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Superior Court of California  
County of Los Angeles

FEB 19 2016

Sherril R. Carter, Executive Officer/Clerk  
By: Trena Arismendez, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

12 THE ESTATE OF NINA SIMONE,  
13 Deceased.  
14  
15 IN THE MATTER OF  
16  
17 THE NINA SIMONE CHARITABLE  
TRUST.  
18

Case No. BP 079 597

Case No. BP 147 057

**SETTLEMENT AGREEMENT AND  
RELEASE AND [PROPOSED] ORDER**

The Honorable David J. Cowan

20 Section 1.0. Parties: This Settlement Agreement and Release (hereinafter "Settlement  
21 Agreement") is made and entered into by and between the following parties: Lisa Simone Kelly  
22 ("KELLY"), former Administrator of the Estate of Nina Simone ("the Estate") and former  
23 Trustee of the Nina Simone Charitable Trust (also referred to as the residual charitable trust, the  
24 Charitable Trust, and the Trust); San Pasqual Fiduciary Trust Company ("SAN PASQUAL"), in  
25 its capacity as Special Administrator of the Estate and as Trustee of the Nina Simone Charitable  
26 Trust; American Contractors Indemnity Company ("ACIC"); and the Attorney General of the  
27  
28

1 State of California (the "ATTORNEY GENERAL). The parties to this Settlement Agreement are  
2 referred to as a "Settling Party" or, collectively, as the "Settling Parties."

3 Section 2.0. Recitals:

4 2.1. ATTORNEY GENERAL Kamala D. Harris has primary responsibility for  
5 supervising charitable trusts in California, for ensuring compliance with trusts, and for protecting  
6 charitable assets. The ATTORNEY GENERAL has standing in proceedings affecting the  
7 disposition of charitable assets and has authority to act as an advocate in support of the charitable  
8 provisions set forth in wills and trusts. The ATTORNEY GENERAL represents the public  
9 beneficiaries of charitable trusts.

10 2.2. Nina Simone died in France on April 21, 2003. Ms. Simone's will dated October 15,  
11 1992 and codicil dated May 1993, which have been admitted to probate in the Los Angeles  
12 County Superior Court BP 079597 (the "Probate Proceeding"), provide for the following: a  
13 condominium in Los Angeles ("the Franklin Condo") to her daughter, KELLY; the proceeds from  
14 the sale of a house in France to Nina Simone's brother; two small monetary gifts; and all residue  
15 to be held in trust and used "for the musical education of black African children from South  
16 Africa, Liberia and Ghana." Ms. Simone named Myriam Makeba as trustee of the residual  
17 Charitable Trust. In January 2004, Ms. Makeba designated KELLY as successor trustee of  
18 the Charitable Trust.

19 2.3. On June 9, 2004, KELLY filed in the Probate Proceeding a Petition for Probate of  
20 Will and for Letters of Administration with Will Annexed and other relief (the "June 9, 2004  
21 Petition). On September 1, 2004, the Court in the Probate Proceeding filed its Order for Probate,  
22 appointing KELLY as Administrator of the Estate of Nina Simone ("the Estate") and admitting  
23 Nina Simone's will and codicil to probate. However, the previous executor's appeal of that order  
24 stayed KELLY's authority as Administrator. On December 1, 2004, the Court gave KELLY  
25 limited authority to pursue the Estate's interests in France, to address tax issues, and to represent  
26 the Estate in pending civil litigation. On October 12, 2005, the Court assigned all special  
27 administration authority to her. On August 30, 2006, the Court of Appeal confirmed KELLY's  
28 authority as Administrator C.T.A.

1           2.4. The June 9, 2004 Petition, prepared by KELLY's former counsel, Weinstock Manion,  
2 Reisman, Shore & Neumann ("WEINSTOCK"), stated under penalty of perjury that Nina Simone  
3 died a "resident" of Los Angeles County. However, on February 25, 2011, KELLY's then  
4 counsel, Karlin & Peebles, LLP ("K&P") filed in the Probate Proceeding a "Petition for Order  
5 Authorizing Establishment of Trust and for Order Appointing Trustee and Trustee Ad Hoc" (the  
6 "2011 Petition"). In this document, it is alleged that the June 9, 2004 Petition incorrectly stated  
7 that Nina Simone was domiciled in Los Angeles County at time of death. KELLY, through  
8 counsel, asserted that Nina Simone was actually domiciled in France for at least a decade prior to  
9 her death. The 2011 Petition stated that KELLY had initiated a French forced heirship claim to  
10 deal with the disposition of Nina Simone's assets other than the Franklin Condo.

11           2.5. KELLY has asserted that she is entitled to one-half of the Estate as well as her  
12 mother's prior residence located at 2 Alle des Cypres, 13620 Carry Le Rouet, France and its  
13 contents ("French Residence") under French forced heirship law. The ATTORNEY GENERAL  
14 and SAN PASQUAL have asserted that French forced heirship law does not apply to the  
15 distribution of the Estate's assets and that the Charitable Trust is entitled to all of Nina Simone's  
16 Estate other than the Franklin Condo and the other specific bequests.

17           2.6. On August 30, 2013, KELLY, through counsel, filed in the Probate Proceeding her  
18 "Second Supplement to First Account Current and Report and Petition for Approval of Acts"  
19 ("2013 Accounting") covering the period of April 1, 2006 through March 31, 2009. The  
20 ATTORNEY GENERAL filed objections to KELLY's 2013 Accounting, asserting that she  
21 breached her fiduciary duty to the Estate and to the Charitable Trust. The Court subsequently  
22 ordered KELLY to supplement her 2013 Accounting. In November 2013, at the ATTORNEY  
23 GENERAL'S request, the Court in the Probate Proceeding accepted KELLY's resignation as  
24 Administrator of the Estate and appointed SAN PASQUAL as Special Administrator of the  
25 Estate, and the Court in Los Angeles County Superior Court BP 147057 (the "Trust Proceeding")  
26 accepted KELLY's resignation as Trustee of the Charitable Trust and appointed SAN PASQUAL  
27 as successor Trustee of the Charitable Trust.

1 2.7. In May 2014, KELLY, through counsel, filed in the Probate Proceeding an  
2 "Independent Accountant's Compilation Report" (the "2014 Accounting"). Both the  
3 ATTORNEY GENERAL and SAN PASQUAL filed objections to this accounting.

