

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS  
and DETERMINATION REPORT**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Gregory DoVico
	Certification Number:	20067
	Business Name:	Southwest Fiduciary, Inc
	Certification Number:	20069
	Type of Certificate/License:	Fiduciary PRN, BUE
<i>COMPLAINANT</i>	Name:	Anne Cotner
<i>INVESTIGATION INFORMATION</i>	Complaint Number:	13-0007
	Investigator:	Pasquale Fontana

Complaint Received:	May 16, 2013
Complaint Forwarded to the Certificate Holder:	May 17, 2013
Certificate Holder/Licensee Received Complaint:	May 20, 2013
Response From Certificate Holder:	June 17, 2013
Period of Active Certification/Licensure:	March 3, 1999 - Present (DoVico)
Period of Active Certification/Licensure:	March 3, 1999 - Present (Southwest Fiduciary, Inc.)
Status of Certification/License:	Active (DoVico)
Status of Certification/License:	Active (Southwest Fiduciary Inc.)
Availability of Certificate Holder/Licensee:	Available
Availability of Complainant:	Not Available
Report Date:	December 3, 2013

**ALLEGATIONS:**

1. Cotner alleges SFI failed to make her health a priority because she was placed in care facility without her required medication and did not receive them for weeks, SFI did not make medical appointments for her, and she was unable to see her doctor in a timely manner.
2. Cotner alleges SFI did not discharge her from the assisted living facility despite her doctors allowing her to return home therefore failing to keep her in the least restrictive environment.
3. Cotner alleges SFI, when filing a restraining order, included inaccurate dates and false information and restricted her ability to leave the care facility and see her son.

4. Cotner alleges SFI did not pay all of her bills and was not truthful with its accounting and statements.

#### **ADDITIONAL ALLEGATIONS:**

5. DoVico did not secure the income of the protected person in a timely manner, in violation of ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), and § 7-202(J)(5)(c).
6. DoVico, as designated principal of SFI, failed to remedy the Court's erroneous depiction of Phillip DoVico, as a licensed fiduciary, in violation of ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), and § 7-202(F)(8)(b)(1)(3) and (8)(c).

#### **List of sources for obtaining information: (Investigative, records, outside resources, etc.):**

- Written complaint and documentation submitted by complainant, Anne Cotner ("Cotner")
- Written response and documentation submitted by certificate holder, Gregory DoVico ("DoVico") of Southwest Fiduciary Inc., ("SFI")
- Review of applicable Certification and Licensing Division ("Division") records
- Review of applicable sections of Arizona Revised Statutes ("ARS"), Arizona Codes of Judicial Administration ("ACJA") § 7-201 and § 7-202, and Arizona Supreme Court Rules
- Review of applicable Superior Court of Arizona, Maricopa County ("Superior Court") records regarding Probate Cause Number PB2012-051107.
- Interview with Jane Engeldinger ("Jane")
- Interview with Cotner's Court-appointed attorney, Mark Theut ("Theut")
- Interview with Zachary Manley ("Zachary")
- Interview with DoVico
- Interview with Rosario Leyvas ("Leyvas")

#### **PERSONS INTERVIEWED:**

1. Jane Engeldinger
2. Mark Theut
3. Zachary Manley
4. Gregory DoVico
5. Rosario Leyvas

#### **SUMMARY OF INVESTIGATION:**

Cotner alleged SFI did not make her health a priority because she was not given her required medication when placed into an assisted living facility, did not receive the medication for several weeks, was unable to see her physician in a timely way, and had to

make her own medical appointments. She said SFI failed to pay her bills or paid them late resulting in late charges. She asserted SFI filed a petition to obtain a restraining order against her son and provided false and inaccurate information to the Court. Cotner believed SFI ignored her physician's recommendations that she could return home resulting in her remaining in an assisted living arrangement longer than necessary.

DoVico disputed Cotner's assertions saying she received her medication at the time of admission into the facility and received ongoing medical care. SFI scheduled her medical appointments but Cotner cancelled and rescheduled. DoVico acknowledged not being able to pay all of Cotner's bills in a timely manner because of lack of money and delays in securing additional funds provided by a family Trust. DoVico said Cotner's bills were paid when money was available. SFI filed a petition to not pursue a permanent appointment and the guardianship was terminated.

#### **SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:**

1. SFI was appointed Temporary Guardian of and Temporary Conservator for Cotner from October 4, 2012 to January 27, 2013 with Letters issued October 4, 2012. SFI filed a *Notice of Intent to Not Pursue Permanent Appointments* on January 18, 2013. The Superior Court determined guardianship was no longer necessary and discharged SFI from its fiduciary responsibilities on January 22, 2013.
2. On May 16, 2013, the Division received a written complaint from Cotner stating:

I was placed under a temporary guardianship/conservatorship from Oct 4 [sic] 2012 to January 22, 2013 due to illness. Southwest Fiduciary of Phoenix initiated this action and was in charge (PB2012-051107) [sic]. Southwest was in charge of my health and money. This complaint is that the Fiduciary did not put my health first; they did not discharge me when I was fit, ignoring my four doctors and my requests to return to my home; they did not put me in the least restrictive environment; filed a restraining order so I couldn't see my son or leave the group home; did not handle my money carefully and did not pay all of my bills.

Cotner said she was unable to see her primary care doctor for several weeks, scheduled her own medical appointments, and was without her medication when placed at Happy Valley Care Home ("Happy Valley") and did not get them for several weeks. She said SFI employee Leyvas told Dr. Chong's ("Dr. Chong") receptionist Leyvas was the only one to make medical appointments but Dr. Chong "took care of this" by making appointments for Cotner.

