

Exhibit B

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FILED
SAN MATEO COUNTY

JUL 30 2008

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

MARIA J. PENA

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

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11 In the Matter of the }
12 IRREVOCABLE TRUST AGREEMENT }
13 dated April 15, 1989, for the benefit of }
14 ELISA ZAFFARONI }
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No. 114220 Probate

ORDER GRANTING TRUSTEES'
AMENDED PETITION FOR ORDER
APPROVING MODIFICATION OF
TRUST TERMS DUE TO CHANGED
CIRCUMSTANCES; APPOINTING
CORPORATE CO-TRUSTEE;
APPROVING WAIVER OF
ACCOUNT; AND RELEASING
TRUSTEES FROM LIABILITY FOR
PAST TRANSACTIONS

(Probate Code Sections 15409, 15412,
16464, 16465, 17000; 17200(B)(10) and
(B)(13))

Time: 9:00 a.m.
Dept.: Probate
Date: July 30, 2008

23 The verified Petition of MATILDA NIERI and ANA LEECH, Co-Trustees of the
24 Irrevocable Trust Agreement dated April 15, 1989 for the benefit of ELISA ZAFFARONI,
25 came regularly on for hearing before the Court on July 30, 2008. Petitioners appeared
26 through their counsel of record, Kim T. Schoknecht; Robert Brady appeared on behalf of
27 ELISA ZAFFARONI; James Mitchell appeared on behalf of the Trustors, LIDA and DR.
28 ALEJANDRO ZAFFARONI, and on behalf of LIDA ZAFFARONI in her capacity as

1 Guardian Ad Litem for the issue of ELISA ZAFFARONI who may later be born or adopted
2 by her; David Packard appeared on behalf of VERA SPRINKEL, the Conservator of the
3 Estate of ELISA ZAFFARONI; and Michael Burnstein appeared on behalf of
4 ALEJANDRO PETER ZAFFARONI and CHARLES ALEJANDRO ZAFFARONI. There
5 were no objections to the petition.

6 Through their verified petition, the Trustees seek the following orders: (1) the
7 division of the Trust into separate GST Exempt and GST Non-Exempt Trusts; (2) the
8 clarification and modification of the distribution standard during ELISA ZAFFARONI's
9 lifetime; (3) the ratification of the one-time principal distribution of the Tiburon house
10 purchase price to ELISA ZAFFARONI; (4) a determination of the identity of the remainder
11 beneficiaries of the Trust; (5) the modification of the Trust to require that a corporate
12 Trustee serve at all times as a Co-Trustee, to appoint J.P. MORGAN TRUST COMPANY,
13 N.A. as the initial corporate and third Co-Trustee to serve with Petitioners, and to clarify
14 the procedure for appointing future successor Trustees; (6) the modification of the Trust to
15 permit retention of a limited partnership interest without liability; (7) the confirmation of
16 the waiver of accounting by the Trustees, if filed by the beneficiaries; and (8) the release of
17 the current Co-Trustees from liability in connection with the Trust, if approved by the
18 beneficiaries. Having considered the papers and evidence submitted by the parties and the
19 arguments of counsel, and for good cause appearing, the Petition is GRANTED, as set forth
20 below.

21 **FINDINGS**

22 1. **Jurisdiction and Venue.** The Court has jurisdiction over this matter
23 pursuant to California Probate Code §§15409, 15412, 16464, 16465 and 17000,
24 17200(b)(1), (b)(10), (b)(13), and (b)(14), providing for the Court's jurisdiction over the
25 internal affairs of the Trust, determining questions of construction of the Trust, approving
26 the modification of the Trust and dividing the Trust, and approving waivers of accounting
27 and releases of Trustee liability. Venue is proper in this Court under California Probate
28

1 Code section 17005(a)(2) because San Mateo County is the principal place of the Trust's
2 administration.

3 2. **Notice:** The Court finds that Notice has been given in the manner prescribed
4 by law:

5 3. **Allegations are True and Correct.** All allegations in the Petition are true
6 and correct.