4 2.8. The Attorney General asserts that KELLY breached her fiduciary duty to the Estate  
5 and to the Charitable Trust and wrongfully diverted Estate assets. The ATTORNEY GENERAL  
6 seeks to surcharge KELLY for amounts totaling \$5,937,749.42 plus over \$2.5 million in interest,  
7 which the Attorney General contends is far more than one-half of the Estate's value during  
8 KELLY's administration of the Estate. The ATTORNEY GENERAL also seeks (1) an order  
9 surcharging KELLY for profits that the Attorney General alleges would have accrued to the  
10 Estate but for KELLY's alleged breach of trust, (2) an order requiring KELLY to disgorge any  
11 profits she received from her allegedly improper use of Estate assets to advance her personal  
12 interests, and (3) attorney's fees and costs incurred in litigating the ATTORNEY GENERAL's  
13 claims against KELLY. SAN PASQUAL and the ATTORNEY GENERAL further contend that  
14 KELLY has failed to turn over, to SAN PASQUAL, tangible personal property of the Estate.  
15 KELLY also claims an interest adverse to the Estate in certain intangible personal property.

16 2.9. KELLY denies the claims of both SAN PASQUAL and the ATTORNEY  
17 GENERAL. KELLY claims that she is entitled to one-half of the Estate under French law and  
18 the French Residence, and that the only asset subject to administration in the United States is the  
19 Franklin Condo. KELLY claims that she exercised her duties as Special Administrator and  
20 Trustee in good faith and claims that she has substantially increased the value of the Estate.

21 2.10. The Settling Parties, each of whom desires to avoid the expense, uncertainty, and  
22 inconvenience of further litigation in this case and in consideration of the following mutual  
23 promises and covenants contained herein, subject to approval of the Court in the Probate Case  
24 and the Trust Proceeding, and the conditions stated below, hereby agree as follows all with no  
25 admission of liability:

26 SETTLEMENT TERMS

27 Section 3.0. Court's Jurisdiction over the Estate. The Settling Parties (other than ACIC  
28 who takes no position concerning the subject of this Section) acknowledge and agree that, except

1 as to the French Residence, the Court in the Probate Case has jurisdiction over the Estate. The  
2 Settling Parties (other than ACIC who takes no position concerning the subject of this Section)  
3 further acknowledge and agree that this Settlement Agreement does not decide any rights to the  
4 French Residence or the issue of whether the Court in the Probate Case or a court in France has  
5 jurisdiction over the French Residence. As to all other property (real or personal, tangible or  
6 intangible) passed under the will and codicil admitted to probate in the Estate Proceeding by order  
7 filed September 1, 2004, notwithstanding any French forced heirship laws or related laws, and as  
8 against the Estate or the Trust (including the ATTORNEY GENERAL as a representative of the  
9 Trust), or any successor or assign of the Estate or Trust with respect to such property, KELLY (a)  
10 hereby waives any and all rights she may have under French forced heirship laws (except for the  
11 French Residence), (b) agrees not to pursue any proceedings in France or anywhere related to  
12 French forced heirship laws other than with respect to the French Residence, and (c) agrees not to  
13 assert that Nina Simone was domiciled in France at her time of death in any legal proceeding  
14 except in regards to the French Residence.

15 Section 4.0. Court's Jurisdiction over the Charitable Trust. The Settling Parties (other than  
16 ACIC who takes no position concerning the subject of this Section) acknowledge and agree that  
17 the Court in the Trust Proceeding has jurisdiction over the Charitable Trust and that Ms. Simone  
18 specifically provided in her will that the French Residence was not an asset of the Charitable  
19 Trust. The Settling Parties (other than ACIC who takes no position concerning the subject of this  
20 Section) further acknowledge and agree that the law of the State of California governs the  
21 Charitable Trust and that France has no jurisdiction over the Charitable Trust or any of its assets.

22 Section 5.0. Role of SAN PASQUAL in the Estate and the Charitable Trust. The Settling  
23 Parties agree that the Court may appoint SAN PASQUAL as permanent Administrator of the  
24 Estate. The Settling Parties further agree that SAN PASQUAL shall continue to serve as Trustee  
25 of the Charitable Trust unless and until SAN PASQUAL seeks court appointment of a successor  
26 trustee. KELLY specifically disclaims any right to serve as either Administrator of the Estate or  
27 as Trustee of the Charitable Trust.

1           Section 6.0. Court Approval of Settlement Petition. Reference is made to the settlement  
2 agreement in the following cases: *San Pasqual Fiduciary Trust Company v. Karlin & Peebles,*  
3 *LLP* (BC563629); *Lisa Simone Kelly v. Karlin & Peebles LLP* (BC565704); and *Lisa Simone*  
4 *Kelly v. Weinstock, Manion, Reisman, Shore & Neumann, et al.* (BC522923) (the “Other  
5 Settlement Agreement”). Reference is particularly made to paragraph 2 of the Other Settlement  
6 Agreement, regarding SAN PASQUAL filing, in both the Estate Proceeding and the Trust  
7 Proceeding, a petition for an order approving the overall settlement reflected by this Settlement  
8 Agreement and the Other Settlement Agreement (the “Settlement Petition”). The Parties agree to  
9 join in seeking the Probate Court’s approval of the Settlement Petition, and waive any right to  
10 appeal from an unconditional (other than the conditions set forth in this Settlement Agreement  
11 and in the Other Settlement Agreement) approval of the Settlement Petition. The effectiveness of  
12 this Settlement Agreement is conditioned on, among other matters, the Court’s execution of the  
13 order at the end of this Settlement Agreement, the Court’s execution of separate orders in both  
14 the Probate Case and the Trust Proceeding approving this Settlement Agreement and the Other  
15 Settlement Agreement, and the orders becoming Final, meaning that all rights of appeal have  
16 expired, or been exhausted with the result being upon the filing of the remittitur, the  
17 unconditional affirmance of the orders (“Final Orders”).

