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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

12 JUDITH BADGLEY, as Executor of the  
Estate of Patricia Yoder, an individual,

13 Plaintiff,

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.

Case No. 4:17-cv-00877-HSG  
Hon. Haywood S. Gilliam, Jr.

**PLAINTIFF JUDITH BADGLEY'S  
NOTICE OF MOTION AND  
MOTION FOR SUMMARY  
JUDGMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

**[DECLARATIONS OF JUDITH  
BADGLEY, PAMELA YODER,  
JEFFREY HIPSHMAN AND DAMON  
MIRCHEFF; REQUEST FOR  
JUDICIAL NOTICE; AND  
[PROPOSED] ORDER FILED  
CONCURRENTLY]**

DATE: January 4, 2018  
TIME: 2:00 p.m.  
DEPT: 2

Action filed: Jan. 23, 2017  
Trial date: April 9, 2018

25 ///  
26 ///  
27 ///  
28 ///

1           **TO THE HONORABLE COURT, ALL PARTIES AND THEIR**  
2 **COUNSEL OF RECORD:**

3           **PLEASE TAKE NOTICE** that on January 4, 2018 at 2:00 p.m. in  
4 Courtroom 2 of the above-entitled court located at 1301 Clay Street, Oakland,  
5 California, plaintiff Judith Badgley, as Executor of the Estate of Patricia Yoder  
6 (“Plaintiff”), will and hereby does move this Court for summary judgment against  
7 defendant United States of America (“Defendant”) on Plaintiff’s claim for a refund  
8 of estate taxes paid on the Estate of Patricia Yoder. Plaintiff brings this Motion  
9 pursuant to Federal Rule of Civil Procedure 56, and the Northern District Civil  
10 Local Rules 7-2, 7-3, 7-4, 7-5, and 56-1. This Motion is based on the grounds that  
11 there is no triable issue of material fact, and that summary judgment is appropriate  
12 as a matter of law on Plaintiff’s claim for a refund, pursuant to 26 U.S.C. section  
13 7422,<sup>1</sup> for the overpayment of \$3,810,004 in estate taxes (out of a total of  
14 \$11,206,694 in estate taxes paid). Specifically, Plaintiff’s Motion is based on the  
15 grounds that:

16           1.     The Grantor Retained Annuity Trust (“GRAT”) that decedent Patricia  
17 Yoder (“Patricia”) created in 1998 complied with section 2702(a)(2) in that the fixed  
18 annuity the GRAT paid was a “qualified interest” as defined in section 2702(b)(1);<sup>2</sup>

19           2.     Patricia did not retain the right to the “income from, the property” that  
20 Patricia transferred to her GRAT within the meaning of section 2036(a)(1), a section  
21 of the Internal Revenue Code that dictates whether the trust corpus, and how much  
22 of the corpus, is included in a decedent’s gross estate;

23           3.     Patricia did not retain a right to “possession or enjoyment of . . . the  
24 property” that Patricia transferred to her GRAT, within the meaning of Section  
25 2036(a)(1);

26

27 <sup>1</sup> Unless otherwise noted, all section references are to the Internal Revenue Code  
of 1986, as amended, Title 26 of the United States Code.

28 <sup>2</sup> Defendant does not dispute that Patricia’s annuity was a “qualified interest” as  
defined in section 2702(b)(1).

1 4. The Internal Revenue Service’s relevant regulation, 26 C.F.R. section  
2 20.2036-1, in which the IRS interprets section 2036(a)(1), is overly broad and  
3 invalid *as applied to a GRAT like Patricia Yoder’s GRAT*; and

4 5. Because section 2036(a)(1) did not apply to Patricia’s GRAT (i.e.,  
5 Patricia did not retain the right to income from the property or possession or  
6 enjoyment of the property after she transferred it to her GRAT), the estate tax paid  
7 for Patricia’s estate in 2013 included the overpayment of \$3,810,004 in tax (because  
8 of the inclusion of the full date-of-death value of the GRAT’s corpus in her gross  
9 estate), which the IRS failed to refund in response to the June 2016 Claim for  
10 Refund.

11 For these reasons, Plaintiff is entitled to summary judgment awarding her a  
12 refund of \$3,810,004 in estate tax, plus interest on that principal sum as provided by  
13 law from January 30, 2014.

14 Plaintiff’s Motion is based upon this Notice of Motion and Motion, and the  
15 attached Memorandum of Points and Authorities; the declarations of Judith  
16 Badgley, Pamela Yoder, Jeffrey Hipshman and Damon Mircheff; the Request for  
17 Judicial Notice; the accompanying exhibits in support thereof, the [Proposed] Order,  
18 and upon such other matters as may be presented to the Court on Plaintiff’s behalf in  
19 connection with this Motion.

20 Dated: November 20, 2017

Respectfully submitted,  
RUTAN & TUCKER, LLP

By: /s/ Damon Mircheff  
Damon D. Mircheff  
Attorneys for Plaintiff  
Judith Badgley, as Executor of the  
Estate of Patricia Yoder

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND ARGUMENT SUMMARY.**

This is an action by plaintiff Judith Badgley, as a co-Executor of the Estate of Patricia Yoder (“Plaintiff”), for the refund of the overpayment of \$3,810,004 in estate tax paid in January 2014 for the Estate of Patricia Yoder, pursuant to the Internal Revenue Code of 1986, as amended.

In 1998, Patricia Yoder (“Patricia”) created a type of trust commonly known as a Grantor Retained Annuity Trust (“GRAT”).<sup>3</sup> She funded her GRAT with her 50% partnership interest in Y&Y Company, a partnership that owned commercial properties. The GRAT was designed to pay Patricia a fixed annuity for 15 years (paid quarterly) or until her earlier death and, at the expiration of the 15-year term or on her earlier death to transfer the GRAT’s corpus, less all remaining amounts due under the obligation to pay the annuity, to Patricia’s adult daughters Pamela Yoder (“Pamela”) and Judith Badgley (“Judith”).

The formation the and funding of the GRAT resulted in a taxable gift of the discounted value of the GRAT’s corpus to Pamela and Judith at the end of the 15-year term, and Patricia filed a gift tax return reporting such gift. Patricia died in November 2012, less than 90 days before the end of the GRAT’s 15-year term, with only \$101,992.89 remaining payable (\$75,564.75 on December 31, 2012, and \$26,428.14 on February 1, 2013).

