

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM05
HON. Judge Ebrahim Baytieh

Date: 06/27/2025

Court Room Rules and Notices

#	Case Name	Tentative
1	Gaytan – Trust (01322551)	<p style="text-align: center;">MOTION TO REOPEN DISCOVERY (ROA 484)</p> <p>Respondent James E. Maisenbacher (“Maisenbacher”) moves to reopen discovery, pursuant to Code of Civil Procedure section 2024.050.</p> <p>Code of Civil Procedure section 2024.050(a) provides: “On motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.”</p> <p>Subdivision (b) of Code of Civil Procedure section 2024.050 explains that in exercising the court’s discretion, the court takes into consideration any relevant matter, including but not limited to:</p> <ol style="list-style-type: none">(1) The necessity and the reasons for the discovery.(2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier.(3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party.(4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action. <p>(See Code Civ. Proc., § 2024.050(b); <i>Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh</i> (2005) 131 Cal.App.4th 1342, 1351-1352.)</p> <p>Maisenbacher argues the discovery should be reopened as to the facts alleged in the First Amended Supplement (ROA 144), which was deemed an amended petition on 2/24/25 (ROA 407).</p>

As more fully set forth in the court’s ruling on the demurrer and motion to strike, the First Amended Supplement added new causes of action and prayers for relief. Thus, it should have been filed as an amended petition after obtaining leave of court. Maisenbacher argues that until the First Amended Supplement was deemed a petition, he had no means of knowing whether the causes of action in the supplement would be heard by the court, and if so, when would the court hear such added causes of action. The court finds this argument to be persuasive.

In opposition to this motion, Petitioner Valerie Gaytan (“Petitioner”) argues that the court already addressed this issue on 8/28/24 in ruling on an *Ex Parte* application filed by Respondent Rick Alike Vierra Cardoza (“Cardoza”). However, Cardoza’s *Ex Parte* application set forth seven (7) reasons for good cause to reopen discovery and continue trial. The filing of the First Amended Supplement was only one of the many reasons listed. (ROA 167, 2:18-5:1.) In ruling on the *Ex Parte* application, the court bifurcated the issue of the transfer of the Palm Springs property, set it for a three-day trial to commence on 2/24/25 (continued from 9/23/24), and reopened discovery consistent with the new trial date. (ROA 194.) No part of the court’s ruling on the *Ex Parte* application mentions the new causes of action and prayers for relief set forth in the First Verified Supplement. In the *Ex Parte* ruling, the court did not set a trial date for any of the causes of action in the First Verified Supplement or for any other issue besides the transfer of the Palm Springs property.

Based on the foregoing, the court finds that the first, second, and fourth factors weigh in favor of reopening discovery.

As more readily reflected in the court’s ruling on the demurrer and motion to strike, this First Amended Supplement/Deemed Petition is not at issue and is still in the pleading stage. Furthermore, the court’s probate examiners must review it anew as an amended petition. Thus, the third factor does not weigh against Maisenbacher’s request to reopen discovery.

Petitioner’s argument that the court does not have authority to reopen discovery once trial has commenced is without merit. Trial has only commenced as to specifically bifurcated issues. No trial has commenced as to the First Amended Supplement/Deemed Amended Petition. Further, trial courts have the ability and discretion to bifurcate causes of action both “for discovery and trial.” (*Garat v.*

		<p><i>City of Riverside</i> (1991) 2 Cal.App.4th 259, 272 n.5, overruled on other grounds. See Cal. Civ. Code Proc. § 2019.020(b) “[O]n motion and for good cause shown, the court may establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice.”].)</p> <p>Petitioner’s assertion that the motion was not accompanied by a meet and confer declaration is a misplaced assertion. The court ordered the parties to meet and confer and submit a joint status report (ROA 407), which report clearly shows that the parties met and conferred as to the issue of reopening discovery. (ROA 416.)</p> <p>Finally, any prejudice resulting to Petitioner in reopening discovery (i.e., delay and expense) can be traced back to Petitioner’s failure to seek leave to amend in July 2024.</p> <p>In order to resolve any confusion or uncertainty resulting from the irregular manner in which the Petition was amended, and given the severity of the claims made against Respondents in the First Amended Supplement/Deemed Amended Petition, and weighing the factors of Code of Civil Procedure section 2024.050(b), the court finds good cause to reopen discovery for all purposes (e.g., written discovery, depositions, experts, etc.) limited only to the facts and subject matter of the First Amended Supplement/Deemed Amended Petition (ROA 144). Further, any party or witness that was previously deposed in this case prior to 7/16/24 may be deposed again solely on the issues raised in the First Amended Petition/Deemed Amended Petition.</p> <p>The motion is GRANTED as set forth above.</p> <p>Petitioner’s request for monetary sanctions is DENIED.</p>
2	Gaytan – Trust (01322551)	<p style="text-align: center;">DEMURRER (ROA 469) AND MOTION TO STRIKE (ROA 468)</p> <p>Respondent James E. Maisenbacher demurs to, and moves to strike, portions of the First Amended Supplement (ROA 144) filed by Petitioner Valerie J. Gaytan (“Petitioner”) on 7/16/24 and deemed an amended petition on 2/24/25 (ROA 407).</p>