18           Section 7.0. Additional Conditions. This Settlement Agreement is further conditioned  
19 upon all of the following:

20           7.1. WEINSTOCK’s deposit of \$1,480,000.00 and K&P’s deposit of \$1,585,000.00 into a  
21 trust account held by SAN PASQUAL’s attorneys of record in the Estate Proceeding, currently  
22 Poindexter & Doutré, Inc. (“the Trust Account”) within ten (10) business days after receiving  
23 notice of the Final Orders. These funds shall be disbursed solely as set forth in paragraphs 8.1,  
24 8.2, and 8.3 below, and are provided for in the Other Settlement Agreement;

25           7.2. ACIC’s deposit of \$335,000.00 into the Trust Account within ten (10) business days  
26 after receiving notice of the Final Orders, to be disbursed solely as set forth in paragraphs 8.1,  
27 8.2, and 8.3, below;

1 7.3. WEINSTOCK's written agreement not to seek compensation for any services rendered  
2 or costs advanced to or on behalf of KELLY, the Estate or the Trust, and to withdraw any claim  
3 previously made and still pending in the Estate Proceeding or the Trust Proceeding for any services  
4 rendered or costs advanced to or on behalf of the Estate or the Trust;

5 7.4 K&P's written agreement not to seek compensation for any services rendered or costs  
6 advanced to or on behalf of KELLY, the Estate or the Trust, and to withdraw any claim previously  
7 made and still pending in the Estate Proceeding or the Trust Proceeding for any services rendered or  
8 costs advanced to or on behalf of the Estate or the Trust; and

9 7.5 KELLY's assignment of rights to the Estate assets as provided in paragraph 9.4 and  
10 agreement to the injunctive relief provisions as set forth in Section 9.0 below.

11 Section 8.0. Settlement Payments.

12 8.1. \$400,000.00 of the funds deposited as set forth in Section 7.0, above, shall be  
13 disbursed on KELLY'S behalf to the ATTORNEY GENERAL, within seven (7) business days,  
14 or as promptly thereafter as possible if circumstances beyond reasonable control result in a delay,  
15 after notice of the Final Orders. These funds shall be paid by check in the amount of  
16 \$400,000.00 and delivered to the Attorney General's Office located at 300 S. Spring Street, Suite  
17 1702, Los Angeles, California, addressed to the attention of Deputy Attorney General Sonja K.  
18 Berndt. The check shall be made payable to the California Attorney General, pursuant to  
19 Government Code sections 12598 and 12586.2, for attorney's fees and costs incurred by the  
20 Charitable Trusts Section in pursuing its claims against KELLY. This \$400,000.00 payment shall  
21 be used exclusively by the Charitable Trusts Section for the administration of the Attorney  
22 General's charitable trust enforcement responsibilities.

23 8.2. \$2,100,000.00 of the funds deposited as set forth in Section 7.0, above, shall be  
24 disbursed on KELLY'S behalf to SAN PASQUAL for the benefit of the Estate, within seven (7)  
25 business days, or as promptly thereafter as possible if circumstances beyond reasonable control  
26 result in a delay, after notice of the Final Orders. These funds shall be paid by check made  
27 payable to SAN PASQUAL in the amount of \$2,100,000.00 and delivered to SAN PASQUAL at  
28 the address 550 S. Hope St., Suite 550, Los Angeles, California, 90071 addressed to the attention

1 of Richard H. Patterson, Jr. This payment, the payment made pursuant to paragraph 8.1, the  
2 assignment of rights to, and transfer and delivery of, Estate assets set forth in paragraph 9.4  
3 below, and KELLY's agreement to comply with the injunction of Section 9.0 below, shall be to  
4 settle the claims the ATTORNEY GENERAL and SAN PASQUAL have alleged against  
5 KELLY.

6 8.3. \$900,000.00 of the funds deposited as set forth in Section 7.0, above, shall be  
7 disbursed to the joint designee of Salisian | Lee LLP ("SL") and Robins Kaplan LLP ("RK")  
8 within seven (7) business days, or as promptly thereafter as possible if circumstances beyond  
9 reasonable control result in a delay, after notice of the Final Orders. The payment of the  
10 \$900,000.00 to the joint designee of SL and RK is with respect to attorney's fees and expenses  
11 incurred by KELLY in Case BC522923, Case BC565704, in the Estate Proceeding, and in the  
12 Trust Proceeding. The division of the \$900,000.00 between SL and RK has been agreed to by  
13 those firms and is not the concern of any of the Settling Parties.

14 Section 9.0. Injunctive Relief Against KELLY.

15 9.1. Prohibited Actions: KELLY, WHETHER ACTING DIRECTLY OR THROUGH  
16 ANY OTHER PERSON, IS PERMANENTLY RESTRAINED AND ENJOINED FROM ALL  
17 OF THE FOLLOWING:

- 18 a) Affiliating with, either directly or indirectly, any non-profit or charitable organization IN  
19 (as used herein "IN" means located in, incorporated in, doing business in and, to the  
20 extent that KELLY knows, or should have known, advertising in, and soliciting funds in)  
21 California, including, but not limited to:
  - 22 i) Receiving any financial or other benefit for participating or assisting in the solicitation  
23 of charitable contributions, directly or indirectly, from any person, organization, or  
24 entity IN California;
  - 25 ii) Establishing, operating, controlling, or managing any nonprofit organization or other  
26 entity IN California, directly or indirectly, whether compensated or not, including, but  
27 not limited to, by serving as a founder, incorporator, officer, director, trustee, chief  
28 executive, manager or other fiduciary; and



- 1           iii) Managing, controlling, directing, or distributing any charitable asset IN California, or  
2           participating or assisting in managing, controlling, directing, or distributing any  
3           charitable asset IN California, directly, or indirectly, whether compensated or not;
- 4           b) Assisting others affiliated with, either directly or indirectly, any non-profit or charitable  
5           organization IN California, including, but not limited to:
- 6           i) Receiving any financial or other benefit for participating or assisting in the solicitation  
7           of charitable contributions, directly or indirectly, from any person, organization, or  
8           entity IN California;
- 9           ii) Establishing, operating, controlling, or managing any nonprofit organization or other  
10           entity IN California, directly or indirectly, whether compensated or not, including, but  
11           not limited to, by serving as a founder, incorporator, officer, director, trustee, chief  
12           executive, manager or other fiduciary; and
- 13           iii) Managing, controlling, directing, or distributing any charitable asset IN California, or  
14           participating or assisting in managing, controlling, directing, or distributing any  
15           charitable asset IN California, directly, or indirectly, whether compensated or not;
- 16           c) Exercising any rights with respect to the registration or transfer of any copyrights  
17           pertaining to recorded Nina Simone performances or compositions composed by Nina  
18           Simone in derogation of the provisions set forth in paragraph 9.2.