7 4. **Specific Finding re Trustees' Intent with Respect to Distributions.** The
8 Court specifically finds as follows with respect to the Trustees' intent to determine the
9 amount of the income beneficiary's distributions:

10 Because the Trust is an ideal candidate for adjusting principal and income, the
11 Trustees intend to determine the amount of annual distributions to ELISA using the
12 following procedure:

13 a. Each year, Petitioners and the institutional Trustee (e.g., J.P.
14 MORGAN TRUST COMPANY, N.A.) shall determine the amount of "aggregate income
15 of the Trusts" available to fund discretionary distributions to ELISA from either the GST
16 Exempt Trust or the GST Non-Exempt Trust. They intend to do so by multiplying the
17 mean average of the fair market value of aggregate assets of the Trusts (as determined in
18 accordance with general standards used for gift and estate tax valuation purposes without
19 regard for any possible discounts that may be allowed for fractional interests or lack of
20 marketability) as of December 31 for each of the three preceding calendar years by the
21 percentage of annual asset value that J.P. MORGAN CHASE BANK (the corporate parent
22 of J.P. MORGAN TRUST COMPANY, N.A.), or other institutional Trustee then serving,
23 determines that it should use under principal and income adjustment powers available when
24 acting as trustee of taxable trusts subject to the Uniform Principal and Income Act or
25 comparable statutes (the "Adjustment Percentage").^[2]

26
27 ^[2] For example, to determine the Adjusted Distribution Ceiling for distributions to be made
28 to ELISA in calendar year 2009, before March 1, 2009 the Trustees will determine the
mean average of the fair market value of the combined Trust estate as of December 31,
(continued...)

1 The resulting product (which may be pure income only, or may be income
2 augmented by principal which is "adjusted" into income), which may also be referred to as
3 the "Adjusted Distribution Ceiling," shall be the maximum amount of funds the Trustees
4 may distribute to ELISA that calendar year from both Trusts. The parties have agreed that
5 in no event shall the Adjusted Distribution Ceiling drop below 3.0 percent. The product
6 shall be pro-rated for the initial year of this procedure. For the information of the Court,
7 J.P. MORGAN CHASE BANK set the Adjustment Percentage at 3.0% for 2008, with no
8 trustee's fees being charged against that 3.0% payout. In other words, for taxable trusts
9 invested under the Prudent Investor Rule and CUPIA for total maximum return, in selected
10 circumstances J.P. MORGAN CHASE BANK as trustee adjusted principal and income so
11 that "income" beneficiaries would receive 3.0% of the aggregate fair market value of the
12 GST Exempt Trust and the GST Non-Exempt Trust; and in those situations, J.P. MORGAN
13 CHASE BANK charged trustee's fees entirely to principal, so the 3% payout to the
14 beneficiary was not reduced by trustee's fees.

15 It is anticipated that the funding of discretionary distributions of aggregate net
16 income of the Trusts pursuant to the standard set forth above will be made first from the
17 GST Non-Exempt Trust to the extent practical and then from the GST Exempt Trust. In no
18 event will aggregate discretionary distributions from the Trusts exceed the Adjusted
19 Distribution Ceiling.

20 J.P. MORGAN CHASE BANK determines the Adjustment Percentage early each
21 calendar year for which an adjustment is to be made. The Trustees therefore intend to give
22 notice to the trust beneficiaries of the amount of the Adjusted Distribution Ceiling by
23 March 1 of each calendar year for which an income and principal adjustment is to be made,
24 under the procedure described for giving Notice of Proposed Action under California

25 (...continued)
26 2006, 2007 and 2008. They will then multiply that average dollar value by the percentage
27 of annual asset value that J.P. MORGAN CHASE BANK (or other institutional Trustee
28 then serving) determines that it should use for calendar year 2009 under principal and
 income adjustment powers available when acting as trustee of taxable trusts subject to the
 Uniform Principal and Income Act or comparable statutes.

