

TENTATIVE RULINGS

FOR: September 17, 2020

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PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

In the Matter of the In Yong Carper Revocable Trust

20PR000156

FIRST AND FINAL ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR ITS SETTLEMENT AND FOR APPROVAL OF TRUSTEE'S FEES

TENTATIVE RULING: GRANT petition, including fees as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Jenna Mozzetti v. Bright Event Rentals, LLC, et al.

19CV000534

PLAINTIFF’S MOTION FOR ORDER THAT REQUESTS FOR ADMISSION BE DEEMED ADMITTED

TENTATIVE RULING: Good cause appearing, and no opposition having been filed, the Motion is GRANTED. The truth of the matters asserted in the Requests for Admission attached as Exhibit 3 to the Declaration of Noemi Nuñez Esparza in Support of the motion, are deemed admitted by Defendant Luis Jose Torres Bastidas. (Code Civ. Proc. § 2033.280, subd. (b).)



Duncan Mackenzie Miller v. Deborah Jeanne Miller, et al.

19CV001035

[1] RESPONDENT’S DEMURRER TO PLAINTIFF’S SECOND AMENDED PETITION

APPEARANCE REQUIRED: Respondent’s demurrer to the Second Amended Petition (SAP) is SUSTAINED, in part, with leave to amend. The Demurrer is sustained, with leave to amend, as to the sixth cause of action for unfair business practices, the thirteenth cause of action for fraud, and the fourteenth cause of action for negligent misrepresentation. The demurrer is OVERRULED in all other respects. Petitioner shall serve and file an Amended Petition within 10 days’ notice of entry of order.

The Court directs the parties to appear prepared to discuss Petitioner’s request, pursuant to Code of Civil Procedure section 430.41, subd. (c), for a conference between the parties prior to the filing of an additionally amended petition. (Opposition at 7:1-5.) In addition, the Court notes that on September 11, 2020, Petitioner filed two “requests” with the Court: a request for an informal discovery conference; and a request to be placed on the case management conference calendar. Although the matters raised by these requests are not calendared, in light of the meet and confer issues discussed herein below, and the significant delay in setting the pleadings at issue in this case, the Court directs the parties to be prepared to discuss these issues as well.

A. Meet and Confer

The Court finds that both parties’ meet and confer efforts in this matter were wholly insufficient. “Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading.” (Code Civ. Proc. §430.41, subd. (a). Emphasis added.) “As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies.” (*Id.* subd. (a)(1).) “The parties shall meet and

confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer.” (*Id.* at subd. (a)(2).)

Petitioner filed the SAP on March 4, 2020. A responsive pleading would, therefore, have ordinarily become due on or about April 3, 2020. (See Code Civ. Proc. §471.5, subd. (a).) However, the Court was closed to all but emergency requests during the period March 18, 2020 through May 31, 2020, in response to the Covid-19 pandemic. This period was deemed a court holiday for purposes of computing time for filing papers with the Court. (See General Order of March 18, 2020, and Orders Re: Implementation of Emergency Relief of April 9, 2020, and May 1, 2020.)

Respondent’s first (and apparently only) effort to meet and confer regarding the issues raised through the present demurrer was a letter dated May 27, 2020 –12 weeks after Petitioner filed the SAP, and only three business days before the date on which the responsive pleading was due. (See Rupprecht Decl. at ¶2, Exh. A.) In that letter, counsel for Respondent stated, “[d]ue to the recent notice of reopening by Napa Superior Court, and the inability to meet and confer in the statutory time, we will be filing a declaration under CCP §430.41.” (*Id.* at Exh. A.) There is no explanation whatsoever as to why counsel deferred all meet and confer efforts for 12 weeks.

Counsel for Respondent then filed a Declaration, ostensibly under Code of Civil Procedure section 430.41 on June 1, 2020. (See Declaration of Michael W. Rupprecht in Support of 30-day Extension (Rupprecht 30-day Decl.) That Declaration simply cited the May 27, 2020 letter as counsel’s “good faith attempt to meet and confer.” (Code Civil Proc. §430.41, subd. (a).) Counsel asserted that “the parties have not had an opportunity to fully meet and confer regarding respondents’ and defendants’ anticipated demurrer and motion to strike.” (See Rupprecht 30-day Decl. at ¶5.) The Court disagrees. The parties had 12 weeks’ worth of opportunity to meet and confer. While the period March 18 through June 1 was a *Court holiday*, there is evidence that counsel for the parties were working and in communication during that period. (See, e.g., Rupprecht 30-day Decl. at ¶2, Exh. A; Declaration of Steven H. Kuhn, Esq. in Response to Declaration of Michael W. Rupprecht in Support of 30-day Extension (Kuhn 30-day Decl.) at ¶¶6-12, 16, Exhs. A, E, F, G, H, I.)

On June 22, 2020, Counsel for Petitioner filed a Declaration that addressed, at some length, the means by which Mr. Rupprecht’s meet and confer letter was served. (See, generally, Kuhn 30-day Decl.) That declaration does not, however, assert that Mr. Kuhn made any efforts to address any of the substantive issues raised in the May 27, 2020 meet and confer letter. (*Ibid.*)

Thus, the single letter sent 12 weeks after the SAP was filed appears to be the *only effort by either party to meet and confer on the substantive matters here at issue*. It is therefore clear that no actual meet and confer, let alone meaningful meet and confer, took place. Of course, “[t]he failure to sufficiently meet and confer is not grounds to overrule or sustain a demurrer.”

(Weil & Brown, *et al.*, Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2020) §7:97.27, p. 7(I)-48.)