19           9.2. Termination Rights: KELLY HEREBY AGREES AS FOLLOWS WITH RESPECT  
20 TO KELLY'S STATUTORY TERMINATION RIGHTS UNDER THE COPYRIGHT ACT OF  
21 1976 AS TO ANY AND ALL OF NINA SIMONE'S COPYRIGHTED WORKS:

- 22           a) KELLY hereby quitclaims to San Pasqual Fiduciary Trust Company, as administrator of  
23           the Estate of Nina Simone. all rights, title, and interest she may have in any termination  
24           rights in and to the works of Nina Simone under 17 U.S.C. §§ 203 and 304(c) or (d), any  
25           rights she may have in the renewal term of any works of Nina Simone pursuant to 17  
26           U.S.C. §304(a) (the "Renewal Term Works") and any so-called "British Reversionary  
27           Rights," including, but not limited to, any administration rights KELLY may have in and  
28           to the works, up to and until the works cumulatively earn \$750,000.00 from post-

1 termination and/or post reversion gross earnings calculated at source and/or gross earnings  
2 calculated at the source earned from the Renewal Term Works (hereinafter collectively  
3 referred to as "Reversionary Income"). KELLY makes no express or implied  
4 representations or warranties of any kind whatsoever with respect to her entitlement to  
5 termination rights, "British Reversionary Rights" or any renewal rights in or to the works  
6 of Nina Simone and hereby disclaims any and all implied warranties. If and when the  
7 Renewal Term Works and the works that revert to KELLY or the Estate cumulatively earn  
8 \$750,000.00 in Reversionary Income, San Pasqual Fiduciary Trust Company, or its  
9 successor, will transfer and assign to KELLY (a) all rights, title and interest in the  
10 termination rights and the British reversionary rights and (b) all rights title and interest in  
11 and to the Renewal Works and any works of Nina Simone that reverted to KELLY, the  
12 Trust or the Estate pursuant to 17 U.S.C. §§203 or 304(c) or (d) or as a result of KELLY's  
13 British Reversionary Rights, including, but not limited to, the administration rights and  
14 the copyrights in and to such works.

15 b) The Estate shall be responsible for taking all steps required pursuant 17 U.S.C. §§ 203 and  
16 304 or British law to obtain any and all termination or British reversionary rights that  
17 KELLY (or the Estate pursuant to this Settlement Agreement) may have in the works of  
18 Nina Simone, including, but not limited to, preparing, filing and serving any and all  
19 documents and paying any and all fees. The Estate shall deliver to KELLY copies of any  
20 and all such documents for her review, comments and execution twenty (20) business  
21 days prior to filing or serving any such documents. KELLY further agrees to execute and  
22 return to SAN PASQUAL all such documents prepared by the Estate as are required to  
23 effectuate the exercise of the termination and reversionary rights herein specified within  
24 twenty (20) business days of her receipt of any such documents. If KELLY fails to sign  
25 and return any such documents to SAN PASQUAL within such twenty (20) business day  
26 period, SAN PASQUAL, or its successor in interest, is hereby granted a power of attorney  
27 coupled with an interest to sign the documents on KELLY's behalf. provided that it first  
28 makes any and all changes or modifications to the documents requested by KELLY within

1 such twenty (20) business day period. In the event that SAN PASQUAL or its successor  
2 objects to making any changes or modifications to the documents requested by KELLY,  
3 the determination as to what changes or modifications, if any, shall be made to the  
4 documents prior to serving and filing them shall be submitted to arbitration as provided in  
5 paragraph 9.2(f) below.

6 c) KELLY shall not challenge the validity or enforceability of the transfers she makes to the  
7 Estate hereunder. The parties acknowledge that KELLY's agreement to transfer to the  
8 Estate any rights she may have under 17 U.S.C. §§ 203 and 304 and any so-called "British  
9 Reversionary Rights" may not be valid or enforceable. Accordingly, the parties  
10 acknowledge and agree that if the transfer is determined to be invalid or unenforceable,  
11 such determination shall not effect the validity or enforceability of the remaining  
12 provisions of this Settlement Agreement.

13 d) The Estate agrees that, within forty (40) business days after the last day of June and  
14 December of each year, it will prepare and furnish to KELLY statements showing any  
15 amounts which the Estate has received in Reversionary Income during the semi-annual  
16 period ending June 30 or December 31, as applicable. The Estate also agrees that, within  
17 thirty (30) business days of earning \$750,000.00 in Reversionary Income with respect to  
18 the works, it shall furnish to KELLY a statement along with any Reversionary Income  
19 received by the Estate in excess of \$750,000.00, and will assign to KELLY (a) all rights,  
20 title and interest in the termination rights and the British reversionary rights; and (b) all  
21 rights, title and interest in and to the Renewal Term Works and any works of Nina Simone  
22 that reverted to KELLY, the Trust or the Estate pursuant to 17 U.S.C. §§203 or 304(c) or  
23 (d) or as a result of KELLY's British Reversionary Rights, including, but not limited to,  
24 the administration rights and the copyrights in and to such works. The Estate further  
25 agrees to prepare and execute any and all documents reasonably necessary to accomplish  
26 such assignment.