1 Probate Code Section 16337. Until the time for objecting to such Notice has lapsed, the
2 Trustees will use the Adjusted Distribution Ceiling from the prior calendar year, and
3 subsequently credit (or charge) the beneficiary for any underpayments (or overpayments)
4 made that year before the new Adjusted Distribution Ceiling is determined.

5 b. Prior to January 1st of each year, ELISA's conservator will submit to
6 the Co-Trustees an annual estimate of her anticipated general maintenance, support, health
7 and educational needs, detailed on a monthly basis. If no conservator is then serving, the
8 estimate will be submitted by ELISA.

9 The Trustees will review ELISA's budget to determine the amount of cash
10 necessary or advisable for her general maintenance, support, health or education, including
11 college, graduate and professional education, taking into consideration the factors described
12 in Article SECOND as modified by this Court and also retaining an appropriate reserve for
13 extraordinary medical or other unanticipated expenses falling within the standard for
14 distributions set forth above. The Trustees shall then distribute to ELISA's conservator or
15 expend directly for her benefit the amount so determined in monthly or other convenient
16 installments from the GST Non-Exempt Trust and then the GST Exempt Trust as described
17 above. If such distributions are less than net accounting income, the Trustees shall add the
18 excess to principal of the Trust no less than annually. If the amount determined to be
19 necessary or advisable for the maintenance, support, health or education of ELISA and her
20 unanticipated expenses exceeds the Adjusted Distribution Ceiling established by the
21 Trustees for that calendar year, then the Trustees shall distribute no more than the Adjusted
22 Distribution Ceiling, with ELISA making up any shortfall from her personal assets.

23

24 **ORDERS**

25 FOR GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:

26 1. **Modifications to Trust.** Probate Code Section 15409 empowers the Court
27 to modify the administrative or dispositive provisions of a trust on petition by the trustee if
28

1 "owing to circumstances not known to the settlor and not anticipated by the settlor, the
2 continuation of the trust under its terms would defeat or substantially impair the
3 accomplishment of the purposes of the trust." The enormous increase in the value of the
4 Trust since its inception, coupled with intervening changes in the tax and trust law, justify
5 modifying the terms of the Trust without jeopardizing the Trust's ability to accomplish its
6 primary goal of providing significant benefits for the lifetime of ELISA ZAFFARONI. For
7 good cause appearing for the reasons set forth in the verified petition of the Trustees, the
8 Irrevocable Trust Agreement dated April 15, 1989 for the benefit of ELISA ZAFFARONI
9 is hereby modified as follows:

10 a. Division into GST Exempt and GST Non-Exempt Trusts. The
11 Trustees shall divide the Trust into a GST Exempt Trust and a GST Non-Exempt Trust in
12 accordance with the applicable fraction (as defined in IRC Section 2642(a)(2)) of the
13 original trust as it is finally determined. Each such resulting trust will have terms identical
14 to the original Trust, as modified pursuant to the terms of this Order.

15 b. Modification of Distribution Standard During ELISA
16 ZAFFARONI's Lifetime. Article SECOND is hereby modified as follows:

17 "During the lifetime of ELISA ZAFFARONI, the Trustees shall pay to
18 or apply for the benefit of ELISA ZAFFARONI and any of her issue
19 (as defined in the following paragraph) so much of the "aggregate
20 income of the Trusts" as the Trustees shall determine necessary or
21 advisable for the maintenance, support, health or education, including
22 college, graduate and professional education, of ELISA ZAFFARONI
23 and any of her issue (as defined in the following paragraph), provided
24 that no payments shall be made so as to relieve anyone of the legal
25 obligation to support a beneficiary of either the GST Exempt Trust or
26 the GST Non-Exempt Trust. "Aggregate income of the Trusts" as
27 used in the preceding sentence shall mean combined trust income of
28 the GST Non-Exempt Trust and the GST Exempt Trust determined on
an aggregate basis by the corporate Trustee after applying the CUPIA
adjustment powers under Probate Code Sections 16335-16339. The
determination as to the necessity and amount of any payment under the
foregoing standard, and the GST Exempt or GST Non-Exempt source
of such payment shall be made in the sole and absolute discretion of
the Trustees and in light of the needs and best interests of the
beneficiaries and all of the circumstances existing at the time of the
determination, including the size and composition of the assets of each