It is clear to the Court that counsel's relationship is strained, at best. The Court expects counsel for the parties to make every effort to observe the requisite standards of professionalism in their interactions with one another, and to seek, where possible, to eliminate unnecessary antagonism between themselves, for the benefit of all parties and the efficient resolution of the matters before the Court. Moreover, the Court will carefully scrutinize all further motions to ensure that, where required, counsel make an honest good faith effort to meet and confer in a meaningful way and in an effort to resolve issues prior to turning to the Court. The Court notes its authority under Code of Civil Procedure section 128.5 to address subsequent, unjustified failures to honor meet and confer requirements.

B. Legal Background

A complaint must contain "facts constituting the cause of action." (Code Civ. Proc. § 425.10, subd. (a)(1).) A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (Code Civ. Proc., § 430.30, subd. (a).) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) In reviewing a demurrer, the court must "construe the allegations of a complaint liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie "where the complaint has included allegations that clearly disclose some defense or bar to recovery." (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.)

C. Respondent's Request for Judicial Notice

Respondent's Request for Judicial Notice Nos. 1 and 3 are GRANTED. Respondent's Request for Judicial Notice No. 2 is DENIED – the subject matter is not relevant to the Court's resolution of the instant motions. Respondent's Request for Judicial Notice No. 4 is GRANTED. The Court takes judicial notice of the documents attached to the SAP filed in this matter, but not for the truth of the matters set forth therein.

D. Respondent's Arguments Regarding Procedural Defects Are Not Supported

Respondent asserts that the Court lacks jurisdiction over the causes of action asserted in the SAP. (See Support Memo at 4:11-18.) The authority she cites stands for the opposite proposition: "The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts." (Prob. Code §17000.) Moreover, "[t]he court in proceedings under this code is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil

Procedure.” (Prob. Code §800.) Respondent is not entitled to have her demurrer sustained on this ground.

Respondent next asserts that “[a] special demurrer is properly sustained when there is a defect in the named parties, namely that all necessary parties have not been joined in the action. (CCP §410.10(d).)” (Support Memo at 4:20-21.) Code of Civil Procedure section 410.10 provides, in its entirety, that “[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” There is no subdivision (d) to that code section.

The Court speculates that Respondent may have intended to cite to Code of Civil Procedure section 389 which governs indispensable and conditionally necessary parties. However, by the Court’s reading, none of the provisions of that section of the code appear to support Defendant’s contention that a demurrer is proper where a necessary party has not been joined. Respondent is not entitled to have her demurrer sustained on this ground.

Finally, Respondent correctly asserts that “[a] special demurrer is properly sustained when the person who filed the pleading does not have the legal capacity to sue.” (Support Memo at 5:2-3, citing Code Civ. Proc. §430.10, subd. (b).) Respondent contends that “[i]n the SAP, Plaintiff raises [causes of action] in which the injury occurred – if at all – to the Decedent...” (Support Memo at 5:4.) Respondent does not, however, direct the Court to any specific portion of the SAP. Rather, Respondent cites counsel’s meet and confer letter. The Court declines Respondent’s apparent invitation to hunt for her argument on this point.

While the Petition is organized by purported “Causes of Action,” the allegations reveal that it is clearly also a petition regarding the internal affairs of a trust brought pursuant to Probate Code section 17200. (See, *e.g.*, Petition at ¶7.) “Even though the plaintiffs labeled their causes of action, that does not mean they are bound by those labels. It is an elementary principle of modern pleading that the nature and character of a pleading is to be determined from its allegations, regardless of what it may be called, and that the subject matter of an action and issues involved are determined from the facts alleged rather than from the title of the pleadings or the character of the damage recovery suggested in connection with the prayer for relief. [Citation omitted.]” (*Jaffe v. Carroll* (1973) 35 Cal.App.3d 53, 57.) “The courts of this state have, of course, long since departed from holding a plaintiff strictly to the ‘form of action’ he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained.” (*Ibid.*)

Any trustee or beneficiary of a trust has standing to petition the court concerning the internal affairs of the trust or to determine the existence of the trust. (Prob. Code § 17200(a).) Petitioner alleges that he is a beneficiary under the Miller Family Trust. (See Petition at ¶8.) Based on the foregoing, the Court finds that Petitioner has alleged facts sufficient to confer standing to bring the claims set forth in the SAP.

Moreover, the Court notes that the Probate Code contains a number of provisions, many invoked through the SAP, which together “recognize a broad and nonexclusive list of remedies

for beneficiaries to use to seek redress for breach of trust.” (*Estate of Giralдин* (2012) 55 Cal.4th 1058, 1075.)

Respondent is not entitled to have her demurrer sustained on this ground.

E. First and Second Causes of Action for Undue Influence

Respondent nakedly asserts that the first and second causes of action, alleging undue influence, “are vague, ambiguous and unintelligible.” (Support Memo at 5:12-13.) Respondent neither elaborates further on this argument, nor identifies any specific allegation in the SAP that she contends is vague, ambiguous and/or unintelligible.

A demurrer for uncertainty is disfavored and may only be sustained where the allegations render the complaint so incomprehensible that a defendant cannot reasonably respond. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) The Court is not able to locate any allegation in the SAP that meets this standard.

Respondent next argues that Petitioner fails to plead sufficient facts to state a cause of action for undue influence. Respondent essentially argues that the allegations in the SAP are in the nature of legal conclusions, and that it does not contain factual allegations sufficient to state a cause of action. (See Support Memo at 5:12-19.)

“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.” (Welf. & Inst. Code §15610.70, subd. (a).) The Court finds that the SAP contains factual allegations sufficient to state a cause of action for undue influence. (See, e.g., SAP at ¶¶ 1-5, 20, 21, 28, 37-41, 44, 48-51.)