27 e) The Estate may sell any of the Renewal Term Works or the works that reverted to  
28 KELLY or the Estate pursuant to 17 U.S.C. §§203 or 304 (c), or (d) or as a result of

1 KELLY's British Reversionary Rights, provided that any such work is not sold for less  
2 than fair market value and KELLY does not object to the sale on the grounds that the sale  
3 price is less than fair market value by sending notice of her objection to SAN PASQUAL,  
4 or its successor, within eighteen (18) business days of receipt of notice from SAN  
5 PASQUAL, or its successor in interest, advising KELLY of the proposed sale and  
6 providing her with a detailed description of the works being sold, a copy of the proposed  
7 contract of sale and the information used by the parties to calculate the purchase price of  
8 the work or works such as the annual net and gross income and the multiple, if applicable.  
9 Within three (3) business days of receipt of notice from KELLY requesting the right to  
10 inspect and copy the documents relevant to the sale, SAN PASQUAL, or its successor,  
11 shall make available to KELLY, or a representative of KELLY, for inspection and  
12 copying at the offices of SAN PASQUAL, any and all documents or other information  
13 regarding the work or works that was provided to the potential purchaser or that is  
14 requested by KELLY. If KELLY timely objects to the sale price as being below fair  
15 market value SAN PASQUAL, or its successor, cannot sell the work or works without  
16 first submitting the issue to arbitration pursuant to paragraph 9.2(f) below and obtaining  
17 an award from the arbitrator finding that the proposed purchase price is not less than fair  
18 market value and KELLY's time to vacate the award has expired. For the avoidance of  
19 any doubt, the entire sale price paid for the work or works shall be considered  
20 Reversionary Income.

21 f) Any dispute, claim or controversy pursuant to this Section herein, including the  
22 determination of the scope or applicability of this agreement to arbitrate, shall be  
23 determined by arbitration in Los Angeles before one arbitrator. The arbitrator shall have  
24 the express power to order a party to sign necessary documents. The invalidity of any  
25 conveyance under paragraph 9.2(a) shall not be a defense to any application for arbitral  
26 relief. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined  
27 Arbitration Rules and Procedures. Judgment on the Award may be entered in any court  
28 having jurisdiction

1 9.3. TO THE EXTENT THE GENERAL PUBLIC IS PROHIBITED FROM DOING THE  
2 SAME, KELLY, WHETHER ACTING DIRECTLY OR THROUGH ANY OTHER PERSON,  
3 ORGANIZATION, OR ENTITY, IS PERMANENTLY RESTRAINED AND ENJOINED.  
4 EXCEPT AS OTHERWISE LICENSED OR GIVEN PERMISSION OR CONSENT FROM  
5 THE ESTATE OR THE TRUST, OR THEIR RESPECTIVE SUCCESSORS IN INTEREST,  
6 FROM ANY AND ALL OF THE FOLLOWING ACTS:

- 7 a) Using, or assisting others to use, in perpetuity (except as provided in paragraph 9.2  
8 above), any copyright, trademark, or other intellectual property owned or controlled by the  
9 Estate of Nina Simone, or in which the Estate of Nina Simone has an interest;
- 10 b) Using any right encompassed in Nina Simone's right of publicity;
- 11 c) Using the name "High Priestess of Soul" for any commercial purpose;
- 12 d) Referring or hyperlinking, directly or indirectly, to <http://www.ninasimone.com> or any  
13 website or equivalent digital listing that:
- 14 i) Is owned or operated by, or affiliated with, the Estate of Nina Simone or the Nina  
15 Simone Foundation;
- 16 ii) Misrepresents, expressly or by implication, an affiliation with the Estate of Nina  
17 Simone or the Nina Simone Foundation; or
- 18 iii) KELLY causes to appear (including, but not limited to, by use of meta tags and search  
19 engine optimization) in response to an internet, or equivalent, search for any term that  
20 identifies the Estate of Nina Simone or the Nina Simone Foundation.
- 21 e) Misrepresenting, or assisting others who are misrepresenting, expressly or by implication:
- 22 i) That she is affiliated with, endorsed or approved by, or otherwise connected to, the  
23 Estate of Nina Simone;
- 24 ii) That she is the "sole heir" to the Estate of Nina Simone;
- 25 iii) That she operates The Nina Simone Foundation;
- 26 iv) That she is affiliated with, endorsed or approved by, or otherwise connected to any  
27 nonprofit entity or a tax-exempt nonprofit entity IN California under the Internal  
28 Revenue Code;

1 v) That she is affiliated with, endorsed or approved by, or otherwise connected to any  
2 foundation, corporation, or organization (foreign and domestic) named for, or in  
3 remembrance of, Nina Simone.

4 9.4. Required Assignments and Transfers Of Assets: KELLY, WITHIN TEN (10)  
5 BUSINESS DAYS OF RECEIPT OF THE ORDER ON THIS SETTLEMENT AGREEMENT,  
6 IS REQUIRED TO ASSIGN/TRANSFER/DELIVER THE FOLLOWING ASSETS TO THE  
7 ESTATE OF NINA SIMONE:

- 8 a) All future money payable to KELLY, her agents, and her assigns in connection with *Nina*  
9 *Revisited: A Tribute to Nina Simone* other than any artist royalties or other monies payable  
10 in lieu thereof and public performance monies payable to KELLY, which notwithstanding  
11 anything stated to the contrary in this Settlement Agreement, the Settling Parties hereby  
12 acknowledge and agree that KELLY shall be entitled to receive and keep;
- 13 b) All future money payable to KELLY, her agents, and her assigns in connection with all  
14 other previously recorded covers, done by KELLY, of Nina Simone recordings, including  
15 royalties and any and all other rights in the sound recordings embodied in the long-playing  
16 album *Simone on Simone*, Copyright Office Registration SR0000615667 except for such  
17 money payable in connection with the sound recording or musical composition entitled  
18 "Child in Me" written and composed by KELLY, which notwithstanding anything stated  
19 to the contrary in this Settlement Agreement, the Settling Parties hereby acknowledge and  
20 agree that KELLY shall be entitled to receive and keep;
- 21 c) The condominium located at 7250 Franklin Ave., Los Angeles, CA 90046 ("The Franklin  
22 Condo");
- 23 d) The Original 1963 Oil Painting of "Nina Simone and Piano at Town Hall";
- 24 e) The two Nina Simone diaries that the ATTORNEY GENERAL claims KELLY purchased  
25 with Estate of Nina Simone funds, and an assignment of any copyright interests;
- 26 f) All publicity and trade photographs that the ATTORNEY GENERAL claims KELLY  
27 purchased with Estate of Nina Simone funds, and any and all interests to the copyrights  
28 therein, throughout all terms, whether existing now or hereafter enacted; and

1 g) An assignment of all rights of High Priestess, LLC under that Assignment Of Rights  
2 Agreement made in about July, 2007 between Bernard Gotfryd and High Priestess, LLC.

