these documents with James Green, and he did not take guidance from James Green or anyone other than Ralph and Jeanne Green regarding the documents. *Id.*, pp. 5-9, ¶ 17, 19, 24, 25, 26, 28, 29, 34. Richard Wallace attests that James Green was not present when Ralph and

Jeanne Green executed the “Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust”, the “Fourth Amendment to the Green Trust”, the “Fifth Amendment to Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3-26-98”, the “Sixth Amendment to the Revocable Trust Agreement of Ralph Maurice Green and Jeanne Green, 3/26/98”, or the Last Will and Testaments. *Id.*, pp. 6-9, ¶¶ 22, 24, 26, 28, 31. He also specifically attests that “[t]he Sixth Amendment was executed by Ralph and Jeanne and they confirmed to me, in my presence, that it reflected their intentions and desires. They manifested no appearance of being under the influence of any third-party or person when they executed the document in my presence.” *Id.*, p. 8, ¶ 29. He similarly testified regarding the execution of Jeanne Green’s Last Will and Testament that “Jeanne Green manifested no indication that she was under the influence of any third-party. Jeanne Green manifested no indication that she was being pressured by anyone to sign the Will.” *Id.*, p. 9, ¶ 33.

This evidence shifts the burden to plaintiffs to demonstrate, through specific facts, that there is a genuine issue for trial. They have failed to meet this burden. In response, they merely allege James Green “was around his parents and in communication with those who were providing objective advice to them.” Memorandum in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 10. They do not point to specific conversations where James Green discussed estate planning with his parents. They do not have evidence that rebuts the testimony of Richard Wallace that he was not in communication with James Green regarding the preparation of documents for the Greens, including the Sixth Amendment to the Trust or the Last Will and Testaments. It is logical that a son would be around their parents. While not being an adversary of his parents’ position might have given

him a better access to his parents, it also suggests that their decision to bequest their estate to him was not because they were being unfairly taken advantage of by him.

As such, plaintiffs have failed to provide any admissible evidence that James Green had an opportunity to exert undue influence over Ralph and Jeanne Green.

3. Disposition to Exert Undue Influence.

Under this element, the court “examines the character and activities of the alleged undue influencer to determine whether his conduct was designed to take unfair advantage of the testator.” *Gmeiner*, 100 Idaho at 8, 592 P.2d at 64. Specifically, the court should look to whether the alleged undue influencer actively participated in preparing or executing the will or trust. *Id.* The existence of undue influence is not likely found if, “it can be shown that the grant was not made at the request, suggestion or direction of the grantee; where the grantee was not active in the preparation or execution of the documents; or where disinterested advice was sought and third parties were informed of the grantor's intentions.” *Id.* (internal citations omitted).

Plaintiffs argue the counsel Ralph and Jeanne Green received from Tevis Hull and Steve Klatt was not independent or disinterested, but rather based on “misinformation and misplaced comments about the Plaintiffs.” Memorandum in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, p. 11. In support of this claim, the plaintiffs direct the court to an April 2, 2011, email from Steve Klatt to James Green, which provides:

Jim> [sic] I’m about to send out cancellation notices, but I want to encourage you to not get too distressed about Ralph thinking of a “Forgive and Forget” policy in some hope of general family harmony while your mom is alive. Allowing this episode to be water under the bridge someday before too long does not mean a significant effort is not made right now to prevent these three yahoos from ever having control of the family property. That will be the counsel next Friday from Tevis, Rich Wallace and me, I do believe.

We're on with Tevis at 8:30, followed by Rich at 10am.

I've been encouraging Ralph to be tolerant of this episode of his children's [sic] stupidity and meanness, just so he doesn't brood continually on it and upset them both. No one needs that at 87 years old. Allowing some tolerance does not mean closing your eyes to the personality traits exhibited by this latest shenanigan.

It's all very disturbing right now, but putting up sideboards for the future is what we'll be discussing next Friday.

