

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

IN THE MATTER OF THE SAN FRANCISCO WAR MEMORIAL TRUST DATED
08/19/1921, AMENDED 06/30/1928

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F I L E D

Superior Court of California
County of San Francisco

JAN 29 2016

CLERK OF THE COURT

BY: Craig R. [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

IN THE MATTER OF SAN FRANCISCO
WAR MEMORIAL TRUST (DATED
AUGUST 19, 1921, AS AMENDED JUNE
30, 1928)

No. PTR-15-298701

ORDER CONSTRUING TRUST INSTRUMENT
AND INSTRUCTING THE BOARD OF
TRUSTEES OF THE SAN FRANCISCO WAR
MEMORIAL TRUST

INTRODUCTION

This case asks the Court to interpret the meaning of the term “patriotic organizations” as used in the San Francisco War Memorial Trust. The San Francisco Posts of the American Legion (“American Legion”) seeks a determination that “patriotic organizations” include organizations without veteran membership, such as veteran service organizations that provide social services exclusively to veterans. The Board of Trustees of the Trust (“Trustees”) have interpreted the term as being limited to organizations that have veteran members.

The Court finds that the term “patriotic organizations” is not limited to veteran membership organizations, but can include veteran service organizations, such as Swords to Plowshares. Such an interpretation best effectuates the intentions of the original trustees who created the trust.

PROCEDURAL HISTORY

This matter came before the Court on November 2, 2015 at 9:00 a.m. for a hearing on the

1 Amended Petition of the American Legion for an Order Construing the Trust Instrument and Instructing
2 the Trustees (the "Petition") of the San Francisco War Memorial Trust ("the Trust"). Todd C. Toral and
3 Jesse Medlong of DLA Piper, LLP appeared on behalf of the American Legion. Sara J. Eisenberg,
4 Deputy City Attorney, appeared on behalf of the Trustees.

5 At the conclusion of the hearing on November 2, 2015, the Court ordered the parties to submit
6 post-hearing briefs by November 12, 2015. The Trustees filed their post-hearing brief on November 12,
7 2015. The American Legion filed its post-hearing brief on November 13, 2015. On November 17, 2015,
8 the Trustees filed an Ex Parte Application to Strike Improper Material in the American Legion's Post-
9 Hearing Filing, or in the Alternative, for Leave to File Additional Documents. The matter was set for
10 hearing on December 3, 2015 at 10:00 a.m. in Department 202. Before the hearing, the Trustees
11 withdrew the request to strike improper material from the American Legion's post-hearing brief.

12 The Trustees filed an Ex Parte Application for Leave to File Additional Documents on November
13 19, 2015. On November 20, 2015, the Court issued an Order re Petition for Order Construing Trust
14 Instrument and Instructing the Trustees, which resolved the laches and statute of limitations arguments
15 raised by the Trustees and set the matter for a mandatory settlement conference on December 11, 2015.
16 The order provided that if the parties did not settle on December 11, 2015, the matter would be deemed
17 submitted on December 14, 2015.

18 On November 24, 2015, the American Legion filed an Opposition to the Trustees' Ex Parte
19 Application for Leave to File Additional Documents.

20 At the December 3, 2015 hearing, the Court granted the Trustees leave to file the following: (1) a
21 reply to the American Legion's post-hearing brief; (2) objections to the American Legion' newly
22 submitted evidence; (3) an opposition to the American Legion's request for judicial notice; and (4)
23 objections to the American Legion's proposed order. The Court also gave the American Legion an
24 opportunity to file a final response to the Trustees' reply by December 18, 2015. Though not specified in
25 the Court's order, it was implicit that the matter would be officially under submission as of December 18,
26 2015.

27 On December 4, 2015, the Trustees filed the documents. On December 11, 2015, the parties
28 attended an all-day mandatory settlement conference. The case did not settle. On December 18, 2015,

1 the American Legion filed a Final Response to the Trustees' Post-Hearing Reply Brief.

2 **ANALYSIS**

3 The Petition, brought pursuant to § 17200 of the Probate Code, asks this Court to construe the
4 meaning of the term “patriotic organizations” as used in ¶ 10(C)(1) of the Trust. That section of the Trust
5 provides that:

6
7 The building to be occupied by the San Francisco Posts of the American Legion shall be
8 occupied and used by [them] . . . without rent charge. The San Francisco Posts of the
9 American Legion or a majority of them, shall under such rules and conditions as they may
10 prescribe, provide headquarters for Veterans of the Mexican War, Grand Army of the
11 Republic, Spanish-American War Veterans, and *such other patriotic organizations* as said
12 San Francisco Posts of the American Legion may from time to time desire to install.