3 9.5. Delivery of Assets: ALL WRITTEN ASSIGNMENTS OF ASSETS WITH  
4 KELLY'S ORIGINAL SIGNATURES AND ALL MONIES AND OTHER TANGIBLE  
5 ASSETS REFERENCED IN THIS SECTION ARE TO BE DELIVERED TO SAN PASQUAL  
6 TO THE ADDRESS OF 550 S. HOPE ST., SUITE 550, LOS ANGELES, CALIFORNIA, 90071  
7 WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THE ORDER ON THIS  
8 SETTLEMENT AGREEMENT.

9 9.6 ACIC shall not be responsible for KELLY's compliance with the terms set forth in  
10 Section 9.0, above and has no liability for KELLY's non-compliance with those terms.

11 Section 10.0. Dismissal of Lawsuits. Within ten (10) business days after the full payment  
12 of all Settlement Payments identified in Paragraphs 8.1, 8.2, and 8.3, above:

13 10.1. SAN PASQUAL and the ATTORNEY GENERAL shall withdraw their objections to  
14 KELLY'S 2013 and 2014 Accountings; and,

15 10.2. KELLY, the ATTORNEY GENERAL and SAN PASQUAL shall dismiss their  
16 appeals in Second District Court of Appeal case number B262486, with each party to bear her or  
17 its own costs, expenses and attorneys' fees in connection with the appeals.

18 Section 11.0. Waiver of Rights: KELLY waives any and all rights she may have under any  
19 law, including but not limited to French law, to any assets of the Estate other than with respect to  
20 the French Residence, and KELLY quitclaims to the Estate any copyrights in the recorded  
21 performances and writings of Nina Simone she may have that she purchased with Estate funds.

22 Section 12.0. Cooperation: Each Settling Party shall cooperate fully in the execution of  
23 this Settlement Agreement and any other documents and any other actions that may be necessary  
24 or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

25 Section 13.0. General Provisions.

26 13.1. Except for the obligations set forth in this Settlement Agreement, each Settling Party,  
27 and their respective parents, subsidiaries, affiliates, related parties, attorneys, insurers, employees,  
28 directors, officers, agents, predecessors, successors, and assigns, shall be released and discharged

1 by each of the other Settling Parties from all civil liability, civil claims, civil damages and  
2 attorney's fees and costs whether or not known to them that relate to, or arise from the Estate, the  
3 Trust, the Charitable Trust, KELLY's position as Administrator of the Estate, successor trustee of  
4 the Charitable Trust, Trustee of the Trust, the Probate Proceeding, or the Trust Proceeding arising  
5 from any acts, omissions, or facts occurring from the beginning of time until the date of the Final  
6 Orders. The ATTORNEY GENERAL expressly does not release or discharge KELLY from any  
7 criminal liability or criminal claims known or unknown to the ATTORNEY GENERAL that  
8 relate to, or arise from, KELLY's position as Administrator of the Estate. The release and  
9 discharge set forth in this paragraph is binding on the parties to this Settlement Agreement and  
10 their predecessors, successors, heirs, beneficiaries, and assigns. This release and discharge shall  
11 not be construed to limit or prevent any party's ability to enforce the terms of this Settlement  
12 Agreement.

13       **13.2. Waiver of California Civil Code Section 1542.** The Settling Parties acknowledge,  
14 with respect to the claims released in paragraph 13.1 above, that they are familiar with provisions  
15 of Section 1542 of the California Civil Code which reads as follows:

16                   **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
17                   WHICH THE CREDITOR DOES NOT KNOW OR  
18                   SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE  
19                   TIME OF EXECUTING THE RELEASE, WHICH IF  
20                   KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
                    AFFECTED HIS OR HER SETTLEMENT WITH THE  
                    DEBTOR.**

21 The Settling Parties hereby knowingly and voluntarily waive any and all rights they may have  
22 under Section 1542 with respect to the claims released in paragraph 13.1, above.

23       13.3. This Settlement Agreement shall not constitute an admission or finding of any  
24 wrongdoing, fault, violation of law, or liability of any of Party. Neither shall it be deemed or  
25 interpreted an admission of the existence or non-existence of any fact.

26       13.4. This Settlement Agreement and the Other Settlement Agreement contain the entire  
27 agreement and understanding among the Settling Parties other than the Attorney General  
28



1 concerning the subject matter of the Probate Proceeding and the Trust Proceeding. The Attorney  
2 General's entire agreement and understanding concerning the subject matter of the Probate  
3 Proceeding and the Trust Proceeding is pursuant to this Settlement Agreement only. The  
4 Attorney General is not a party to the Other Settlement Agreement, makes no agreement pursuant  
5 thereto, has no obligations thereunder, but has certain rights explicitly specified therein. Each of  
6 the undersigned warrants that no promise or inducement has been offered to them except as set  
7 forth herein and that the Settlement Agreement is executed without reliance upon any statement  
8 or representation by any persons or parties, or their representatives, concerning the nature and  
9 extent of injuries and/or damages and/or legal liability herein.

10 13.5. Each of the Settling Parties acknowledges that he, she, or it has read the entire  
11 Settlement Agreement and understands it and, in addition, has had an opportunity to discuss the  
12 content with an attorney and make whatever investigation or inquiry that party may deem  
13 necessary or desirable in connection with the subject matter of the Settlement Agreement.

14 13.6. Each of the parties warrants that he, she, or it is legally competent to execute the  
15 Settlement Agreement. Any person executing this Settlement Agreement on behalf of any  
16 Settling Party does hereby personally represent and warrant to the other parties that he/she/it has  
17 the authority to execute this Settlement Agreement on behalf of, and to fully bind, that party.

18 13.7. This Settlement Agreement shall be binding upon the heirs, devisees, beneficiaries,  
19 affiliates, administrators, successors, assigns, officers, directors, trustees, executors, attorneys,  
20 agents and employees of each and every one of the Settling Parties.

21 13.8. This Settlement Agreement is a product of bargained-for, arms-length negotiations  
22 among the Settling Parties and their counsel. No party shall be considered the author of this  
23 Settlement Agreement.