Moreover, the Court finds that the allegations of these sections are relevant to a determination of the issues identified in Probate Code section 17200, subdivisions (b)(1)-(4), (10), (12), and (13).

For the foregoing reasons, Respondent’s demurrer is OVERRULED as to the first and second causes of action.

F. Causes of Action for a Determination of Invalidity of Sixth Amendment to Miller Family Trust Based on: (Third Cause of Action) Lack of Capacity; and (Fourth Cause of Action) Mistake

As to these sections of the SAP, Respondent argues that “Plaintiff alleges [causes of action]...that are either prayers for relief or do not exist as actionable claims, thus making these [causes of action] vague, ambiguous and subject to demurrer. (Support Memo at 6:15-16.)

The Court finds that the allegations of these sections are relevant to a determination of the issues identified in Probate Code section 17200, subdivisions (b)(1)-(4), (10), (12), and (13).

Respondent's demurrer is therefore OVERRULED as to the allegations set forth in the third and fourth cause of action sections of the SAP. (See *Jaffe v. Carroll*, *supra*, 35 Cal.App.3d at 57.)

G. Fifth Cause of Action for Elder Abuse

Respondent nakedly asserts that the fifth cause of action, alleging elder abuse, is "vague, ambiguous and unintelligible." (Support Memo at 5:12-13.) Respondent neither elaborates further on this argument, nor identifies any specific allegation in the SAP that she contends is vague, ambiguous and/or unintelligible.

A demurrer for uncertainty is disfavored and may only be sustained where the allegations render the complaint so incomprehensible that a defendant cannot reasonably respond. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) The Court is not able to locate any allegation in the SAP that meets this standard.

Respondent next argues that Petitioner fails to plead sufficient facts to state a cause of action for elder abuse. Respondent essentially argues that the allegations in the SAP are in the nature of legal conclusions, and that it does not contain factual allegations sufficient to state a cause of action. (See Support Memo at 5:12-19.)

"'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70." (Welf. & Inst. Code §15610.30.)

The Court finds that the SAP contains factual allegations sufficient to state a cause of action for undue influence. (See, *e.g.*, SAP at ¶¶ 1-5, 20, 21, 28, 37-41, 44, 48-51.)

Moreover, the Court finds that the allegations of these sections are relevant to a determination of the issues identified in Probate Code section 17200, subdivisions (b)(1)-(4), (10), (12), and (13).

For the foregoing reasons, Respondent's demurrer is OVERRULED as to the fifth cause of action.

H. Sixth Cause of Action for Unfair Business Practices

Respondent argues that a cause of action under Business & Professions Code section 17200 "pertains to businesses, such as hotels and general contractors." That section provides that, "[a]s used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1." (Bus. & Prof. Code §17200.)

Petitioner presents no substantive argument in opposition, asserting only that, “[a]s a disabled person, [Petitioner] is a protected person. [Respondent’s] actions are patently unfair to [Petitioner] who was forced into homelessness by [Respondent’s] revoking the rental payments [decedent] had been making on [Petitioner’s] behalf for years.” (Opposition at 11:24-27. Capitalization omitted.)

The Court finds no allegations in the SAP that suggest that any of the complained of actions were a “business act or practice” or “advertising” or that they were an act prohibited “by Chapter 1.” (Bus. & Prof. Code §17200.) For the foregoing reasons, Respondent’s demurrer to the Sixth Cause of Action is SUSTAINED.

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The Court finds that there is a reasonable possibility that Petitioner can amend the Petition to state a cause of action for unfair business practices under Business & Professions Code section 17200, and on that basis grants Petitioner leave to amend.

I. Seventh Cause of Action for Breach of Fiduciary Duty

Respondent argues that Petitioner fails to plead sufficient facts to state a cause of action for breach of fiduciary duty. Respondent essentially argues that the allegations of wrongdoing in the SAP all were alleged to have taken place prior to the time that Respondent’s fiduciary duties to Petitioner arose. (See Support Memo at 7:11-15.)

Petitioner confirms that the claims of breach of fiduciary duty arise “as a result of the Trustee/Beneficiary relationship between Petitioner and...Respondent.” (Opposition at 12:1-3.) “The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. [Citation.]” (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432.)

The Court finds that the SAP contains factual allegations sufficient to state a cause of action for breach of fiduciary duty. (See, e.g., SAP at ¶¶ 4, 6.)

Moreover, the Court finds that the allegations of this section are relevant to a determination of the issues identified in Probate Code section 17200, subdivisions (b)(1)-(4), (10), (12), and (13).

For the foregoing reasons, Respondent’s demurrer is OVERRULED as to the seventh cause of action.

J. Eighth Cause of Action for Removal of Trustee and Appointment of Receiver or Temporary Trustee

The form of relief sought under this section is expressly available pursuant to Probate Code Section 17200, subdivision (b)(10). The allegations of this section of the Petition are relevant to that issue. Respondent’s demurrer is therefore OVERRULED as to the allegations set forth in the section of the SAP titled eighth cause of action. (See *Jaffe v. Carroll, supra*, 35 Cal.App.3d at 57.)

K. Ninth Cause of Action for “Determining Predecease of Defendant(s)”

The Court finds that the allegations of this section are relevant to a determination of the issues identified in Probate Code section 17200, subdivisions (b)(1)-(4), (10), (12), and (13). Respondent’s demurrer is therefore OVERRULED as to the allegations set forth in the section of the SAP titled ninth cause of action. (See *Jaffe v. Carroll*, *supra*, 35 Cal.App.3d at 57.)

