

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 1, Honorable Le Jacqueline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

**To contest the ruling, call (408) 808-6856 Or Email at
Department1@scscourt.org before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS
DATE: December 20, 2024 TIME: 10:00 A.M.**

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22PR193657	Maria Del Carmen Maldonado revocable Living Trust	Click on LINE 1 or scroll down for attached Tentative Ruling.

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PROBATE LAW AND MOTION TENTATIVE RULINGS

LINE 2	24PR197332	Estate of Asha Sharma	Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3	24PR197332	Estate of Asha Sharma	Click on LINE 3 or scroll down for attached Tentative Ruling.
LINE 4	24PR197332	Estate of Asha Sharma	Click on LINE 4 or scroll down for attached Tentative Ruling.
LINE 5	24PR197332	Estate of Asha Sharma	Click on LINE 5 or scroll down for attached Tentative Ruling.
LINE 6	24PR197332	Estate of Asha Sharma	Click on LINE 6 or scroll down for attached Tentative Ruling.
LINE 7	24PR197332	Estate of Asha Sharma	Click on LINE 7 or scroll down for attached Tentative Ruling.

Line 1

Case Name: *Maria Del Carmen Maldonado Revocable Living Trust*

Case No.: 22PR193657

Hearing date, time, and department: December 20, 2024 at 10:00 a.m. in Department 1

INTRODUCTION

On November 15, 2022, Petitioner Israel Maldonado initiated the instant case filing a Probate Code section 850 petition alleging eight causes of action against the trustee of the Maria Del Carmen Maldonado Revocable Living Trust, Respondent Pedro Enrique Guerra Otra (“Respondent”). The parties were also involved in an unlawful detainer action in docket 23CV423334.

On July 10, 2023, Respondent filed a petition alleging that Israel Maldonado and Elizabeth Maldonado committed financial elder abuse against decedent Maria Del Carmen Maldonado and demanded that they return possession of the real property located at 3403 Viewmont Court, San Jose, California to the trust.

Currently before the court is Respondent’s motion to enforce the settlement agreement entered into on the record at a settlement conference before the Honorable Carol Overton. The motion is unopposed.

DISCUSSION

I. Legal Background

Respondent filed the instant motion to enter judgment pursuant to the terms of the parties’ settlement agreement under Code of Civil Procedure section 664.6 (“section 664.6”). Section 664.6 provides, “If parties to pending litigation stipulate, in a writing signed by the parties outside of 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.” (§ 664.6, subd. (a).) The purpose of section 664.6 is “to permit a court, via a summary proceeding, to finally dispose of an action when the existence of the agreement or the terms of the settlement are subject to reasonable dispute, something not permissible before the statute’s enactment.” (*Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 206.)

“ ‘If requested by the parties,’ . . . ‘the [trial] court may retain jurisdiction over the parties to enforce [a] settlement until performance in full of the terms of the settlement.’ (§ 664.6, italics added.) ‘Because of its summary nature, strict compliance with the requirements of section 664.6 is prerequisite to invoking the power of the court to impose a settlement agreement.’ [Citations.]” (*Mesa RHF Partners, L.P. v. City of Los Angeles* (2019) 33 Cal.App.5th 913, 917 (*Mesa*), italics in original.) “[T]he request for retention of jurisdiction must conform to the same three requirements which the Legislature and the courts have

deemed necessary for section 664.6 enforcement of the settlement itself: the request must be made (1) during the pendency of the case, not after the case has been dismissed in its entirety, (2) by the parties themselves, and (3) either in a writing signed by the parties or orally before the court.” (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440.) “The request to the court that it retain jurisdiction under section 664.6 must be made by the parties. [Citation.]” (*Mesa, supra*, 33 Cal.App.5th at p. 918.)

The court may interpret the terms of the settlement agreement on a motion to enforce such an agreement. “[I]f the requirements of section 664.6 are met the trial court is authorized to resolve remaining questions of disputed fact or interpretation. [Citations.]” (*City of Fresno v. Maroot* (1987) 189 Cal.App.3d 755, 760, fn. 3.) “Section 664.6’s ‘express authorization for trial courts to determine whether a settlement has occurred is an implicit authorization for the trial court to interpret the terms and conditions to settlement.’ [Citation.]” (*Skulnick v. Roberts Express, Inc.* (1992) 2 Cal.App.4th 884, 889.)