Cotner said by November 13, 2012, she saw her four doctors and all believed she should be allowed to return home and assume her own care. She said Dr. Chong and Dr. Sapp ("Dr. Sapp") wrote recommendations for her to go home and sent

them to SFI but it did not acknowledge them or her desire to return home instead "forcing" her to stay at the facility for an additional three months. Cotner said SFI did not consult with her doctors but did with psychologist, John Beck ("Dr. Beck"), whom she said wrote a psychological report "after spending a half hour with me." Cotner said Dr. Sapp wrote a letter supporting her going home for a few days over Christmas, Leyvas authorized the request but Theut called later advising DoVico would not approve her plans. Cotner said she called SFI but did not hear back so she went home. She later sought permission to return home on New Year's Eve and Day but SFI obtained a Restraining Order prohibiting her son, Zachary, from coming to the facility but it was amended to allow visitation. Cotner asserted SFI put incorrect "dates and other information" on the restraining order and filed "paperwork that was a lie in court."

Cotner said SFI's final profit and loss statement, given to her on February 14, 2013, showed some bills were paid late or not paid. She referenced a \$7,000.00 medical bill from John C. Lincoln hospital paid after December 31, 2012 she said should have been paid before year's end because it was part of 2012 insurance charges. She discovered her Home Owner's Association ("HOA") fees were paid January 11, 2013 but were due at the beginning of the month; car insurance was paid on November 14 and 29, 2012 and January 11, 2013; and she learned Dr. Beck was paid \$750.00 on December 18, 2012 and again on January 22, 2013 but he refunded the amount two days later. She said SFI's November and December statements listed a \$5,000.00 check sent from her sister but it was not listed in the final statement. She said Commissioner Kupiszewski recommended a formal accounting be completed by the Court accountant because of concerns with SFI's final accounting.

The Division notes Court records from the January 22, 2013 hearing show the Court waived requirement for a formal accounting and directed SFI to file an informal accounting to the Court and to Theut for the Court's review and approval. SFI filed its accounting on February 21, 2013 and the Court, by its own motion, set a Status Conference on March 18, 2013.

Cotner alleged a "downright untruth" in the *Fee Statement-Executive Summary*. She said SFI claimed to reload her cell phone on a regular basis but said Zachary bought her the phone with a \$45.00 balance and she asked SFI for \$100.00 to reload the phone. She said it took two weeks to get the \$100.00 card resulting in \$43.00 in late fees and leaving her without a phone for two weeks. She refuted that SFI took her to the bank to cash personal checks because her bank account had been closed when SFI took over and she was only taken to doctors' appointments.

3. On June 17, 2013, the Division received a written response from DoVico. He verified SFI was appointed guardian and conservator despite Zachary being Cotner's attorney-in-fact under a Power of Attorney ("POA") because of his criminal history. DoVico said the Restraining Order was brought against Zachary

based on knowledge of his criminal past and because it was not in Cotner's best interest for her to be taken out of Happy Valley. DoVico said Zachary tried to remove her from the facility and was "aggressive with group home personnel."

DoVico stated he could verify all of Cotner's prescribed and administered medication. He noted Dr. Sapp last saw Cotner on December 12, 2012 and later reported she could return home with supervision. Dr. Chong saw her on November 20, 2012 and determined she could go home with a companion. DoVico refuted Cotner's assertion SFI did not make her medical appointments and said SFI contacted doctors, provided temporary letters of appointment, and advised them SFI would make Cotner's appointments for the next 90 days. He said Cotner called doctors and cancelled scheduled appointments claiming she did not have transportation but this was not the case.

DoVico said shortly after appointment SFI and counsel met with Zachary to coordinate the transfer of finances. Zachary said bills for October and previous months were paid and he was willing to cover any outstanding bills. DoVico recognized it would take a few weeks to redirect and open new accounts and agreed to Zachary paying bills with the understanding October was covered. DoVico said in November SFI learned Zachary had not paid the October bills including HOA fees and home insurance. DoVico added Cotner received a stipend from a Trust administered by her sister but the Trustee required a review of bills before sending money and if funds were not remitted in a timely way there was little SFI could do.

DoVico acknowledged SFI made a mistake in filing the accounting regarding a check from the Trust in the amount of \$5,000.00 but said once the oversight was noted the matter was rectified and SFI provided a supplemental accounting. DoVico said a detailed list of expenses was presented when the accounting was filed and Cotner was given a complete list at the time of discharge. She was advised to take control over her accounts after January 22, 2013 but did not do so and failed to redirect her income.

DoVico disputed Cotner's claim the *Fee Statement-Executive Summary* was false. He referenced Cotner's example of Leyvas driving to Walgreens to purchase a phone card noting prepaid cell phones stop working after minutes expire and do not accumulate late charges. He denied anyone from SFI took Cotner to the bank because of its policy of not transporting clients. He said employees went to the bank on her behalf, cashed checks, and delivered money to Cotner along with a receipt for her to sign to prove she received the money.

4. On September 25, 2013, Division Investigator, Pasquale Fontana ("Investigator Fontana"), called Cotner. Zachary answered and identified himself as agent under the POA. He advised his mother has been in hospital for the past four months and scheduled for discharge to a rehabilitation facility by the week's end. He would

not disclose her location or provide a contact number stating her health took priority over an interview. He said he would inform her of this Investigator's call.