11 (Trust, p.15, ¶10(C)(1) [emphasis added].)

12 The parties dispute the meaning of “patriotic organizations.” The American Legion seeks a
13 determination that the provision in the Trust allowing them to allocate space in the War Memorial
14 Veterans' Building (“the Veterans' Building”) to “patriotic organizations,” includes organizations without
15 veteran membership, such as veteran service organizations (“VSOs”) that provide social services
16 exclusively to veterans. Swords to Plowshares (“STP”) is one such VSO. STP is a community-based
17 non-profit that offers employment and employment training, counseling, free legal services, health
18 services, and other social services to more than 3,000 veterans in the Bay Area. The parties' dispute over
19 the meaning of the term “patriotic organizations” arose in the context of the American Legion's attempt to
20 allocate rent-free space in the Veterans' Building to STP in 2008.

21 **A. Legal Background**

22 The court must read an instrument's language in its plain and ordinary meaning unless a clear
23 intention to use its words in another sense can be collected and ascertained. (*In re Mitchell's Estate*
24 (1938) 10 Cal.2d 628, 632-33; *Kauffman v. Gries* (1903) 141 Cal. 295, 299-300; *In re Edwards' Estate*
25 (1932) 126 Cal.App. 152, 155 [no strained meaning can be attributed to any word or phrase in a
26 testamentary instrument].) In construing trust instruments, the duty of the court is to first ascertain, and
27 then, if possible, give effect to the intent of the maker. (*In re Estate of Cairns* (2010) 188 Cal.App.4th
28 937, 944.) In determining the intent of the maker, the court must stand by the words in the instrument,

1 and no intent should be attributed to the drafter of the instrument that cannot reasonably be drawn from
2 the language of the document itself. (See *In re Raymond's Estate* (1950) 96 Cal.App.2d 808, 813-14.)
3 When interpreting the provisions of such an instrument, the meaning of particular words, phrases, and
4 provisions in the instrument must be subordinated to such testamentary scheme, plan, or dominant
5 purpose. (*Id.*; see also *In re Puett's Estate* (1934) 1 Cal.2d 131, 133.) The court must also consider the
6 property disposed of by the instrument, the persons it names as devisees or legatees, the words it uses, and
7 the context in which it was created. (*In re Greenwald's Estate* (1937) 19 Cal.App.2d 291, 296.)

8 **B. Trust Background**

9 The Trust was established 94 years ago by an agreement dated August 19, 1921 (“the
10 Agreement”), entered into by the Regents of the University of California (“the Regents”) and Walter S.
11 Martin, Charles Templeton Crocker,¹ John D. McKee, E.S. Heller,² Charles H. Kendrick, Frank F.
12 Kilsby,³ Milton H. Esberg, Herbert Fleishhacker, William H. Crocker, and John S. Drum (collectively,
13 “the Original Trustees”). The beneficiaries of the Trust are the San Francisco Posts of the American
14 Legion, The San Francisco Art Association (now the Museum of Modern Art), and the Musical
15 Association of San Francisco (now the San Francisco Symphony).

16 In the years following World War I, a group of private citizens, desirous of a cultural hub for
17 music and fine arts in San Francisco, sowed the seeds for the creation of the War Memorial Trust. Those
18 citizens successfully gathered a substantial sum of money from wealthy donors to develop the desired
19 site, but the sum was insufficient to complete their plan. In 1920, members of the newly formed
20 American Legion suggested an alternate vision for the project and proposed dedicating the site as a War
21 Memorial in tribute to civilian and military heroes of World War I. By initiating a funding drive, the
22 American Legion was able to raise approximately \$2 million dollars, which was sufficient to develop the
23 project. The War Memorial project included a theater or auditorium building, a building to be used by the
24 San Francisco Art Association, and a permanent headquarters for the American Legion and other patriotic
25 organizations.

26 The Trust was created, in part, “to honor the memory of the soldiers, sailors, marines, and war
27

28 ¹ Mr. Martin and Mr. Crocker represented the San Francisco Art Association. (Trust, p. 4, ¶1.)