L. Tenth Cause of Action for Accounting

The form of relief sought under this section is expressly available pursuant to Probate Code section 17200, subdivisions (b)(5), and (b)(7)(C). The allegations of this section of the Petition are relevant to those issues. Respondent’s demurrer is therefore OVERRULED as to the allegations set forth in the section of the SAP titled tenth cause of action. (See *Jaffe v. Carroll*, *supra*, 35 Cal.App.3d at 57.)

M. Eleventh Cause of Action for Conversion

“The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) Petitioner clearly alleges facts sufficient to state a claim for conversion. (See Petition at ¶¶91-95.)

Respondent asserts that Petitioner “must prove that...[Respondent] *intentionally* interfered with plaintiff’s possession....” (Support Memo at 8:14-15. Emphasis in original.) First, questions of proof are not relevant on demurrer. Second, Respondent provides no authority supporting her assertion that the interference must be intentional.

For the foregoing reasons, Respondent’s demurrer is OVERRULED as to the eleventh cause of action.

N. Twelfth Cause of Action for Receipt of Stolen Property

Penal Code section 496 provides that “[e]very person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained” is guilty of the crime of receiving or concealing stolen property. (See Penal Code §496, subd. (a).) That section further provides for a civil cause of action in favor of “any person who has been injured by a violation of subdivision (a)...” (*Id.* at subd. (c).)

Petitioner alleges facts sufficient to state a claim under Penal Code section 496. (See Petition at ¶¶98-101.)

Respondent claims that “[t]here is a heightened standard associated with this claim since its [*sic*] alleged as a crime under the penal code.” She concludes that Petitioner’s allegations are deficient because he “fails to allege *when* the personal property was removed....” (Support Memo at 9:3-5.) Again, Respondent fails to cite to any authority for this proposition.

As noted herein above, the Court finds that the allegations of paragraphs 98-101 of the SAP are clear, factual, and specific. The Court is aware of no authority requiring the specificity of pleading here urged by Respondent.

For the foregoing reasons, Respondent's demurrer is OVERRULED as to the twelfth cause of action.

O. Thirteenth Cause of Action for Fraud

The elements of actionable fraud which must be pleaded and proved are a false representation of a material fact, made with knowledge of its falsity and with intent to induce reliance thereon, on which plaintiff justifiably relies to his injuries; and, normally, omission of a single one of these elements in an action for deceit will prevent recovery. (See *Wishnick v. Frye* (1952) 111 Cal.App.2d 926, 930.)

Claims based in fraud must be specifically pleaded, with facts constituting each element of the cause of action alleged. (*Hall v. Dept. of Adoptions* (1975) 47 Cal.App. 898, 904.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. Thus, the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. [Citations omitted.]" (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 645.)

The Court agrees with Respondent that the SAP fails to state an independent cause of action for fraud, and Respondent's demurrer is SUSTAINED as to Petitioner's independent cause of action for fraud.

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The Court finds a reasonable possibility that Petitioner could amend the allegations of the Petition to allege a claim for fraud with the requisite specificity, and therefore, grants Petitioner leave to amend.

Notwithstanding the foregoing, the Court finds that the specific factual *allegations* set forth in this section of the Petition are relevant to a determination of the issues identified in Probate Code section 17200, subdivisions (b)(1)-(4), (10), (12), and (13).

P. Fourteenth Cause of Action for Negligent Misrepresentation

"To state a cause of action for negligent misrepresentation, plaintiff must allege facts establishing that defendants owed him a duty to communicate accurate information. As discussed below, California courts have recognized a cause of action for negligent misrepresentation, i.e., a duty to communicate accurate information, in two circumstances. The first situation arises where providing false information poses a risk of and results in physical harm to person or property. The second situation arises where information is conveyed in a commercial setting for a business purpose." (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 477.)

Neither of these circumstances appearing, the demurrer to the Fourteenth Cause of Action is SUSTAINED.

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The Court finds that there is a reasonable possibility that Petitioner could amend the Petition to state a cause of action for Negligent Misrepresentation, and on that basis, grants Petitioner leave to amend.

Q. Fifteenth Cause of Action for Injunctive Relief

Respondent asserts that a prayer for injunctive relief through a petition and complaint must meet certain standards, but once again fails to cite to any authority in support of her assertions. As such, Respondent fails to provide the Court with grounds or authority upon which her demurrer to this section of the Petition may be sustained and it is, on that basis, OVERRULED.

R. Sixteenth Cause of Action for Intentional Infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress are: “(1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress.” (*Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 155, fn. 7.)

The Court finds that the SAP contains factual allegations sufficient to state a cause of action for intentional infliction of emotional distress. (See, *e.g.*, SAP at ¶¶ 1, 3-6, 8-9, 14-21, 25-41, 118-120.)

For the foregoing reasons, Respondent’s demurrer is OVERRULED as to the sixteenth cause of action.

S. Seventeenth Cause of Action for Negligent Infliction of Emotional Distress

“[T]he negligent causing of emotional distress is not an independent tort but the tort of negligence. The traditional elements of duty, breach of duty, causation, and damages apply. Whether a defendant owes a duty of care is a question of law. Its existence depends upon the foreseeability of the risk and upon a weighing of policy considerations for and against imposition of liability. [Citations omitted.]” (*McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1509.)

Respondent correctly asserts that “[a] family relationship alone is not sufficient basis to impose a duty of care to refrain from negligently causing emotional distress.” (Support Memo at 12:7-9, citing *Fluharty v. Fluharty* (1997) 59 Cal.App.4th 484, 496.) Respondent further asserts that “[t]here [are] no facts pled that [Respondent] owed [Petitioner] a duty, arguably, until [decedent] died, the Trust became irrevocable, and [Respondent] became the trustee.” (Support Memo at 12:10-11.) The Court disagrees.