5. On September 27, 2013, Investigator Fontana conducted a telephonic interview with Jane, Cotner's sister. Jane said she was initially contacted by a Social Worker at John C. Lincoln Hospital who said it was unsafe for Cotner to be discharged home and to Zachary's care. The hospital recommended SFI be appointed as fiduciary. Jane said she gave SFI \$7,000.00 for what she understood would cover SFI's fiduciary costs over three months including taking care of placement issues, inventory of possessions, and assuming control of Cotner's finances and bank accounts. Jane said SFI wanted more money and surprised her with the service charges. She claimed SFI did not immediately take control of Cotner's account and Zachary quickly depleted money. Jane said SFI controlled Cotner's pension and social security benefits and those covered basic expenses and some of the larger household bills. She said SFI requested additional funds and she insisted the fiduciary provide her with detailed invoices and full accounting prior to her remitting Trust money. Jane acknowledged she did not immediately pay bills. When remitting money Jane said she would write a check to Cotner with the understanding SFI had financial control and would use the funds as requested. Jane recalled SFI submitted bills for her to review "mostly monthly" and was unaware if any bills were paid late adding SFI did not raise this as a concern. Jane stated her sister did not say she had any problems with medication while at Happy Valley but made comments about doctor's appointments. Jane acknowledged a strained relationship with her sister saying she is prone to being dishonest.
6. On October 4, 2013, Investigator Fontana conducted a telephonic interview with Theut. He was unaware of Cotner lacking any medication when placed at Happy Valley and opined the facility took good care of her. He recalled Cotner complaining about making one or more medical appointments but he was unsure if this was her trying to maintain her previous physicians in lieu of doctors at the hospital. Theut said Cotner's doctors eventually thought she was able to return home and manage her own affairs and the guardianship was terminated. Theut said he did not believe there was any unwarranted delay in the process.
7. On October 4, 2013, Investigator Fontana conducted a telephonic interview with Zachary. He confirmed his mother was in a rehabilitation home following her hospitalization but maintained she was not well enough to be interviewed. He acknowledged he had access to his mother's account prior to SFI's appointment but said once appointed SFI closed the account and prohibited access. Zachary recalled making a mortgage payment on October 1, 2012, using his mother's money but paid "out of pocket" for an APS electric bill payment made on or about October 20, 2012. Zachary was unable to recall any meeting or discussion with SFI regarding any agreement for him to pay bills and added SFI only started paying his mother's bills in December. He said he received a disconnection notice from APS in October because of lack of payment and got a second notice in

November. He said he called SFI's attorney about this but the two ended up arguing over a number of issues. Zachary verified there was no disruption in utility service.

Zachary said his mother received her medication and had what she needed when placed at Happy Valley but said she often scheduled her own appointments. He added Leyvas claimed she was unable to immediately schedule medical appointments needing several weeks to do so but when his mother called she got appointments within the week. Zachary recalled Leyvas telling Dr. Chong's receptionist SFI was to make medical appointments for his mother.

8. On October 8, 2013, Investigator Fontana and Division Manager, Linda Grau ("Manager Grau") conducted a telephonic interview with DoVico and Leyvas. DoVico said Cotner was admitted to Happy Valley on October 6, 2012 after discharge from hospital and she was given a two week supply of medication. He said she was to see her primary care physician, Dr. Ernie Riffer ("Dr. Riffer") in one or two weeks but Dr. Riffer said he thought it was unnecessary because he recently saw her in hospital and recommended a follow-up appointment in one month. Leyvas said SFI's case manager scheduled Cotner's medical appointments with Drs. Chong and Sapp but the medical office contacted SFI advising Cotner cancelled and rescheduled. DoVico responded with letters to the medical professionals advising SFI was responsible for setting appointments and asked them not to accept further cancellations from Cotner.

DoVico said he sought medical reports from Drs. Chong, Sapp, and Beck, in anticipation of the permanent guardianship hearing in January 2013. DoVico acknowledged a letter from Dr. Sapp, dated December 21, 2012, supporting Cotner returning home for a few days over Christmas but said Theut faxed the letter to SFI on December 28, 2012 and Cotner went home on December 24, 2012. DoVico said Zachary told facility staff he was taking his mother out for a while then said he had permission from SFI to take her home. Facility staff called SFI to clarify and was told approval was not granted. Leyvas said prior to December 24, 2012 she spoke with Cotner about going home for Christmas. Leyvas said she consulted with Dr. Chong whom supported the plan contingent upon Cotner having 24-hour nursing or caregiver support. SFI secured a caregiver but Cotner thought it was unnecessary because her insurance would not cover the cost. Leyvas said she called Theut to apprise him of the situation. DoVico said Leyvas checked in with Cotner by telephone for the period she was at home but was reluctant to sending SFI staff to Cotner's home because of safety concerns given Zachary's history. DoVico added he did not want Zachary arrested and did not think police would have responded to a son taking his mother over Christmas. DoVico said he believed the better alternative was to seek a Restraining Order.

DoVico stated early in SFI's appointment he realized it would be a difficult transition because of Cotner's incoming bills and lack of resources. He said SFI met with Zachary to discuss the bills and he agreed to pay bills for October; SFI

would monitor and over several weeks supersede the accounts and have an orderly transition. DoVico was unable to provide a specific date when SFI secured the accounts stating October was "fluid" but said it was sometime in that month. Leyvas said several of Cotner's bills were on automatic payment but others such as the car insurance were mailed out and Zachary would get money from the account and pay them. DoVico was unaware of any disconnection notices or disruption in utility services and maintained "we paid the bills when we had money, if we didn't have money we couldn't pay the bills" and said he made this "abundantly clear" to Cotner, Jane, and Zachary. DoVico stated he had concerns about Zachary having access to the account and said SFI made the transition as "quickly as possible."

DoVico said the Trust sent money in October and all of it was used to cover costs to Happy Valley because it "took precedence over anything." Leyvas said in November Cotner was arguing with her sister and Zachary started asking his aunt for money and wanted documentation on the Trust. Leyvas opined this increased Jane's suspicion and delayed her remitting money adding Jane was out of country during November and was unavailable. DoVico said he spoke with Jane and she relayed concerns about Zachary "ripping his mother off" which contributed to her reluctance to send money to Zachary instead preferring the funds be "filtered" through SFI but money was not received until late November or late December leaving SFI with only Cotner's pension and social security benefits to cover all costs. DoVico denied having any knowledge of a bill for \$7,000.00 paid to John C. Lincoln Hospital.

DoVico said at the January 22, 2013 hearing the Commissioner told Cotner SFI was released of its responsibilities and advised her to change over her accounts. DoVico said SFI gave Cotner a cashier's check in the amount of \$5000.00 on January 23, 2013 to assist with the transition but Cotner failed to act. SFI received Cotner's February annuity check, social security benefits on February 20, 2013; and her annuity/retirement on March 1, 2013. SFI called Cotner and asked her to come to the SFI office. On March 6, 2013, she arrived, was given her money and SFI again stressed to her the need for her to change over her accounts.