² Mr. McKee and Mr. Heller represented the Musical Association of San Francisco. (Trust, p. 4, ¶1.)

³ Mr. Kendrick and Mr. Kilsby represented the San Francisco Posts of the American Legion. (Trust, p. 4, ¶1.)

1 workers -- men and women --who brought imperishable glory to California by their splendid contribution
2 to the winning of the World War[]” and provided for “the erection . . . of a *War Memorial* consisting of . .
3 . a building to be used by the San Francisco Art Association, . . . and a building to be used by the San
4 Francisco Posts of the American Legion, an organization composed of veterans of the late World War, all
5 for the purpose of commemorating in perpetuity the victory achieved by the United States of America, . .
6 .” (Trust, pp.1-2, Preamble.) The Trust requires the Trustees to “completely furnish and equip in a
7 modern manner the buildings to be occupied by the San Francisco Posts of the American Legion, as
8 executive offices, club and meeting rooms, and auditorium, . . .” and provides that the American Legion
9 “shall be under no obligation to pay rent.” (*Id.*, p.7, ¶¶8-9.) As previously stated, the Trust further
10 provides that:

11
12 The building to be occupied by the San Francisco Posts of the American Legion shall be
13 occupied and used by [them] . . . without rent charge. The San Francisco Posts of the
14 American Legion or a majority of them, shall under such rules and conditions as they may
15 prescribe, provide headquarters for Veterans of the Mexican War, Grand Army of the
16 Republic, Spanish-American War Veterans, and such other patriotic organizations as said
17 San Francisco Posts of the American Legion may from time to time desire to install.

18 (Trust, p.15, ¶10(C)(1) [emphasis added].) In a later section entitled “General Provisions,” the
19 Trust states that if the American Legion “should cease to exist and there be no similar patriotic
20 organization of like membership in existence at that time, the building to be erected for use by the
21 San Francisco Posts of the American Legion shall thereafter be under the exclusive direction and
22 control of the Regents.” (Trust, p.16, “General Provisions” ¶3 [emphasis added].) The term at
23 issue – “patriotic organizations” – thus appears twice in the Trust, but it is the use of that phrase in
24 paragraph 10, that is disputed here.

25 **C. Interpretation**

26 The Trustees have interpreted the term “patriotic organizations” as being limited to organizations
27 that have veteran members. The American Legion argues that the term “patriotic organizations” is not
28 intended to be limited to veteran-only membership organizations, but is broad enough to include, for
example, veteran service organizations like STP. The American Legion maintains that construing that
phrase as narrowly as the Trustees propose would constrain its rights under the Trust “to the point of near

1 non-existence.” (Amended Petition, p. 4:3-4.) The Trustees contend that that the doctrine of *ejusdem*
2 *generis*, the principle against surplusage, and the requirement that all parts of a trust be construed in
3 relation to each other weigh in favor of their proposed interpretation of “patriotic organizations.” The
4 American Legion rejects the Trustees’ reliance on *ejusdem generis*, a principle of *statutory* interpretation,
5 and encourage the Court to instead focus on Probate Code §§ 21120-21122, which the American Legion
6 believes supports its interpretation of “patriotic organizations.”

7 The Court’s primary task in construing the meaning of a trust provision is to determine the intention
8 of the trustor(s). Though the Court may evaluate the meaning of particular words, phrases, and
9 provisions, and the context in which the instrument was created, the ultimate theme or purpose of the trust
10 must be its principal focus. Under the four corners of the Trust, the most obvious “intent” in drafting the
11 Agreement was “to honor the memory of the soldiers, sailors, marines, and war workers—men and
12 women—who brought imperishable glory to California by their splendid contribution to the winning of the
13 World War.” (Trust, p.1, Preamble.)

14 The American Legion maintains that the term “war workers” suggests the drafters wished to honor
15 both military and nonmilitary personnel involved in the war effort. They further contend that use of such
16 language sheds light on the intended breadth of the term “patriotic organizations” as used in paragraph 10.
17 The American Legion cites to Probate Code § 21121, which instructs that all parts of an instrument
18 should “be construed in relation to each other and so as, if possible, to form a consistent whole.” The
19 American Legion claims that interpreting “patriotic organizations” to include “war workers” as in the
20 Preamble would lead to a far broader construction than the one taken by the Trustees. The Trustees,
21 however, argue that there is no reason to assume that the term “war workers” refers to non-military
22 personnel or non-veterans. The Trustees contend that even if that were the intended meaning, it would
23 not be inconsistent with their interpretation of “patriotic interpretations” set forth in the so-called “Varah
24 Memorandum,”⁴ which classifies “patriotic organizations” as organizations “*primarily* or exclusively
25 limited to veterans” or their relatives.

