

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM3
Temporary Judge Seni B. Linnebur
Date: 05/01/2024

Court Room Rules and Notices

#	Case Name	Tentative
1	Pipkin Trust 01286434	<p style="text-align: center;">DEMURRER</p> <p>Respondent Patricia Pipkin’s demurrer to Petitioner Aaron Pipkin’s Amended Petition (ROA 32) is SUSTAINED without leave to amend. The hearing on the Petition (ROA 2) set for 5/21/24 at 9:00 a.m. in Dept. CM03 is VACATED.</p> <p>Respondent demurrers to the entire Petition on the ground that Respondent lacks standing. “[W]hen a demurrer or pretrial motion to dismiss challenges a complaint on standing grounds, the court may not simply assume the allegations supporting standing lack merit and dismiss the complaint. Instead, the court must first determine standing by treating the properly pled allegations as true. If, having taken the allegations as true, the court finds no standing, it should sustain the demurrer or dismiss the petition. If it finds standing by contrast, the court should allow the litigation to continue.” (<i>Barefoot v. Jennings</i> (2020) 8 Cal.5th 822 (“<i>Barefoot</i>”).)</p> <p>The facts alleged in the Petition (ROA 2) demonstrate that Petitioner lacks standing as to the first, fourth, fifth, and sixth causes of action. Petitioner argues that he has standing because he would have been an intestate heir of the settlor but for the Trust that was allegedly procured by fraud. In <i>Barefoot</i>, the California Supreme Court held that “the Probate Code grants standing in probate court to individuals who claim that <i>trust amendments</i> eliminating their beneficiary status arose from incompetence, undue influence, or fraud.” (<i>Id.</i> at p. 825, emphasis added.) The Supreme Court in <i>Barefoot</i> specifically stated, “We do not decide here whether an heir who was never a trust beneficiary has standing under the Probate Code to challenge that trust.” (<i>Id.</i> at Fn. 2.) The facts in the Petition make it clear that Petitioner is not, and has never been, a trustee or beneficiary of the Trust. Thus, Petitioner lacks standing to bring any cause of action under Probate Code sections 17200 and 15409.</p> <p>As to the second cause of action for Financial Elder Abuse, in ruling on the demurrer, the court must assume as true the allegations made that Petitioner is the successor in interest and an interested person. However, the probate court does not have jurisdiction over elder abuse claims unless it is brought in connection with a conservatorship proceeding. (Prob. Code § 15657.3.) Additionally, the court has concurrent jurisdiction over an elder abuse action when it is made in conjunction with an action brought under the Probate Code (i.e., sections 17200 or 850). Since Petitioner’s trust causes of action fail, the probate</p>