Hang in there – sk

Id. (citing Declaration of Steve Klatt, Exhibit E). The Court notes that nowhere in their briefing do plaintiffs mention what “misinformation and misplaced comments about the Plaintiffs” James Green supposedly gave Steve Klatt. While the Court understands why plaintiffs would take offense to being referred to by Klatt, a former County Commissioner and a confidant of their parents’, as the “three yahoos”, the evidence is that it was plaintiffs’ own actions, not any “misinformation or misplaced comments about the Plaintiffs” made by James Green, that likely caused the moniker “three yahoos” to be used. Keep in mind that ten days *before* Klatt used the reference “three yahoos”, Klatt, in a letter to the three plaintiffs, signed by both Ralph and Jeanne, implored everyone to get along or the conservancy easement would be the only way Ralph and Jeanne could preserve the property. Declaration of James M. Green in Support of Defendant James Green’s Motion for Partial Summary Judgment, Exhibit C. And, keep in mind that two weeks *after* Klatt used the reference “three yahoos”, those three people had their own attorney, John Finney, in writing, refer to Ralph and Jeanne Green as incompetent. On April 18, 2011, attorney John Finney, then counsel for plaintiffs, sent letters to the tenants of Green Enterprises, Inc., which provided in part:

This letter is to inform you and to put you on notice that my clients have concerns involving the conduct of certain shareholder, directors and/or officers of the Corporation, specifically including but not limited to Ralph Green and Jeanne Green. The concerns involve, but are not

limited to, the competency and/or legal capacity of Ralph Green and/or Jeanne Green to negotiate and/or enter into new leases or renewals of your leases and also the legal authority for anyone to purport to negotiate and/or enter into longer term leases on the property.

Steps are underway to address my clients concerns, but any purported efforts to enter into long term leases or other purported leases, contrary to the existing annual leasing system terms, will be subjected to severe scrutiny, and if necessary, legal action. . . .

Declaration of James M. Green in Support of Defendant James Green's Motion for Partial Summary Judgment, Exhibit D. All the evidence is that "three yahoos" is ascribed due to the actions of the three plaintiffs, and not due to what James Green was telling Klatt.

Essentially, this Court's assessment of all the evidence in this case is that the three plaintiffs, having fouled their own nest via their own behaviors vis-à-vis their parents which culminated in Finney's letter, now seek to blame James Green for the stench.

James Green contends he was not involved in the preparation of the original Trust and he did not select Richard Wallace as counsel to succeed Tevis Hull. Reply Memorandum in Support of Defendant James Green's Motion for Partial Summary Judgment, p. 16. He claims "[t]here is no disputed issue of fact that Richard Wallace drafted the Sixth Amendment and the Greens' Wills as part of an evolving process over several months, wherein Ralph and Jeanne had been on the receiving end of continued hostile action by Kathy, Gary and Randy." *Id.* James Green maintains that as a result of plaintiffs' conduct, Ralph and Jeanne Green requested that Richard Wallace amend the Trust to remove Gary as their Successor Trustee and remove him as the party with Power of Attorney. *Id.*, p. 17. He claims he "had no contact with Rich Wallace regarding the implementation, communication, or execution or any of these instruments." *Id.* James Green maintains he was unaware he was the only beneficiary

under the Trust until July 2012, when plaintiffs sued Jeanne Green, claiming she was incompetent and sued Ralph Green, claiming he had taken advantage of Jeanne Green's incompetence. *Id.*, p. 18. James Green argues, "Plaintiffs do not establish any evidence of any conduct by Jim wherein he directed, orchestrated, planned, or implemented the estate panning desires of his parents." *Id.*, p. 20.