Procedural Background

On 8/22/23, Petitioner filed a Petition. (ROA 58.) The Petition named Rick Alike Vierra Cardoza (“Cardoza”) and Maisenbacher as Respondents (collectively, “Respondents”). The Petition sets forth four claims, though two of the claims have multiple subparts. The First Claim seeks multiple orders concerning real property located in San Clemente. The Second Claim seeks multiple orders regarding the “Palm Canyon Property.” The Third Claim alleges conversion. The Fourth Claim is for the imposition of a constructive trust.

On 3/4/24, Maisenbacher filed an objection to the Petition. (ROA 120.)

On 3/11/24, the court set the Petition for trial to commence on 9/24/24. (ROA 125.)

On 5/21/24, Cardoza filed an objection to the Petition. (ROA 139.)

On 7/16/24, Petitioner filed a “First Verified Supplement” to her Petition. (ROA 144.) This supplement added three new causes of action and new prayers for relief. Specifically, it added a Fifth Claim for Court Order to Invalidate Conveyance Documents Based upon Lack of Capacity and/or Undue Influence; a Sixth Claim for Financial Elder Abuse; and a Seventh Claim for Double Damages in connection with the 850 claims in the initial Petition.

On 2/5/25, Petitioner filed a motion to have the First Verified Supplement (ROA 144) deemed an amended petition. (ROA 343.)

On 2/24/25, the court granted the motion and deemed the First Amended Supplement (ROA 144) an amended petition. (ROA 407.) In addition, on 2/24/25 the court commenced the first phase of trial which dealt only with the issue of whether the real property located at 280 N. Palm Canyon Drive, Palm Springs, CA was wrongfully transferred out of the Trust.

On 2/28/25, the court issued its tentative ruling on Phase 1 of the trial. (ROA 419.) On 2/28/25, the court also set a briefing schedule for filing motions to challenge the First Verified Supplement/Deemed Amended Petition. (ROA 423.)

On 3/3/25, the court commenced Phase 2 of the trial which dealt with the validity of the lease agreements submitted as exhibits 24, 25, and 27 during phase 1 of the trial.

On 3/26/25, Maisenbacher filed the instant demurrer (ROA 469) and a motion to strike (ROA 468), challenging the sufficiency of the First Verified Supplement/Deemed Amended Petition (ROA 144).

On 4/3/25, the court issued its tentative ruling on Phase 2 of the trial. (ROA 419.)

Procedural Issues

Since the Verified First Supplement (ROA 144) added new causes of action and prayers for relief, it was an amendment, not a supplement. (CRC, Rule 5.74(a)(3) and (4).) Petitioner failed to seek leave of court to file an amended petition. (Code of Civ. Proc. § 472(a); Prob. Code § 1000.)

While leave to amend is liberally granted, there are procedural safeguards in place to ensure that the amendment does not result in prejudice to the opposing party. (*Vallejo Develop. Co. v. Beck Develop. Co.* (1994) 24 Cal.App.4th 929; *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487 [“Although courts are bound to apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings, up to and including trial, this policy should be applied only ‘[w]here no prejudice is shown to the adverse party.’” (Citations omitted.)].)

The procedural safeguards in place for amending pleadings are especially important in probate cases. When an amended petition is filed in the Probate Department, the court’s Probate Examiners examine the amended pleading anew. Such is not the case when a supplement is filed. This is important because the filing of an amended petition requires service of a new Notice of Hearing, while the filing of a supplement does not. Further, certain types of petitions (such as an 850 Petition) have very strict notice and pleading requirements.

By adding new causes of action to a supplement, Petitioner not only bypassed the procedural requirement to seek leave to amend, but also she bypassed the process of probate examination. Further, it created confusion in the status of the pleadings and as to what

matters were proceeding to trial, thereby potentially denying Respondents due process of law.

Thus, in ruling on the demurrer, motion to strike, and motion to reopen discovery, the court proceeds with an abundance of caution, resolving any doubts in favor of giving Respondents every opportunity to prepare their defense for trial.