First, pursuant to the allegations in the SAP, upon decedent’s death, Respondent became the Trustee of a Trust of which Petitioner was a Beneficiary. Taking those allegations as true, for

purposes of the present demurrer, from and after that event, Respondent owed Petitioner significant fiduciary duties of loyalty and prudence. (See, *e.g.*, Probate Code §§ 16000, *et seq.*) However, the tort duty to take or refrain from certain acts in order to avoid causing Petitioner emotional distress are distinct duties.

Taken as a whole, the SAP alleges that Respondent engaged in a pattern of behavior and actions specifically designed to cause her ailing mother to unwittingly reduce that share of the mother's trust intended to provide for Petitioner – Respondent's adult, disabled brother – and to redirect that share to Respondent. The SAP further alleges that as a result of this calculated pattern of behavior, Petitioner has been left without the means to pay rent and cover other basic necessities of living. The SAP further alleges that, following the parties' mother's death, Respondent denied Petitioner access to residential real property that Petitioner has a right to possess, and disposed of Petitioner's personal property at a time when Petitioner is homeless. Assuming the truth of the facts alleged in the pleadings, and all reasonable inferences therefrom, the Court finds that the harm Petitioner alleges would have been eminently foreseeable to Respondent. Moreover, the volumes of Probate Code invoked in the Petition reflects the significant public policy against allowing an adult child to use undue influence and deception to mislead a dying woman into effectively omitting her disabled son from her estate plan, contributing to his becoming homeless, and then diverting the proceeds of that omission towards herself. Under the alleged facts, the Court finds that Respondent would owe Petitioner a duty sufficient to conclude that the Petition adequately states a cause of action for negligent infliction of emotional distress. (*McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1509.)

To clarify, the Court is not here finding that Respondent actually owed such duty to Petitioner. Such a finding would be premature at the pleading stage of the litigation. Rather, the Court finds that the factual allegations, if true, would be sufficient to find that such a duty was owed, and therefore, the Petition alleges facts sufficient to state the cause of action.

For the foregoing reasons, Respondent's demurrer is **OVERRULED** as to the seventeenth cause of action.

T. Eighteenth Cause of Action for Unjust Enrichment

“In general, a person who has been unjustly enriched at the expense of another is required to make restitution to the other. A critical limitation on this rule is that one who confers a benefit officiously is not entitled to restitution. It must ordinarily appear that the benefits were conferred by mistake, fraud, coercion or request; otherwise, though there is enrichment, it is not unjust.” (*Nibbi Bros. v. Home Fed. Sav. & Loan Ass'n* (1988) 205 Cal. App. 3d 1415, 1422.)

The Court finds that the SAP contains factual allegations sufficient to state a cause of action for Unjust Enrichment. (See SAP at ¶¶126-127.)

For the foregoing reasons, Respondent's demurrer is **OVERRULED** as to the eighteenth cause of action.

[2] RESPONDENT’S MOTION TO STRIKE PLAINTIFF’S SECOND AMENDED PETITION

TENTATIVE RULING: Respondent’s motion to strike based on Petitioner’s failure to obtain leave of court is DENIED. Based on the Court’s ruling granting Respondent’s demurrer with leave to amend, the other issues raised in the motion to strike are moot. However, because these issues are likely to persist into the Third Amended Petition, in the interest of judicial economy in setting the pleadings at issue, the Court provides some brief analysis of the matters raised.

Respondent’s Notice of Motion identifies 62 separately enumerated requests. (See Notice of Motion and Motion at 2:16-10:2.) The Court addresses the present motion according to this organization.

A. Request No. 1: The Court Exercises Its Discretion and Declines to Strike the Second Amended Petition Based on Petitioner’s Failure to Obtain Leave to File Same

Petitioner filed the original Petition in this matter on July 10, 2019. On January 21, 2020, Petitioner filed a First Amended Petition (FAP). On February 20, 2020, Respondent filed a demurrer to the FAP and motion to strike allegations therein. Hearing on the demurrer and motion to strike were set for March 18, 2020. On March 4, 2020, Petitioner filed a Second Amended Petition (SAP). Thereafter, the Court improperly vacated the hearing on the demurrer and motion to strike. This motion to strike the SAP followed.

Respondent argues that the Court should strike the entirety of the SAP because it was filed without leave of Court. (See Support Memo at 3:16-18.) Petitioner counters that, pursuant to Code of Civil Procedure section 472, leave of Court was not required because he filed the SAP prior to the due date for his reply to Petitioner’s demurrer to the FAP.

“A party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike.” (Code Civ. Proc. § 472.) That section, however, cannot be relied upon by a party to *further* amend an already amended pleading. (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 575. “[U]nder section 472, the right to amend a cross-complaint as a matter of right is...limited to the original version of the cross-complaint.”) Petitioner filed his first amended petition on January 21, 2020. Pursuant to the holding in *Hedwell v. PCMV, LLC*, section 472 did not provide him the right to further amend the Petition without leave of court. Because Petitioner did not obtain the Court’s leave to file the SAP, it was not filed in conformity with the law.

That finding does not, however, mandate that the Court strike the Petition. “[t]he court *may*...[s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc. §436. Italics added.) The Court declines to do so in this case.

As noted, the Court mistakenly vacated the hearings on Respondent's demurrer to the FAP, and motion to strike allegations in the FAP. Respondent did not contest the vacation of those motions or otherwise bring the mistake to the Court's attention. Rather, Respondent elected to respond, in detail, to the allegations asserted in the SAP, by her demurrer and motion to strike on calendar this day.