The issue in this case is how much of the date-of-death value of the GRAT’s corpus was includable in Patricia’s gross estate for estate tax purposes, and turns on the interpretation of Title 26 of the United States Code, section 2036(a)(1) and validity of the Internal Revenue Service’s regulation (26 C.F.R. § 20.2036-1) as applied to Patricia’s GRAT.<sup>4</sup> Plaintiff maintains that only \$101,303.36 (the net

<sup>3</sup> This Motion refers to most individuals by first name because there are multiple members of the family with the last name of “Yoder.” including decedent Patricia Yoder, her late husband Donald Yoder, her daughter Pamela Yoder, and her brother-in-law H. Frank Yoder, III.

<sup>4</sup> Unless otherwise noted, all section references are to the Internal Revenue Code



1 present value of the remaining unpaid annuity amounts valued using the section  
2 7520 interest rate for November 2012 of 1.07%) was includable under section 2033.  
3 Defendant, however, maintains that the entire date-of-death value of the corpus of  
4 the GRAT (\$10,987,029) was includable under section 2036(a)(1).

5 It is undisputed that had Patricia died even one day after January 31, 2013  
6 (the expiration date of the GRAT's 15 year term) there would have been nothing  
7 includable in her gross estate under section 2036(a)(1), and only \$26,428.14 (the  
8 pro-rated unpaid annuity amount for January 2013) includable in her gross estate  
9 under section 2033. Defendant argues that because she died 89 days prior to the  
10 expiration of the 15 year term (and Defendant would make the same argument had  
11 she died just one day prior thereto), the entire date-of-death value of the GRAT  
12 corpus (\$10,987,029) was includable under section 2036(a)(1). For a statute to  
13 operate in such a draconian fashion, its applicability to the facts at hand should be  
14 crystal clear. Because section 2036(a)(1) does not, on its plain language, apply to  
15 Patricia's GRAT, the court should reject the Defendants' interpretation and  
16 argument.

17 Plaintiff asserts that, based on the plain language of section 2036(a)(1), it  
18 does not apply to Patricia's GRAT. However in 2008, due to the increased use of  
19 GRATs, the Internal Revenue Service promulgated the Regulation, which states that  
20 for *all GRATs*, the right to receive a fixed sum (i.e., an annuity) is a retention of a  
21 "right to the income" from the transferred property within the meaning of section  
22 2036(a)(1). *Id.* The tax consequence of the Regulation is that if the grantor of a  
23 GRAT dies prior to the expiration of the term of a GRAT, an amount determined by  
24 formula, up to the full date-of-death value of the GRAT corpus, is includable in the  
25 grantor's gross estate for estate tax purposes.

26 The validity of the Regulation *as applied to Patricia's GRAT* is thus central to  
27

28 of 1986, as amended, Title 26 of the United States Code. All references the  
"Regulation" are to Treasury Reg., 26 C.F.R. § 20.2036-1.



1 this Motion. The Regulation treats all GRATs the same for purposes of section  
2 2036(a)(1); but they are not all the same. The Regulation is invalid as to all GRATs.  
3 The Regulation correctly interprets section 2036(a)(1) for some kinds of GRATs,  
4 namely: (i) GRATs with an “ordering rule” (i.e., a rule that income must first be  
5 used to pay the annuity and principal used only to the extent there is insufficient  
6 income); (ii) GRATs where, even absent an ordering rule, the annuity payments  
7 cannot be satisfied without using income; and (iii) GRATs with payments of income  
8 disguised to look like annuity payments. The Regulation, however, does not  
9 properly interpret section 2036(a)(1) with respect to Patricia’s GRAT, where none  
10 of those conditions exist. And here, the application of section 2036(a)(1), to  
11 Patricia’s GRAT resulted in the substantial overpayment of estate tax.

12 Because this dispute is centered upon the interpretation of section 2036(a)(1)  
13 and the validity of the Regulation as applicable to Patricia’s GRAT, the material  
14 facts are limited and not reasonably disputed, and this Court can and should  
15 summarily adjudicate the applicability of the Regulation to Patricia’s GRAT, and  
16 the estate tax properly due with respect to her GRAT.

17 Plaintiff will establish that: (i) Patricia did not retain the “right to income”  
18 from the interest in Y&Y Company which she transferred to her GRAT within the  
19 meaning of section 2036(a)(1); (ii) Patricia did not retain the “possession or  
20 enjoyment” of the transferred interest in Y&Y Company within the meaning of  
21 section 2036(a)(1); (iii) even assuming (arguendo) that because of her status as the  
22 Trustee of the GRAT Patricia retained possession or enjoyment of the transferred  
23 interest in Y&Y Company, she did not possess such possession or enjoyment at the  
24 time of her death;<sup>5</sup> and (iv) the IRS’s interpretation of section 2036(a)(1), as applied  
25 to Patricia’s GRAT, is inconsistent with the statutory language and intent.

26 Accordingly, under the correct interpretation and application of section

27 \_\_\_\_\_  
28 <sup>5</sup> The point in time to test the applicability of section 2036(a)(1) is Patricia’s date  
of death; of the requisite time periods specified in section 2036(a)(1), only a  
“period, which does not in fact end before [the decedent’s] death” is relevant here.

1 2036(a)(1), Plaintiff is entitled to the requested refund of \$3,810,004, plus interest as  
2 provided by law from January 30, 2014.

3 **II. UNDISPUTED MATERIAL FACTS.**

4 **A. The Yoder Family real estate business.**

5 Patricia Yoder met her future husband Donald Yoder (“Donald”) in the 1950s  
6 while both were attending universities in Los Angeles, California. Shortly after they  
7 graduated, they moved to Europe, where Donald performed his service with the  
8 United States Army. After Donald completed his military service, he and Patricia  
9 returned to the states, ultimately moving to California. Donald and Patricia had  
10 three daughters: Pamela, Judith, and Deborah. Deborah died from cancer in her  
11 early 20s.

12 Donald spent his professional life after the service developing, managing and  
13 owning commercial real estate in California. He did so primarily through a general  
14 partnership with his father H. Frank Yoder, Jr. (or H. Frank Yoder, II) called Yoder  
15 and Yoder, and through a separate general partnership with his brother H. Frank  
16 Yoder, III (“Frank Yoder”) called Y&Y Company. Both partnerships purchased  
17 undeveloped land, constructed commercial buildings, and, for most of those  
18 projects, held and managed them as income-generating properties.

