

Superior Court of the State of California  
County of Orange  
TENTATIVE RULINGS FOR DEPARTMENT CM06  
**HON. JUDGE Bradley Erdosi**

**Date: 11/21/2024**

Court Room Rules and Notices

#	Case Name	Tentative
1	Tucker – Trust	<p style="text-align: center;"><b>MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ENTER JUDGMENT</b></p> <p>Before the court is a motion by Petitioner James Martin Tucker (“Petitioner”) for an order to enforce the settlement agreement and enter judgment pursuant to Code of Civil Procedure section 664.6.</p> <p><u>Evidentiary Objections</u></p> <p>Respondent’s evidentiary objections (ROA 208) are SUSTAINED as to objection nos. 2, 3, 4, 6, 8, 9, 11, and 12 and OVERRULED as to objection nos. 1, 5, 7, and 10.</p> <p><u>Pertinent Facts</u></p> <p>On September 15, 2023, Petitioner and Respondent Lisa Daniels (“Respondent”) participated in an MSC and were able to reach an agreement to settle their claims. The agreement was subsequently memorialized in writing and signed by the parties. (Soto Decl., Ex. 1.)</p> <p>The relevant terms of the settlement agreement are:</p> <ul style="list-style-type: none"><li>• the Court will appoint a PPF to manage the assets in the Tucker trust;</li><li>• the two parcels of real property, specific financial accounts, and classic vehicles belonging to Decedent Martin Tucker (“Decedent”) or his estate will be considered to be trust assets;</li><li>• the PPF will marshal the assets of the trust and take title to the real estate;</li><li>• the PPF will pay the costs and expenses of the trust out of trust assets, including reasonable and fair attorneys’ fees for both parties, and then liquidate the assets and split the proceeds equally between Petitioner and Respondent;</li><li>• Respondent will be permitted to live in the Poppy Property rent-free for up to eight months after the appointment of the PPF;</li><li>• Respondent will also be permitted to purchase the Poppy Property at fair market value as determined by an appraisal and the determination of the PPF and approval by the Court; however, if escrow does not close within</li></ul>

- eight months after appointment of the PPF, she will pay fair market rent for each month until close of escrow;
- the Court may retain jurisdiction to enforce the agreement under Code Civ. Proc. § 664.6; and
  - the prevailing party in a motion to enforce the settlement agreement will be entitled to recover attorneys' fees.

On October 4, 2023, Lee Ann Hitchman was appointed as PPF of the Tucker trust. (Soto Decl., Exs. 3 and 4.)

To date, Respondent has possession of the Poppy Property and has been unable to purchase it.

Petitioner further contends that Respondent has failed to turn over two classic vehicles. Respondent denies having possession of such vehicles.

Merits of the Motion

"If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc. § 664.6.)

Petitioner contends that Respondent has not performed the terms of paragraph 13 of the settlement agreement, which provides as follows:

13. Living at the Poppy Property. Lisa will be allowed to live in the Poppy Property, rent free from the date of death of Martin, for no more than 8 months after the PPF accepts the appointment. If Lisa gives a 30 days' notice to vacate the Poppy Property within the 8 months after the PPF is appointed or Lisa gives notice that she cannot purchase the Poppy Property within the 8 months of PPF appointment, then the PPF may list and sell the Poppy Property within the 8 months. Lisa shall have the right to purchase the Poppy Property at fair market value as determined by an appraisal and the PPF's determination, and court approval. If the purchase price is of issue, the court shall determine the purchase price. Lisa shall be responsible for all escrow fees. If there are no real estate commissions for the sale of the Poppy Property, Lisa may receive a 3% reduction in the sale price. If escrow does not close within 8 months after appointment of PPF, Lisa will pay