DoVico confirmed the *Fee Statement --Executive Summary* was filed in Court along with the accounting. He did not know which of his staff authored the summary but acknowledged reviewing it prior to filing with the Court. Investigator Fontana reviewed the content of the summary which documented, in part, that SFI frequently took Cotner to the bank and assisted with her travel arrangements over Christmas. DoVico restated SFI's policy of not transporting Wards and denied SFI assisted Cotner with travel arrangements during the holidays. He conceded the summary was poorly written, contained misstatements, and did not accurately reflect what transpired. Regarding Cotner's cell phone, DoVico said she used pre-paid minutes and could not have incurred late fees because there was no contract. Leyvas said she purchased minutes via cards and loaded the phone for Cotner.

DoVico verified he did not attend the October 4, 2012 guardianship hearing and said Phillip DoVico ("Phillip"), SFI's Executive Vice President, was authorized through Harter to accept SFI's appointment. DoVico said he was aware of the hearing's outcome but did not recall any concern about the content of the Minute Entry. Investigator Fontana pointed out the Minute Entry identified Phillip as a licensed fiduciary. DoVico acknowledged he did not file any documentation with the Court correcting that Phillip was not a licensed fiduciary. DoVico said Harter has "always indicated" Phillip was not licensed and referred to him as an officer of the corporation empowered to accept appointments.

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#### ANALYSIS OF ALLEGATIONS:

*Allegation 1: Cotner alleges SFI failed to make her health a priority because she was placed in care facility without her required medication and did not receive them for weeks; that SFI did not make medical appointments for her, and she was unable to see her doctor in a timely manner.*

DoVico verified Cotner was placed into Happy Valley on October 6, 2012 and was given a two week supply of medication upon her discharge from hospital. He said Dr. Riffer recommended a follow-up appointment in one month and prescribed medication for Cotner. DoVico said SFI made all of Cotner's medical appointments but she would cancel appointments and reschedule them at her convenience.

Zachary confirmed his mother had medication and everything she needed at the time of her placement at Happy Valley and she received medical care. He said his mother made medical appointments and acknowledged Levyas told the doctor SFI was to make the appointments.

Theut was unaware of Cotner going without medication at the facility and believed the assisted living home took good care of her.

A review of various receipts submitted by DoVico showed payment to Walgreens Pharmacy, dated October 5, 2012, in the amount of \$129.46 for six (6) prescriptions. Other documentation reviewed included 13 (thirteen) prescriptions for medication and other items written by Dr. Riffer on October 11, 2012; and several purchases at Walgreens on October 11, 2012 and October 12, 2012 including eight (8) prescriptions at a cost of \$198.86. A review of an unsigned receipt, number 600808, dated October 11, 2012, showed Cotner paid \$60.00 for a three hour doctor's appointment. A review of other documentation reflected Cotner's subsequent medical appointments and prescriptions for October and onward. A review of SFI's invoices to Cotner for professional services rendered showed in mid October there were entries reflecting issues related to scheduling medical appointments.

It appears Cotner was provided medication at the time of her admission to the assisted living facility and she received ongoing medical treatment and follow-up appointments

with her doctors. There was no evidence was submitted to or reviewed by the Division that showed SFI failed to ensure Cotner had medication or that she lacked ongoing medical treatment or follow-up with doctors. Therefore, Allegation 1 is not substantiated.

*Allegation 2: Cotner alleges SFI did not discharge her from the assisted living facility despite her doctors allowing her to return home therefore failing to keep her in the least restrictive environment.*

On October 4, 2012, the Court heard testimony from Dr. Rama Kunkle ("Dr. Kunkle") of John C. Lincoln Hospital and determined the safest and least restrictive environment for Cotner was in an assisted living facility.

DoVico said he obtained several medical reports in preparation for the permanent guardianship and conservatorship hearing in January 2013.

Theut acknowledged subsequent medical reports reflected Cotner's improved cognition and independence and the guardianship was subsequently terminated. He did not believe there was any undue delay in the process.

A review of SFI's invoices to Cotner for services rendered showed on or about November 14, 2012 SFI learned of Cotner's desire to no longer have fiduciary involvement and appeared to immediately discuss and consult with Theut and Harter. Records indicated they determined a more comprehensive examination of her abilities would be prudent. A review of Dr. Chong's medical report, patient visit date of November 20, 2012, noted Cotner could live at home with a companion. The preparation date of the report was not identified. A review of Dr. Beck's neuropsychological evaluation, dated December 16, 2012, documented Cotner's unhappiness in the assisted living facility and of her desire to return home. Dr. Beck indicated his willingness to support such a transfer but only on a "last trial basis" and with the condition medical and nursing assistance and observing could be provided for at least four hours daily. The Division reviewed Dr. Sapp's medical report, dated December 31, 2012, patient visit date of December 21, 2012, stating Cotner could live independently but would benefit from support for a period of time.

SFI was appointed on an emergency temporary basis with its authority expiring on January 27, 2013. After Cotner expressed a desire to terminate fiduciary involvement, medical assessment and reports were completed in late November and in mid and late December 2012. Medical documentation supported Cotner's return home with some level of assistance and on January 18, 2013, DoVico filed notice of intent not to pursue permanent appointments. On January 22, 2013, the Court determined guardianship was no longer necessary and released SFI of all of its fiduciary responsibilities. No evidence was submitted to or reviewed by the Division that showed DoVico delayed or interfered with any action regarding Cotner's improving cognition or in the process of having her rights reinstated. Therefore, Allegation 2 is not substantiated.