19 Donald and Frank Yoder were 50% partners in Y&Y Company. Badgley  
20 decl., ¶¶ 3-4, Ex. A. In 1976, Donald and Frank Yoder executed a written  
21 partnership agreement for Y&Y Company. *Id.*, Ex. A.<sup>6</sup>

22 **B. Patricia Yoder creates the GRAT in 1998, which gave her the right**  
23 **to receive fixed annuity payments for 15 years.**

24 Donald died in 1990. Under Y&Y Company’s partnership agreement, Frank  
25 Yoder had the right to buy out Donald’s 50% interest in Y&Y Company on  
26 Donald’s death, but did not elect to do so. Badgley decl., ¶ 3, Ex. A; ¶ 4, Ex. B.

27  
28 <sup>6</sup> The facts in Section II.A. without evidentiary cites are not necessary to decide  
this Motion, but are provided for clarity and context.

1 Donald's 50% partnership interest in Y&Y Company thus passed to Patricia. *Id.* So  
2 too, did Donald's 50% partnership interest in Yoder and Yoder. Patricia and Frank  
3 Yoder executed an amendment to the Y&Y Company partnership agreement in  
4 1997. Badgley decl., ¶ 4, Ex. B.

5 From the mid-1980s through Patricia's death in late 2012, Yoder  
6 Development, run by daughter Pamela (who lived in Orange County, and who  
7 assumed responsibilities for Yoder Development and its property leasing and  
8 management functions from Donald), managed the properties owned by Y&Y  
9 Company and Yoder & Yoder. Yoder decl., ¶¶ 3-4. After Donald's death, Patricia  
10 gradually became involved with the partnerships, but for most the time from the  
11 1990s through 2012, entrusted Pamela and Yoder Development with managing the  
12 partnerships' properties. *Id.*, ¶ 4; Mircheff decl., ¶ 2, Ex. U [Patricia Yoder depo.,  
13 21:1-26:1].

14 In February 1998, Patricia created the GRAT. Badgley decl., ¶ 8, Ex. F. In  
15 connection with doing so, Patricia transferred her 50% interest in Y&Y Company,  
16 then valued at \$2,418,075, to the GRAT. *Id.*, ¶ 8, Ex. F, ¶ 9, Ex. G [Patricia Yoder  
17 1998 Gift (and Generation Skipping Transfer) Tax Return, with Limited Appraisal  
18 Report concerning Patricia Yoder's one-half interest in Y&Y Company partnership,  
19 dated December 29, 1997]. Patricia thus paid gift taxes of \$180,606 in connection  
20 with creating the GRAT. Badgley decl., ¶ 9, Ex. G.

21 The reason for the GRAT was to enable Patricia to make a gift to her  
22 daughters Pamela and Judith of the GRAT corpus remaining after paying Patricia a  
23 fixed annuity for a term of 15 years. Badgley decl., Ex. F; Mircheff decl., ¶ 2, Ex. U  
24 [Badgley depo., 59:3-12]. Patricia was the Trustor and Trustee under the GRAT,  
25 but the GRAT provided that Pamela would become successor trustee if Patricia  
26 became "unable or unwilling to act as Trustee" of the GRAT. Badgley decl., ¶ 8,  
27 Ex. F.

28 The GRAT provided for an annuity of \$302,259 per year to Patricia for a term

1 of 15 years or until her earlier death. Badgley decl., ¶ 8, Ex. F. At the expiration of  
 2 the term of years (January 31, 2013) or upon Patricia's earlier death, the corpus of  
 3 the GRAT, less all remaining amounts due under the annuity obligation, was to be  
 4 (and was) distributed to Patricia's living descendants – Pamela and Judith.

5 From when Patricia created the GRAT in February 1998 until her death in  
 6 November 2012, Patricia's largest source of income was her interest in Yoder and  
 7 Yoder. Yoder decl., ¶ 6; Badgley decl., ¶ 14, Ex. H [2013 estate tax return]; see  
 8 Hipshman decl., ¶¶ 6-10, Ex. M-Q [Patricia Yoder partnership tax returns]; ¶¶ 11-  
 9 13, Exs. R-T [Patricia Yoder income tax returns]. The estate tax return for Patricia's  
 10 Estate reports that her 50% interest in Yoder and Yoder as of her death in 2012 was  
 11 worth \$10,410,000. Badgley decl., ¶ 14, Ex. H, ¶ 15, Ex. I. The 50% interest in  
 12 Y&Y Company in the GRAT, in contrast, was worth \$6,409,000 as of Patricia's  
 13 death in 2012. *Id.*

14 Because of her income from Yoder and Yoder, Patricia did not require the  
 15 GRAT's annuity payments for her living expenses, and instead reinvested them.  
 16 Yoder decl., ¶ 6; see Badgley decl., ¶ 14, Ex. H; see Mircheff decl., ¶ 2, Ex. U  
 17 [Badgley depo., 119:25-121:9].

18 **C. Patricia Yoder becomes terminally ill in October 2012, and died**  
 19 **less than three months before the expiration of GRAT's 15-year**  
 20 **term.**

21 Later in her life, Patricia had a chronic respiratory disease that made her  
 22 susceptible to respiratory infections. On or about October 22, 2012, Patricia was  
 23 hospitalized with acute symptoms, for what would be her final hospitalization before  
 24 her death on November 2, 2012. Yoder decl., ¶ 7.

25 On Tuesday, October 30, Patricia left the hospital and returned to her home in  
 26 Newport Beach to spend her remaining few days with her family and receive  
 27 hospice care. *Id.*, ¶ 8.

28 Pamela, who also lived in Orange County, California, was with Patricia daily

1 from when Patricia was hospitalized on October 22 through Patricia's death. Yoder  
 2 decl., ¶¶ 7, 9. Judith, who lived in Sonoma County, traveled to Southern California  
 3 to be with Patricia when she was hospitalized, and was also with Patricia daily from  
 4 part of Patricia's hospitalization through Patricia's death on November 2. Badgley  
 5 decl., ¶ 10.

6 In the last few days of her life, starting October 30 when she returned to her  
 7 home, Patricia suffered a rapid further deterioration in her physical health and  
 8 mental acuity, and lost the ability to act on her own behalf, including with respect to  
 9 her financial affairs. Mircheff decl., ¶ 2, Ex. U [Badgley depo., 68:3 – 72:6]; ¶ 3,  
 10 Ex. V [Pamela Yoder depo., 76:13 – 78:13, 82:3-11]; Yoder decl., ¶¶ 7, 9, Ex. K  
 11 [memo of Dr. John Storch]; Badgley decl., ¶ 11. Because Patricia ceased to have  
 12 capacity to act as Trustee under the GRAT, pursuant to Article Seven of the GRAT,  
 13 Pamela automatically became the Successor Trustee. Badgley decl., ¶ 8, Ex. F.  
 14 Article Seven of the GRAT states in relevant part:

15 If at any time the Trustor becomes unable or unwilling to  
 16 act as Trustee, the persons listed below shall serve as  
 successor Trustee in the order named.

