

**TENTATIVE RULINGS**

**DEPT. CM7**

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**TENTATIVE RULING**

**Date: 04/24/2024**

<b>Case #</b>	<b>Case Name</b>	<b>Tentative</b>
( )		<b>TENTATIVE RULING</b>  <b>Case: ( )</b> <b>Calendar No.:</b>  <b>Date: 04/24/2024</b>
( )		<b>TENTATIVE RULING</b>  <b>Case: ( )</b> <b>Calendar No.:</b>  <b>Date: 04/24/2024</b>
(01224851)	Leavitt - Trust	<b>TENTATIVE RULING</b>  <b>Case: (01224851)</b> <b>Calendar No.: 3</b>  <b>Date: 04/24/2024</b>

		<p><b>MOTION TO SUBSTITUTE / DEMURRER AND MOTION TO STRIKE/ MOTION TO TRANSFER CASE TO CIVIL DIVISION</b></p> <p>It is the court's understanding that a settlement was reached after the Petitioner passed away. On 3/27/24, the tentative ruling was to deny the Motion to Substitute because Decedent did not have a "personal representative" and there was no affidavit by a "successor in interest" as mandated by Code of Civil Procedure section 377.32. The motion was continued to 4/24/24 to allow the parties to effectuate a substitution. No new papers have been filed. Counsel should be prepared to discuss the status of substitution for Petitioner.</p>
(01302482)	Graetz - Probate	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> 01302482  <b>Calendar No.:</b> 6</p> <hr/> <p style="text-align: center;"><b>Date: 04/24/2024</b></p> <p style="text-align: center;"><b>MOTION TO QUASH SUBPOENA</b></p> <p>Ray D. Wu's motion to quash subpoena is <b>GRANTED</b>.</p> <p>Ray D. Wu ("Ray") and Katherine Wu ("Katherine") have competing petitions to administer the estate of Susan H. Graetz ("Decedent"). Katherine has also filed a Will Contest alleging that Ray procured Decedent's will through undue influence. The Will Contest further asserts that the act of procuring the will by undue influence constitutes financial elder abuse and seeks attorney's fees and costs pursuant to Welfare and Institutions Code section 15610.30.</p> <p>On 11/20/23, Katherine issued a subpoena to Bank of America, requesting virtually all records pertaining to any account held by Ray from</p>

2/1/20 to 2/1/23. Ray moves to quash the subpoena on the grounds that it violates his constitutional right to privacy.

Whether documents protected by the right of privacy may be produced is evaluated under the standard set by the California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal.5th 531. As the court explained in *Williams*:

“The party asserting a privacy right must establish a legally protected privacy interest, and objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. The party seeking information may raise in response whatever legitimate and important countervailing interest disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interest or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations. To the extent prior cases require a party seeking discovery of private information to always establish a compelling interest or compelling need, without regard to the other considerations articulated in *Hill v. National Collegiate Athletic Assn.*, *supra*, 7 Cal.4th 1, 26 Cal.Rptr.2d 834, 865 P.2d 633, they are disapproved.”

(*Williams*, 3 Cal.5th at 557.)

Ray’s personal banking records are protected by California constitutional and statutory rights of privacy. (*Look v. Penovatz* (2019) 34 Cal.App.5th 61, 73). Ray has a reasonable expectation of privacy in his own financial accounts. The court is not persuaded by Katherine’s argument that Ray’s expectation of privacy in his personal accounts is reduced because he was the Decedent’s personal caretaker. Producing three years of personal

banking records would be a serious intrusion of Ray's private information.

Accordingly, the court must balance the seriousness of the prospective invasion of privacy against Katherine's "legitimate and important countervailing interests" in disclosure of the documents. If disclosure is warranted, the court must then consider the least intrusive means to disclose the information. Katherine has not demonstrated any important countervailing interest in obtaining Ray's personal bank accounts. The subpoenaed documents do not appear relevant to the issues raised in the Will Contest.

In her opposition to this motion, Katherine argues that it is "very likely that the banking records will contain transactions between Decedent and [Ray], which may constitute evidence of further financial elder abuse." (Opp., ¶ 26.) However, Discovery must be "relevant to the subject matter involved in the pending action." (Code Civ. Proc. § 2017.010.) The Will Contest does not make any allegations regarding financial transactions between the Decedent and Ray. The sole allegation made by Katherine is that the will was procured through undue influence. The subpoena is not reasonably calculated to lead to the discovery of admissible evidence regarding such issue.

The court is not persuaded that the bank records are necessary to "bolster" allegations that Ray was Decedent's caretaker, as Ray does not dispute being Decedent's caretaker.

