

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

**Department 1, Honorable 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: November 20, 2024      TIME: 10:00 A.M.**

**\*\*\*NOTICE\*\*\***

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hearings. See court website for policy and forms for court reporters at hearing**

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**[https://santaclara.courts.ca.gov/divisions/probate-division/probate-advance-case-  
status-reports](https://santaclara.courts.ca.gov/divisions/probate-division/probate-advance-case-status-reports)**

| <b>LINE #</b>          | <b>CASE #</b> | <b>CASE TITLE</b>                                  | <b>RULING</b>   |
|------------------------|---------------|--|---|
| <a href="#">LINE 1</a> | 24PR196606    | In the Matter of the Armanda Nunes Revocable Trust | Click on <a href="#">LINE 1</a> or scroll down for attached Tentative Ruling. |

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**PROBATE LAW AND MOTION TENTATIVE RULINGS**

|                        |            |                     |   |
|------------------------|------------|---------------------|---|
| <a href="#">LINE 2</a> | 18PR182796 | Gerald C. Fox Trust | Click on <a href="#">LINE 2</a> or scroll down for attached Tentative Ruling. |
| <a href="#">LINE 3</a> |            |                     | Click on <a href="#">LINE 3</a> or scroll down for attached Tentative Ruling. |
| <a href="#">LINE 4</a> |            |                     |   |
| <a href="#">LINE 5</a> |            |                     |   |
| <a href="#">LINE 6</a> |            |                     |   |

Line 1

**Case Name:** *The Armanda Nunes Revocable Trust*

**Case No.:** 24PR196606

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

## INTRODUCTION

On February 22, 2024, Petitioner Carlos Corvelo (“Petitioner”) filed a document he titled “Petition for Objection to Trust Amendment, alleging that his brother, Juvenal Corvelo (“Respondent”), had made changes to the Armanda Nunes Revocable trust, a trust set up for their mother, Armanda Nunes (“Nunes”), while Nunes had dementia. On March 21, 2024, Respondent filed an opposition to the petition.

On March 27, 2024, the petition came on for hearing. Prior to the hearing, the probate examiner had entered probate notes related to deficiencies in the petition. At the hearing, the court explained to Petitioner how to view the notes so that he could make the necessary changes. However, when the parties returned to court for the continued hearing on the petition on June 14, 2024, Petitioner had not filed an updated petition and the court ordered the petition off calendar.

Currently before the court is Respondent’s motion to dismiss the petition for lack of prosecution. The motion is unopposed.

## DISCUSSION

Respondent argues that the petition should be dismissed because Petitioner has done nothing to make the petition comply with the probate notes since March 2024. Respondent moves for dismissal of the petition under Code of Civil Procedure section 583.410,<sup>1</sup> which provides “The court may in its discretion dismiss an action for delay in prosecution *pursuant to this article* on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case.” (§ 583.410, subd. (a), italics added.)

However, section 583.420, subdivision (a) provides,

*The court may not dismiss an action pursuant to this article for delay in prosecution except after one of the following conditions has occurred:*

- (1) Service is not made within two years after the action is commenced against the defendant.
- (2) The action is not brought to trial within the following times:
  - (A) Three years after the action is commenced against the defendant unless otherwise prescribed by rule under subparagraph (B).

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<sup>1</sup> All further undesignated statutory references are to the Code of Civil Procedure.

(B) Two years after the action is commenced against the defendant if the Judicial Council by rule adopted pursuant to Section 583.410 so prescribes for the court because of the condition of the court calendar or for other reasons affecting the conduct of litigation or the administration of justice.

(3) A new trial is granted and the action is not again brought to trial within the following times:

(A) If a trial is commenced but no judgment is entered because of a mistrial or because a jury is unable to reach a decision, within two years after the order of the court declaring the mistrial or the disagreement of the jury is entered.

(B) If after judgment a new trial is granted and no appeal is taken, within two years after the order granting the new trial is entered.

(C) If on appeal an order granting a new trial is affirmed or a judgment is reversed and the action remanded for a new trial, within two years after the remittitur is filed by the clerk of the trial court.

Respondent does not contend that this case falls under any of the above provisions. Here, Petitioner filed his petition in February 2024, less than two years ago. Accordingly, the court may not dismiss the petition under the discretionary dismissal provision of section 583.410. (See *Hawks v. Hawks* (2006) 141 Cal.App.4th 1435, 1437.)

Respondent also seeks dismissal under the mandatory dismissal statute, section 583.360, subdivision (a) which provides, (a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial *within the time prescribed in this article*. (Italics added.) Again, Respondent does not indicate which provision of the article containing section 583.360 he relies on. Section 583.310 provides, “An action shall be brought to trial within five years after the action is commenced against the defendant” and section 583.320 applies when a new trial has been granted. The remaining provisions of that same article speak to tolling or extending time. Again, the petition was filed in February 2024, less than five years ago. Accordingly, section 583.360 does not apply.

Respondent also seeks dismissal under two provisions of the Probate Code. The first, Probate Code section 17200 does not provide for dismissal, nor does it provide any timeframe in which a probate petition must be brought to trial. The section, Probate Code section 4543, provides, “The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the principal or the principal’s estate and shall stay or dismiss the proceeding in whole or in part when required by Section 410.30 of the Code of Civil Procedure.” Respondent does not argue that a stay or dismissal is required under section 410.30. He contends that Petitioner has provided no substantive or legal basis for the relief he seeks in the petition.

At this stage in the proceedings, the court cannot determine if the petition may have merit. As Respondent correctly points out, Petitioner has failed to amend his petition as requested by the court. However, it appears that Probate Code section 4543 appears to apply to cases concerning a power of attorney based on its placement in Division 4.5 of the Probate Code, entitled Powers of Attorney and Part 4 of that Division, entitled, Judicial Proceedings Concerning Powers of Attorney. Here, the petition makes no mention of a power of attorney. Accordingly, the court finds that Probate Code section 4543 does not apply in this case.

As Respondent provides no legal basis for dismissal, the motion is DENIED without prejudice.

### **CONCLUSION**

The motion is DENIED without prejudice.

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**Calendar line 2**

Tentative was posted for 11-1-24 hearing. Parties requested matter be continued to tomorrow for oral argument.

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