1 trust estate, the probable future needs of the beneficiaries, other
2 resources available to the beneficiaries as actually known to the
3 Trustees and the immediate and long-term tax impact of any
4 distribution. The corporate Trustee's adjustment power shall continue
5 in the event California law changes as it relates to the general
6 provisions and fiduciary duties under the California Uniform Principal
7 and Income Act (Probate Code Sections 16335-16339, inclusive and
8 such provisions are incorporated herein by reference). Implicit in the
9 foregoing, and intended by the Trustors, is the authority of the
10 Trustees to vary the amount of income to be paid to or for the benefit
11 of any of the beneficiaries, and to withhold payments from all of them
12 or from one or more of them. Any income not distributed may be
13 accumulated and from time to time added to the principal of each
14 Trust, in the Trustees' sole and absolute discretion. In no event shall
15 total distributions from the GST Exempt Trust and the GST Non-
16 Exempt Trust in any year exceed Aggregate Income of the Trusts (as
17 defined above) for such year. or the 3% payout amount,
18 whichever is greater.

RP

19 For purposes of this Agreement, references to a person's "child" or
20 "children" shall include only (1) such person's natural children and (2)
21 children adopted by such person where all of the following conditions
22 are satisfied: (a) the adoption occurred under the laws of the State of
23 California; (b) the child was under eighteen (18) years of age at the
24 time of the adoption; (c) a California court issued an order approving
25 the adoption; and (d) the child lived while a minor as a regular
member of the household of such adoptive parent. References to a
person's "grandchild" or "grandchildren" shall refer only to children
of a child of such person as defined in this paragraph and references to
a person's great-grandchild or great-grandchildren shall refer only to
children of a grandchild as defined in this paragraph. References to a
person's "issue" shall include only persons who qualify as such
person's children, grandchildren or great-grandchildren as defined in
this paragraph, and more remote descendants."

26 **c. Order Ratifying Trustees' One-Time Principal Distribution to**

27 **ELISA ZAFFARONI.** For good cause appearing, the Trustees' one-time distribution in
28 December, 2000, of \$4.1 million in principal to enable ELISA ZAFFARONI to purchase a
residence in Tiburon, California, is hereby ratified, allowed and approved. It is further
ordered that Article Third of the trust is modified so that Paragraph A, prior to the
enumerated sub-paragraphs 1-3, reads as follows:

29 "A. The Trustees shall first distribute in trust, collectively to the
30 surviving issue of ELISA ZAFFARONI's brother ALEJANDRO A.
31 ZAFFARONI, if any, by right of representation, the lesser of (1) the
32 sum of \$4,100,000.00 as adjusted for the cost of living (using the

1 Consumer Price Index, All Urban Consumers (all items) – San
2 Francisco – Oakland – San Jose, California; December, 2000: 184.1)
3 from December 5, 2000 until the date of death of ELISA
4 ZAFFARONI, and (2) the entire trust estate, and shall hold, administer
5 and distribute such in trust according to the terms set forth below in
6 this Article THIRD (A) and following, except that whenever the name
7 of ELISA ZAFFARONI appears, the name of ALEJANDRO A.
8 ZAFFARONI, her brother, shall appear so that, in effect, his issue
9 shall be the beneficiaries of such trusts. If there are no such surviving
10 issue, then this first distribution shall lapse. The Trustees shall divide
11 the remaining trust estate (or all of the trust estate if there are then no
12 surviving issue of ALEJANDRO A. ZAFFARONI) into as many equal
13 shares as there are children of ELISA ZAFFARONI then living and
14 children of ELISA ZAFFARONI then deceased who have left issue
15 then living, and shall hold, apply and distribute said shares as
16 follows.”