As stated above in the preceding section, the requests to amend the Trust and draft Last Wills and Testaments did not come at the direction of James Green. Rather, Richard Wallace, the preparer of the documents, who witnessed Ralph and Jeanne Green execute them, attests he did not discuss the preparation, execution or subject matter of these documents with James Green, and he did not take guidance from James Green or anyone other than Ralph and Jeanne Green regarding the documents. *Id.*, pp. 5-9, ¶ 17, 19, 24, 25, 26, 28, 29, 34. While plaintiffs claim the counsel Ralph and Jeanne Green received from Tevis Hull and Steve Klatt was not independent or disinterested, they have not pointed the Court to any documents that Hull or Klatt prepared or directed Ralph and Jeanne Green to execute. Moreover, Tevis Hull and Steve Klatt are not parties to this action. There is no evidence before the Court that Tevis Hull or Steve Klatt were directed by James Green to have Ralph and Jeanne Green execute these documents. Viewing the evidence in the light most favorable to plaintiffs, they have failed to establish a genuine issue of material fact on this element.

4. A Result Indicating Undue Influence.

A disposition that departs from what is expected raises suspicion of undue influence. *Gmeiner*, 100 Idaho at 7, 562 P.2d at 63. However, if it is established that the intent of the grantor was to create an unequal or unjust disposition, that intent must be respected. *Id.* "[T]he fact that the grantor was known to be displeased with those

who were disinherited will serve to explain why they were cut off, whereas a sudden shift in the object of the grantor's choice coincidental with the creation of a confidential relation with the new beneficiary will merit strict court scrutiny.” *Id.* (citing *McNabb v. Brewster*, 75 Idaho 313, 272 P.2d 298 (1954); *In re Lunders' Estate*, 74 Idaho 448, 263 P.2d 1002 (1953); *In re Estate of Randall*, 60 Idaho 419, 93 P.2d 1 (1939)). The overwhelming evidence in this case indicates that is exactly what happened here: The actions of plaintiffs over time (and not a sudden shift) caused Ralph and Jeanne Green to make different choices regarding their shares of Green Enterprises, Inc.

James Green argues the resulting Trust is not indicative of undue influence because the facts of this case “show, without question, a result that was part of a deliberative process on the part of Ralph and Jeanne, with the assistance of independent counsel and qualified professionals.” Memorandum in Opposition to James Green and Jeanne Green’s Motion for Partial Summary Judgment, pp. 39-40. He claims Ralph and Jeanne Greens’ decision to change their estate plan and leave the majority of the estate to him was not only done without his knowledge, but is supported by a series of documentation following grievances Ralph and Jeanne Green had with their other children. *Id.*, p. 40. In support of this position, James Green cites to an excerpt from a letter dated September 22, 2010, from attorney Alan Rubens to Kathy Lefor, setting forth his guidance and suggestions to her regarding her concerns with changes at Green Enterprises, Inc., which provides:

Your parents have no obligation to leave any of their assets to you, and you may find that in pursuing this matter you will be “cut out” of any further inheritance I point this out to you only so that in considering whether you are better off to fight or to go along with their plan, you should take a look at where you are now and where you might be in the future.

Id. (citing Declaration of John F. Magnuson in Support of Defendant John Green's Motion for Summary Judgment, Exhibit A, p. 1600). James Green also directs the Court to a letter dated April 18, 2011, from John Finney, an attorney for plaintiffs, to the tenants of Green Enterprises, Inc., which provides in part:

This letter is to inform you and to put you on notice that my clients have concerns involving the conduct of certain shareholder, directors and/or officers of the Corporation, specifically including but not limited to Ralph Green and Jeanne Green. The concerns involve, but are not limited to, the competency and/or legal capacity of Ralph Green and/or Jeanne Green to negotiate and/or enter into new leases or renewals of your leases and also the legal authority for anyone to purport to negotiate and/or enter into longer term leases on the property.

Steps are underway to address my clients concerns, but any purported efforts to enter into long term leases or other purported leases, contrary to the existing annual leasing system terms, will be subjected to severe scrutiny, and if necessary, legal action. . . .

