**STATE OF NEW HAMPSHIRE**

**TENTH CIRCUIT - BRENTWOOD PROBATE DIVISION**

In Re: The Judith E. Tierno Revocable Trust of 2003

Docket No.318-2013-EQ-01252

**OBJECTION TO RESPONDENT’S MOTION TO DISMISS**

 NOW COMES Daniel E. Healy (the “Petitioner”), Trustee of The Judith E. Tierno Revocable Trust of 2003, by and through his attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, and objects to the Motion to Dismiss. In furtherance of His Objection, the Petitioner states as follows:

1. Contrary to the Respondents’ assertions, New Hampshire law does not require that a trust be amended by a method defined in the trust. Rather, Ms. Tierno modified her Trust as provided under the New Hampshire Uniform Trust Code by a method that is not proscribed by the express terms of her Trust and which manifested clear and convincing evidence of her intent.
2. Ms. Tierno is presumed to have had the requisite capacity to amend her Trust until the Respondents produce evidence that she lacked such capacity. No such evidence has been produced. Indeed, discovery has not even begun in this matter.
3. Because the Court assumes the truth of the facts as alleged in the Petitioners’ pleadings and construes all reasonable inferences in the light most favorable to the Petitioner, the facts as pled constitute a basis for relief. Accordingly, it would be inappropriate to dismiss the petition at this early stage.
4. For the reasons stated above, and as discussed in greater detail in the attached Memorandum of Law, the Respondents’ Motion to Dismiss must be denied.

 NOW THEREFORE, for the reasons set forth, the Petitioner respectfully requests that this Honorable Court:

1. DENY the Respondent’s Motion to Dismiss the Partially Assented to Petition to Validate the Third Amendment and Restatement of the Judith E. Tierno Revocable Trust;
2. Grant such other and further relief as this Court determines to be just and equitable.

 Respectfully Submitted,

 Daniel E. Healy in his capacity as

 Trustee of the Judith E. Tierno

 Revocable Trust of 2003

Date: February \_\_, 2014 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 John E. Hughes, Esq. NH BAR # 10243

 Darrell J. Chichester, Esq. NH BAR # 17666

 900 Elm Street, PO Box 326

 Manchester, New Hampshire 03035-0326

 Telephone: (603) 228-1335

**RULE 21 CERTIFICATE**

 I Darrell J. Chichester, certify that a copy of the foregoing document was served on all interested parties by first class mail.

Dated: February \_\_\_\_, 2014 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Darrel J. Chichester, Esq. NH Bar # 17666

7543648\_1.DOCX