24 13.9. This Settlement Agreement and all rights and obligations arising out of it shall be  
25 governed and construed in accordance with the laws of the State of California.

26 13.10. This Settlement Agreement constitutes a written stipulation within the provisions of  
27 California Code of Civil Procedure section 664.6 and may be enforced pursuant to the terms of  
28 that section. The Los Angeles County Superior Court will retain jurisdiction to enforce this

1 Settlement Agreement pursuant to California Code of Civil Procedure section 664.6, provided  
2 that no judgment enforcing the settlement agreement may be entered against KELLY unless she  
3 breaches this Settlement Agreement and fails to cure the breach within 30 days of receipt of a  
4 notice advising her to cure the breach. Notice may be provided via email to KELLY's Counsel,  
5 Robins Kaplan, LLP as set forth below, or as subsequently designated in writing and delivered by  
6 certified mail to the ATTORNEY GENERAL and SAN PASQUAL.

7 13.11. KELLY expressly consents to the personal jurisdiction of the Los Angeles County  
8 Superior Court, and agrees not to assert any claim of lack of personal jurisdiction, in any action to  
9 enforce this agreement.

10 13.12. Notices. All notices under this Settlement Agreement shall be in writing and shall  
11 be effective upon receipt whether delivered by personal delivery or recognized overnight delivery  
12 service, or sent by United States registered or certified mail, return receipt requested, postage  
13 prepaid, addressed to the respective Parties as follows:

14 If to San Pasqual Fiduciary Trust Company:  
15 550 South Hope Street, Suite 550  
16 Los Angeles, CA 90071

17 with a copy to:

18 Jeffrey A. Kent, Esq.  
19 Poindexter & Doutré, Inc.  
20 624 S. Grand Avenue, Suite 2420  
21 Los Angeles, CA 90017  
22 jkent@pdlawyers.com

23 If to the Attorney General of the State of California:

24 Sonja K. Berndt, Esq.  
25 Deputy Attorney General  
26 300 South Spring Street, Suite 1702  
27 Los Angeles, CA 90013  
28 sonja.berndt@doj.ca.gov

If to American Contractors Indemnity Company:

Paul Guelpa, Senior Bond Claims Attorney  
601 South Figueroa Street, Suite 1600  
Los Angeles, CA 90017

with a copy to:

Tracy Stevenson, Esq.  
Lanak Hanna, P.C.  
625 The City Drive South, Suite 190  
Orange, CA 92868  
tastevenson@lanak-hanna.com

If to Lisa Simone Kelly:  
Lisa Simone Kelly  
2 Alle des Cypres  
13620 Carry Le Rouet, France

with a copy to:  
Christopher Reeder, Esq.  
Robins Kaplan LLP  
2049 Century Park East, Suite 3400  
Los Angeles, CA 90067  
creeder@robinskaplan.com

13.13. This Settlement Agreement may be executed in separate counterparts, by original, facsimile, or pdf signature, each of which shall be deemed an original, and said counterparts shall together constitute one Settlement Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to the same counterpart, page.

**IT IS SO AGREED.**

KAMALA D. HARRIS, Attorney General  
SONJA K. BERNDT,  
ELYSE M. RENDON,  
Deputy Attorneys General

DATE: December 10, 2015 By [Signature]  
SONJA K. BERNDT, Deputy Attorney General  
Attorneys for the ATTORNEY GENERAL

SAN PASQUAL FIDUCIARY TRUST COMPANY

DATE: \_\_\_\_\_ By \_\_\_\_\_  
RICHARD PATTERSON  
Special Administrator of the Estate of Nina Simone and  
Successor Trustee of the Nina Simone Charitable Trust

DATE: 20 October 2015 By [Signature]  
LISA SIMONE KELLY

1 Tracy A. Stevenson, Esq.  
2 Lanak & Hanna, P.C.  
3 625 The City Drive South, Suite 190  
4 Orange, CA 92868  
5 tastevenson@lanak-hanna.com

6 If to Lisa Simone Kelly:  
7 Lisa Simone Kelly  
8 2 Alle des Cypres  
9 13620 Carry Le Rouet, France

10 with a copy to:

11 Christopher Reeder, Esq.  
12 Robins Kaplan LLP  
13 2049 Century Park East, Suite 3400  
14 Los Angeles, CA 90067  
15 creeder@robinskaplan.com

16 13.13. This Settlement Agreement may be executed in separate counterparts, by original,  
17 facsimile, or pdf signature, each of which shall be deemed an original, and said counterparts shall  
18 together constitute one Settlement Agreement, binding all parties hereto notwithstanding that all  
19 of the parties are not signatory to the same counterpart, page.

20 **IT IS SO AGREED.**

21 KAMALA D. HARRIS, Attorney General  
22 SONJA K. BERNDT,  
23 ELYSE M. RENDON,  
24 Deputy Attorneys General

25 DATE: \_\_\_\_\_

26 By \_\_\_\_\_

27 SONJA K. BERNDT, Deputy Attorney General  
28 Attorneys for the ATTORNEY GENERAL

SAN PASQUAL FIDUCIARY TRUST COMPANY

29 DATE: October 20, 2015

30 By \_\_\_\_\_

31 RICHARD PATTERSON  
32 Special Administrator of the Estate of Nina Simone and  
33 Successor Trustee of the Nina Simone Charitable Trust

34 DATE: \_\_\_\_\_

35 By \_\_\_\_\_

36 LISA SIMONE KELLY

1 DATE: \_\_\_\_\_ By \_\_\_\_\_

2 AMERICAN CONTRACTORS INDEMNITY COMPANY

3 APPROVED AS TO FORM:

4 POINDEXTER & DOUTRE, INC.  
5 JAMES DRUMMY, ESQ.  
6 JEFFREY A. KENT, ESQ.  
Attorneys at Law

7  
8 DATE: \_\_\_\_\_ By \_\_\_\_\_

9 JEFFREY A. KENT, Esq.  
Attorneys for SAN PASQUAL

10 ROBINS KAPLAN, LLP  
11 CHRISTOPHER REEDER, ESQ.  
Attorneys at Law

12  
13 DATE: 10/21/2015

14 By *Christopher S. Reeder*  
CHRISTOPHER REEDER, Esq.  
Attorneys for Lisa Simone Kelly

15 LANAK & HANNA, P.C.  
16 TRACY A. STEVENSON, ESQ.  
Attorneys at Law

17  
18 DATE: \_\_\_\_\_

19 By \_\_\_\_\_  
TRACY A. STEVENSON, Esq.  
Attorneys for American Contractors Indemnity Company

20  
21 ORDER

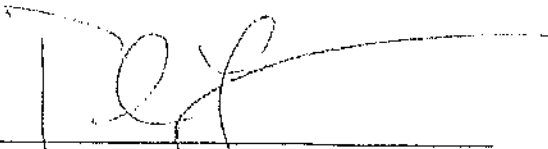
22 IT IS SO ORDERED.