“In ruling on a motion to enter judgment [or to confirm settlement] the trial court acts as the trier of fact, determining whether the parties entered into a valid and binding settlement. [Citation.] Trial judges may consider oral testimony or may determine the motion upon declarations alone.” (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1454.) However, “[t]he power of the trial court under Code of Civil Procedure section 664.6...is extremely limited...[in that] nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon.” (*Hernandez v. Board of Ed. Of the Stockton Unified School Dist.* (2004) 126 Cal.App.4th 1161, 1176, internal quotation marks and citations omitted). This is so because “[a] settlement agreement is simply a contract.” (*Ibid.*) Thus, “[t]he court is powerless to impose on the parties more restrictive or less restrictive or different terms than those contained in their settlement agreement.” (*Ibid.*)

II. Merits of the Motion

Respondent asserts that the parties entered into a global settlement agreement, which would resolve all claims in the instant case and the unlawful detainer action. The transcript of the settlement conference proceedings from January 16, 2024 indicates that the substance of the agreement was as follows: Israel and Elizabeth Maldonado, who resided in the real property located at 3403 Viewmont Court would receive \$100,000 to be paid through their counsel’s trust account, the Mezzetti Law Firm Trust Account. Of the \$100,000, \$10,000 dollars of would be paid on or before February 15th, 2024, to allow Israel and Elizabeth Maldonado sufficient funds to be able to move. Upon payment of the \$10,000, Israel and Elizabeth Maldonado would vacate the 3403 Viewmont Court property on or before March 18, 2024, taking all of their personal property and leaving the property in “broom clean” condition.

Respondent contends that Israel and Elizabeth Maldonado did not leave the property in “broom clean” condition and, instead, he was required to spend \$9,000 for junk removal and disposal. He asserts that he will prove that Israel and Elizabeth Maldonado left the property in deplorable condition with photos he will show to the court at the hearing on this matter. He requests that the court order that \$10,000 held in the Mezzetti Law Firm Trust Account be “distributed to the Pogue, Calvert, LLP Attorney-Client Trust Account, that ISRAEL and ELIZABETH are found to be in breach of the terms of the stipulation and order by leaving the property in a state of disarray and neglect, and for the fees and costs required to enforce this

order.” He maintains that the \$10,000 is held in the Mezzetti Law Firm Trust Account was deposited therein from escrow at the close of the sale of the 3403 Viewmont Court property on the agreement of the parties’ counsel.

But, the term that \$10,000 would be held in the Mezzetti Law Firm Trust Account and that such would be distributed to the Pogue, Calvert, LLP Attorney-Client Trust Account is not a term of the parties’ settlement agreement as stated on the record before Judge Overton. As mentioned above, section 664.6 only applies where the parties stipulate “in a writing signed by the parties outside of the presence of the court or orally before the court[.]” (§ 664.6, subd. (a).) Here, Respondent provides evidence of an oral stipulation made before the court. No other agreement has been provided. As that stipulation does not include the terms Respondent seeks to enforce, the motion must be DENIED. (See *Hernandez v. Board of Ed. Of the Stockton Unified School Dist.*, supra, 126 Cal.App.4th at p. 1176 [“[t]he court [in ruling on a section 664.6 motion] is powerless to impose on the parties more restrictive or less restrictive or different terms than those contained in their settlement agreement”].)

CONCLUSION

The motion to enforce settlement agreement is DENIED.

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Calendar line 2

Case Name: *The Estate of Asha Sharm*

Case No.: 24PR197332

Hearing date, time, and department: December 20, 2024, at 10:00 a.m. in Department 1

INTRODUCTION

On June 5, 2024, Petitioner Ankur Sharma (“Petitioner”) initiated this case, filing a petition for letters of administration for the estate of Asha Sharma (“Decedent”), his mother. He filed an amended petition on June 25, 2024. Also on June 5, 2024, Petitioner filed a document entitled “Will Contest” (“June 5, 2024 Will Contest petition”).