*Allegation 3: Cotner alleges SFI, when filing for a restraining order, included inaccurate dates and false information, and restricted her ability to leave the care facility and see her son.*

Cotner submitted a copy of the *Motion of Issuance of Restraining Order and Request for Accelerated Hearing* filed by SFI on December 28, 2012. The copy contained handwritten notations reflecting Cotner's disagreement with details such as whose idea it was for her to leave the facility, the date she left, and for how long she intended to be away. Cotner referred to these discrepancies as "false" information filed by SFI. For example, Cotner stated she left the facility on December 24 rather than on December 23, 2012, per the Motion. DoVico acknowledged she went home on December 24, 2012. Cotner disputed she intended to remain home for the holidays for longer than one day and also claimed it was her decision to leave the facility and not Zachary's, as asserted in Motion. Inaccuracies in dates appear to be relatively inconsequential. At the hearing on this matter, Cotner was represented by counsel and she provided testimony. At the hearing's conclusion the Court granted the Restraining Order and permitted Zachary visitation but prohibited him from removing her from the facility or out of state.

In filing the Motion and obtaining the Restraining Order SFI seemed to making an effort to prevent a possible situation whereby Cotner could leave or be removed from the facility without fiduciary approval. The narrative of the pleading may have contained an error with a specific date and the parties may disagree with some of the details but it does not appear SFI knowingly provided false assertions or attempted to mislead the Court. No evidence was submitted to or reviewed by the Division that showed any misconduct or wrongdoing on the part of the fiduciary. Therefore, Allegation 3 is not substantiated.

*Allegation 4: Cotner alleges SFI did not pay all of her bills and was not truthful with its accounting and statements.*

DoVico acknowledged some of Cotner's bills were not paid due to lack of financial resources. The Trust remitted money in October 2012 to pay the assisted living facility and medical costs but additional funds from the Trust were not received until late December 2012 and Cotner's social security benefits and pension were left to cover all her bills. Support money from the Trust appears to have been delayed, in part, because the Trustee required a review of bills prior to remitting funds.

Jane said she initially sent money to SFI thinking it would suffice and was surprised to learn more money was needed. She acknowledged Cotner's pension and benefits covered her basic expenses and the Trust would support her as needed. Jane verified she asked SFI to provide her with detailed invoices and full accounting prior to her remitting Trust money and said she did not pay the bills "right away."

A review of SFI's accounting showed it received substantial money from the Trust from December 31, 2012 to January 22, 2013. Records show SFI paid insurance, mortgage, and utilities but did not pay the HOA fees until January 22, 2013 at which time \$1,860.00 was paid out but resulted in two late charges of \$25.00 for each month of non-payment,

November and December. At the time of SFI's appointment, Cotner had accrued HOA fees of approximately \$1,700.00. Cotner's car insurance charged her \$20.00 for non-sufficient funds on November 5, 2012 and \$10.00 for a late payment on January 6, 2013. SFI appears to have paid the insurance on November 14 and 29, 2012, and on January 11, 2013. Accountings showed SFI made three installations on Cotner's annual home insurance premium on November 20 and 29, 2012 and her mortgage was paid from November 2012 through January 2013. The accounting did not reflect any payment to John C. Lincoln Hospital and DoVico was not aware of any invoice from the hospital.

Regarding allegations on the accounting DoVico acknowledged SFI did not list \$5,000.00 remitted by the Trust in SFI's final statement. Cotner acknowledged, in her complaint, the money was accounted for and listed in previous statements. The accounting also showed SFI inadvertently paid Dr. Beck twice, once on December 18, 2012 and again on January 22, 2013 and the extra payment was refunded by Dr. Beck on January 24, 2013. Court records from the January 22, 2013 hearing confirmed the Court waived requirement for a formal accounting and directed SFI to file an informal accounting to the Court and to Theut for the Court's review and approval. SFI filed its accounting on February 21, 2013 and the Court, by its own motion, set a Status Conference on March 18, 2013. The subsequent Minute Entry reflected, in part, the status of the accounting was addressed and was being reviewed by the Court accountant; that Cotner testified and "set forth many issues and concerns, most of which the Court said it could not address or rule on" and the matter concluded. The case was administratively closed.

Cotner appears to have incurred \$80.00 in various charges as a result of late payments. DoVico acknowledged SFI could not pay all of her bills in a timely manner due to a lack of financial resources. A review of SFI's accounting showed the money SFI received seemed to be used primarily for Cotner's benefit. Fiduciary and legal fees were deferred and accounting disbursements showed SFI paid itself about \$9,178.00 and approximately \$13,000.00 in combined legal fees on January 3, 2013.

Regarding the Fee Statement-Executive Summary, DoVico was unable to identify which of his staff authored the summary but said he reviewed it prior to filing it with the Court, along with the accounting. Initially, DoVico said he had no concerns for the content of the summary then acknowledged it contained misstatements and did not accurately reflect what transpired. For example, the summary stated SFI often took Cotner to the bank so she could cash personal checks; and assisted Cotner with travel arrangements over the holiday season. DoVico denied SFI transported Cotner to the bank but staff went to the bank on her behalf. He denied his staff transported Cotner over the holiday season.

It is concerning that DoVico reviewed the Fee Statement - Executive Summary and filed the summary along with its accounting without first ensuring the accuracy of the information presented. However, it does not seem this was done intentionally. A review of SFI's accounting did not show Cotner was billed for any of the tasks noted so the erroneousess of the report did not appear to harm Cotner or the estate. Therefore, Allegation 4 is not substantiated.

*Allegation 5: DoVico did not secure the income of the protected person, in violation of ACJA§ 7-201(F)(1), ACJA § 7-202(F)(1), and § 7-202(J)(5)(c).*

*ACJA § 7-201(F)(1) and ACJA § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA § 7-202(J)(5) reads:*

*Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.*

*§ 7-202(J)(5)(c) states:*

*On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.*

DoVico's petition to be appointed guardian and conservator alleged, in part, that Cotner was incapacitated, an emergency existed, and her welfare required immediate action. The petition further stated John C. Lincoln Hospital advised it was unwilling to discharge Cotner to Zachary's care and responsibility out of concern for her safety and wellbeing. The petition read that a Conservator should be immediately appointed because Cotner lacked the ability to manage and safe guard her property and irreparable injury, loss or damage would result. A hearing was held on October 4, 2012 and Dr. Kunkle, Phillip and Zachary provided testimony to the Court. At the conclusion of the hearing the Court issued a Minute Entry stating, in part, that Cotner was incapacitated and "unable to make or communicate responsible decisions concerning her person and financial affairs" and appointed SFI. The Court ordered Zachary to remain as a non-paying resident in Cotner's home but suspended any powers of attorney issued to Zachary currently in place.