26
27 ⁴ The Trustees’ position regarding the meaning of the phrase “patriotic organizations” originated from a memorandum prepared
28 by then Deputy City Attorney Adine K. Varah, dated February 25, 2009. The parties refer to this memorandum in the briefing
as the “Varah Memorandum”. The dispute between the Trustees and the Posts over the meaning of the term “patriotic
organizations” has been ongoing since about 2009, after the Trustees made clear that they had adopted the position taken in the
Varah Memorandum. (See the Posts’ Notice of Lodgement, Ex. 10.)

1 In attempting to ascertain the overarching purpose of the Trust, the Court agrees with the American
2 Legion’s broader reading of the Preamble’s reference to “war workers.” The reference is to “war workers
3 – men *and women*,” which demonstrates an intent to at least honor non-military personnel and non-
4 veterans in addition to veterans in the creation of the Veterans’ Building. Taken a step further, this
5 language could be construed as intending to allow non-veteran membership organizations, such as VSOs,
6 to occupy space in the Veterans’ Building if selected by the American Legion. However, the Court is not
7 convinced that this alone decides the meaning of “patriotic organizations.” The Court turns then to the
8 other arguments regarding word usage and historical context.

9 ***Ejusdem Generis and Trust Interpretation Under the Probate Code***

10 The Trustees contend that *ejusdem generis* militates against a finding that VSOs are among the
11 “patriotic organizations” entitled to rent-free space in the Veterans’ Building. Literally “of the same kind
12 and class,” *ejusdem generis* instructs that “where general words follow the enumeration of particular
13 classes of person or things, the general words will be construed as applicable only to persons or things of
14 the same general nature or class as those enumerated.” (*Bounds v. Superior Court* (2014) 229
15 Cal.App.4th 468, 481, fn. 5.) The phrase at issue states that the American Legion “shall. . . provide
16 headquarters for Veterans of the Mexican War, Grand Army of the Republic, Spanish-American Civil
17 War Veterans, and such other patriotic organizations as [the American Legion] may from time to time
18 desire to install.” (Trust, p.15, ¶10(C)(1) [emphasis added].) The Trustees identify veteran membership
19 as the central shared characteristic of the specifically enumerated groups in ¶ 10(C)(1) and argue that use
20 of the general phrase “such other patriotic organizations” after the enumerated list demonstrates the
21 drafters’ intent to allow the American Legion to install only fraternal veteran organizations similar to
22 those listed. The American Legion responds that the enumerated groups have more than one common
23 characteristic and ask the Court to apply interpretation principles specifically provided for in the Probate
24 Code (§§ 21120, et seq.) rather than *ejusdem generis*, a doctrine generally employed in statutory
25 interpretation.⁵

26 The Probate Code contains three provisions specifically addressing trust interpretation: §§ 21120,
27 21121, and 21122. The American Legion asks the Court to focus on the “ordinary and grammatical
28

⁵ *Ejusdem generis* is commonly used in interpreting wills. (See 64 Cal.Jur.3d (2015) Wills § 373.)

1 meaning” of the phrase “patriotic organizations” as required by Probate Code § 21122. Webster’s 1913
2 Dictionary defines “patriotic” as “[i]nspired by patriotism; actuated by love of one’s country; zealously
3 and unselfishly devoted to the service of one’s country; as, a patriotic statesman, vigilance.” (W.T.
4 Harrison & F. Sturges Allen, Webster’s New International Diction of the English Language (G. & C.
5 Merriam Co.) (1913).) The American Legion contends that the Trustees’ assigned meaning of “patriotic
6 organizations” – veteran membership – is thus too narrow in light of the “ordinary and grammatical”
7 meaning of “patriotic” at the time the Trust was created. The Trustees acknowledge that the definition of
8 “patriotic” – then and now – is broad but emphasize that the phrase “patriotic organizations” does not
9 stand alone; it follows a list of specific groups. They also refer to extrinsic evidence to contextualize the
10 meaning of “patriotic organizations,” which they believe was intended to be narrower than the dictionary
11 definition of “patriotic.” That evidence is discussed in the section below.