Katherine further argues that the bank records may reveal information about Decedent's personal accounts. Such argument is speculative. Moreover, there are less intrusive means to discover whether Ray has knowledge of the existence and location of the Decedent's personal accounts.

Based on the foregoing, the subpoena to Bank of America is quashed in its entirety.

Ray is ordered to give notice of this ruling.

(00975081)	Jacobson - Trust	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> 00975081 <b>Calendar No.:</b> 7</p> <hr/> <p style="text-align: center;"><b>Date: 04/24/2024</b></p> <p style="text-align: center;"><b>MOTION TO COMPEL DEPOSITION</b></p> <p>Jeffrey Jacobson’s Motion to Compel the Deposition of Darlene Bolivar (ROA 1246) is <b>DENIED.</b></p> <p><b><u>Evidentiary Objections</u></b></p> <p>Jeffrey Jacobson’s Evidentiary Objections 1 and 2 are <b>SUSTAINED.</b></p> <p><b><u>Merits of the Motion</u></b></p> <p>On 10/24/23, Jeffrey Jacobson (“Jeffrey”) served a Notice of Taking Deposition on Darlene Boliver. The notice required Darlene to appear for her deposition on 11/28/23 and to produce documents at the deposition. The deposition was noticed “in order to depose Darlene on matters relating to the Petition for Approval of Settlement Agreement and her Joinder in Objections thereto.” (Opp., 2:8-10.) That Petition has since been dismissed, which would render the noticed deposition, and this motion, moot. (ROAs 1298 and 1300.)</p> <p>Each separate petition filed under the Probate Code commences a new “proceeding” for the purpose of the parties’ rights to conduct discovery. (See Prob. Code, §§ 1000, 1050.) Those rights are unaffected by the fact that multiple probate petitions pertaining to a single trust are typically filed within a single case number. Notwithstanding, on 2/5/24, the court granted Jeffrey leave to amend this motion to pertain to the still pending Petition to Ascertain Beneficiaries. (ROAs 1334 and 1367.) Jeffrey did not do so. Thus, this motion remains moot.</p> <p>It does not appear to the court that the 2/5/24 minute order otherwise prohibited Jeffrey from</p>

		<p>noticing Darlene’s deposition in connection with the Petition to Ascertain Beneficiaries. However, the court will reserve ruling on such issue until it has been fully briefed in connection with the motion set for 8/7/24.</p> <p><b><u>Sanctions</u></b></p> <p>This motion was not brought with substantial justification. The deposition was set for a date during the time period for which counsel for Jake Jacobson and counsel for Darlene and Larry had noticed their unavailability. Darlene timely objected on such grounds. It appears the filing of this motion could have been prevented altogether had Jeffreys’ counsel met and conferred with all counsel once they had returned from vacation, as suggested by Darlene’s counsel. Jeffrey also could have rescheduled Darlene’s deposition and withdrawn this motion once all counsel had returned from vacation. At the very least, Jeffrey could have withdrawn this motion once he decided not to amend it.</p> <p>Nonetheless, the attorney fee declaration of Ms. Smith is not sufficient to permit the court to determine the reasonableness of the time expended on this motion. Thus, Darlene’s request for monetary sanctions is <b>denied</b>.</p>
(00975081)	Jacobson - Trust	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> 00975081  <b>Calendar No.:</b> 7</p> <hr/> <p style="text-align: center;"><b>Date: 04/24/2024</b></p> <p style="text-align: center;"><b>MOTION TO COMPEL DEPOSITION</b></p> <p>Jeffrey Jacobson’s Motion to Compel the Deposition of Ronald Jake Jacobson (ROA 1247) is <b>DENIED</b>.</p> <p><b><u>Requests for Judicial Notice</u></b></p> <p>Ronald Jake Jacobson’s request for judicial notice (ROA 1447) is <b>GRANTED</b> as to Exhibits 1-8.</p>

**Evidentiary Objections**

Jeffrey Jacobson's Evidentiary Objections 5 and 6 are **SUSTAINED**.

**Merits of the Motion**

On 10/30/23, Jeffrey Jacobson ("Jeffrey") served a Notice of Taking Deposition on Ronald Jake Jacobson ("Jake"). The notice required Jake to appear for his deposition on 11/30/23 and to produce documents at the deposition. The deposition was noticed "in order to depose Jake on matters relating to the Petition for Approval of Settlement Agreement and his Joinder in Objections thereto." (Opp., 2:8-10.) That Petition has since been dismissed, which would render the noticed deposition, and this motion, moot. (RJN, Exs. E and F.)