17 First: Pamela A. Yoder  
 18 Second: Judith M. Badgley

19 *Id.* [GRAT, Article 7].

20 When Patricia lost capacity to act as Trustee of the GRAT, Pamela Yoder  
 21 understood that she was the successor Trustee, was willing and able to act as  
 22 successor Trustee, and accepted her appointment as successor Trustee of the GRAT.  
 23 Mircheff decl., ¶ 3, Ex. V [Pamela Yoder depo., 83:20 – 84:7, 86:17- 87:20]; Yoder  
 24 decl., ¶ 10.

25 Pamela, together with Judith, contacted Patricia's attorney to inquire if  
 26 anything needed to be done with respect to the GRAT before Patricia's imminent  
 27 death. Mircheff decl., ¶ 2, Ex. U [Badgley depo., 73:13 – 74:16, 77:3-78:3]; Yoder  
 28 decl., ¶¶ 10-11. Pamela and Judith also identified Patricia's banking records,

1 including the records for the GRAT. Yoder decl., ¶ 11; Mircheff decl., ¶ 3, Ex. V  
2 [Pamela Yoder depo., 73:9-18].

3 On Wednesday, October 31, Pamela and Judith went to Wells Fargo Bank in  
4 an effort to gain access to Patricia's account to pay Patricia's bills. Yoder decl.,  
5 ¶ 12; Mircheff decl., ¶ 3, Ex. V [Pamela Yoder depo., 79:12-80:13]. Wells Fargo  
6 would not give them access to Patricia's account without substantiation that Patricia  
7 lacked capacity. *Id.*

8 On Thursday, November 1, 2012, Pamela and Judith obtained a note from  
9 Patricia's physician, Dr. John Storch, attesting to Patricia's lack of capacity, so  
10 Pamela could, among other things, gain access to the Wells Fargo account to pay  
11 Patricia's bills. Yoder decl., ¶ 13, Ex. K.

12 On Friday, November 2, 2012, Patricia died in her home, only 89 days prior  
13 to the end of the GRAT's 15-year term. Dkt. 27 [Answer, ¶ 6]. Only the annuity  
14 amount for the last quarter of 2012 and the prorated annuity amount for January,  
15 2013 remained to be paid as of Patricia's death.

16 **D. Pamela and Judith file an estate tax return for Patricia's Estate in**  
17 **January 2014, with the Estate paying estate taxes of \$11,206,694.**

18 Patricia's property was held in the Survivor's Trust, a trust created under the  
19 D. and P. Yoder Revocable Trust dated June 15, 1982, as amended ("Survivor's  
20 Trust"). Badgley decl., ¶ 5, Ex. C.

21 Pursuant to the July 1990 First Amendment to the D. and P. Yoder Revocable  
22 Trust, Pamela and Judith became co-trustees of that trust when Donald and Patricia  
23 became unwilling or unable to act as Trustee. Badgley decl., ¶ 6, Ex. D [1990 First  
24 Amendment to D. and P. Yoder Revocable Trust]. Upon Patricia becoming  
25 incapacitated shortly before her death, Pamela and Judith became co-trustees of the  
26 Survivor's Trust, and, after Patricia's death, were co-executors of Patricia Yoder's  
27 estate.<sup>7</sup> Badgley decl., ¶ 6, Exs. D, ¶ 14, Ex. H [2013 estate tax return identifying

28 <sup>7</sup> As persons in actual possession of Patricia's property, Pamela and Judith are the



1 Pamela and Judith as co-executors of estate of Patricia Yoder].

2 After Pamela and Judith discussed the estate tax return for Patricia's estate  
3 with their tax advisors, they elected to pay the full amount of estate tax that they  
4 were told the IRS would assert was owed with respect to the GRAT under the  
5 Regulation and, after paying those taxes, to seek a refund. Badgley decl., ¶ 13;  
6 Yoder decl., ¶ 15. They thus included the entire date-of-death value of the corpus of  
7 Patricia's GRAT in her gross estate for federal estate tax purposes. Badgley decl.,  
8 ¶ 14, Ex. H. Pamela and Judith took that approach (pay the taxes first, seek a refund  
9 later), rather than challenging the Regulation when filing the estate tax return, to  
10 avoid the risk of being assessed an underpayment penalty should they not prevail on  
11 their refund claim. Badgley decl., ¶ 13; Yoder decl., ¶ 15.

12 On January 30, 2014, Pamela and Judith, as co-executors of Patricia's estate,  
13 timely filed an estate tax return for Patricia's estate, and paid the estate tax reported  
14 thereon in the amount, after an audit adjustment, of \$11,206,694. Dkt. No. 27  
15 [Answer, ¶ 9]; Badgley decl., ¶¶ 14-15, Exs. H and I; Yoder decl., ¶ 16.

16 **E. The IRS did not act upon Plaintiff's Claim for Refund, and**  
17 **Plaintiff filed this action.**

18 On June 1, 2016, Judith, in her capacity as a statutory executor of Patricia's  
19 estate timely filed an IRS form 843 Claim For Refund (the "Claim for Refund") for  
20 \$3,810,004 in estate tax, plus interest. Dkt. No. 27 [Answer, ¶ 10]; Badgley decl.,  
21 ¶ 17, Ex. K.

22 Where the IRS does not advise of the allowance or disallowance of a claim  
23 for refund within six months after filing, the taxpayer's representative (here, Judith,  
24 as a statutory executor of Patricia's estate) may file a refund action in the United  
25 States District Court. The IRS did not advise on the allowance or disallowance of  
26 the Claim for Refund within that time period. Dkt. No. 8 [FAC, ¶ 11]; Dkt. No. 27  
27 [Answer, ¶ 11].

28 \_\_\_\_\_  
statutory co-executors of Patricia's estate within the meaning of section 2203.



1 Judith, as a statutory executor of Patricia’s estate, is the sole and absolute  
2 owner of this claim for refund, and has made no transfer or assignment of any part  
3 thereof. Badgley decl., ¶ 2. Judith filed this action in the Central District of  
4 California on January 23, 2017. Dkt. No. 1. Venue was subsequently transferred to  
5 the Northern District, where Judith resides. Dkt. Nos. 10 and 11 [stipulation to  
6 transfer venue, and order thereon]. The operative pleadings are the First Amended  
7 Complaint, and Defendant’s Answer. Dkt. Nos. 8 and 27.