12 The American Legion also cites Probate Code § 21120 in arguing that the phrase “patriotic
13 organizations *of like membership*,” which appears on page 16 of the Trust under “General Provisions,”
14 would be robbed of its effect if the Court interprets “patriotic organizations” as used on page 15 (§
15 10(C)(1)) as requiring veteran membership. In such a case, “patriotic organizations” would already be
16 defined by their membership, rendering the later addition of the language “of like membership”
17 meaningless surplusage. Section 21220 states that “[t]he words of an instrument are to receive an
18 interpretation that will give every expression some effect, rather than one that will render any of the
19 expressions inoperative.” The Trustees contend that use of the phrase “similar patriotic organizations of
20 like membership” lends additional support to their position because it demonstrates that the settlors
21 connected “patriotic organizations” with a membership structure, and argue that a provision is not
22 surplusage simply because it reiterates a point established elsewhere.

23 While the Court finds it significant that the phrase “patriotic organizations” follows a list of
24 veteran organizations, it agrees with the American Legion that it is too restrictive to find that the only
25 unifying characteristic of those organizations is their composition. *Ejusdem generis* instructs that the
26 general nature or class of specifically enumerated persons or things should inform the meaning of less
27 specific terminology. (See 58 Cal.Jur.3d Statutes (2015) § 142.) VSOs, which provide services to
28 veterans, including counseling and support services, are not so dissimilar to the organizations listed that

1 they cannot be said to be of the same general nature or class as those that are comprised solely of
2 veterans. Also, in providing a network for veterans who fought in the wars specified in paragraph 10,
3 those fraternal organizations ostensibly supported veterans in many of the same ways VSOs like STP
4 currently support veterans. The argument in favor of such a narrow interpretation might be stronger if the
5 phrase said “*other such* organizations,” but it does not and the Court is not prepared to find that veteran
6 membership was an implicit requirement of a “patriotic organization” based on the application of *ejusdem*
7 *generis*.

8 Further, the paramount principle of trust construction is that, so far as possible, provisions must be
9 construed according to the intention of the settlor as manifested in the instrument. (See 64 Cal.Jur.3d
10 (2015) Wills § 341.) To this principle, all other rules of construction, statutory or judicial, must yield
11 since the general object of the various rules of construction is the ascertainment of the settlor's intention.
12 (See *Newman v. Wells Fargo Bank* (1996) 14 Cal.4th 126, 134.) As discussed above, the overarching
13 theme or intent of the Trust, though not entirely clear, appears to be broader than the Trustees’ proposed
14 interpretation. The Preamble’s language suggests that the drafters intended to honor the memory of the
15 many contributors to the war effort, not just those who served in the armed forces. *Ejusdem generis* is
16 primarily used in construing statutes, which assume a level of sophistication with respect to choice of
17 words, or sentence structure and punctuation. Because of the age of the Trust and lack of witnesses with
18 personal knowledge about its execution, the Court cannot discern a similar level of thought and
19 sophistication regarding the specific language in dispute; what little the Court knows of the circumstances
20 surrounding execution has been brought to its attention through the parties’ use of extrinsic evidence,
21 discussed below.

22 Before analyzing the extrinsic evidence presented, the Court wishes to address the other two
23 points made by the parties: (1) the rule against surplusage and (2) the common and grammatical meaning
24 of the term “patriotic.” To be sure, use of the qualifying language “of like membership” on the page of
25 the Trust immediately following the provision at issue demonstrates a clear intent to narrow the scope of
26 permissible organizations that could essentially “stand in” for the American Legion should they cease to
27 exist. However, the “of like membership” phrase addresses a very specific situation – the end of the
28 American Legion – and the inclusion of that language after “patriotic organizations” evinces an awareness

1 of the limitation being placed on “patriotic organizations” in that context and the lack of limitation placed
2 on “patriotic organizations” in the previous context (i.e., the context provided for in ¶ 10(C)(1)). With
3 respect to the meaning of the word “patriotic” (and the significance of that meaning in interpreting the
4 provision at issue), both sides are, in certain ways, correct. The broad meaning of “patriotic” suggests
5 that patriotism – a love of one’s country – can take many forms including but not limited to military
6 service. However, the Trustees are correct that the word “patriotic” in the Trust does not stand alone and
7 thus cannot be interpreted in a vacuum.