On November 20, 2024, Petitioner filed a document entitled, “Amended Contest: Opposition to Probate of Purported Will; Contest of Appointment of Personal Representative” (“November 20, 2024 Amended Petition”). The November 20, 2024 Amended Petition separates itself into 10 “grounds”, which can be summarized as follows: (1) elder abuse of Decedent, (2) breach of fiduciary duty, (3) fraud in procuring Decedent’s 2023 will, (4) Medi-Cal fraud, (5) conflict of interest, (6) undue influence in procuring the 2023 will, (7) lack of due execution of 2023 will, (8) lack of testamentary capacity at the time the 2023 will was signed, (9) lack of intent that the 2023 will be Decedent’s will, (10) the petition to open probate filed by Decedent’s surviving spouse, Vishnu Sharma (“Respondent”), is invalid.

Currently before the court is Respondent’s demurrer, filed November 19, 2024, to Petitioner’s June 5, 2024 Will Contest (“November 19, 2024 demurrer”). Petitioner filed an opposition to the demurrer on December 11, 2024.

Also before the court is Respondent’s demurrer, filed November 22, 2024, to the November 20, 2024 Amended Petition (“November 22, 2024 demurrer”). On December 11, 2024, Respondent filed a notice of non-opposition. Petitioner filed an amended opposition to the demurrer on December 12, 2024¹ and Respondent filed a reply on December 13, 2024. On December 16, 2024, Petitioner also filed what he terms a reply to Petitioner’s reply.²

¹ Respondent contends that the opposition is untimely and the court should not consider it. The court will exercise its discretion to consider the late-filed opposition. (See Rules of Court, rule 3.1300(d); *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765.) However, Petitioner is admonished to follow all applicable procedural rules, including the timely filing of opposition papers.

² The court declines to consider this unauthorized filing. (See *Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 703 [determination of whether to consider unauthorized filings is within the discretion of the court].) The Rules of Court contemplate moving, opposition and reply papers. (See Rules of Court, rule 3.1113(d).) Sur-replies are not contemplated by the rules. Petitioner is admonished not to file unauthorized filings and that the court may refuse to consider unauthorized filings in the future.

On December 12, 2024, Petitioner filed a motion to strike portions of the November 22, 2024 demurrer. Respondent filed an opposition to the motion to strike on December 17, 2024.

Petitioner also filed, on December 18, 2024, a motion to continue the demurrers.

DISCUSSION

I. Motion to Strike Notice of Non-Opposition

Petitioner contacted the court to reserve the hearing date of December 20, 2024 for the court to hear a motion to strike the notice of non-opposition. However, no such motion has been filed. Accordingly, that motion is ordered OFF CALENDAR.

II. December 12, 2024 Motion to Strike Portions of Demurrer

Petitioner moves to strike portions of Respondent's November 22, 2024 demurrer pursuant to Code of Civil Procedure sections 435.5 and 436.³ At the outset, the court GRANTS Petitioner's request for judicial notice of the proof of service (Exhibit B) under Evidence Code section 452, subdivision (d). The court DENIES the request for judicial notice of Respondent's memorandum of points and authorities in support of the demurrer as that is the document that is the subject of the motion to strike and, therefore, a request for judicial notice of that document is unnecessary. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 [denying as unnecessary a request for judicial notice of pleading under review on demurrer].) Additionally, the copy of the memorandum of points and authorities attached to the request for judicial notice is not a complete copy as it is missing several pages.

Section 435.5 provides no basis for the motion to strike because it simply governs the meet and confer requirements for a motion to strike. Section 436 provides in its entirety, "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike 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." (Formatting altered.)

However, the notice of motion for the motion to strike is fatally defective as it neither quotes any portions sought to be stricken, nor accurately cites the portions of the demurrer to be stricken. (See Rules of Court, rule 3.1322(a).) The court notes that Petitioner cites his request for judicial notice and not the actual memorandum of points and authorities in support of the demurrer making it extremely difficult to tell which allegations he is targeting with the motion to strike. For example, the first item Petitioner seeks to strike is "Request for Judicial Notice, Pg 5 Lines 14 and 15: Statements regarding changes to the 2015 Will, which violate the Sham Pleading Doctrine by presenting inconsistent statements in verified pleadings." (See Motion to Strike Demurrer, p. 3:6-8.) If the court looks at page five of the request for judicial notice, the content contained on those lines reads, in full: "filed against his family members. II.