Further, on October 4, 2012, the Court filed an *Order to Temporary Guardian and Temporary Conservator*, to which DoVico, on September 27, 2012, signed, acknowledged, and agreed to be bound by its provisions. It stated, in pertinent part:

*The welfare and best interest of the person named above, Anne E. Cotner, are matters of great concern to this Court. By accepting appointment as Temporary Guardian and Temporary Conservator, you have subjected yourself to the power and supervision of the Court. Therefore, to help avoid problems and assist you in the performance of your duties, this Order is entered. You are required to be guided by it and comply with its provisions as it relates to your duties as Temporary Guardian of Anne E. Cotner and to your duties as Temporary Conservator, as follows:*

*CONSERVATOR:*

*1. Immediately locate, identify and inventory all of the assets of the protected person and make proper arrangements for their protection such as changing the locks on the house, renting a safety deposit box for important documents, etc.*

*3. Immediately begin to take title to all the protected person's property. The property should be titled in the name of the Conservatorship "as Conservator(s) of the Estate of Anne E. Cotner" or Anne E. Cotner by Southwest Fiduciary, Inc, Conservator(s)." Do not put the protected person's funds into joint accounts, trust accounts ("in trust for"), or payable on death (POD) accounts. Do not list yourself as beneficiary on any bank accounts or other assets belonging to the protected person.*

DoVico claimed shortly after appointment SFI personnel and Harter met with Zachary and agreed to allow him to continue paying bills for October but that he failed to pay the HOA fees, home insurance, and other bills. DoVico was unable to provide a specific date when SFI secured Cotner's bank accounts and said October was "fluid." He affirmed his concerns for Zachary having access to the bank accounts and said SFI made the transition to secure the accounts as "quickly as possible."

Zachary was unable to clearly account for any discussion or agreement he had with SFI about paying bills and could not recall any meeting. He acknowledged paying the mortgage on October 1, 2012 and a utility bill on October 20 adding SFI, once appointed, secured the accounts and prohibited further access.

Jane stated SFI did not immediately take control of her sister's accounts and Zachary quickly depleted money.

A review of SFI's invoices to Cotner for services rendered showed one entry on October 19, 2012 when Phillip met with Zachary to discuss, in part, Cotner's personal property and to take inventory of her property. Invoices also reflected SFI opening an account for Cotner on October 4, 2012. SFI executed letters to Bank of America and Chase Bank providing Letters of Appointment and requesting information on accounts and safety deposit boxes on October 17, 2012. SFI executed similar letters to Desert Schools Federal Credit Union, Wells Fargo Bank, and Marshall and Isley Bank on October 30, 2012; and the following day requested Desert Schools Federal Credit Union to release funds and close the account. It appears SFI took control of Cotner's two pensions during the first week of November 2012.

DoVico's petition to the Court plainly conveyed concerns for Cotner's financial affairs and for Zachary's appropriateness to responsibly manage her finances. Testimony provided at the temporary hearing revealed sufficient concern and the Court appointed SFI and suspended Zachary's powers of attorney. In his written response to the Division, DoVico detailed his apprehensions about Zachary's past criminal conduct and dubious lifestyle choices. DoVico's assertions of Zachary's unsavory history, whether accurate

and true or not, clearly noted misgivings for Zachary trustworthiness and appropriateness to manage the estate despite the POA. Notwithstanding all information presented, DoVico continued to give Zachary what appears to be unfettered access to Cotner's income. Moreover, DoVico was unable to account for approximately \$1,581.71 in withdrawals made from Cotner's bank account after SFI's appointment. As Temporary Conservator, and in context of the stated concerns for Zachary, DoVico had responsibility to immediately secure Cotner's income while continuing to marshal her assets, but failed to protect her income resulting in several withdrawals for which the fiduciary cannot account. Therefore, Allegation 5 is substantiated.

*Allegation 6: DoVico, as designated principal of SFI, failed to remedy the Court's erroneous depiction of Phillip DoVico, as a licensed fiduciary, in violation of ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), and § 7-202(F)(8)(b)(1)(3) and (8)(c).*

*ACJA § 7-201(F)(1) and ACJA § 7-202(F)(1), require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*Pursuant to Administrative Order 2012-64, in effect at the time of the alleged misconduct, ACJA § 7-202(A) reads:*

*"Trainee" means a person who would qualify for licensure as a fiduciary but for the lack of required experience and who is seeking to gain the required experience to qualify as a licensed fiduciary by working under the active and direct supervision of a designated principal or licensed fiduciary to perform authorized services, pursuant to this section.*

*ACJA § 7-202(E)(3)(f)(1)(a)(b) and (c) states:*

*(1) The principal shall:*

*(a) Provide active and direct supervision of all other licensed fiduciaries, trainees, and support staff who work with wards, protected persons, or decedent estates and who work for the corporation, limited liability company, or partnership, Department of Veterans' Services, or Office of the Public Fiduciary;*

*(b) Adopt policies and procedures giving reasonable assurance that all licensed fiduciaries and trainees conform to the applicable rules, statutes and sections of the ACJA and that non-licensed staff conduct themselves in accordance with the applicable rules, statutes, and sections of the ACJA.*

*(c) In compliance with subsections F and J, delegate and assume personal professional responsibility for ensuring the tasks performed by the licensed fiduciaries, professionals, support staff, and others who provide services for wards, protected persons, or decedent estates are within the scope of their training and experience and have been delegated by the principal.*

ACJA § 7-202(F)(8)(b)(1)(3) and (8)(c) sets out:

*b. The supervising fiduciary shall:*

*(1) Assume personal professional responsibility for the trainee's guidance in any work undertaken and for providing active and direct supervision, as necessary, for the quality of the trainee's work;*