8 *Extrinsic Evidence*

9 In this section, the Court discusses the extrinsic evidence it found most significant in reaching its
10 determination. The parties presented extrinsic evidence beyond that discussed here, some of which was
11 objected to by the Trustees in post-hearing briefing. Because the Court did not consider that evidence in
12 reaching its decision, it finds it unnecessary to rule on the Trustees’ evidentiary objections and opposition
13 to the American Legion’ request for judicial notice submitted on December 4, 2015.

14 In an attempt to shed light on the construction of the phrase “patriotic organizations” in the years
15 following the execution of the Agreement, both sides have brought a variety of documents to the Court’s
16 attention. Only a small fraction of those documents are discussed in this section. In the Petition, the
17 American Legion cite to an opinion written by the San Francisco City Attorney in 1932, which states that
18 the “wish and will of the American Legion Posts, with respect to veteran and other patriotic organizations,
19 is superior to that of the Board of Trustees of the War Memorial.” (City Att’y Op. No. 621, p. 2 (1932).)
20 In their Response & Objections, the Trustees submit a letter sent in 1933 from then-Secretary of the
21 American Legion War Memorial Commission, J.C. Claridge, to then-Managing Director of the War
22 Memorial and Performing Arts Center, Selby Oppenheimer. (Decl. of Jennifer E. Norris, Ex. 8 at p.1.) In
23 that letter, Mr. Claridge states, in pertinent part:

24
25 *The understanding regarding the definition of a patriotic organization for the purpose of*
26 *permitting them occupancy of the Veterans’ Building on the same basis as Veteran*
27 *organizations was that such patriotic organization must have its foundation and be the*
28 *outcome of some one of the Wars in which this Country has engaged. As an example of the*
type of patriotic organization, this list [of organizations occupying the Building] shows the
American War Mothers and the Gold Star Mothers, which are based entirely upon the service
of sons of the members of those two organizations during the World War, the Ladies of the

1 Grand Army of the Republic, Daughters of the American Revolution, Daughters of Union
2 Veterans of the Civil War, and organizations of a like character.

3 From this you can readily see that although there are many organizations, and in the general
4 sense of the term they are patriotic organizations, for the purpose of admitting them to the
5 facilities of this building, we believe that this Commission has followed a line of definition
6 that is clearly within the intent of the Trust Agreement.

7 (*Id.* [emphasis added].) The Trustees focus on the second paragraph, but it is the italicized portion of the
8 first paragraph the Court finds most significant. The second paragraph shows that the settlors intended
9 something narrower than, e.g., any organization “actuated by love of one’s country.” However, the first
10 paragraph, which sets forth the clearest “definition” of “patriotic organizations” the Court has at its
11 disposal, refers to “patriotic organizations” as organizations “hav[ing] their foundation and be[ing] the
12 outcome of” one of the wars in which the U.S. has engaged. STP, which arose out of its founders’
13 dissatisfaction with the resources available to veterans of the Vietnam War, would appear to fit that
14 definition. Though the same cannot be said for all veteran service organizations, i.e., that they have their
15 foundation in a specific war, the Court finds that the term “patriotic organizations” incorporates more than
16 just veteran membership organizations, and, in light of the “foundation requirement” described above, the
17 specific VSO at issue in this litigation – STP – falls within that definition.

18 As demonstrated by the above quoted portion of Mr. Claridge’s letter, and reinforced by the Annual
19 Report of the Board of Trustees of the War Memorial of San Francisco (1939-1946),⁶ various
20 organizations comprised of non-veterans, such as the Gold Star Mothers and Daughters of the American
21 Revolution, were permitted to occupy space in the Veterans’ Building as “patriotic organizations” in the
22 early years following execution of the Trust. The Trustees contend that the prior use of the building by
23 organizations comprised of *relatives* of veterans, such as the Gold Star Mothers and Daughters of the
24 American Revolution, is not inconsistent with their position (i.e., the position taken in the Varah
25 Memorandum): namely, that “patriotic organizations” are those comprised *primarily* or exclusively of
26 veterans *or their relatives*. (See the American Legion’ Notice of Lodgement, Ex. 10, p. 7.) The
27 American Legion correctly point out that though the Trustees use the phrase “veterans *or their relatives*”
28 repeatedly in their Response & Objections brief, the phrase “or their relatives” only appears once in the

⁶ Included as Exhibit 4 of the Posts Notice of Lodgement in Support of its Petition.