³ All further undesignated statutory references are to the Code of Civil Procedure.

STANDING TO DEMURRER”. Page five of the memorandum itself is not attached to the request for judicial notice. The court finds this defect fatal to the motion.

Additionally, the court’s decision to strike the petition pursuant to section 436 is discretionary. (See § 436 [“The court may . . .strike”]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].) A motion to strike should be applied cautiously and sparingly because it is used to strike substantive defects. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.) Accordingly, the motion to strike is DENIED.

III. December 18, 2024 Motion to Continue Demurrer Hearing

Petitioner moves to continue the hearing on the demurrers, currently scheduled for December 20, 2024 on the ground that he has discovered new evidence “on the State Bar website” that somehow speaks to his standing, one of the arguments raised in the demurrers. The court DENIES that request. The court notes that Petitioner has not stated what this evidence is or how it affects the issue of his standing. Setting aside the extremely dubious nature of the claim that evidence on the State Bar website could possibly impact Plaintiff’s standing to contest the will lodged with the court, any evidence from the State Bar website would be extrinsic evidence, which the court may not consider in ruling on a demurrer. (See *SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905 [“A demurrer tests the pleadings alone and not the evidence or other extrinsic matters.”].) For the same reasons, Petitioner’s citation to cases he contends indicate that the court should consider all available evidence in making its rulings are unavailing.

IV. November 19, 2024 Demurrer

In his reply, Respondent contends that the November 19, 2024 demurrer is moot because the November 20, 2024 Amended Petition supersedes the June 5, 2024 Will Contest petition. In general, the filing of an amended petition renders a demurrer to the prior version of the petition moot because “ ‘ ‘an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading. [Citations.]’ [Citation.] [Citation.]” (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, quoting *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884; accord *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 506.)

Here, however, the court finds that Petitioner could not file the November 20, 2024 Amended Petition without leave of court. Code of Civil Procedure section 472, provides, “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. A party may amend the pleading after the date for filing an opposition to the demurrer or motion to strike, upon stipulation by the parties. The time for responding to an amended pleading shall be computed from the date of service of the amended pleading.” (§ 472, subd. (a).) Here, Respondent had already filed the November 19, 2024 demurrer before Petitioner filed the November 20, 2024 Amended Petition. Further, on September 19, 2024, Petitioner filed a prior amended will contest titled, “Contest of Appointment of Personal Representative; Will Contest and Grounds

of Opposition to Probate of Purported Will” (“September 19, 2024 petition”). Although not labelled as a petition, the September 19, 2024 petition also contests the 2023 will and asks that it not be admitted to probate, as the June 5, 2024 Will Contest petition does, but also adds additional requests and grounds for relief. Thus, Petitioner already amended the will contest once without leave of court.

The court orders the November 20, 2024 Amended Petition stricken on its own motion pursuant to Code of Civil Procedure section 436. An amended pleading filed without leave of court or stipulation after the time to file an amended pleading has passed is subject to a motion to strike on the court’s own motion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 613.)

Nonetheless, the September 19, 2024 petition supersedes the June 5, 2024 Will Contest petition and thus the June 5, 2024 Will Contest petition and the November 20, 2024 demurrer targeting the June 5, 2024 Will Contest petition are both MOOT. The court has before it no demurrer or other motion challenging the September 19, 2024 petition. Accordingly, it appears that the September 19, 2024 petition is the operative petition for the purposes of trial.

V. November 22, 2024 Demurrer

The November 22, 2024 Demurrer targeting the November 20, 2024 Amended Petition is MOOT as the November 20, 2024 Amended Petition has been ordered stricken.

CONCLUSION

The court hereby orders as follows:

- (1) Petitioner’s motion to strike the notice of non-opposition, which was never filed, is ordered OFF CALENDAR.
- (2) Petitioner’s December 12, 2024 motion to strike portions of the demurrer to the November 20, 2024 Amended Petition is DENIED.
- (3) Petitioner’s December 18, 2024 motion to continue demurrer hearing is DENIED.
- (4) The November 20, 2024 Amended Petition is ordered STRICKEN on the court’s own motion.
- (5) The June 5, 2024 Will Contest petition and the November 29, 2024 Will Contest Demurrer are both MOOT.
- (6) The November 22, 2024 Demurrer is MOOT.

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