		<p>court is without jurisdiction to proceed solely on the elder abuse action.</p> <p>The court need not rule on the third cause of action because it is merely a remedy for financial elder abuse. "Constructive Trust" is an equitable remedy, not a cause of action. (Civ. Code § 2224; <i>Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga</i> (2009) 175 Cal.App.4th 1306, 1332.)</p> <p>On the record presented, there does not appear to be any reasonable possibility of amending the Petition to overcome the issue of standing. Thus, the demurrer is sustained without leave to amend.</p>
3	Foresman - Trust 01001069	<p style="text-align: center;">MOTION FOR SANCTIONS</p> <p>Before the court is a motion by Petitioner Guy Foresman ("Guy") for issue, evidentiary, and/or terminating sanctions, and for monetary sanctions, against Respondent Gayl Beller ("Gayl"). This motion is made pursuant to Code of Civil Procedure section 2025.450(h) because Gayl has failed to obey a court order compelling her attendance, testimony, and production at her deposition. (ROA 766.) "The principle that a party to a civil action has a right to depose any adverse party in the action is both fundamental to our legal system and longstanding." (<i>Slaieh v. Superior Ct. of Riverside Cnty.</i> (2022) 77 Cal.App.5th 266, 275.)</p> <p>Guy requests that the court "enter a terminating sanction against [Gayl] striking every response, objection, or opposition to Guy's petitions filed by [Gayl] and striking any petitions filed by [Gayl]." (Opp. 6:15-16.) There are multiple matters pending in this case, and Guy did not identify any particular pleading he wishes to strike, making the court's job in ruling on this motion difficult.</p> <p>The purpose of the discovery sanctions is to protect the party seeking the discovery, not to punish the noncompliant party. (See <i>Siry Inv., L.P. v. Farkhondehpour</i> (2020) 45 Cal.App.5th 1098, 1117.) "Where a motion to compel has been granted, and discovery has been delayed or denied, the court must make orders in regard to the refusal As are just . . . The penalty should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. Where a motion to compel has previously been granted, the sanction should not operate in such a fashion as to put the prevailing party in a better position than he would have had if he had obtained the discovery sought and it had been completely favorable to his cause." (<i>Deyo v. Kilbourne</i> (1978) 84 Cal.App.3d 771, 793.)</p> <p>Guy has not established how Gayl's failure to attend her deposition relates to every petition, response, and objection filed by Gayl. The subject deposition notice issued to Gayl appears to pertain only to Guy's Petition (ROA 2.) In Guy's motion to compel</p>

		<p>Gayl to attend her deposition, Guy is referred to as the "Petitioner" and Gayl as "Respondent." Moreover, in such motion to compel, Guy argued that each of the documents he requested to be produced at Gayl's deposition were "material to the issues in this litigation, namely GAYL's breach of fiduciary duties owed to the Trust. GAYL's actions as trustee are the crux of the claims against her, and these documents are evidence of those actions." (ROA 551, 5:28-6:3.) Thus, it appears that the deposition notice pertains to Guy's Petition against Gayl (ROA 2) and not Gayl's Petition against Guy (ROA 185) or any other pleading. Guy's Petition is currently stayed. (ROA 971.)</p> <p>The court notes that at the onset of this case, Gayle and Scott were both represented by Beck & Christian, APC. Consequently, Gayl's Response to Guy's Petition (ROA 28) and Gayl's Petition against Scott (ROA 185) were filed jointly with Scott. It would not be appropriate for the court to strike these pleadings, as requested by Guy, since there is no reason to impose sanctions against Scott.</p> <p>Guy requests, in the alternative, that the court issue "an evidentiary and/or issue sanction precluding [Gayl] from introducing any documents, evidence, or testimony, previously ordered by this Court and precluding [Gayl] from contesting the allegations raised in GUY's Petition regarding [Gayl's] acts as trustee." (Opp., 6:16-19.)</p> <p>The court believes this alternative relief requested is "appropriate to the dereliction" of Gayl and is inclined to issue such order. Likewise, the court is inclined to grant the monetary sanctions of \$2,560. However, as discussed above, the relief requested pertains only to Guy's Petition (ROA 2) which is stayed. If Scott's motion to dismiss Guy's Petition is granted, then this motion will be moot. Further, Gayl has not opposed this motion despite proof of service. It is not clear to the court whether Gayl (and/or Scott) has neglected to oppose this motion because of the stay. If such is the case, then Gayl should be given an opportunity to oppose this motion.</p> <p>Additionally, this request for sanctions is brought under the Discovery Act. Motions concerning discovery must be heard 15 days before the date initially set for trial. (Code Civ. Proc. § 2024.020(a).) This case was initially set for trial on 10/24/23. (ROA 776.) Other than the court's ruling on the initial motion compel Gayl's deposition, there does not appear to be any stipulation or order extending the discovery motion cutoff date.</p> <p>Counsel should be prepared to discuss (1) the effect of the stay on this motion; and (2) the discovery cut-off date.</p>
5	Galloway - Trust 01319769	