1 Varah Memorandum. (*Id.*) Both sides agree that the definition of “patriotic organizations” is broader
2 than pure veteran membership organizations, but disagree on just how much broader it is.

3 *Additional Considerations*

4 The language quoted above from the 1932 City Attorney Opinion - that the “wish and will of the
5 American Legion Posts, with respect to veteran and other patriotic organizations, is superior to that of the
6 Board of Trustees of the War Memorial”⁷ – is significant for two reasons. (City Att’y Op. No. 621, p. 2
7 (1932).) First, it shows that in the years following execution of the Trust, the attitude was one of
8 deference to the “wish and will” of the American Legion with respect to their right to install veteran and
9 other “patriotic organizations” in the Veterans’ Building. Second, it reemphasizes a point that the
10 American Legion make in the Petition and that is central to any discussion of parties’ rights and duties
11 under a Trust: the Trust is to be administered for the sole benefit of the beneficiaries. The American
12 Legion is one of three beneficiaries under the Trust and is given some – not unlimited, but some –
13 discretion to install “patriotic organizations” in the Veterans’ Building. The Court takes no position on
14 the veracity of the suggested motivations of the Trustees in narrowly construing the American Legion’
15 discretion under the Trust. However, it agrees that the Trustees’ interpretation would constrain the
16 American Legion’ rights “to the point of near non-existence.” (Amended Petition, p. 4:3-4.)

17 CONCLUSION

18 The American Legion’s Petition is GRANTED. As used in paragraph 10, ¶ (C)(1) of the Trust, the
19 term “patriotic organizations” is not limited to veteran membership organizations. The Trustees are
20 instructed to allow the American Legion to allocate rent-free space in the Veterans’ Building to veteran
21 service organizations, such as Swords to Plowshares. The organization’s use of the facilities must fall
22 within the uses prescribed in ¶ 10, (C)(2) of the Trust – club and meeting rooms, executive offices, and
23 auditorium purposes.

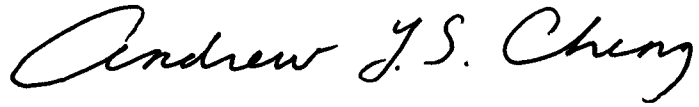
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26 ⁷ This sentiment is also consistent with another item of evidence presented by the Posts: a 1996 letter from Clayton Roche,
27 then-Deputy Attorney General of California to Senator Milton Marks, attached as Exhibit 14 to the Notice of Lodgement. In
28 pertinent part, Mr. Roche states that “the Trust specifies that the Building will ‘be occupied by San Francisco Posts of the
American Legion,’ and allows the [P]osts, at their discretion, to provide space for ‘other patriotic organizations,’ without
regard to any criteria established by Congress or other qualification.” (Notice of Lodgement, Ex. 14, p.3 [emphasis added].)

1 The Court finds that construing “patriotic organizations” to include veterans services organizations
2 best fulfills the duties of the Board of Trustees to the American Legion under the Trust Agreement and
3 fittingly honors those who have sacrificed so much for the good of our country.

4 IT IS SO ORDERED.

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7 Dated: January 29, 2016

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ANDREW Y.S. CHENG
Judge of the Superior Court

2
3 **CERTIFICATE OF SERVICE BY MAIL (C.C.P. §1013)**

4 The undersigned certifies, under penalty of perjury, that I am over the age of 18 years,
5 employed in the County of San Francisco, State of California. I served the **ORDER**
6 **CONSTRUING TRUST INSTRUMENT AND INSTRUCTING THE BOARD OF**
7 **TRUSTEES OF THE SAN FRANCISCO WAR MEMORIAL TRUST** by enclosing a true
8 copy thereof in an envelope(s) addressed as shown below and placing the envelope(s)
9 for collection and mailing on **January 29, 2016** in San Francisco, California following
10 the Court's ordinary practices. I am readily familiar with the Court's practice for
11 collecting and processing correspondence for mailing. On the same day that
12 correspondence is placed for collection and mailing, it is deposited in the ordinary
13 course of business with the United States Postal Service in a sealed envelope with
14 postage fully prepaid.

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Dated: January 29, 2016

By: Craig Blackstone
Craig Blackstone
Deputy Court Clerk