Declaration of James M. Green in Support of Defendant James Green's Motion for Partial Summary Judgment, Exhibit D; Memorandum in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment, p. 38. Following this letter, James Green contends Ralph and Jeanne Green met with Richard Wallace to execute the Third Amendment to the Trust, removing Gary Green as Successor Trustee to the Trust, and naming James Green in his place. *Id.* He then claims Richard Wallace drafted the Fourth Amendment to the Trust, at the request of Ralph and Jeanne Green, which they executed, to leave their trust assets to three charitable organizations if the children could not reach an agreement on the conservation easement. *Id.* The Fifth Amendment to the Trust was drafted by Richard Wallace, at the request of Ralph and Jeanne Green, to reiterate this position. *Id.* After the Conservancy withdrew its offer of the conservation easement, James Green contends:

Two days later, Ralph and Jeanne, frustrated and tired of the process of dealing with Gary, Kathy, and Randy, executed the Sixth Amendment which has been prepared by Wallace at the request of Ralph and Jeanne.

Wallace went over the Sixth Amendment with Ralph and Jeanne, in person, explained the legal effect, and confirmed that Ralph and Jeanne's execution of the same was consistent with their intent.

Id. p. 39; Declaration of Richard Wallace in Support of James Green's Motion for Partial Summary Judgment, pp. 7-8, ¶ 27. James Green also notes that the Conservancy's Board had concerns with the "level of dysfunction in the family". *Id.* Based on this history, James Green maintains the changes to the estate were ongoing and were as a result of a deliberate choice by Ralph and Jeanne Green. *Id.*, p. 40.

Plaintiffs claim, "the resulting Trust amendment indicates undue influence because Ralph and Jeanne wanted the property preserved with a conservation easement, and James' actions are inconsistent with their stated goal." Memorandum in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment, p. 13; Plaintiffs' Supplemental Memorandum in Opposition to James Green and Jeanne Green's Motions for Partial Summary Judgment, pp. 12-14. They contend it is suspicious that Ralph and Jeanne Green changed their estate plan from equal distribution among all of the children to distributing all of Ralph and Jeanne Green's property to James Green. Memorandum in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment, p. 19. Plaintiffs also argue "James' actions have not been consistent with Ralph and Jeanne's desires, thus making his inheritance of all of the property a suspicious result which warrants scrutiny." *Id.*, p. 21.

Moreover, plaintiffs cite to the "Declaration of Bennett Blum, M.D., RE: Plaintiffs' Supplemental Memorandum in Opposition to Jeanne Green and James Green's Motions for Partial Summary Judgment", where Dr. Blum, a Board Certified Psychiatrist specializing in General Adult Psychiatry and Forensic Psychiatry concludes:

d. That through paltering, commiseration, and exploiting Ralph and Jeanne Green's vulnerabilities, James Green, individually and through use

of others in trusted relationships with Ralph and Jeanne, manipulated and unduly influenced Ralph and Jeanne to believe that only James Green understood and would carry out their wishes with respect to Green Enterprises and the family property that was held by Green Enterprises. Specifically, James Green, individually, and through use of others in his charge, led his parents to believe that James Green was the only one of Ralph and Jeanne's children who would place the property into a Conservation Easement and that the other children were against it; that the Plaintiffs thwarted James Green's ability to move onto the Green Property to care for Ralph and Jeanne Green in their later years; and that the Plaintiffs were trying to assume control over Ralph and Jeanne's later-in-life planning and security;

e. That at the same time, James Green manipulated the Plaintiffs to believe that James did not support the creation of a Conservation Easement on the subject property; that Ralph and Jeanne did not understand the consequences of the creation of a Conservation Easement; that he believed Ralph and Jeanne could not run Green Enterprises; and that he believed Ralph and Jeanne suffered from mental deficits;

f. That the October 28, 211 Sixth Amendment of Ralph and Jeanne's Trust resulting in the Plaintiff's being disinherited and James Green receiving Ralph and Jeanne's entire estate indicates a transaction that was the result of James Green's undue influence over Ralph and Jeanne; that such an amendment was contrary to all wishes expressed by Ralph and Jeanne – including just a matter of a few days after what has been characterized as the worst possible conduct engaged in by the Plaintiffs, which was a letter calling into question Ralph and Jeanne Green's competency; and that even at that point, Ralph and Jeanne wished their estate to be split equally among their children.