		<p style="text-align: center;">MOTION TO COMPEL FURTHER RESPONSE TO FORM INTERROGATORIES</p> <p>On 2/28/24, Respondent Duane Galloway’s motion to compel further responses to form interrogatories was granted. At the request of counsel for Petitioner Denise Galloway, the court continued this motion only as to the issue of sanctions. (ROA 37.)</p> <p>The court’s tentative was to award Respondent attorney’s fees and costs of \$1,185.00 (\$375ph x 3hrs + \$60costs). After reviewing Petitioner’s Opposition filed 4/16/24, the court is not persuaded to change its tentative ruling.</p> <p>Petitioner appears not to understand that her initial responses to discovery were served untimely and, therefore, any objections were waived. Respondent’s motion appropriately sought further responses. Petitioner’s Opposition confusingly insists that responses were served but does not address the deficiencies of the responses which were raised in the moving papers. The Opposition is not supported by a declaration and does not provide substantial justification for opposing the motion to compel further response.</p> <p>The court imposes monetary sanctions jointly and severally against Denise Galloway and Michael Quintiliani in the amount of \$1,185.00 (\$375ph x 3hrs + \$60costs). To be clear: The total amount of sanctions incurred for both motions is \$2,370.</p>
5	Galloway - Trust 01319769	<p style="text-align: center;">MOTION TO COMPEL FURTHER RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>On 2/28/24, Respondent Duane Galloway’s motion to requests for production of documents was granted. At the request of counsel for Petitioner Denise Galloway, the court continued this motion only as to the issue of sanctions. (ROA 38.)</p> <p>The court’s tentative was to award Respondent attorney’s fees and costs of \$1,185.00 (\$375ph x 3hrs + \$60costs). After reviewing Petitioner’s Opposition filed 4/16/24, the court is not persuaded to change its tentative ruling.</p> <p>Petitioner appears not to understand that her initial responses to discovery served on 7/26/23 were served untimely and, therefore, any objections were waived. Respondent’s supplemental responses served on 10/16/23 included objections and did not otherwise comply with the Code of Civil Procedure. Respondent’s motion appropriately sought further responses. Petitioner’s Opposition confusingly insists that responses were served but does not address the deficiencies of the responses or supplemental responses which were raised in the moving papers, nor does the Opposition address Petitioner’s failure to meet and confer regarding the supplemental</p>

		<p>responses. The Opposition is not supported by a declaration and does not provide substantial justification for opposing the motion to compel further response.</p> <p>The court imposes monetary sanctions jointly and severally against Denise Galloway and Michael Quintiliani in the amount of \$1,185.00 (\$375ph x 3hrs + \$60costs). To be clear: The total amount of sanctions incurred for both motions is \$2,370.</p> <p>Counsel for Respondent is ordered to give notice.</p>
6	<p>Nguyen - Minor's Compromise 01379729</p>	<p style="text-align: center;">MOTION TO SEAL</p> <p>Petitioner Jimmy Nguyen's motion to seal is GRANTED.</p> <p>Unless confidentiality is required by statute or rule of court, California court records are presumed to be open to the public. (Cal. Rules of Court, rule 2.550(c).) "Probate proceedings, including a petition for minor's compromise, are not closed proceedings. No statute exempts probate files from the status of public records." (<i>Copley Press, Inc. v. Superior Court</i> (1998) 63 Cal.App.4th 367, 376.) When individuals employ the public powers of state courts to accomplish private ends, "they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed ... will be open to public inspection." (<i>Ibid.</i>)</p> <p>Absent circumstances not present here, the court may seal the records at issue only if it expressly finds facts establishing that:</p> <ol style="list-style-type: none"> 1. There exists an overriding interest that overcomes the right of public access to the record; 2. The overriding interest supports sealing the record; 3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; 4. The proposed sealing is narrowly tailored; and 5. No less restrictive means exist to achieve the overriding interest. <p>(Cal. Rules of Court, rule 2.550(d).)</p> <p>The party moving to have a record sealed bears the burden of proving such facts. (<i>See H.B. Fuller Company v. Doe</i> (2007) 151 Cal.App.4th 879, 894-895.)</p> <p>Petitioner seeks to seal portions of the Amended Petition for Approval of Compromise, as well as portions of the Supplemental Declaration of Yoshiaki C. Kubota. The redacted version of these documents were filed on 3/12/24. (ROAs 27, 28.) The declaration in support of this motion sets forth facts sufficient to find overriding interests that will be prejudiced if this motion is denied. The proposed sealing is narrowly tailored</p>

