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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF **HERKIMER**

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PROBATE PROCEEDING,
WILL OF

RECENT DECEDENT,

Deceased.

PETITION FOR PROBATE AND:

Letters Testamentary
 Letters of Trusteeship
 Letters of Administration c.t.a.

File No.: _____

-----X
TO THE SURROGATE'S COURT, COUNTY OF **HERKIMER**

It is respectfully alleged:

1.(a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

Name: **DAVE DECEDENT**
Domicile or Principal Office: **20 MAIN STREET**
(Street and Number)
HERKIMER **NY** **12345**
(City, Village or Town) (State) (Zip Code)

Mailing Address: _____
(If different from domicile)

Citizen of: **U.S.A.**

1. (b) The proposed individual Executor Dave Decedent is is not an attorney.

1. (c) The proposed Executor is is not the attorney-draftsperson, a then-affiliated attorney or employee thereof. [NOTE: An attorney-draftsperson, a then-affiliated attorney or employee thereof must comply with SCPA 2307-a].

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent as follows:

(a) Name: **RECENT DECEDENT**
(b) Date of death: **September 5, 2012**
(c) Place of death: **THE BAPTIST HOME**
15 MAIN STREET
City, Town, Village: **HERKIMER**
County: **HERKIMER**
State: **NEW YORK**
(d) Domicile: Street: **15 MAIN STREET**
City, Town, Village: **HERKIMER**
County: **HERKIMER**
State: **NEW YORK**
(e) Citizen of: **U.S.A.**

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

April 21, 2012
(Date of Will)

Vincent L. Teahan and Cheryl Kip
(Names of All Witnesses to Will)

(Date of Codicil)

(Names of All Witnesses to Codicil)

4. No other will or codicil of the decedent is on file in this Surrogate's Court, and upon information and belief, after a diligent search and inquiry, including a search of any safe deposit box, there exists no will, codicil or other testamentary instrument of the decedent later in date to any of the instruments mentioned in Paragraph 3 except as follows: **[Enter "NONE" or specify]**

NONE

5. The decedent was survived by distributees classified as follows: [Information is required only as to those classes of surviving relatives who would take the property of decedent pursuant to EPTL 4-1.1 and 4-1.2. State the **number** of survivors in each class. Insert "**NO**" in all prior classes. Insert "**X**" in all subsequent classes].

- a. **[NO]** Spouse (husband/wife).
- b. **[NO]** Child or children and/or issue of predeceased child or children. **[Must include marital, nonmarital, adopted, or adopted-out of child under DRL Section 117]**
- c. **[NO]** Mother/Father.
- d. **[1]** Sisters and/or brothers, either of the whole or half blood, and issue of predeceased sisters and/or brothers (nieces/nephews, etc.)
- e. **[X]** Grandparents. [Include maternal and paternal]
- f. **[X]** Aunts and/or uncles, and children of predeceased aunts and/or uncles (first cousins). [Include maternal and paternal]
- g. **[X]** First cousins once removed (children of predeceased first cousins). [Include maternal and paternal]

6. The names, relationships, domicile and addresses of all distributees (under EPTL 4-1.1 and 4-1.2), of each person designated in the Will herewith presented as primary executor, of all persons adversely affected by the purported exercise by such Will of any power of appointment, of all persons adversely affected by any codicil and of all persons having an interest under any other will of the decedent on file in the Surrogate's Court, are hereinafter set forth in subdivisions (a) and (b).

[If the propounded will purports to revoke or modify an inter vivos trust or any other testamentary substitute, list the names, relationships, domicile and addresses of the trustee and beneficiaries affected by the will in subparagraphs (a) and (b) below. **[Submit trust agreement] N/A**

Dave Decedent Family Trust (certified copy filed herewith) dated April 21, 2012, between Recent Decedent, as Grantor, and Recent Decedent and Dave Decedent, as Trustees, is beneficiary of the decedent's residuary estate.