### 8 **III. LEGAL ARGUMENT.**

#### 9 **A. Legal standard for motion for summary judgment.**

10 Summary judgment is appropriate when there is no genuine dispute as to any  
11 material fact and the moving party is entitled to judgment as a matter of law. Fed.  
12 R. Civ. P. 56(a). When the moving party has the burden of proof on a specific issue,  
13 the moving party has the burden of establishing a prima facie case as to that issue on  
14 its motion for summary judgment. *See UA Local 343 v. Nor-Cal Plumbing, Inc.*,  
15 48 F.3d 1465, 1471 (9th Cir. 1995).

16 “If the moving party meets its initial burden of showing the absence of a  
17 material and triable issue of fact, the burden then moves to the opposing party, who  
18 must present significant probative evidence tending to support its claim or defense.”  
19 *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).  
20 If the nonmoving party fails to make this showing, the moving party is entitled to a  
21 judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).  
22 “[S]ummary judgment should be granted where the nonmoving party fails to offer  
23 evidence from which a reasonable jury could return a verdict in its favor.” *Arpin v.*  
24 *Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001); *see UA*  
25 *Local 343*, 48 F.3d at 1471. Production of a “scintilla of evidence” in support of an  
26 essential element will not forestall summary judgment. *Anderson v. Liberty Lobby,*  
27 *Inc.*, 477 U.S. 242, 252 (1986). Under this standard, “the mere existence of some  
28 alleged factual dispute between the parties will not defeat an otherwise properly

1 supported motion for summary judgment.” *Id.* at 247-248.

2 **B. Section 2036(a)(1) does not apply to Patricia’s GRAT.**

3 Section 2036(a)(1) states in pertinent part;

4 The value of the gross estate shall include the value of all  
5 property to the extent of any interest therein of which the  
6 decedent has at any time made a transfer (except in case of  
7 a bona fide sale for an adequate and full consideration in  
8 money or money’s worth), by trust or otherwise, under  
9 which he has retained for his life or for any period not  
ascertainable without reference to his death or *for any  
period which does not in fact end before his death* —

(1) *the possession or enjoyment of, or the right to the  
income from, the property,*

10 (Emphasis added.) Section 2036 is referred to as a “strings” section because the  
11 underlying issue is whether the decedent has retained a “string” to pull the  
12 transferred property back into his or her gross estate for estate tax purposes at full  
13 date-of-death value.

14 To come within the scope of section 2036(a), the decedent must retain the  
15 “string” until (i) the decedent’s death, (ii) a period of time not ascertainable without  
16 reference to the decedent’s death or (iii) a period of time which does not in fact end  
17 before the decedent’s death. In this case the relevant “string” would be either “the  
18 right to the income from, the [transferred] property,” or “the possession or  
19 enjoyment of . . . the [transferred] property.” 26 U.S.C. § 2036(a)(1). Patricia  
20 retained neither “string”.

21 **1. Patricia Yoder did not retain a “right to the income” of the**  
22 **GRAT property within the meaning of section 2036.**

23 Patricia did not either expressly or impliedly retain a right to the income from  
24 the 50% interest in Y&Y Company which she transferred to the GRAT.<sup>8</sup>

25 Put simply, a fixed annuity payment payable out of transferred property is not  
26 the same as the income from the property. The retention of the right to receive a

27 <sup>8</sup> A grantor can be considered to have impliedly retained a right to income where  
28 income must be used to satisfy the annuity payments or where the annuity payments  
are no more than disguised payments of income.

1 fixed sum over time should not be treated as the retention of a “right to the income”  
 2 from the transferred property within the meaning of section 2036(a)(1). While the  
 3 income generated by the transferred property will necessarily fluctuate from year to  
 4 year, a fixed annual payment does not depend on the income generated or the  
 5 performance of the transferred asset, and does not fluctuate over time. See  
 6 Hipshman decl., ¶¶ 6-10, Exs. M-Q [rents generated by Y&Y Company, reported on  
 7 partnership tax returns, fluctuating by tens or hundreds of thousands of dollars  
 8 between 2008 and 2012].

9 The term “right” in section 2036(a)(1) (i.e., the “right to income”) connotes  
 10 an ascertainable and legally enforceable power. See *United States v. Byrum*, 408  
 11 U.S. 125, 136-37 (1972). Here, Patricia had a right to receive annuity payments; she  
 12 did not have a right to receive income from the transferred property. An annuity  
 13 payment is a mixture of income and principal, or principal only, and does not vary  
 14 with the income of the GRAT.

15 Where a decedent . . . has transferred property to another  
 16 in return for a promise to make periodic payments to the  
 17 transferor for his lifetime, ***it has been held that these  
 payments are not income from the transferred property  
 so as to include the property in the estate of the decedent.***

18 *Fidelity-Philadelphia Trust Co. v. Smith*, 356 U.S. 274, 280 n.8 (1958), emphasis  
 19 added; see also *Cain v. Comm’r*, 37 T.C. 185 (1961) (acq.) [the right to receive  
 20 installment payments from the sale of property to continue for a period of years or  
 21 until the seller’s death, whichever is shorter, does not constitute a right to income if  
 22 the amounts do not vary with the income produced by the transferred property.]

23 Defendant argues that because income was at all times available to satisfy the  
 24 annuity payments, Patricia’s right to the payments constituted a right to income even  
 25 if income was not used to satisfy the annuity payments. This argument has no merit.  
 26 The possibility that the Trustee might use income to make the annuity payments was  
 27 no more than that: a possibility. Patricia, as beneficiary, could not legally compel  
 28 the Trustee to use income rather than principal to pay the annuity. She thus did not

1 have a “right to income” in any normal sense of that term. An indirect and remote  
2 right to income is not a right to income for purposes of section 2036 inclusion. See  
3 *Wyly v. Commissioner*, 610 F.2d 1282 (5th Cir. 1980).

4 In order for there to be a right, there must be a corresponding obligation.  
5 Thus, a right over trust property requires a corresponding obligation on the part of  
6 the trustee. In order for the beneficiary to have had a right to the GRAT’s income,  
7 the trustee must have had a corresponding obligation both to (1) generate income,  
8 and (2) allocate income to the annuity payment.