		<p>and no less restrictive means exist to achieve the overriding interest.</p> <p>The court ORDERS the unredacted Sealed Amended Petition for Approval (ROA 30) and the unredacted Sealed Declaration of Yoshiaki C. Kubota (ROA 31) to remain permanently sealed. This order is without prejudice to the right of any person to seek an order unsealing the sealed documents pursuant to CRC, Rule 2.551(h).</p> <p>Counsel for Petitioner is directed to give notice.</p>
10	Merrill-Francis - Minor's Compromise	<p style="text-align: center;">MOTION TO SEAL</p> <p>Petitioner Robert Lee Francis's motion to seal is GRANTED.</p> <p>Unless confidentiality is required by statute or rule of court, California court records are presumed to be open to the public. (Cal. Rules of Court, rule 2.550(c).) "Probate proceedings, including a petition for minor's compromise, are not closed proceedings. No statute exempts probate files from the status of public records." (<i>Copley Press, Inc. v. Superior Court</i> (1998) 63 Cal.App.4th 367, 376.) When individuals employ the public powers of state courts to accomplish private ends, "they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed ... will be open to public inspection." (<i>Ibid.</i>)</p> <p>Absent circumstances not present here, the court may seal the records at issue only if it expressly finds facts establishing that:</p> <ol style="list-style-type: none"> 1. There exists an overriding interest that overcomes the right of public access to the record; 2. The overriding interest supports sealing the record; 3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; 4. The proposed sealing is narrowly tailored; and 5. No less restrictive means exist to achieve the overriding interest. <p>(Cal. Rules of Court, rule 2.550(d).)</p> <p>The party moving to have a record sealed bears the burden of proving such facts. (See <i>H.B. Fuller Company v. Doe</i> (2007) 151 Cal.App.4th 879, 894-895.)</p> <p>Petitioner seeks to seal portions of The Firm-Client Agreement. The redacted copy is attached as Exhibit 5 to the Declaration of Hiromi Parks filed 8/18/23 (ROA 4) and as Exhibit 1 to the Declaration of Hiromi Parks filed 3/28/24 (ROA 43). The declaration in support of this motion sets forth facts sufficient to find an overriding interest may be prejudiced if this motion is denied. The proposed sealing is narrowly tailored and no less restrictive means exist to achieve the overriding interest.</p>

		<p>The court ORDERS the unredacted Sealed Document (ROA 44) to remain permanently sealed. This order is without prejudice to the right of any person to seek an order unsealing the sealed documents pursuant to CRC, Rule 2.551(h).</p> <p>Counsel for Petitioner is directed to give notice.</p>
13	<p>Dorris - Guardianship 00958812</p>	<p style="text-align: center;">MOTION TO BE RELIEVED AS COUNSEL</p> <p>Attorney Robert Pearson seeks to be relieved as counsel for Marisabel Gonzalez. The motion is DENIED.</p> <p>An attorney’s right to withdraw as counsel is conditioned upon compliance with California Rules of Court, Rule 3.1362 and Orange County Local Rule 601.21. The court’s records reflect that counsel has complied with Local Rule 601.21 but has not complied with CRC Rule 3.1362.</p> <p>Counsel must file and serve all three mandatory forms (MC-051, MC-052, and MC-053). (Cal. Rules Court, Rule 3.1362(d).)</p>