- (a) All persons and parties so interested who are of **full age and sound mind** or which are corporations or associations, are as follows:

<u>Name and Relationship</u>	<u>Domicile Address and Mailing Address</u>	<u>Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status</u>
Dave Decedent Brother	20 Main Street Herkimer, New York 12345	Distributee, Trustee of Dave Decedent Family Trust dated April 21, 2012; Legatee of residuary estate under Article THIRD; permissible income and principal beneficiary under Article SECOND of that trust; donee of limited power of appointment under that trust; Executor named in Will; Petitioner herein

- (b) All persons so interested who are **persons under disability**, are as follows:
[Furnish all information specified in NOTE following 7b]

<u>Name and Relationship</u>	<u>Domicile Address and Mailing Address</u>	<u>Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status</u>
	NONE	

7.(a) The names and domiciliary addresses of all substitute or successor executors and of all trustees, guardians, legatees, devisees, and other beneficiaries named in the Will and/or trustees and beneficiaries of any inter vivos trust designated in the propounded Will other than those named in Paragraph 6 herewith are as follows:

<u>Name and Relationship</u>	<u>Domicile Address and Mailing Address</u>	<u>Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status</u>
John Friend None	250 E. 71st St., Apt. 12A New York, New York 10021	Donee of limited power of appointment over tangible personal property under Article FIRST of Will.
Amherst College (Office of Development) None	P.O. Box 5000 Amherst, MA 01002	Bequest of \$25,000
Yale University None	157 Church Street New Haven, CT 06510	Bequest of \$10,000

<u>Name and Relationship</u>	<u>Domicile Address and Mailing Address</u>	<u>Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status</u>
Carol Decedent Niece	207 120th Street, S.E. Herkimer, NY 12345	Bequest of \$50,000 under Article SECOND C of Will; and contingent remainderman (In default of exercise of Power of appointment) under Article SECOND of the Dave Decedent Family Trust.
Roberta Decedent Niece	525 W. Kiernan Avenue Herkimer, NY 12345	Bequest of \$50,000 under Article SECOND C of Will; and contingent remainderman (In default of exercise of Power of appointment) under Article SECOND of the Dave Decedent Family Trust.
J. Decedent Nephew	1717 E. 16th Herkimer, NY 12345	Bequest of \$50,000 under Article SECOND C of Will; and contingent remainderman (In default of exercise of Power of appointment) under Article SECOND of the Dave Decedent Family Trust.
Hon. Eric Schneiderman Attorney General of the State of New York	120 Broadway New York, NY 10271	Statutory Representative of Charitable Legatees

(b) All such legatees, devisees and other beneficiaries who are persons under disability are as follows: [Furnish all information specified in NOTE below]

<u>Name and Relationship</u>	<u>Domicile Address and Mailing Address</u>	<u>Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status</u>
	NONE	

[NOTE: In the case of each infant, state (a) name, birth date, relationship to decedent, domicile and residence address, and the person with whom he/she resides, (b) whether or not he/she has a court-appointed guardian (if not, so state), and whether or not his/her father and/or mother is living, and (c) the name and residence address of any court-appointed guardian and the information regarding such appointment. In the case of each other person under a disability, state (a) name, relationship to decedent, and residence address, (b) facts regarding his disability including whether or not a committee, conservator, guardian, or any other fiduciary has been appointed and whether or not he/she has been committed to any institution, and (c) the names and addresses of any committee, person or institution having care and custody of him/her, conservator, guardian, and any relative or friend having an interest in his/her welfare. In the case of a person confined as a prisoner, state place of incarceration and list any person having an interest in his/her welfare. In the case of unknowns, describe such person in the same language as will be used in the process.]

8. (a) No beneficiary under the propounded will, listed in Paragraph 6 or 7 above, had a confidential relationship to the decedent, such as attorney, accountant, doctor, or clergy person, except: [Enter "NONE" or indicate the nature of the confidential relationship].

NONE

(b) No persons, corporations or associations are interested in this proceeding other than those mentioned above.

9. (a) To the best of the knowledge of the undersigned, the approximate total value of all property constituting the decedent's gross testamentary estate is greater than **\$500,000**.

Personal Property	greater than \$500,000
Improved real property in New York State	\$ -0-
Unimproved real property in New York State	\$ -0-
Estimated gross rents for a period of 18 months	\$ -0-

(b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows: [Enter "NONE" or specify]

NONE

10. Upon information and belief, no other petition for the probate of any will of the decedent or for letters of administration of the decedent's estate has heretofore been filed in any court.

WHEREFORE, your petitioners pray that process be issued to all necessary parties to show cause why the Will set forth in Paragraph 3 and presented herewith should not be admitted to probate; (b) that an order be granted directing the service of process, pursuant to the provisions of Article 3 of the S.C.P.A., upon the persons named in Paragraph (6) hereof whose names or whereabouts are unknown and cannot be ascertained, or who may be persons on whom service by personal delivery cannot be made; and (c) that such Will be admitted to probate as a Will of real and personal property and that letters issue thereon as follows: [Check and complete all relief requested.]