*(3) Ensure that the trainee is familiar with and adheres to the provisions of this section and ACJA § 7-201; and*

*c. The trainee may perform authorized services, as set forth in statute, court orders, this section, and ACJA § 7-201, only under the supervision of the licensed fiduciary or designated principal. Neither the trainee nor the supervising fiduciary may represent that the trainee is a licensed fiduciary...*

A.R.S 14-531 (B)(10) reads:

*(B) The Court may consider the following persons for appointment as guardian in the following Order:*

*10. A fiduciary who is licensed pursuant to section 14-5651, other than a public fiduciary.*

14-5651(A) states, in pertinent part:

*Except as provided by subsection G of this section, the superior court shall not appoint a fiduciary unless that person is licensed by the supreme court.*

The Division reviewed the audio recording of the October 4, 2012 hearing. Harter, counsel for SFI, addressed the Court during appearances, stating, in part, "Present with me is Phillip DoVico representing Southwest Fiduciary Inc." At another point in the hearing Phillip was sworn in and identified his affiliation with SFI as "Executive Vice President and Estate Manager" and he provided testimony accordingly.

Later in the hearing Commissioner Kupiszewski addressed Zachary regarding private fiduciaries and said of Phillip, "He's a licensed fiduciary, he knows what his duties and responsibilities are but if I ask him these questions and I'll having him follow up in the affirmative, when you hear my statement Mr. DoVico, I'm going to guess that you're going to agree with it. He understands that he has a duty to pursue and to have your mom placed in the least restrictive environment that's possible for her to be safe. Right now that looks like that's a group home that can monitor this...[The Division removed reference to confidential medical information] situation and if it does bounce back and she gets under control, Mr. DoVico, if it looks like it's safe to send her home and that's where she wants to go, that's where she's going to go and if she does bounce back then it's not appropriate for this petition to become a permanent guardianship, they'll move to

dismiss or let it expire on its own terms. Mr. DoVico, would you agree with this statement in its entirety?" Phillip replied, "Yes, Your Honor."

Commissioner Kupiszewski continued discussing private fiduciaries and Cotner's placement and said, "They are one of the licensed fiduciaries I see often and so they have relationships with a lot of these home care providers or group homes and they go with the ones they are more comfortable with that do the best jobs for their clients. So while you have suspicions and worries, if he had clients that he kept sending to these places that would have issues, get sick and die, the Court would be holding him responsible and he wouldn't be a private fiduciary for very long." Zachary asked a question stating, "This is more towards the fiduciary" regarding his mother's discharge from hospital and Phillip addressed the question directly. Commissioner Kupiszewski closed, in part, stating based on the information presented "SFI is appropriate to serve in that capacity" and appointed SFI accordingly. The subsequent Minute Entry reads, in pertinent part:

*Based on the information and testimony provided, the Court finds as follows:*

- 4. Phillip DoVico is competent to serve as temporary guardian and conservator.*
- 6. Anne Cotner is an incapacitated person because of mental and physical disabilities, she is unable to make or communicate responsible decisions concerning her person and financial affairs, appointment of a temporary guardian and conservator is necessary to provide for her continuing care and supervision, an emergency exists and Phillip DoVico is appropriate to act as temporary guardian and conservator.*

*IT IS THEREFORE ORDERED:*

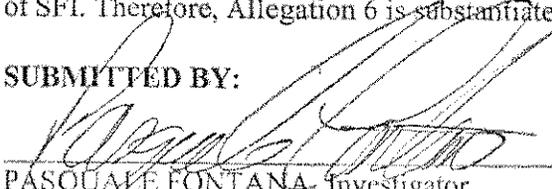
*(A) Licensed Fiduciary Phillip DoVico [sic] is hereby appointed Temporary Guardian and Conservator for the above-named person pursuant to A.R.S Section 14-5310, and, upon, acceptance, letters of authority shall be issued subject to the following restrictions*

Phillip has never been a licensed fiduciary and has consistently been identified by SFI as an employee and trainee. DoVico acknowledged he did not file any corrective documentation with the Court and maintained the Order appointed SFI and named him as the licensed fiduciary and, as such, "seems to correct that error." Harter said he introduced Phillip, at the hearing, on behalf of SFI as a representative of SFI and did not think Phillip would not have represented himself to the Court as a licensed fiduciary. Harter said a significant portion of the Order identified SFI's appointment and the Order was acknowledged by SFI through DoVico. Harter said he believed the statement in the Minute Entry was "clearly an error on the part of an unknown employee of the Superior Court."

It does not appear Phillip himself, Harter, or DoVico directly presented Phillip as a licensed fiduciary. However, the audio record of the hearing revealed the Court's implicit

understanding of Phillip's capacity as a licensed fiduciary in Court on behalf of SFI and neither Phillip nor Harter acted purposely to refine or clarify this salient point in Court. The corresponding Minute Entry evidenced the Court's perception and Commissioner Kupiszewski's address to the parties indicated it was not simply a clerical error made by a Superior Court employee, as suggested by Harter. SFI, by not clarifying with the Court at the time of the hearing and by not submitting any subsequent documentation, allowed the Court to reasonably assume Phillip was functioning as a licensed fiduciary on behalf of SFI. Therefore, Allegation 6 is substantiated.

**SUBMITTED BY:**

  
PASQUALE FONTANA, Investigator  
Certification and Licensing Division

12/3/13  
Date

**REVIEWED BY:**

  
Certification and Licensing Division

12/6/13  
Date

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**DECISION OF THE PROBABLE CAUSE EVALUATOR:**

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number 13-0007 the Probable Cause Evaluator:

requests division staff to investigate further.

determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

# 1, 2, 3, 4.

determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

# 5, 6.

  
Mike Baumstark  
Probable Cause Evaluator

12/9/13  
Date

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
ORDER OF THE BOARD**

**LICENSEE  
INFORMATION**

Licensee:	Gregory DeVico
License Number:	20067
Business Name:	Southwest Fiduciary, Inc.
License Number:	20069

**RECOMMENDATION TO THE FIDUCIARY BOARD ("BOARD"):**

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Gregory DeVico ("DeVico") and Southwest Fiduciary, Inc. ("SFI") committed the alleged acts of misconduct detailed in the Investigation Summary and Allegation Analysis Report in complaint number 13-0007.