Each separate petition filed under the Probate Code commences a new "proceeding" for the purpose of the parties' rights to conduct discovery. (See Prob. Code, §§ 1000, 1050.) Those rights are unaffected by the fact that multiple probate petitions pertaining to a single trust are typically filed within a single case number. Notwithstanding, on 2/5/24, the court granted Jeffrey leave to amend this motion to pertain to the still pending Petition to Ascertain Beneficiaries. (RJN, Exs. G and H.) Jeffrey did not do so. Thus, this motion remains moot.

It does not appear to the court that the 2/5/24 minute order otherwise prohibited Jeffrey from noticing Jake's deposition in connection with the Petition to Ascertain Beneficiaries. However, the court will reserve ruling on such issue until it has been fully briefed in connection with the motion set for 8/7/24.

**Sanctions**

This motion was not brought with substantial justification. The deposition was set for a date during the time period for which Jake's counsel had noticed his unavailability. Jake timely objected on such grounds. The motion was then filed before Jake's counsel had an opportunity to provide further dates, as he was still unavailable. Upon returning from vacation, Jake's counsel immediately agreed to have the

		<p>deposition take place on alternate dates that Jeffrey’s counsel had proposed. Thus, the filing of the motion could have been prevented altogether had Jeffreys’ counsel met and conferred with Jake’s counsel once he returned from vacation. Jeffrey also could have rescheduled Jake’s deposition and withdrawn this motion once he heard from Jake’s counsel. At the very least, Jeffrey could have withdrawn this motion once he decided not to amend it.</p> <p>Nonetheless, the attorney fee declaration of Mr. Fisher is not sufficient to permit the court to determine the reasonableness of the time expended on this motion. Thus, Jake’s request for monetary sanctions is <b>denied</b>.</p>
(00975081)	Jacobson - Trust	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> 00975081  <b>Calendar No.:</b> 7</p> <hr/> <p style="text-align: center;"><b>Date:</b> 04/24/2024</p> <p style="text-align: center;"><b>MOTION TO COMPEL DEPOSITION</b></p> <p>Jeffrey Jacobson’s Motion to Compel the Deposition of Laurence Jacobson (ROA 1246) is <b>DENIED</b>.</p> <p><b><u>Evidentiary Objections</u></b></p> <p>Jeffrey Jacobson’s Evidentiary Objections 3 and 4 are <b>SUSTAINED</b>.</p> <p><b><u>Merits of the Motion</u></b></p> <p>On 10/24/23, Jeffrey Jacobson (“Jeffrey”) served a Notice of Taking Deposition on Laurence Jacobson (“Larry”). The notice required Larry to appear for his deposition on 11/17/23 and to produce documents at the deposition. The deposition was noticed “in order to depose Larry on matters relating to the Petition for Approval of Settlement Agreement and his Joinder in Objections thereto.” (Opp., 2:8-10.) That Petition has since been dismissed,</p>



		<p>which would render the noticed deposition, and this motion, moot. (ROAs 1298 and 1300.)</p> <p>Each separate petition filed under the Probate Code commences a new “proceeding” for the purpose of the parties’ rights to conduct discovery. (See Prob. Code, §§ 1000, 1050.) Those rights are unaffected by the fact that multiple probate petitions pertaining to a single trust are typically filed within a single case number. Notwithstanding, on 2/5/24, the court granted Jeffrey leave to amend this motion to pertain to the still pending Petition to Ascertain Beneficiaries. (ROAs 1334 and 1367.) Jeffrey did not do so. Thus, this motion remains moot.</p> <p>It does not appear to the court that the 2/5/24 minute order otherwise prohibited Jeffrey from noticing Larry’s deposition in connection with the Petition to Ascertain Beneficiaries. However, the court will reserve ruling on such issue until it has been fully briefed in connection with the motion set for 8/7/24.</p> <p><b><u>Sanctions</u></b></p> <p>This motion was not brought with substantial justification. The deposition was set for a date during the time period for which counsel for Jake Jacobson had noticed his unavailability. Larry timely objected on such grounds. It appears the filing of the motion could have been prevented altogether had Jeffrey’s counsel met and conferred with all counsel once they returned from vacation, as suggested by Larry’s counsel. Jeffrey also could have rescheduled Jake’s deposition and withdrawn this motion once all counsel had returned from vacation. At the very least, Jeffrey could have withdrawn this motion once he decided not to amend it.</p> <p>Nonetheless, the attorney fee declaration of Ms. Smith is not sufficient to permit the court to determine the reasonableness of the time expended on this motion. Thus, Larry’s request for monetary sanctions is <b>denied</b>.</p>
(00993898)	Kim - Probate	<b>TENTATIVE RULING</b>

**Case:** 00993898  
**Calendar No.:** 9

**Date:** 04/24/2024

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**MOTION TO DISMISS**

Administrator Young Kwon ("Kwon") seeks to strike the entire Petition to Remove Administrator filed by Kyu Tai Kim on May 26, 2023 ("Petition for Removal") (ROA 548) on the grounds that it is barred by the doctrine of res judicata. The motion is **DENIED**.