If the Court were to grant the motion to strike based on Petitioner's filing of the SAP, it would be compelled to reset Respondent's demurrer to and motion to strike allegations of the FAP and provide Petitioner with the opportunity to oppose those motions. In this context, the Court notes the strong policy in favor of granting leave to amend pleadings. (See, *e.g.*, *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

In light of the foregoing, the Court finds that granting the motion to strike, based on Petitioner's failure to obtain leave, and the consequent reversion to the FAP, with demurrer and motion to strike relating thereto pending, would likely lead to gross inefficiency and unnecessary delay. Respondent's failure to take issue with the Court's vacating the hearings on her original demurrer and motion to strike, and her subsequent detailed demurrer and motion to strike relating to the SAP, demonstrate to the Court's satisfaction that Respondent will suffer no prejudice from proceeding in this manner.

B. Request No. 2: The Petition is Required to be Verified

Respondent next argues that the Court should strike the Petition in its entirety because it is not verified. In his motion, Respondent cites, as authority, Code of Civil Procedure sections 1020 and 1023. (See Motion at 2:20-22.) Unfortunately, neither of these code sections touches on the issue. Section 1020 governs notices by registered mail and section 1023 governs referee's fees. These misstatements create an unnecessary drain on the Court's resources. For this reason, counsel is cautioned to use a greater degree of care in citation to authority going forward.

The Court has discretion to deny the motion for failure to properly state, in the Notice of Motion, the grounds on which it is made. (Code Civ. Proc. §1010; Rules of Ct., rule 3.1110, subd. (a).)

However, the Court finds the issue moot based on its granting of Respondent's demurrer with leave to amend.

Nevertheless, the Court notes that Probate Code section 2100 does require that the Petition be verified. "The failure to verify a pleading -- even where the verification is required by statute -- is a mere defect curable by amendment." (*UFW of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 915.) Petitioner states that he is "absolutely willing to verify the filed pleading." (Opposition at 4:1-3.) The Court further notes that this is precisely the type of issue that can easily, and indeed should be resolved through meaningful meet and confer.

C. Request Nos. 3-62

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper...[s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc. §436, subd. (a).)

1. A Motion to Strike Cannot Serve the Purpose of a Demurrer

A motion to strike cannot be made to serve the purpose of a special demurrer. (*Allerton v. King* (1929) 96 Cal.App.230, 234.) That is precisely what Respondent appears to be attempting. Through Request No. 3, Respondent seeks to strike the entire Petition on the grounds of “Irrelevant, false or improper matters; conclusions of law; impermissible relief/prayer; legal conclusions. (CCP §§436-437)” (Notice of Motion and Motion at 2:24-26.) Through Request Nos. 4-21, Respondent moves to strike each of the 18 causes of action, each in its entirety, based on identical legal grounds: “Irrelevant, false or improper matter; improper relief requested; nonconformity with required form or procedure; allegations are conclusions of law. (CCP §§ 436-437.)” (See Notice of Motion at 2:27-5:9, Request Nos. 4-21.)

2. Respondent Fails to Provide the Standard for Granting a Motion to Strike Based on False Matters

Request Nos. 22-45 each identify paragraphs or lines of the SAP that Respondent contends are irrelevant, false, or improper. As to this class of requests, Respondent appears to argue that factual allegations are “false” if Respondent contends that they cannot be proven at trial. This position is, of course, unsupported by authority. Respondent fails to provide authority suggesting under what circumstances a factual allegation in a Petition may be struck on the ground that it is false. The Court will not strike any allegation as “false” unless it is clearly and unequivocally inconsistent with another factual allegation. Respondent makes no such showing here as to any of the allegations to which he takes exception.

3. A Motion to Strike Based on Irrelevance that is So Broad as to Include Relevant Matters May Be Denied in its Entirety

As to the blanket claim that the matters are irrelevant, where a motion to strike is so broad as to include relevant matters, it may be denied in its entirety. (*Allerton v. King* (1929) 96 Cal.App.230, 234.) Following a review of Request Nos. 22-45, and the subject text of the Petition, while the Court finds certain words or phrases that could, arguably, be considered not strictly necessary to Petitioner’s claims, each of the complained of sections are, on the whole, relevant to those claims. Granting any of Respondent’s requests would require striking relevant material.

4. The Prayed for Relief Appears Proper with One Exception

Finally, through Request Nos. 46-62, Respondent asks the Court to strike each of the sections of Petitioner’s prayer for relief, save prayers, “6. [f]or general damages in an amount according to proof;” and “18. [f]or such other and further legal and equitable relief that this Court may deem just and proper....” (Notice of Motion and Motion at 18:19-10:2.)

The relief sought through sections 1 through 4 of the Petition’s prayer for relief is available pursuant to Probate Code section 17200, subdivisions (b)(1),(2),(3), and (13). The relief sought through section 5 of the Petition’s prayer for relief is available pursuant to Probate Code section 17200, subdivisions (b)(10). Respondent does not provide any support in her Memorandum for the assertion that section 8 is improper. That section seeks damages pursuant to Welfare and Institutions Code section 15657.5, subdivision (a). Assuming that all of the allegations of the SAP are true, relief under that section is available.

Section 9 of the Prayer states, “[f]or treble damages pursuant to and in accordance with Civil Code Section 3345 based upon Debbie’s undue influence and elder abuse of Betty Anne.” (SAP at 35:26.) Civil Code Section 3345 applies, “only in actions brought by, on behalf of, or for the benefit of senior citizens or disabled persons, as those terms are defined in subdivisions (f) and (g) of Section 1761, to redress unfair or deceptive acts or practices or unfair methods of competition.” Section 1761 is part of the Consumers Legal Remedies Act, the purpose of which is “to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” (Civil Code §1760.) The Court does not find any cause of action in the Petition under the Consumer Legal Remedies Act, and no allegations that would support such cause of action. Petitioner, through his opposition, does not address Respondent’s request to strike this portion of the prayer.