9 The trustee of Patricia’s GRAT had no obligation to generate income, and  
10 even though substantial income was generated, there was no obligation to pay  
11 income rather than principal, as long as sufficient principal was available to satisfy  
12 the annuity payments. Badgley decl., ¶ 8, Ex. F [GRAT]. Since the trustee was not  
13 required to generate income, and since the trustee could satisfy the GRAT payments  
14 out of principal alone, there was not even an implied right to the income. Badgley  
15 decl., ¶¶ 14-15, Exs. H and I [see Schedule G to estate tax return re appreciated  
16 value of Y&Y Company and accumulated annuity payments]; Hipshman decl.,  
17 ¶¶ 11-13, Exs. R-T [showing accumulated value of GRAT annuity payments and  
18 GRAT principal].

19 Defendant’s position that Patricia’s role as trustee distinguishes this case  
20 because, as trustee, she had the discretion to use income rather than principal to  
21 make the payments, also fails as a matter of law. In *United States v. Byrum*, the  
22 Court explained,

23 At the outset, we observe that this Court has never held  
24 that trust property must be included in a settlor’s gross  
25 estate solely because the settlor retained the power to  
26 manage trust assets. On the contrary, since our decision in  
27 *Reinecke v. Northern Trust Co.*, 278 U.S. 339 (1929), it  
28 has been recognized that a settlor’s retention of broad  
powers of management does not necessarily subject an  
intervivos trust to the federal estate tax. Although there  
was no statutory analogue to section 2036(a)(2) when  
*Northern Trust* was decided, several lower court decisions  
decided after the enactment of the predecessor of section  
2036(a)(2) have upheld the settlor’s right to exercise

1 managerial powers without incurring estate tax liability.

2 408 U.S. at 132-133, footnotes omitted.

3 Defendant's argument that Patricia's role as trustee distinguishes this case  
4 fails for an additional reason: The "right to the income" under section 2036(a)(1)  
5 must be held for the requisite time period, in this case until *the expiration of a*  
6 *period which does not in fact end before his/her death*. So even if Defendant's  
7 argument might otherwise have merit on different facts (which Plaintiff disputes), it  
8 has no merit in this case because the period during which Patricia was acting as the  
9 trustee ended before her death. The undisputed facts show that Patricia became  
10 unable to continue to act as Trustee of her GRAT days before her death, and Pamela  
11 became Successor Trustee pursuant to the GRAT's express terms.

12 **2. Patricia Yoder did not retain "the possession or enjoyment**  
13 **of . . . the [GRAT] property" within the meaning of**  
14 **section 2036.**

15 The reference in section 2036(a)(1) to the "possession or enjoyment" of the  
16 transferred property ensures that the section reaches assets that do not generate  
17 income in the conventional sense (e.g., vacation homes, works of art) if the decedent  
18 retained the right to occupy or otherwise use the property. See 5 Boris I. Bittker  
19 & Lawrence Lokken, *Federal Taxation of Income, Estates, and Gifts*, par. 126.6.2  
20 (2d Ed. 1993). Cases have equated the right to income with enjoyment of the  
21 property. Cf. *McNichols v. Commissioner*, 265 F.2d 667 (3d Cir 1959); *Estate of*  
22 *Barlow v. Commissioner*, 55 T.C. 666 (1971). Those cases dealt with fact situations  
23 where there was no question that what the grantor retained or reserved was income;  
24 in other words, "enjoyment" of the property existed where the decedent received the  
25 income therefrom.

26 Section 2036(a)(1) thus uses the term "possession or enjoyment" to deal with  
27 situations in which the property owner has divested himself of title, but has retained  
28 the lifetime possession or use of the property. No case has held that a person has

1 retained “possession or enjoyment” of the property if he has transferred title  
2 irrevocably, made complete delivery of the property, and relinquished the right to  
3 income where the property is income producing. *See Byrum*, 408 U.S. 125. Here,  
4 Patricia transferred her title to the 50% interest in Y&Y Company irrevocably to the  
5 GRAT, and made complete delivery of that property to the GRAT. Thus, Patricia  
6 cannot be held to have retained the “enjoyment” of the property unless she retained  
7 the income generated by it. As established above, she did not.

8 Defendant may argue that as Trustee, Patricia effectively held the right to  
9 possess and enjoy the transferred property, regardless of the fact Patricia did not  
10 retain any right to income. However, Patricia was not Trustee at her death. The  
11 undisputed evidence shows that Pamela was the Successor Trustee of the GRAT at  
12 Patricia’s death, and hence, even under that argument by Defendant, Patricia was  
13 not in possession of the GRAT property as of her death.

14 Moreover, Patricia’s power as trustee of the GRAT to manage and control the  
15 property did not constitute “the . . . enjoyment of . . . the property” within the  
16 meaning of section 2036(a)(1). *See Byrum*, 408 U.S. at 145-46; see also  
17 *Commissioner v. Holmes*, 326 U.S. 480, 486 (1946) [stating that it is well settled  
18 that the terms “‘enjoyment’ and ‘enjoy’, as used in these and similar statutes, are not  
19 terms of art, but connote substantial present economic benefit rather than technical  
20 vesting of title or estates.”]; *Old Colony Trust Co. v. U.S.*, 423 F.2d 601, 603-604  
21 (1st Cir., 1970 [“We hold that no aggregation of purely administrative powers can  
22 meet the government’s amorphous test of ‘sufficient dominion and control’ so as to  
23 be equated with ownership.”]).

24 In sum, because Patricia did not retain “the right to the income from, the  
25 [transferred] property,” or “the possession or enjoyment of . . . the [transferred]  
26 property” as of her death, no part of the GRAT was includable in her gross estate  
27 under section 2036(a)(1).

28 ///



1           **C. The Regulation is overly broad, and to that extent is invalid as**  
 2           **applied to Patricia’s GRAT.**

3           **1. The Court must disregard an IRS regulation that is**  
 4           **inconsistent with the corresponding statute.**

5           An interpretive regulation inconsistent with the statute will be ignored. *Prof’l*  
 6 *Equities v. Commissioner*, 89 T.C. 165 (1987). Similarly, a regulation that departs  
 7 from the statute’s express wording is invalid. *Altera Corp. v. Commissioner*, 145  
 8 T.C. No. 3 (July 27, 2015). Where the meaning and effect of a Code section is not  
 9 what the IRS thinks it should be, the IRS may not fix the perceived flaw by  
 10 regulation. See *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Although the IRS  
 11 may believe that the use of GRATs must be curtailed because they are such a  
 12 powerful estate planning device with which to reduce the taxable estate, that does  
 13 not justify its interpretation of section 2036(a)(1) to require including the entire  
 14 date-of-death value of the trust corpus in the decedent’s gross estate where the  
 15 statute does not clearly and expressly so provide. The “solution” is for Congress to  
 16 amend section 2036.