		<p>fair market rent for each month until close of escrow.</p> <p>Respondent claims that Petitioner has unreasonably interfered with her ability to purchase the Poppy Property. Respondent has offered to purchase the Poppy Property using her anticipated distribution from the Trust. The court has not heard from the PPF regarding the viability of such offer.</p> <p>Petitioner requests the following orders:</p> <ul style="list-style-type: none"> <li>• compelling the PPF to immediately list the Fountain Valley property for sale;</li> <li>• compelling the PPF to give 60-days' notice to respondent and any persons residing in the Fountain Valley property and then begin unlawful detainer proceedings if necessary to facilitate the sale of the property;</li> <li>• compelling the PPF to collect fair market value rent of \$4000/months from respondent and any person residing in the Fountain Valley property until that property is sold;</li> <li>• compelling the PPF to charge respondent with any unpaid rent owed and any fees for unlawful detainer proceedings against her one-half share of the trust assets; and</li> <li>• compelling respondent to pay one-half of the fair market value of the classic vehicles.</li> </ul> <p>None of the foregoing orders are appropriately made under Code of Civil Procedure section 664.6. Code of Civil Procedure section 664.6 allows a party to obtain a judgment containing all material terms of a settlement agreement not yet fully performed by the parties. (<i>Hines v. Lukes</i> (2008) 167 Cal.App.4th 1174, 1185; <i>Kilpatrick v. Beebe</i> (1990) 219 Cal.App.3d 1527, 1529 [Section 664.6 "do[es] nothing more than provide a streamlined method for reducing a stipulated settlement to judgment."].)</p> <p>On the record presented, Petitioner is entitled to judgment based on the terms of paragraph 13 of the settlement agreement which remain unperformed by Respondent. Petitioner is <b>ORDERED</b> to submit a proposed Judgment with such terms. The trustee and/or beneficiaries may petition the court for instructions if necessary.</p> <p>The motion is <b>GRANTED</b> insofar as it seeks a judgment to be entered on the unperformed terms of paragraph 13 of the settlement agreement. All other requested orders are <b>DENIED</b> without prejudice on procedural grounds.</p>
	Govind and Urmila Patel - Trust	<p>[Motion Type]</p> <p><b>MOTIONS TO COMPEL INITIAL RESPONSES TO DISCOVERY</b></p>

		<p>Respondent Shyamal Patel brings (1) a motion to compel Petitioner Nilu Patel to respond to form interrogatories (ROA 71), and (2) a motion to compel Petitioner Reshma Block to respond to form interrogatories (ROA 75).</p> <p>On 11/1/23, Respondents served Petitioners with form interrogatories. Responses were due 12/5/23. On 12/19/23, Respondents' counsel emailed Petitioners' counsel, notifying him that responses were past due. Petitioners' counsel responded that same day, stating that they were working on responses which were inadvertently not calendared.</p> <p>In opposition to this motion, Petitioners' counsel explains that Respondents' counsel sent two emails on the same day. The first email contained only requests for admissions; the second email contained the same set of requests for admission and form interrogatories. Since the emails appeared to be duplicative, the form interrogatories were inadvertently overlooked.</p> <p>On 12/28/24, Respondents filed the instant motions.</p> <p>On 1/11/24, the Petitioners served responses to the form interrogatories.</p> <p>The motions to compel responses are <b>DENIED</b> as moot.</p> <p>The motions for sanctions are <b>DENIED</b>. There is no substantial justification for filing a motion to compel after being informed that responses were forthcoming. There is no evidence that Petitioners have engaged in a misuse of discovery.</p>
	<p>Govind and Urmila Patel - Trust</p>	<p style="text-align: center;">[Motion Type] <b>DEMURRER</b></p> <p>Respondents Govind Patel and Shyamal Patel (collectively, "Respondents") demurrer to the Petition to Compel Accounting ("Accounting Petition") filed by Petitioners Reshma Block and Nilu Patel (collectively, "Petitioners").</p> <p>Respondents' special demurrer on the grounds of uncertainty is <b>OVERRULED</b>.</p> <p>Respondents' general demurrer on the grounds of failure to state a cause of action is <b>SUSTAINED without leave to amend</b> as to Respondent Shyamal Patel ("Shyamal") and <b>OVERRULED</b> as to Respondent Govind Patel ("Govind").</p> <p><u>Special Demurrer</u></p> <p>Respondents specially demurrer to the Accounting Petition (ROA 53) on the grounds of uncertainty.</p>

A demurrer for uncertainty is strictly construed "because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.*, (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty will be sustained only where the pleading is so unclear that Respondents cannot reasonably respond to it. (*Id.*)

A special demurrer should be overruled where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. [Citation.] All that is required of a complaint, even as against a special demurrer, is that it set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the cause of action.