Section 10 of the prayer asks the Court “[f]or exemplary and punitive damages pursuant to Welfare and Institutions Code section 15657.5 and/or Civil Code section 3294 and/or California Penal Code § 496 based upon Debbie’s undue influence and elder abuse of Betty Anne.” (SAP at 35:28-36:1.) Respondent argues that such relief is improper because “Punitive damages require heightened pleading requirements beyond merely stating that defendant acted ‘with oppression, fraud or malice.’ Instead, Plaintiff must allege specific facts showing that Movant’s conduct was oppressive, fraudulent or malicious.” (Support Memo at 6:8-12.) The Court finds that the SAP contains sufficient specific factual allegations of conduct that a reasonable jury could conclude were oppressive, fraudulent and/or malicious. As such, the prayed for relief is available.

Section 11 prays for attorneys’ fees, and section 12 prays for costs, each “pursuant to Probate Code Section 859 and Welfare and Institutions Code section 15657.5.” (SAP at 36:2-6.) Both forms of relief are available under both sections.

As to sections 13 and 14, Respondent asserts simply that these sections “‘seeking an order to show cause’ regarding injunctive relief” should be struck “on the basis that such relief is not supported by the allegations in the SAP.” (Support Memo at 6:17-18.) This identical issue was raised through Respondent’s demurrer. As there, Respondent here fails to cite to any authority in support of her assertions. As such, Respondent fails to provide the Court with grounds or authority upon which the Court may grant her motion to strike this prayer section.

Finally, as to the remaining sections 15-17, and 19, Respondent again simply asserts, without explanation, argument, or citation to authority, that the relief sought in each of these sections is “not supported by the allegations or causes of action alleged.” As such, Respondent fails to provide the Court with grounds or authority upon which the Court may grant her motion to strike this prayer section. Each form of relief appears on its face, to the Court, to be available and proper based on the allegations of the SAP.

[3] MOTION TO COMPEL RESPONSES TO FORM AND SPECIAL INTERROGATORIES AND FOR MONETARY SANCTIONS

TENTATIVE RULING: Respondent's request for judicial notice is GRANTED. Petitioner's motion to compel responses to form and special interrogatories is DENIED. Both of the parties' requests for sanctions are DENIED.

Petitioner and Plaintiff Duncan Miller moves the Court for an order compelling Defendant and Respondent Deborah Jeanne Miller to serve proper responses to Form and Special interrogatories, and further for an order requiring Respondent to pay monetary sanctions.

Respondent opposes the motion on the ground that it was not timely served pursuant to Code of Civil Procedure section 2030.300, subdivision (c).¹ That statute provides the deadline by which a party must give notice of a motion for an order compelling further responses to interrogatories. (*Ibid.*) "Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories." (*Ibid.*) The rule has been strictly applied. "The Legislature has explicitly stated that unless a party moves to compel further response within 45 days of the unsatisfactory response, he waives any right to compel a further response. We hold that this means what it says." (*Professional Career Colleges, Magna Inst. v. Super. Ct.* (1989) 207 Cal.App.3d 490, 494; see also *Sexton v. Super. Ct.* (1997) 58 Cal.App.4th 1403, 1410 [discussing language in the context of motions to compel production of documents].)

The Court can find *no* formal proof of service of the motion in its files. Thus, the only evidence that it was served at all is proffered by Respondent. (See Rupprecht Decl. at ¶9, Exh. F.)

Petitioner does not address the point through his Reply brief.

Based on the foregoing, the court finds that the present motion was not timely filed. Plaintiff has, therefore, waived "any right to compel a further response to the interrogatories." (Code Civ. Proc. §2030.300, subd. (c).)

Respondent requests, pursuant to Code of Civil Procedure section 2030.300, subdivision (d), monetary sanctions in the amount of \$3,145.00. "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc. §2030.300, subd. (d).)

¹ Respondent characterizes her opposition as an opposition and request to strike." (See Opposition at caption.) It is unclear to the Court how the granting of a request to strike would differ in this context from denying the underlying motion to compel. For this reason, the Court elects to proceed by considering Respondent's filing as an opposition.

The Court finds, based on the arguments advanced by Petitioner in his moving papers, that his decision to file the present motion was substantially justified. Moreover, given that the Court does not reach the merits of the motion, imposing sanctions on Petitioner for, in essence missing a service deadline, would be unjust.

Based on the foregoing, Respondent's request for sanctions is DENIED.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Alonso Obrien Uribe

17PR000147

REVIEW HEARING

TENTATIVE RULING: The court investigator was unable to interview two co-conservators, Bertha Chavez and Maria Chavez. Moreover, the co-conservators indicated they would provide medical information to the court investigator to confirm the conservatee is not in danger from being underweight. Bertha and Maria Chavez shall make themselves available for an interview with the court investigator and the co-conservators shall provide medical records to the court investigator relative to the weight issue. The matter is continued December 1, 2020, at 8:30 a.m. in Dept. B to allow for the co-conservators to comply with this order and for the court investigator to file a supplemental report. The clerk is directed to send notice to the parties and to attorney Richard Day.