It is recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(f)(1)(a), (E)(3)(f)(1)(b), (E)(3)(f)(1)(c), (F)(1), (F)(8)(b)(1), (F)(8)(b)(3), (F)(8)(c), (J)(5) and (J)(5)(c).

Mitigating Factors: None noted.

Aggravating Factors:

1. Prior record of discipline. [ACJA § 7-201(H)(22)(b)(2)(a)] Division records reflect Letters of Concern have previously been issued to DeVico and SFI in the following complaint matters:
  - 02-0010: Letter of Concern issued May 20, 2005
  - 02-0016: Letter of Concern issued May 20, 2005
  - 03-0005: Letter of Concern issued February 7, 2005
  - 06-0001: Letter of Concern issued November 3, 2006
  - 08-0008: Letter of Concern issued September 9, 2010
2. Substantial experience in the profession. DeVico and SFI have been certified/licensed since the inception of the program. [ACJA § 7-201(H)(22)(b)(2)(i)]

Proportionality Analysis:

The stated purpose of the Fiduciary Program includes protecting the public through professional and competent performance in accordance with all applicable statutes and court rules. In prior matters involving failures to secure and marshal assets, the Board and the Administrative Director have issued Letters of Concern, Censures, ordered probationary terms with specified conditions, mandated continuing education and



- requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
  - enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
  - enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

adopts the recommendations of the Division Director.

does not adopt the recommendations of the Division Director and orders:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Catherine R. Robinson* 1/9/14

Deborah Primock, Chair Date  
 Fiduciary Board *Vice chair*

**THE ORDER OF THE BOARD DATED JANUARY 9, 2014,  
WAS SUBSEQUENTLY MODIFIED PURSUANT TO THE  
FOLLOWING DOCUMENT TITLED**

**“BY CONSENT: FINDING OF FACT; CONCLUSIONS OF  
LAW AND ORDER FOR CENSURE”**

**DATED AUGUST 5, 2014**

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9 Attorneys for Southwest Fiduciary, Inc.

10 **SUPREME COURT OF ARIZONA**  
11 **FIDUCIARY BOARD**  
12 **BEFORE THE ASSIGNED HEARING OFFICER**  
13 **1501 W. WASHINGTON, SUITE 102, PHOENIX, ARIZONA 85007-3231**

14 IN THE MATTER OF LICENSED  
15 FIDUCIARY:

16 Gregory DoVico  
17 License Number 20067  
18 and  
19 Southwest Fiduciary, Inc.  
20 License Number 20069

No. FID-NFC-13-0007

BY CONSENT: FINDING OF FACT;  
CONCLUSIONS OF LAW AND ORDER  
FOR CENSURE

21 On January 16, 2014, the Fiduciary Board issued its Notice of Formal Statement of  
22 Charges and Right to Hearing. The licensees, Southwest Fiduciary, Inc. license number  
23 20069 and Gregory DoVico, license number 20067, timely filed their Answer and Request  
24 for Hearing. Pursuant to agreement of the parties, the matter was resolved without hearing  
25 and the licensees consented to the entry of the Findings of Act, Conclusions of Law and  
26 Order set forth below.



1 fiduciary on October 4, 2012, but is now a licensed fiduciary. A Letter of  
2 Concern was issued to Philip J. DeVico with respect to this subject.

3  
4 6. All court filings and orders which were entered in the above identified action  
5 contained the true and correct information as to the identity and license number of  
6 the appointed fiduciary and its principal.

7  
8 7. Southwest Fiduciary, Inc. through its principal fiduciary, Gregory P. DeVico,  
9 also acting as the supervisory fiduciary, received the minute entry, reviewed the  
10 minute entry and failed to remedy the Court's depiction of Philip DeVico as a  
11 licensed fiduciary.

12 **Findings of Fact as to Violation No. 2**

13  
14 1. On October 4, 2012, Southwest Fiduciary, Inc. was appointed Temporary  
15 Conservator for Anne E. Cotner.

16  
17 2. Southwest Fiduciary, Inc., was appointed as Temporary Conservator, after the  
18 Court heard evidence regarding Zachary Manley (Cotner's son) past criminal  
19 conduct, drug use and lifestyle choices.

20  
21 3. After appointment, Southwest Fiduciary, Inc., through its principal fiduciary  
22 Gregory P. DeVico permitted Zachary Manley to have continued access to  
23 Cotner's account during the month of October resulting in approximately  
24 \$1,581.71 in withdrawals.

- 1 4. Southwest Fiduciary, Inc. and its principal fiduciary, Gregory P. DoVico, had  
2 the obligation to secure the protected person's bank account but did not secure  
3 it in a timely manner.  
4  
5 5. Southwest Fiduciary, Inc., through its principal fiduciary Gregory P. DoVico  
6 within (3) business days after appointment commenced efforts to collect the  
7 Social Security payment that was owed to the ward.  
8  
9 6. An automatic deposit into the ward's account occurred before Southwest was  
10 able to secure the account and as a result the ward's son was able to access the  
11 account and withdraw the social security payment.  
12  
13 7. The ward did not complain about her son's ability to access the account and  
14 withdraw funds.

15 **Conclusion of Law**

16 The Conduct described above is in violation of ACJA § 7-201(F)(1), ACJA §7-  
17 202(F)(1), ACJA § 7-202(F)(8)(b)(1)(3) and (8)(c) and ACJA § 7-202(J)(5)(c).  
18

19 **Order**

20 IT IS HEREBY ORDERED that Southwest Fiduciary, Inc., license number 20069  
21 and Gregory P. DoVico, license 20067, are issued a Decree of Censure.  
22

23 DATED this 5<sup>th</sup> day of August, 2014,  
24

25   
26 Catherine Robbins, Acting Chair  
Fiduciary Board