Declaration of Bennett Blum, M.D., RE: Plaintiffs' Supplemental Memorandum in Opposition to Jeanne Green and James Green's Motions for Partial Summary Judgment, pp. 2-3, ¶¶ d-f. The Court above has already discussed why Blum's opinions are inadmissible. Having stricken Blum's affidavit, the Court now references Blum's affidavit only to put plaintiffs' arguments in context. The reason the Court rejected Blum's affidavit is because Blum failed to point to any evidence in the record to support any of his opinions. The reason Blum didn't reference any evidence to support his opinions is because there isn't any evidence to support those opinions. There is no evidence of James Green's "paltering" (acting insincerely or deceitfully) conduct; there

is no evidence he exploited Ralph or Jeanne Green's vulnerabilities. The evidence is Ralph and Jeanne were exasperated with their children, knew exactly what they were doing and sought and received professional legal advice to accomplish a different outcome, and executed such.

While plaintiffs are correct that, on its face, amending the Trust from an equal distribution of the estate among all of the children to leaving the majority of the estate to James Green raises suspicion, the facts as set forth by James Green through the Declaration of Richard Wallace make it clear that the change in distribution was not sudden, and was based on the clear intent of Ralph and Jeanne Green. In total, the Greens amended their Trust six times. According to the testimony of Richard Wallace, each amendment coincided with Ralph and Jeanne Green's displeasure of actions taken by plaintiffs. Specifically, Wallace attests that prior to drafting the "Revocation of Durable Power of Attorney" revoking the durable power of attorney granted to their son Gary Green, and the "Third Amendment to the Ralph Maurice and Jeanne Green Revocable Trust" removing Gary Green as successor trustee and replacing him with James Green, "[a]t our April 29, 2011 meeting, Ralph and Jeanne expressed consternation over the contents of Mr. Finney's [April 18, 2011] letter", which was drafted on behalf of the plaintiffs to the tenants of Green Enterprises, Inc. Declaration of Richard P. Wallace in Support of James Green's Motion for Partial Summary Judgment, pp. 3, 5, ¶¶ 10, 19. He also testifies that he "prepared the Fourth Amendment at the request of Ralph and Jeanne as another effort to try to work with all of their children to accomplish the wishes of Ralph and Jeanne with respect to the possibility of placing a conservation easement on the property." *Id.*, p. 6, ¶ 23. Further, Richard Wallace attests that he received a call from Ralph Green in October 2011, where Ralph told Richard "that he and Jeanne were frustrated and tired of the process

of dealing with Gary, Kathy, and Randy. Ralph advised me to prepare a Sixth Amendment to the Trust, giving everything to Jim, because Ralph and Jeanne were worried about the other children and thought that Jim was best able to follow his parents' wishes." *Id.*, pp. 7-8, ¶ 27. The Draft Minutes of the September 9, 2011, Green Enterprises, Inc. Board Meeting, show that at this meeting, which occurred the month prior to the execution of the Sixth Amendment to the Trust, Gary Green polled the members, including Ralph and Jeanne Green, on their history of dementia. Declaration of Tevis W. Hull, Exhibit I.

This testimony is evidence that Ralph and Jeanne Green were displeased with plaintiffs. Due to that displeasure, they took steps over the course of several months demonstrating their intent to distribute the majority of the Trust estate to James Green. Viewing the evidence in the light most favorable to plaintiffs, based on the evidence before the Court, the intent of Ralph and Jeanne Green to leave the majority of their estate to James Green is clear, as is the reason for their intent. Plaintiffs have failed to demonstrate that there is a genuine issue of material fact on this issue. Without any evidence to the contrary being provided to the Court by plaintiffs, the Court must respect the intent of Ralph and Jeanne Green under the Sixth Amendment to the Trust.