17 d. Order Appointing Corporate Co-Trustee and Modifying Trust to

18 Add Corporate Trustee as Third Co-Trustee. For good cause appearing, J.P. MORGAN
19 TRUST COMPANY, N.A. is appointed to serve as Co-Trustee with Petitioners. Petitioners
20 will retain exclusive authority to make discretionary distribution decisions, and J.P.
21 MORGAN TRUST COMPANY, N.A. will have exclusive authority with regard to
22 administrative matters (including the CUPIA adjustment powers) and all investment
23 decisions. It is further ordered that Article NINTH of the Trust is hereby amended in full
24 as follows:

25 “NINTH: The Trusteeship shall be subject to the following
26 provisions:

27 A. A corporate fiduciary and two individuals shall at all times
28 serve as Co-Trustees of this Trust. A Court of competent
jurisdiction shall initially appoint the corporate fiduciary
authorized by law to act as such in the State of California to
serve as a third Co-Trustee of the Trust. Any successor
corporate fiduciary serving as Co-Trustee of the Trust shall be
a company of comparable standing and adequate capitalization
and security as the original corporate Co-Trustee.

29 B. Any successor individual Trustee shall have the right to
30 appoint his or her successor (including a series of alternative
31 successors) with the power to revoke any such appointment
32 prior to the qualification of his or her successor and to make a
33 new appointment. Thereafter, upon the failure of the
34 appointing individual Trustee to act, the appointed individual

1 shall become a successor Trustee. Upon the failure of any
2 individual Co-Trustee to act without appointing a successor
3 who agrees to act, a successor Trustee thereto may be
4 appointed by the remaining individual Co-Trustee, or jointly by
5 remaining individual Co-Trustees if more than one Co-Trustee
6 then remains. Upon failure of the individual Co-Trustees to act
7 without a successor Trustee having been appointed pursuant to
8 the foregoing provisions, a majority of the beneficiaries then
9 entitled to receive income from the trust estate (including the
10 guardian(s) or conservator(s) of any minor or incapacitated
11 beneficiaries) shall have the right to appoint a successor
12 Trustee. Any appointment of a successor trustee by a majority
13 of beneficiaries shall require the approval of the Court.

14
15 If two successors have been appointed to fill the same vacancy
16 (because, for example, one individual Trustee appoints a first
17 and a second successor to herself, then ceases to serve; her first
18 successor appoints a different person to serve as successor to
19 the first successor; and the first successor ceases to serve, so
20 there is a conflict between the original trustee's "second
21 successor" and the first successor's own successor), then the
22 appointment which is later in time shall take precedence over
23 earlier appointments.

24 C. The individual Co-Trustees, acting jointly, shall alone have the
25 right to appoint a successor corporate Co-Trustee should a
26 vacancy in the office of corporate Co-Trustee exist for any
27 reason. At that time, the individual Co-Trustees shall designate
28 a company of comparable standing and adequate capitalization
and security as J.P. MORGAN TRUST COMPANY, N.A.,
now has. ELISA ZAFFARONI shall be given thirty (30) days
from the date of such designation to consent to such
designation. Should she do so in writing delivered to the
individual Co-Trustees, such designated successor corporate
Trustee shall serve upon the effective date of removal or
resignation of the prior corporate Trustee in office. Should
ELISA ZAFFARONI fail for any reason to consent to such
designation within thirty (30) days, the individual Co-Trustees
shall, within thirty (30) days thereafter, petition the appropriate
Court for appointment of a successor corporate Trustee.

24 D. Any Trustee may at any time resign from any trust hereby
25 established by depositing in the United States mail, postage
26 prepaid, a notice of such resignation addressed to any other
27 Trustee then acting and to the persons or person then entitled to
28 receive payments hereunder at the addresses of such persons or
person last known to the Trustee. The resignation of an
individual Co-Trustee shall take effect on the first to occur of

the following: (i) the acceptance by the remaining Trustees of such resignation; (ii) the appointment and qualification of a successor individual Trustee; or (iii) the expiration of sixty (60) days from the date of mailing such notice. The resignation of the corporate Co-Trustee shall take effect upon the effective appointment of a successor corporate Co-Trustee.