(*Smith v. Kern County Land Co.* (1958) 51 Cal. 2d 205, 209, citations omitted.)

Respondents argue that the Accounting Petition is uncertain, ambiguous, and unintelligible pursuant to Code of Civil Procedure section 430.10(f). However, Respondents do not assert that the claims are so ambiguous that they cannot reasonably respond to it. In fact, Respondents have responded to it. (ROA 87.)

In support of their claim of uncertainty, Respondents argue (1) that Shyamal cannot be compelled to provide an accounting because he is not a trustee, and (2) that the trustee does not have to provide an accounting for the revocable Trust A. While such arguments may have merit, they do not establish grounds for demurrer based on uncertainty.

Respondents' special demurrer is **OVERRULED**.

#### General Demurrer

Respondents generally demurrer to the Accounting Petition on the grounds that it fails to state facts sufficient to constitute a cause of action.

The Accounting Petition (ROA 53) alleges the following pertinent facts:

- Govind and Decedent Urmila Patel ("Decedent") created the Govind and Urmila Patel Family Trust ("Trust") on 7/20/2000.
- On 12/27/2002, Decedent acquired a 33% interest in a corporation entitled BVIV Hospitality Group ("BVIV").
- On 12/1/2016, Govind and Decedent executed the First Amendment to the Govind and Urmila Patel Family Trust ("2016 Trust Amendment").

- The 2016 Trust Amendment provides that Decedent's interest in BVIV would be distributed to Petitioners and Anita Patel.
- BVIV owned Studio 6 Motel.
- Decedent passed away on 4/12/2019.
- Upon Decedent's passing, Govind became the sole trustee of the Trust.
- On 6/27/2022, Respondents received \$1,056,200 from the sale of Studio 6 Motel. Govind transferred \$540,000 to a bank account for Decedent's grandchildren, and Shyamal used \$350,000 to pay his personal taxes.
- On 4/14/2023, Petitioners made a written request to Respondents for an accounting and related information from 4/12/2019 to the present.
- Respondents have failed to provide an accounting.

Such facts are sufficient to state a cause of action to compel a trustee to provide an accounting of an *irrevocable trust*. (Probate Code §§ 16060-16064, 17200(b)(7)(C).)

Respondents argue that the Accounting Petition fails to state a cause of action because Petitioners have yet to prove that BVIV is an asset of the Trust. However, a demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-1405.) No matter how unlikely or improbable, Petitioners' allegations in the Accounting Petition must be accepted as true for the purpose of ruling on the demurrer. (*Hacker v. Homeward Residential, Inc.* (2018) 26 Cal.App.5th 270, 280; *Marina Pacific Hotel & Suites, LLC v. Fireman's Fund Ins. Co.* (2022) 81 Cal.App.5th 96, 104-105.) Here, the Accounting Petition sufficiently alleges that Petitioners are beneficiaries of an irrevocable portion of the 2016 Amended Trust and that their inheritance includes Decedent's interest in BVIV.

Respondents correctly argue in their demurrer that a trustee does not have to provide an accounting of a revocable trust. (Prob. Code § 15800(a)(1).) However, Petitioners correctly argue in opposition that Section 3.2 of the Trust, which is attached as Exhibit A to the Accounting Petition, provides that a portion of the Trust becomes irrevocable upon the death of one of the trustors. The exhibits to the Accounting Petition are part of the "face of the pleading." (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94; *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.)

Respondents incorrectly argue that Petitioners are not entitled to an accounting unless they demonstrate a breach of fiduciary duty or demonstrate that they are entitled to an unascertainable amount. The case law cited in support of such

		<p>position does not pertain to a request for a trust accounting under Probate Code section 16060 <i>et seq.</i></p> <p>Based on the foregoing, the Accounting Petition alleges sufficient facts to compel an accounting from Govind, who is the trustee, not from Shyamal.</p> <p>Respondents' general demurrer is <b>SUSTAINED without leave to amend</b> as to Shyamal and <b>OVERRULED</b> as to Govind.</p> <p><b>***THE PETITION TO COMPEL AN ACCOUNTING (ROA 53) IS TO REMAIN ON CALENDAR AS TO RESPONDENT GOVIND PATEL ONLY***</b></p>
		[Motion Type]