Plaintiffs argue that "James' actions have not been consistent with Ralph and Jeanne's desires, this making his inheritance of all of the property a suspicious result which warrants scrutiny." Memorandum in Opposition to James Green and Jeanne Green's Motion for Partial Summary Judgment, p. 21. However, the Court finds that this argument is not relevant to the question of why Ralph and Jeanne Green amended their trust estate when they executed the Sixth Amendment to the Trust. As such, the Court finds in favor of James Green on this element.

For the reasons set forth above, the Court grants partial summary judgment to James Green on plaintiffs' claim of undue influence. Plaintiffs are required to prove four elements to establish their claim for undue influence. Through the evidence presented by James Green, he demonstrated the absence of a genuine issue of material fact on each of these elements. This shifted the burden to plaintiffs to provide specific facts that a genuine issue of material fact remained on each element. However, plaintiffs only provided specific facts showing a genuine issue for trial on one of the four elements; susceptibility to undue influence. Having failed to meet their burden on each required element, the Court grants partial summary judgment in favor of James Green.

B. Ralph Green's Execution of the Sixth Amendment to the Trust.

James Green also argues the Sixth Amendment to the Trust is valid because it was executed by Ralph Green. Memorandum in Support of Defendant James Green's Motion for Partial Summary Judgment, p. 40. He contends that under Article 20-2 of the Trust, Ralph Green could act as the sole trustee. *Id.* As such, he claims Jeanne Green was not required to execute the Sixth Amendment for it to be valid. *Id.* The plaintiffs do not appear to respond to this claim. As the Motion for Partial Summary Judgment is granted on other grounds set forth above, it is not necessary for the Court to discuss this issue.

C. Last Will and Testaments of Ralph Green.

James Green contends there is no colorable challenge to invalidate the Last Will and Testament of Ralph Green. *Id.*, p. 41. Specifically, he claims "[t]here are no facts that would support the conclusion that Ralph Green executed his 'Last Will and Testament' on October 28, 2011 as the product of the undue influence of anyone." *Id.*

In support of this, he cites to the Declaration of Richard Wallace, which sets forth the intent of Ralph Green when executing his Last Will and Testament. *Id.*

As stated above, there are four elements to undue influence. Based on the Declaration of Richard Wallace, there is no disputed genuine issue of material fact that Ralph Green was unduly influenced by anyone. Plaintiffs have not specifically responded to this claim. As such, there does not appear to be a dispute about the validity of the Last Will and Testament of Ralph Green. Summary judgment on the validity of the Last Will and Testament of Ralph Green is appropriate.

D. Last Will and Testaments of Jeanne Green.

James Green contends it is premature to challenge the Last Will and Testament of Jeanne Green as she is still living. *Id.* Moreover, he cites to the Declaration of Richard Wallace, which sets forth the intent of Jeanne Green when executing her Last Will and Testament. *Id.* Plaintiffs have not specifically responded to this claim. As such, there does is no factual dispute about the Last Will and Testament of Jeanne Green at this time. Summary judgment is appropriate.

E. Claims Against Jeanne Green.

Jeanne Green seeks dismissal from this action, alleging there are no allegations in the Verified Complaint alleging any wrongdoing on the part of Jeanne Green, nor any allegations that she breached any duty owed to plaintiffs. Jeanne Green's Reply Brief in Support of Her Motion for Summary Judgment, p. 2. As such, she claims she should be dismissed from the action with prejudice because the Verified Complaint fails to state a claim against her upon which relief can be granted. *Id.*, p. 4.

"A motion to dismiss under Rule 12(b)(6) for failure to state a claim must be read in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim and calls for 'a short and plain statement of the claim showing that the pleader is entitled to

relief' and a demand for relief." *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992) (citing I.R.C.P. 8(a)(1), (2)). A court may only consider matters within the pleadings as part of a Rule 12(b)(6) motion. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990) (citing I.R.C.P. 12(b)). If matters outside the pleadings are "[p]resented to and considered by the court it is the *duty* of the court to treat such motion to dismiss as a motion for summary judgment." *Id.* (citing *Boesiger v. DeModena*, 88 Idaho 337, 399 P.2d 635 (1965)) (emphasis in original). As Jeanne Green "adopts the record made by James Green, her son, in his Motion for Partial Summary Judgment dated August 28, 2014, as well as his brief in support of his motion" the Court should treat this motion as a motion for summary judgment. See Jeanne Green's Reply Brief in Support of Her Motion for Summary Judgment, p. 2.