17           **2. The Regulation is an incorrect interpretation of Section 2036**  
 18           **as applied to Patricia’s GRAT.**

19           The intended scope of the Regulation is summed up in the following  
 20 statement in the Preamble to Treasury Decision 9414 (7/14/08): “The IRS and  
 21 Treasury Department believe . . . that under section 2036 every type of lifetime  
 22 interest in property (annuity, income, use or enjoyment of the transferred property,  
 23 etc.) retained for the requisite time period constitutes the retained possession and  
 24 enjoyment of the transferred property or the income therefrom, causing inclusion of  
 25 the transferred property in the transferor's gross estate.”

26           The question presented in this case is whether a right to receive an annuity is  
 27 a retained lifetime interest in the transferred property. Plaintiff maintains that the  
 28 retention of the right to receive a fixed sum over time should not be treated as the



1 retention of a right to the income of the transferred property or its possession or  
2 enjoyment within the meaning of section 2036(a)(1). However, in the above-quoted  
3 statement the IRS and Treasury Department answer the question presented in the  
4 affirmative by the simple assertion that an annuity is a retained lifetime interest in  
5 property, without any supporting analysis or authority other than *Ne. Pa. Nat'l Bank*  
6 *& Tr. Co. v. United States*, 387 U.S. 213 (1967). *Ne. Pa. Nat'l Bank & Tr. Co.* is a  
7 case where a court is stretching to rescue a marital deduction to save the taxpayer.  
8 Such a decision, which goes out of its way to help the taxpayer by salvaging a  
9 marital deduction out of a poorly drafted trust, should not dictate the rule for  
10 deciding how much, if any, of an annuity payment will be considered as income or  
11 otherwise bind a court determining whether or to what extent the property of a  
12 GRAT should be included in a decedent's estate. Defendant asks the Court to accept  
13 a strained reading of section 2036(a)(1) as applied to Patricia's GRAT to hurt – not  
14 help – the taxpayer.

15 The conclusion that an annuity is a retained interest in the transferred  
16 property, moreover, would cause all private annuities that do not qualify for the full  
17 and adequate consideration exception under section 2036 to be included in the  
18 transferor-annuitant's gross estate under section 2036(a)(1). Such a conclusion is  
19 contrary to the cases that have found no includable retained income interest in a  
20 private annuity for life. See, e.g., *Lafargue v. Commissioner*, 689 F.2d 845 (9th Cir.  
21 1982). The Preamble's self-serving and unpersuasive attempt to explain away the  
22 private annuity cases on the ground that they are negotiated with a third party falls  
23 short because a private annuity entails little negotiation, as the tax law dictates what  
24 must be paid to the annuitant in order to avoid adverse gift and estate tax  
25 consequences.<sup>9</sup>

26 \_\_\_\_\_  
27 <sup>9</sup> By prescribing a formula for determining the amount of a GRAT corpus  
28 includable in a deceased grantor's gross estate, the Regulation tacitly concedes that  
a retained annuity does not constitute retained possession or enjoyment of property.  
No complicated formula is required where there is retained possession or enjoyment  
of property because the full date-of-death value of the property is includable. See

1 The IRS's rationale for applying section 2036(a)(1) to GRATs, as the  
2 Preamble to the Regulation reveals, is that section 2036(a)(1)'s application *should*  
3 not be dependent on either the trustee's exercise of his or her discretion to invest in  
4 income or non-income producing assets, or the actual performance of the GRAT  
5 assets. Whether section 2036(a)(1) *should* apply to a GRAT like Patricia's,  
6 however, is not the issue – the issue is whether Section 2036(a)(1) *does* apply to  
7 such a GRAT under its plain language. The Regulation is an improper interpretation  
8 of section 2036 *as applied to Patricia's GRAT*.

9 The Regulation is a proper interpretation to some GRATs, where there is a  
10 disguised or implied retention of income, and the outcome the IRS wants is not  
11 draconian in those situations that can involve taxpayers trying to game the rules.  
12 None of those situations applies to Patricia's GRAT.

13 For example, some GRATs have an ordering rule (a rule that income must  
14 first be used to pay the annuity, and principal used only to the extent there is  
15 insufficient income), and Plaintiff does not dispute that the Regulation is valid as  
16 applied to such GRATs.

17 Some GRATs have annuity payments which are simply disguised payments  
18 of income, so that the right to receive the fixed payments is, in substance, equivalent  
19 to retaining the right to receive income. Plaintiff does not dispute that the  
20 Regulation is valid as to these GRATs. See *U.S. v. Ray*, 762 F.2d 1361 (9th Cir.  
21 1985) [annuity amount designed to approximate trust's expected income].

22 In some GRATs without an ordering rule or disguised payments of income,  
23 the annuity payments nevertheless cannot be satisfied without using income. If this  
24 condition exists *at the time of the grantor's death*, then section 2036(a)(1) applies.

25 Some GRATs, however, such as Patricia's GRAT, have no ordering rule, do  
26

27 \_\_\_\_\_  
27 paragraph (c)(2)(iv), Example 6 of the Regulation. As a further example, for a  
28 house where the grantor retains possession or enjoyment, the value of the corpus  
(i.e., the house) on death is determined by a simple appraisal – no formula is  
required.

1 not provide for income payments disguised as annuity payments, and at the time of  
2 the grantor's death can satisfy the annuity payments entirely out of principal.  
3 Section 2036(a)(1) does not apply to these GRATs, and to the extent the Regulation  
4 states otherwise it is contrary to the statute, and therefore invalid.

5 **D. Including The Full Date-of-Death Value of the GRAT Corpus In**  
6 **Patricia's Taxable Estate Resulted In An Overpayment Of**  
7 **\$3,810,004 In Estate Tax**

8 As set forth in the Claim for Refund, including the full date-of-death value of  
9 the GRAT corpus in Patricia's gross estate resulted in an overpayment of  
10 \$3,810,004 in estate tax.

11 The only amount includable in Patricia's gross estate with respect to her  
12 GRAT was the net present value as of Patricia's date of death of the remaining  
13 unpaid annuity payments (\$101,303.36), includable under section 2033.