- E. The corporate fiduciary may be removed at any time, with or without cause, by written notice, signed by both non-corporate Trustees, delivered to the corporate fiduciary at least thirty (30) days from the effective date of the removal. At the time of delivering notice of removal, the non-corporate Trustees then in office shall designate a company of comparable standing and adequate capitalization and security as the successor corporate Trustee, using the procedure described in Paragraph C above (including seeking the consent of ELISA ZAFFARONI to the appointment).
- F. Any appointment of successor trustee shall be by written instrument executed by the person or persons entitled to make such appointment and delivered at the time of the actual appointment to the person appointed and to the remaining Trustee or Trustees then acting.
- G. Any successor Trustee shall serve without bond unless the terms of the appointment require bond.
- H. Any successor Trustee, however appointed, shall be responsible only for those trust assets actually received, and shall have no duty or responsibility to inquire into the acts or omissions of any predecessor Trustee. All powers exercisable by the Trustees are exercisable by any successor Trustee or Trustees.
- I. In no event shall the Trustors or any beneficiary of a trust established hereunder be appointed to serve as a Trustee of any trust established hereunder.
- J. At all times when a corporate Co-Trustee is serving, the corporate Co-Trustee shall account annually, in its usual accounting format, to any person then entitled to distributions of income from the Trust, and to any person who would then be a remainder beneficiary if the income beneficiary were then deceased.
- K. The corporate Co-Trustee shall be responsible for administrative and investment matters, and shall have exclusive authority with respect to the determination of income under the CUPIA adjustment powers. The individual Co-Trustees shall

1 have responsibility for making discretionary distributions to the
2 beneficiaries. Nothing in this paragraph, however, shall allow
3 the individual Co-Trustees to distribute sums during ELISA
4 ZAFFARONI's lifetime which exceed in any calendar year, the *greater of the*
5 *3% payout amount or the*
6 "Adjusted Distribution Ceiling" for that year. As used here,
7 the "Adjusted Distribution Ceiling" shall mean the amount of
8 "aggregate income of the Trusts" available to fund
9 discretionary distributions to ELISA ZAFFARONI from either
10 the GST Exempt Trust or the GST Non-Exempt Trust,
11 determined by multiplying the mean average of the fair market
12 value of aggregate assets of the Trusts (as determined in
13 accordance with general standards used for gift and estate tax
14 valuation purposes without regard for any possible discounts
15 that may be allowed for fractional interests or lack of
16 marketability) as of December 31 for each of the three
17 preceding calendar years by the percentage of annual asset
18 value that the institutional Trustee then serving determines that
19 it should use under principal and income adjustment powers
20 available when acting as trustee of taxable trusts subject to the
21 Uniform Principal and Income Act or comparable statutes.

22 L. The Co-Trustees may invest without regard to any generally-
23 applicable restriction on self-dealing or violation of any rule
24 against divided loyalty or other conflict of interest.

25 M. Notwithstanding anything to the contrary herein, upon the
26 death of ELISA ZAFFARONI, the majority of the legally
27 competent beneficiaries then entitled to receive income from
28 the trust estate, or the guardian or guardians of the
beneficiaries, if they be minors, or the conservator or
conservators of the estate of the beneficiaries if they be
incapacitated, shall have the right to remove and appoint the
Trustee."

29 e. Order Modifying Trust to Permit Retention of Family

30 Investments Without Liability. For good cause appearing, Article TENTH of the Trust is
31 hereby modified to add a new Paragraph L (setting forth trustee powers) as follows:

32 "L. The Trustees shall have no liability for implementing the Trustees'
33 intent by retaining any interests in the Family Investments (as
34 hereinafter defined) regardless of the investment performance,
35 productivity, distribution policy or history, or investment policy or
36 history. Furthermore, the Trustees shall have no liability for retaining
37 any one or more of the Family Investments regardless of the lack of
38 diversification resulting from such retention or whether any one or
more of the Family Investments constitutes a prudent investment for
the Trust. There shall be no duty to diversify, nor any duty of making