A complaint should not be dismissed under Rule 12(b) "[u]nless it appears beyond doubt that the plaintiffs can prove no set of facts which would entitle them to relief." *Dumas v. Ropp*, 98 Idaho 61, 62, 558 P.2d 632, 633 (1977) (citing *Wackerli v. Martindale*, 82 Idaho 400, 353 P.2d 782 (1960); *Stewart v. Arrington Construction Co.*, 92 Idaho 526, 446 P.2d 895 (1968)). "The non-moving party is entitled to have all inferences from the record and pleadings viewed in his/her favor, and only then may the question be asked whether a claim for relief has been stated." *Idaho Schs. For Equal Educ. v. Evans*, 123 Idaho 573, 578, 850 P.2d 724, 729 (1993) (citing *Miles v. Idaho Power*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989)). In addition to being viewed in the light most favorable to the nonmoving party, any doubt must be resolved in their favor. *Garder v. Hollifield*, 96 Idaho 909, 611, 533 P.2d 730, 732 (1975) (citing *Stewart*, 92 Idaho at 530-31, 446 P.2d at 895).

If the record reveals that there are no genuine issues of material fact and the case can be decided as a matter of law, the granting of a Rule 12(b)(6) motion will be affirmed. See *Moss v. Mid-American Fire and Marine Ins. Co.*, 103 Idaho 298, 302, 647 P.2d 754, 758 (1982); *Eliopoulos v. Idaho State Bank*, 129 Idaho 104, 107-08, 922 P.2d 401, 404-05 (Ct. App. 1996). When reviewing an order of the district court to dismiss a case pursuant to Rule 12(b)(6), “[t]he issue is not whether the plaintiff will ultimately prevail, but whether the party ‘is entitled to offer evidence to support the claims.’” *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995) (quoting *Greenfield v. Suzuki Moto Co. Ltd.*, 776 F. Supp. 698, 701 (E.D.N.Y. 1991)).

In their Complaint, plaintiffs allege three counts: Count I, declaratory judgment that Jeanne and Ralph Green disinherited Randy Green, Kathy Lefor, and Gary Green through undue influence; Count II, declaratory judgment that the gifting of corporate shares to James Green was improper; and Count III, preliminary injunction against James Green and Green Enterprises to preserve corporate property. Verified Complaint for Declaratory Judgment and Injunctive Relief, pp. 48-50. Plaintiffs are not seeking relief from Jeanne Green. They are not alleging wrongdoing on her part. There is no showing in the Complaint that plaintiffs are entitled to relief from Jeanne Green or a demand of relief from her. Plaintiffs do not appear to specifically respond to the claims in her motion. As such, the Court dismisses Jeanne Green from this case.

IV. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED the motions to strike filed by James Green and by Jeanne Green are GRANTED as set forth above and as explained at the November 18, 2014, hearing.

IT IS FURTHER ORDERED defendant James Green’s Motion for Partial Summary

Judgment is GRANTED in all respects, and all claims of the plaintiffs against James Green are DISMISSED with prejudice.

IT IS FURTHER ORDERED defendant Jeanne Green's Motion for Summary Judgment is GRANTED in all respects, and all claims of plaintiffs against Jeanne Green are DISMISSED with prejudice. Additionally, Jeanne Green is DISMISSED as a party from this lawsuit.

IT IS FURTHER ORDERED defendant James Green and defendant Jeanne Green are the prevailing parties over the plaintiffs in this litigation.

IT IS FURTHER ORDERED that the trial scheduled to begin January 26, 2015, is VACATED.

Entered this 20th day of November, 2014.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of December, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
Eric P. Swartz	208-489-8988	John F. Magnuson	667-0500
William Boyd	208-664-5884		

Deputy Clerk