Timeliness

Petitioner argues that the demurrer and motion to strike are untimely because they were not filed before the initial hearing date of 3/11/24. Such argument is without merit. The First Amended Supplement (ROA 144) was not filed until 7/16/24, and no hearing date was set on it because it was filed as a supplement.

Petitioner argues that court's order deeming her supplement as a petition does not change the timeline. The court is not persuaded by this argument. In fact, such order *began* the timeline for challenging the sufficiency of the pleading. The court's order specifically states that the order deeming the supplement a petition was "effective" as of 2/24/25. (ROA 407.) The First Amended Supplement (ROA 144) was not an operative petition prior to 2/24/25. There is no proper procedure that was in place allowing the Respondent to challenge the sufficiency of the supplement until it was deemed an amendment on 2/24/25.

Petitioner argues that Maisenbacher's "motion to strike the at-issue 850 Petition's Amendment thereto is wholly untimely and waived." The court is not persuaded, and the court does not find this statement to be legally accurate. The First Amended Supplement/Deemed Amended Petition was deemed a petition on 2/24/25, and no objection or response to it has been filed to it or waived so as to deem it at issue.

On 2/28/25, the court set a briefing schedule as to any motions challenging the sufficiency of the newly deemed petition. (ROA 423.) Thus, the time to challenge the pleading was not 30 days from the date of the initial Petition, nor 30 days from the 2/24/25 Order. Rather, Respondents had up to and including 4/30/25, as ordered by the court. The demurrer and motion to strike were timely filed on 3/26/25.

Meet and Confer

Maisenbacher alleges that Petitioner refused to meet and confer despite his diligent attempts. Petitioner argues that Maisenbacher failed to meet and confer in good faith. Regardless, the failure to adequately meet and confer is not grounds to overrule a demurrer. (Code Civ. Proc. § 430.41(a)(4).)

Demurrer to Sixth Cause of Action for Financial Elder Abuse

Maisenbacher demurs to the sixth cause of action in the First Verified Supplement/Deemed Amended Petition (hereinafter, “Deemed Amended Petition”) (ROA 144) on the grounds that it fails to state a cause of action.

The case law cited by Petitioner in opposition to the demurrer pertains to pleadings in general, but it ignores the heightened pleading requirements for allegations of fraud and elder abuse.

“To be valid, a pleading must contain factual allegations supporting the existence of all the essential elements of a known cause of action.” (*Mobley v. Los Angeles Unified Sch. Dist.* (2001) 90 Cal.App.4th 1221, 1239; see also *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 253; 109 Cal. Rptr. 2d 591, 606.) Further, the causes of action for fraud (e.g., forgery) and elder abuse must be pled with particularity. General and conclusory allegations will not suffice. (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 838; *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal. App. 4th 396, 410.) “This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered.” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74.)

In pleading a cause of action based upon fraud, “[i]t is essential that the facts and circumstances which constitute the fraud should be set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what he is called on to answer, and to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.” (*Scafidi v. W. Loan & Bldg. Co.* (1946) 72 Cal. App. 2d 550, 553, citation omitted, emphasis added.)

Furthermore, “it is not sufficient to allege fraud or its elements upon information and belief unless the facts upon which the belief is founded are stated in the pleading.” (*Dowling v. Spring Val. Water Co.* (1917) 174 Cal. 218, 221.)

Welfare and Institutions Code section 15610.70 provides, as follows (emphasis added):

- (a) “Undue influence” means **excessive persuasion** that causes another person to act or refrain from acting by **overcoming that person's free will** and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:
 - (1) **The vulnerability of the victim.** Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.
 - (2) **The influencer's apparent authority.** Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.
 - (3) **The actions or tactics used by the influencer.** Evidence of actions or tactics used may include, but is not limited to, all of the following:
 - (A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.
 - (B) Use of affection, intimidation, or coercion.
 - (C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.
 - (4) **The equity of the result.** Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the