On 7/18/22, Kyu Tai Kim ("Kim") filed a document entitled "Amended Petitioner, Failure to Attach Nomination of Letters and Signatures (DE-111) of All Parties Involved of Probate Estate for Keum Soo Kim (Decedent), filed May 21, 2018." (ROA 448.) The exact nature of this filing is unclear. In it, Kim argued that certain forms were not attached to Kwon's petition to be appointed administrator.

On 12/22/22, Kim filed a document entitled "Amended-Request for Reconsideration." (ROA 519.) It is not clear what Kim is "amending" or what he is requesting the court to "reconsider." In it, Kim argues that the court missed certain discrepancies in Kwon's Petition for Administration. He further argues that he was not given notice of a 2/10/20 hearing, even though Kim appeared at such hearing and was granted a continuance to hire an attorney. (ROA 67.)

The court deemed both filings as "motions" and set them for hearing on the Law & Motion calendar. (ROA 521.) On 5/1/23, the temporary judge ruling on these matters noted that they appeared to be an untimely challenge to Kwon's petition to be appointed administrator and denied them on such basis. (ROA 544.)

On 5/26/23, Kim filed a "Petition to Remove Administrator." In it, he argues that Kwon should be removed as Administrator because he is a felon, because he is not fulfilling his responsibilities to administer the estate, because he is not treating the heirs fairly, and because he has not kept Kim informed about the status of the estate. None of these arguments were raised in the prior filings.

		<p>Because the Petition to Remove Administrator raises new grounds that were not raised in the previous petitions (deemed motions), it is not barred by the doctrine of res judicata. Thus, Kwon's motion to dismiss is denied.</p>
(01301697)	Hesford - Trust	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> 01301697 <b>Calendar No.:</b> 10</p> <hr/> <p style="text-align: center;"><b>Date:</b> 04/24/2024</p> <hr/> <p style="text-align: center;"><b>MOTION TO STRIKE</b></p> <p>Respondent Mark A. Hesford's motion to strike the Petitioner John C. Hesford, Jr.'s Amended Petition (ROA 39) is <b>GRANTED</b>.</p> <p>Matters of pleading and procedure in Probate Courts are governed by the Code of Civil Procedure. (Prob. Code § 1000.) Accordingly, Petitioners can amend their Petition once without leave of court before a Response is filed. (Code of Civ. Proc. § 472(a).)</p> <p>On 1/12/23, Petitioner filed a Petition. On 7/18/23, Petitioner filed an Amended Petition before a Response was filed. On 9/20/23, Respondent filed an Objection and Response to the Amended Petition. Thereafter, on 11/20/23, Petitioner filed another Petition, seeking some of the same relief, albeit on a different legal basis, as well as entirely new causes of action. (ROA 39.)</p> <p>"Amended pleading' means a pleading that completely restates and supersedes the pleading it amends for all purposes." It appears to the court that Petitioner intends this latest petition to supersede the former petition. (Cal. Rules of Court, Rule 7.3.) Thus, leave of court was required. On such basis, the motion to strike is <b>granted</b>.</p>

		<p>The court notes that Petitioner has since filed a motion for leave to amend which is set for hearing on 5/8/24. Petitioner should ensure such motion complies with California Rules of Court rule 3.1324 and timely supplement the motion, if necessary.</p> <p>Respondent is not entitled to prevailing party fees under Code of Civil Procedure section 1032, as this case remains pending.</p> <p>Counsel for Respondent is ordered to give notice.</p>
(01285185)	Schamber - Probate	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> 01285185 <b>Calendar No.:</b> 11</p> <hr/> <p style="text-align: center;"><b>Date: 04/24/2024</b></p> <p style="text-align: center;"><b>MOTION FOR LEAVE TO AMEND</b></p> <p>Before the court is a motion by Petitioner Tracy Schamber ("Petitioner") for leave to file an amended Petition for Probate. The motion is <b>DENIED</b>.</p> <p>Petitioner initially filed a Petition for Probate (DE-111) for letters of administration. The petition was granted, and letters were issued. The petition cannot be amended after it has been disposed. If Petitioner seeks different letters, she needs to file a petition subsequent, not an amended petition.</p> <p>This motion is opposed by interested party Scott A. Schamber. He argues that Petitioner should be removed as administrator and a public administrator should be appointed. While grounds for removal might exist, such relief must be requested by <i>petition</i>. (Prob. Code § 8500.)</p> <p>The court makes no finding as to Petitioner's suitability to administer the estate.</p>

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