23  
24 **David J. Cowan**

25 DATE: 2-19-16

26 DAVID J. COWAN  
27 Judge of the Superior Court  
28

1 DATE: Oct. 21, 2015

By   
PAUL PIZZELLA, Senior Bond Claims Attorney  
AMERICAN CONTRACTORS INDEMNITY COMPANY

3 APPROVED AS TO FORM:

4 POINDEXTER & DOUTRE, INC.  
5 JAMES DRUMMY, ESQ.  
6 JEFFREY A. KENT, ESQ.  
Attorneys at Law

7 DATE: \_\_\_\_\_

8 By \_\_\_\_\_  
9 JEFFREY A. KENT, Esq.  
Attorneys for SAN PASQUAL


10 ROBINS KAPLAN, LLP  
11 CHRISTOPHER REEDER, ESQ.  
Attorneys at Law

12 DATE: \_\_\_\_\_

13 By \_\_\_\_\_  
14 CHRISTOPHER REEDER, Esq.  
Attorneys for Lisa Simone Kelly

15 LANAK & HANNA, P.C.  
16 TRACY A. STEVENSON, ESQ.  
Attorneys at Law

17 DATE: Oct. 21, 2015

18 By   
19 TRACY A. STEVENSON, Esq.  
Attorneys for American Contractors Indemnity Company

20 ORDER

21 IT IS SO ORDERED.

22 DATE: \_\_\_\_\_

23 DAVID J. COWAN  
24 Judge of the Superior Court

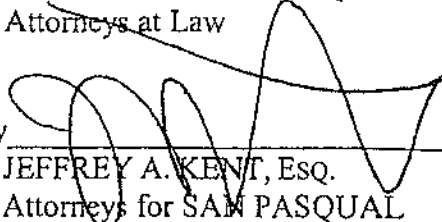
1 DATE: \_\_\_\_\_ By \_\_\_\_\_

2 AMERICAN CONTRACTORS INDEMNITY COMPANY

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4 POINDEXTER & DOUTRE, INC.  
5 JAMES DRUMMY, ESQ.  
6 JEFFREY A. KENT, ESQ.  
Attorneys at Law

7 DATE: 10/21/2015

8 By  \_\_\_\_\_  
9 JEFFREY A. KENT, ESQ.  
Attorneys for SAM PASQUAL

10 ROBINS KAPLAN, LLP  
11 CHRISTOPHER REEDER, ESQ.  
Attorneys at Law

12 DATE: \_\_\_\_\_

13 By \_\_\_\_\_  
14 CHRISTOPHER REEDER, Esq.  
Attorneys for Lisa Simone Kelly

15 LANAK & HANNA, P.C.  
16 TRACY A. STEVENSON, ESQ.  
Attorneys at Law

17 DATE: \_\_\_\_\_

18 By \_\_\_\_\_  
19 TRACY A. STEVENSON, Esq.  
Attorneys for American Contractors Indemnity Company

20 ORDER

21 IT IS SO ORDERED.

22 DATE: \_\_\_\_\_

23 \_\_\_\_\_  
24 DAVID J. COWAN  
25 Judge of the Superior Court

1 DATE: \_\_\_\_\_

By \_\_\_\_\_

2 AMERICAN CONTRACTORS INDEMNITY COMPANY

3 APPROVED AS TO FORM:

4 POINDEXTER & DOUTRE, INC.  
5 JAMES DRUMMY, ESQ.  
6 JEFFREY A. KENT, ESQ.  
Attorneys at Law

7 DATE: \_\_\_\_\_

By \_\_\_\_\_

8 JEFFREY A. KENT, Esq.  
9 Attorneys for SAN PASQUAL

10 ROBINS KAPLAN, LLP  
11 CHRISTOPHER REEDER, ESQ.  
Attorneys at Law

12 DATE: 10/21/2015

13 By *Christopher S. Reeder*

14 CHRISTOPHER REEDER, Esq.  
Attorneys for Lisa Simone Kelly

15 LANAK & HANNA, P.C.  
16 TRACY A. STEVENSON, ESQ.  
Attorneys at Law

17 DATE: \_\_\_\_\_

By \_\_\_\_\_

18 TRACY A. STEVENSON, Esq.  
19 Attorneys for American Contractors Indemnity Company

20 ORDER

21 IT IS SO ORDERED.

22 DATE: \_\_\_\_\_

23 *David J. Cowan*

24 DAVID J. COWAN  
25 Judge of the Superior Court



1 DATE: \_\_\_\_\_ By \_\_\_\_\_

2 AMERICAN CONTRACTORS INDEMNITY COMPANY

3 APPROVED AS TO FORM:

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Attorneys at Law

7 DATE: \_\_\_\_\_ By \_\_\_\_\_

8 JEFFREY A. KENT, Esq.  
9 Attorneys for SAN PASQUAL

10 ROBINS KAPLAN, LLP  
11 CHRISTOPHER REEDER, ESQ.  
Attorneys at Law

12 DATE: 10/21/2015

13 By Christopher S. Reeder  
14 CHRISTOPHER REEDER, Esq.  
Attorneys for Lisa Simone Kelly

15 LANAK & HANNA, P.C.  
16 TRACY A. STEVENSON, ESQ.  
Attorneys at Law

17 DATE: \_\_\_\_\_ By \_\_\_\_\_

18 TRACY A. STEVENSON, Esq.  
19 Attorneys for American Contractors Indemnity Company

20 ORDER

21 IT IS SO ORDERED.

22 DATE: \_\_\_\_\_

23 DAVID J. COWAN  
24 Judge of the Superior Court