14 Except in a case where the annuity amount has been deliberately set to mirror  
15 the anticipated amount of annual income to be generated by the transferred property,  
16 it is beyond dispute that the amount of a fixed annuity will not necessarily be the  
17 same as the annual amount of income generated by the property. That is why the  
18 Regulation prescribes a formula for determining the amount of the GRAT corpus  
19 which is includable in the deceased grantor's gross estate. If the annuity amount and  
20 the annual income were the same, there would be no need for the formula because  
21 the entire date-of-death value of the property would be includable. This reveals a  
22 flaw in the Regulation. In a case where the annuity amount is identical to the annual  
23 amount of income generated by the property, the entire date of death value of the  
24 property should be includable just as if there had been a straightforward retention of  
25 the income. However, depending upon the section 7520 interest rate in effect at the  
26 grantor's date of death, the formula may result in less than the entire value being  
27 includable. See paragraph (c)(2)(iv), Example 2 of the Regulation, where the date  
28

1 of death value is \$300,000 and the amount includable is only \$205,440.<sup>10</sup>

2 Alternatively, even if section 2036(a)(1) were to require some portion of the  
3 corpus of Patricia's GRAT to be included in her gross estate, the includable amount  
4 should be determined under a formula that incorporates the amortization of principal  
5 as well as a portion of the income. This amount would be the net present value of  
6 the remaining unpaid annuity payments, which is \$101,303.36 – the same amount as  
7 already included under section 2033.

8 Consequently, the estate tax return (Form 706) for Patricia's estate overstated  
9 the amount of the GRAT includable in her gross estate by \$10,885,735.60. See  
10 Badgley decl., ¶ 14, Ex. H. For the GRAT, the estate tax return includes one half  
11 interest in Y&Y Company of \$6,409,000, plus the two bank accounts with accrued  
12 annuity payment monies with a total of \$4,578,029, for GRAT corpus of  
13 \$10,987,029. *Id.* [estate tax return, Schedule G]; Badgley decl., ¶ 14; Hipshman  
14 decl., ¶ 5. Because the correct amount includable in the estate was \$101,303.36, the  
15 overstatement is \$10,885,735.60 (\$10,987,029 less \$101,303.36 equals  
16 \$10,885,735.60). Badgley decl., ¶ 14, Ex. H.

17 As a consequence of this overstatement, the Estate overpaid the estate tax due  
18 by \$3,810,004.00 (\$10,885,725.60 x 35% tax rate = \$3,810,004.00).

19 **IV. CONCLUSION.**

20 Although the IRS would like section 2036 to apply to all GRATs, and  
21 promulgated the Regulation staking out that wish, section 2036(a)(1) must be  
22 limited to GRATs with an ordering rule, GRATs with disguised payments of  
23 income, and GRATs where the annuity payments cannot be satisfied from principal  
24 alone. Therefore, notwithstanding the Regulation, section 2036(a)(1) does not apply  
25 to Patricia's GRAT. The only amount includable in Patricia's gross estate with  
26 respect to her GRAT was the net present value, as of the date of Patricia's death, of

27 \_\_\_\_\_  
28 <sup>10</sup> The Regulation protects itself against an error on the high side caused by the  
vagaries of the section 7520 interest rate by limiting the includable amount to the  
value of the trust's corpus at the decedent's date of death.

1 the remaining unpaid annuity payments (\$101,303.36), includable under section  
2 2033.

3           Consequently, the estate tax return overstated the amount of the GRAT  
4 includable in her gross estate by \$10,885,725.64, and the Estate, accordingly  
5 overpaid the estate tax due by \$3,810,004.00. Plaintiff is entitled to summary  
6 judgment on her sole claim for relief for a refund of \$3,810,004, plus interest as  
7 provided by law from January 30, 2014.

8 Dated: November 20, 2017

Respectfully submitted,

RUTAN & TUCKER, LLP

By: /s/ Damon Mircheff

Damon D. Mircheff  
Attorneys for Plaintiff  
Judith Badgley, as Executor of  
the Estate of Patricia Yoder

**INDEX OF EXHIBITS TO MOTION FOR SUMMARY JUDGMENT**

Declaration of Judith Badgley

- A. Partnership Agreement of Y&Y Company dated May 1, 1976 (Badgley Depo., Ex. 1);
- B. First Amendment to Partnership Agreement of Y&Y Company dated September 25, 1997 (Badgley Depo, Ex. 2);
- C. Agreement Establishing the D. and P. Yoder Revocable Trust dated June 15, 1982 (Badgley Depo., Ex. 3);
- D. First Amendment to D. and P. Yoder Revocable Trust dated July 26, 1990 (Badgley Depo., Ex. 8);
- E. Second Amendment to D. and P. Yoder Revocable Trust dated July 29, 1998 (Badgley Depo., Ex. 5);
- F. Grantor Retained Annuity Trust dated February 1, 1998 (Badgley Depo., Ex. 8);
- G. Form 709 United States Gift Tax Return of Patricia Yoder for tax year 1998 (with appraisal for one-half interest in Y&Y Company, control-numbered PY000160-PY000233);
- H. Form 706 United States Estate Tax Return for Estate of Patricia Yoder dated January 29, 2014 (Badgley Depo., Ex. 12);
- I. July 29, 2013 Discount Study for 50% general partnership interest in Y&Y Company that was exhibit to Estate Tax Return for Estate of Patricia Yoder (PY000114-PY000159);
- J. Form 890 Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment – Estate, Gift, and Generation – Skipping Transfer Tax dated November 9, 2015 for Estate of Yoder (Badgley Depo., Ex. 18);
- K. Form 843 Claim for Refund and Request for Abatement dated May 16, 2016 for Estate of Patricia Yoder (Badgley Depo. Ex., 17);

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Declaration of Pamela Yoder

L. Memo from John C. Storch M.D. of November 1, 2012 (Badgley Depo., Ex. 9);

Declaration of Jeffrey Hipshman

- M. 2008 Partnership Income Tax Return for Patricia Yoder (PY001714-1752);
- N. 2009 Partnership Income Tax Return for Patricia Yoder (PY001753-1792);
- O. 2010 Partnership Income Tax Return for Patricia Yoder (PY001793-1834);
- P. 2011 Partnership Income Tax Return for Patricia Yoder (PY001835-1876);
- Q. 2012 Partnership Income Tax Return for Patricia Yoder (PY001877-1926);
- R. 2010 Federal and State Income Tax Return for Patricia Yoder (PY001193-1264)
- S. 2011 Federal and State Income Tax Return for Patricia Yoder (PY001265-1356)
- T. 2012 Federal and State Income Tax Return for Patricia Yoder (PY001357-1464)

Declaration of Damon Mircheff

- U. Excerpts from August 28, 2017 Deposition of Plaintiff Judith Badgley; and
- V. Excerpts from October 17, 2017 Deposition of Pamela Yoder.