<input checked="" type="checkbox"/>	Letters Testamentary to:	<u>DAVE DECEDENT</u>
<input type="checkbox"/>	Letters of Trusteeship to:	<u>N/A</u>
<input type="checkbox"/>	Letters of Administration c.t.a. to:	<u>N/A</u>

and that petitioner (s) have such other relief as may be proper.

Dated: _____, 2012

1. _____
(Signature of Petitioner)
Dave Decedent
[Print Name]

COMBINED VERIFICATION, OATH AND DESIGNATION
[For use when petitioner is an individual]

STATE OF NEW YORK)
COUNTY OF HERKIMER) s.s.

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. **VERIFICATION:** I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.
2. **OATH OF [X] EXECUTOR [] ADMINISTRATOR c.t.a. [] TRUSTEE**
as indicated above: I am over eighteen (18) years of age and a citizen of the United States and I will well, faithfully and honestly discharge the duties of Fiduciary of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.
3. **DESIGNATION OF CLERK FOR SERVICE OF PROCESS:** I hereby designate the Clerk of the Surrogate's Court of HERKIMER County, and his/her successor in office, as a person on whom service of any process, issuing from such Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is : 20 Main Street
(Street and Number)
Herkimer NY 12345
(City, Village or Town) (State) (Zip Code)

Signature of Petitioner
DAVE DECEDENT
Print Name

On this ____ day of August, 2012, before me, the undersigned, a Notary Public in and for said State, personally came **DAVE DECEDENT** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

Print Name: Vincent L. Teahan, Esq.
Firm Name: Teahan & Constantino LLP
Address of Attorney: 41 Front Street, Suite A, P.O. Box 1181
Millbrook, NY 12545
Tel No. (845) 677-2101

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF **HERKIMER**

-----X
PROBATE PROCEEDING,
WILL OF

AFFIDAVIT OF HEIRSHIP

RECENT DECEDENT,

Deceased.

File No.: _____

-----X

STATE OF NEW YORK)
)
COUNTY OF HERKIMER) s.s.

VINCENT L. TEAHAN, being duly sworn, deposes and says:

1. I reside at 123 Main Street, Anytown, New York.

2. I am an attorney at law admitted to practice in the State of New York and a member of the law firm of Teahan & Constantino LLP, with offices in Millbrook and Poughkeepsie, New York.

3. I was a friend of Recent Decedent ("RD") and was his lawyer for more than twenty years. As part of his estate planning, I had to become familiar with his family circumstances.

4. RD was never married and had no children, biological or adopted.

5. His father, Old Decedent (died March 24, 1989) and Mother, Mom Decedent, (died December 26, 1993). Old and Mom Decedent had three children: RD, and his brothers, Sam Decedent (died April 17, 1996) and Dave Decedent, who survives.

6. Sam Decedent was not married and did not have any children, biological or adopted.

7. Dave Decedent has three surviving children: Susan, Mary and John, whom RD remembered in his Will.

8. I make this affidavit to show that Dave Decedent is the sole distributee of RD.

Dated: _____, 2012
Millbrook, New York

Vincent L. Teahan
Teahan & Constantino
41 Front Street, Suite A
P.O. Box 1181
Millbrook, New York 12545
(845) 677-2101

Sworn to before me this
_____ day of _____, 2012.

Notary Public

At a Surrogate's Court of the State of New York, held in and for the County of Herkimer at _____, _____, New York on the _____ day of _____, 2012.

Present: Honorable _____
Surrogate

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF **HERKIMER**

-----X

PROBATE PROCEEDING,
WILL OF

RECENT DECEDENT,

Deceased.

**DECREE ADMITTING WILL
TO PROBATE**

File No.: _____

-----X

Satisfactory proof having been made that jurisdiction has been obtained of all necessary parties and that all necessary notice has been given; and **VINCENT L. TEAHAN and CHERYL KIP**, the witnesses to the last Will of the decedent bearing date **April 21, 2012**, having been sworn and examined and their examination reduced to writing and filed, or their affidavits having been filed; and it appearing by such proofs that the said Will was duly executed and that the testator at the time of executing the same was in all respects competent to make a Will and not under restraint; and this Court being satisfied of the genuineness of said Will and the validity of their execution; and the probate thereof not having been contested; it is

ORDERED, ADJUDGED AND DECREED, that the instrument offered for probate herein be and the same is hereby admitted to probate as the Will of the said **RECENT DECEDENT**, deceased, valid to pass real and personal property, and that the said Will, and this Decree be recorded and that Letters Testamentary be issued to the Executor who may qualify thereunder.

Judge of the Surrogate's Court