.....
Estate of Deanna Fowles

19PR000121

FIRST AND FINAL ACCOUNT OF ADMINISTRATOR AND PETITION FOR ITS SETTLEMENT, FOR DISTRIBUTION AND FOR FEES (Final Distrib., Pr.C. 11640)

TENTATIVE RULING: The Petition is GRANTED including fees as prayed.

.....
Estate of Charles H. Brusco

19PR000167

(1) MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: Respondents Michael Roach and BRCM, LLC's motion for summary judgment as to the petitioner Tracy Vida's petition to determine ownership of real property is GRANTED. Vida alleges decedent Charles H. Brusco told her that the real property at 2915 N. Texas St. #151, Fairfield, CA 94533, belonged to her in return for moving from Virginia. (Pet., ¶¶ 5-6.) Vida claims she is the equitable owner of the property, but recognizes Roach is entitled to 25% of the value of the property. (*Id.*, ¶¶ 9-10.)

Respondents have met their initial burden to show Vida's claim fails. (Undisputed Material Facts, Nos. 1-8.) Decedent and Roach were business partners in a two member-managed LLC as memorialized in the Operating Agreement for Member-Managed BRCM, Limited Liability Company. (*Id.*, No. 1 [Ex. A].) The agreement provides the LLC's business purpose is to "[p]urchase and sell single family homes and condominiums." (*Id.*, No. 1 [Ex. A, § I(5)].) The agreement additionally states, "[a]ll personal and real property of this LLC shall be held in the name of the LLC, not in the names of individual members[,]” cash from the sale of “capital assets” may be distributed to “members in accordance with each member’s percentage interest in the LLC,” and “[i]f proceeds consist of property other than cash, the members shall decide the value of the property and allocate such value among the members in accordance with each member’s percentage interest in the LLC.” (*Id.*, No. 3 [Ex. A, §§ III(6), IV(8)-(9)].) Decedent held a 75% interest and Roach held a 25% interest in the LLC. (*Id.*, No. 4 [Ex. A., § IV(1)].) “[N]o member may encumber a part or all of his or her membership in the LLC by mortgage, pledge, granting of a security interest, lien, or otherwise, unless the encumbrance has first been approved in writing by all other members of the LLC.” (*Id.*, No. 5 [Ex. A, § V(2)].)

The LLC has owned the property at issue since 2012. (*Id.*, No. 2.) The LLC's members never agreed in writing or verbally to transfer or gift the subject property. (*Id.*, No. 6.) With decedent's passing, Roach now has sole control of the LLC with his 25% interest, and decedent's 75% interest in the LLC goes to his estate (but no longer has any membership, management, or voting rights). (*Id.*, No. 7.) Because the LLC held the ownership interest in the property, decedent could not individually allocate any interest in the real property to Vida.

Having met the initial burden, the burden shifts to Vida to demonstrate a triable issue of material fact. She has not. Vida submits her declaration as evidence she entered into an oral agreement with decedent in 2012 for the condo property. (Vida Decl., ¶¶ 3, 8, 17.) Vida contends this evidence is material because the LLC is responsible for decedent's conduct. Vida argues under Corporations Code section 17703.01, subdivision (a), every member of the LLC is an agent of the LLC for the purpose of its business or affairs, and the act of any member binds the LLC in the particular matter. In other words, according to Vida, decedent's alleged oral contract with her for the property binds the LLC as he was the LLC's agent.

Section 17703.01, subdivision (a), however, does not apply. The section states it does not apply if “the member so acting has, in fact, no authority to act for the [LLC] in the particular matter and the person with whom the member is dealing has actual knowledge of the fact that the member has no such authority.” As noted, decedent had no authority to act unilaterally to gift or promise a property to Vida under the operating agreement.² This is undisputed. Finally, Vida's reliance on *Western Surety Co. v. La Cumbre Office Partners, LLC* (2017) 8 Cal.App.5th 125 is

² The Court has not considered respondents' reply evidence (the Roach declaration) as it is improper to submit new evidence with a reply on a motion for summary judgment. Although the Court has not considered the declaration, it notes UMF No. 1 states the LLC is “member-managed,” but the new evidence appears to conflict by declaring Roach is the manager of the LLC; that is, the LLC was manager-managed. Because the Court has not considered this new evidence, the Court cannot reach the question of whether the LLC was manager-managed to fall under the exception in Corporations Code section 17703.01, subdivision (a) [“Unless the articles of organization indicate the [LLC] is a manager-managed [LLC] . . .”] or the protection provided in subdivision (b) for manager-managed LLCs.

distinguishable because that case relied on the signature of a managing-member of an LLC, thus binding the LLC, which is not present here with just the purported oral promise to transfer real property. (*Id.* at p. 135.)

(2) PETITION TO DETERMINE OWNERSHIP OF REAL PROPERTY

TENTATIVE RULING: Petitioner Tracy Vida’s petition to determine ownership to real property is DENIED due to the granting of respondents Michael Roach and BRCM, LLC’s motion for summary judgment.

The case is set for an OSC re: Dismissal on December 17, 2020, at 8:30 a.m. in Dept. B.

.....
Estate of Alfred Evangelist Leveque, Jr.

20PR000139

AMENDED PETITION FOR LETTERS OF ADMINISTRATION WITH GENERAL POWERS AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition.

.....
Estate of Edgar A. Lantz, Jr.

20PR000155

PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition. Petitioner shall file the proposed order (DE-140) and letters (DE-150) conforming to the petition.

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At 9:00 a.m.

Conservatorship of Ryan Thurow

20MH000027

PETITION FOR APPOINTMENT OF LPS CONSERVATOR

APPEARANCE REQUIRED

(Continued Next Page)

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B
(Historic Courthouse) at 8:30 a.m.**

In the Matter of Patrick Buie

20CV000715

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.