	<p>relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.</p> <p>(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.</p> <p>The Deemed Amended Petition alleges facts sufficient to establish the Decedent’s vulnerability (e.g., ¶71); Maisenbacher’s apparent authority (e.g., ¶ 88); and the inequity of the result (e.g., ¶ 94).</p> <p>However, the Deemed Amended Petition does not allege sufficient facts to show that Maisenbacher employed any actions or tactics to unduly influence Decedent.</p> <p>Paragraphs 73-74 allege that Cardoza, not Maisenbacher, drafted and procured the signed leases. As to Maisenbacher, paragraph 75 states <i>on information and belief</i> that Maisenbacher “cooperated” with Cardoza to obtain the leases. No facts are alleged to substantiate the allegation based on information or belief that Maisenbacher cooperated. When pleading with particularity, allegations made on information and belief must state facts upon which such information and belief are founded. (<i>Dowling v. Spring Val. Water Co.</i> (1917) 174 Cal. 218, 221.)</p> <p>Paragraph 76 alleges <i>on information and belief</i> that Maisenbacher neglected the Decedent’s healthcare and took steps to isolate him. It alleges no facts to support this information and belief. It alleges no facts to establish that Maisenbacher had a duty pertaining to Decedent’s healthcare or what he did to isolate the Decedent.</p> <p>Paragraph 77 alleges that Maisenbacher witnessed the signing of the Decedent’s Advanced Directive that was procured by Cardoza. Such fact is not sufficient to allege an action or tactic employed by Maisenbacher to unduly influence the Decedent as to any particular documents, including the Advanced Directive.</p> <p>Paragraphs 78-80 alleges actions taken by Cardoza, not by Maisenbacher.</p> <p>Paragraph 81 alleges that Maisenbacher signed loan documents as Decedent’s attorney-in-fact. It does not allege any facts establishing the wrongfulness of such action other than the conclusory statement that the refinance was “orchestrated” by Respondents. Paragraph 33 of the initial Petition (ROA 58) alleges</p>
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that Maisenbacher disbursed these loan funds to himself, Mr. Hoffman, Cardoza, and Decedent's personal bank accounts in order to divert funds away from the Trust. Such facts, even if true, allege harm caused to the Trust, not to the Decedent.

Paragraphs 92-93 and 101-108 allege conclusory facts without specifics.

It is true that, "less particularity is required when the facts lie more in the knowledge of the opposite party." (*Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 217.) However, in this case, Petitioner claims that the amendment was made based on information she obtained through discovery. Moreover, in opposition to the motion to reopen discovery, Petitioner argues that no further discovery is needed. Thus, Petitioner claims to have all the facts needed to plead financial elder abuse with particularity, but she has not done so.

Based on the foregoing, Maisenbacher's demurrer to the 6th cause of action is **SUSTAINED with leave to amend**.

Demurrer to the 7th Cause of Action

Maisenbacher demurs to the Deemed Amended Petition on the grounds that it fails to state facts sufficient to claim damages pursuant to Probate Code section 859.

The 7th Cause of Action in the Deemed Amended Petition is not, in fact, a separate cause of action. Rather, it seeks additional relief for the first and second causes of action in the initial Petition (ROA 58). The initial Petition alleged real properties should be returned to the Trust pursuant to Probate Code section 850, but it did not request damages pursuant to Probate Code section 859 as does the Deemed Amended Petition.

The relief provided in Probate Code section 859 is a remedy, not a cause of action. Demurrer may only be made to an entire pleading or to a cause of action or defense, not a remedy or prayer for relief. (Code Civ. Proc. § 430.50.) A prayer for relief is challenged through a motion to strike.

Thus, Maisenbacher's demurrer to the 7th Cause of Action is **OVERRULED**.

Motion to Strike

Maisenbacher moves to strike certain portions of the Petition (ROA 58) and the Deemed Amended Petition (ROA 144), set forth as items 1-14 in the moving papers.

In claiming punitive damages, allegations of malice, fraud, or oppression, must be pled with specificity. This means that general allegations are insufficient; the petition must detail the conduct that constitutes malice, fraud, or oppression. (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137.)

As discussed above, the Deemed Amended Petition is not pled with sufficient particularity. Therefore, the motion to strike is **GRANTED** as to items 3, 10, 11, 12, 13, and 14.

Nonetheless, the requirement for specificity does not mean that a pleading cannot *also* state ultimate facts in a conclusory manner. It just means that it must state *more* than just ultimate facts in a conclusory manner in order to claim punitive damages. Therefore, the motion to strike is **DENIED** as to items 1, 2, 4, 5, 6, 7, 8, and 9.

ORDERS

Petitioner has **10 days** leave to amend the Deemed Amended Petition (RAO 144). The caption shall refer to it as a “**Second Amended Petition.**”

The Second Amended Petition shall also comply with California Rules of Court, rule 2.112.

Given the overlap in the facts alleged in the initial Petition (ROA 58) and the Deemed Amended Petition (ROA 144), the court **VACATES** the trial set for 7/2/25. The case is not fully at issue unless and until Respondents have filed, or waived their right to file, responses/objections to the Deemed Amended Petition. The court will address setting future dates at the time of the hearing on the motions currently scheduled on June 27, 2025.

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