

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

**Department 2, Honorable Drew C. Takaichi, Presiding**  
Audrey Nakamoto, Courtroom Clerk

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

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS**

**DATE: August 8, 2024**

**TIME: 10:00 A.M.**

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

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shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml) to find the appropriate link.**

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information from old cookies even after the current week's rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
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## **Calendar line 1**

**Case Name:** *Javid Family Living Trust*

**Case No.:** 23PR196145

**Hearing date, time, and department:** August 8, 2024 at 10:00 a.m. in Department 2

### **INTRODUCTION**

In 1981, Settlers Ahmad Javid (“Respondent”) and Safoora Javid (“Decedent”) established the Javid Family Living Trust, dated June 24, 1981 (“the trust”). The trust was amended and restated in 2014. In 2023, Decedent attempted to execute an amendment to the trust purporting to distribute to Petitioner Roya Javid, MD (“Petitioner”) Decedent’s separate property and her one half share of the settlors community property outright and free of trust.

On November 30, 2023, Petitioner filed her the petition containing (1) a request for an order ascertaining the trust beneficiaries and determining to whom property shall pass, (2) a claim for breach of spousal fiduciary duty, (3) a claim for financial elder abuse, (4) a request for an order transferring property, and (5) a request for an accounting and for provision of certain documents and information.

Currently before the court is Petitioner’s motion to file a first amended petition. The motion is unopposed.

### **DISCUSSION**

#### **I. Legal Standard**

Code of Civil Procedure sections 473, subdivision (a), and 576 provide that the court “may, in the furtherance of justice,” allow a party to amend any pleading. “It is well established that ‘California courts have “a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others.” [Citation.] Indeed, “it is a rare case in which ‘a court will be justified in refusing a party leave to amend his [or her] pleading so that he [or she] may properly present his [or her] case.’ ”[Citation.]’ [Citation.] Thus, absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. [Citation.]” (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.)

“ ‘Leave to amend a complaint is thus entrusted to the sound discretion of the trial court. . . .’ [Citations.]” (*Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 242.) “[I]t is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment. [Citation.]” (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) The court does not abuse its discretion by denying leave to amend where the facts stated do not constitute a cause of action. (See *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 654.)

A motion to amend filed before trial must (1) include a copy of the proposed amended pleading, (2) state what allegations in the previous pleading are proposed to be deleted, and (3)

state what allegations are proposed to be added to the previous pleading. (Cal. Rules of Court, rule 3.1324(a).) The motion must also include a separate declaration that explains “(1) The effect of the amendment; (2) Why the amendment is necessary and proper; (3) When the facts giving rise to the amended allegations were discovered; and (4) The reasons why the request for amendment was not made earlier.” (Cal. Rules of Court, rule 3.1324(b).)

## **II. Analysis**

Petitioner seeks to amend her petition in order to add two additional respondents and a cause of action for conversion. She asserts that she encountered facts during discovery suggesting that the additional respondents received funds that had been transferred out of trust bank accounts. She also discovered that some of her personal property items, which were stored at a parcel of trust real property, had been damaged or were missing. Petitioner has provided a proposed first amended petition and a redlined copy showing the changes to be made.

The motion is unopposed and, therefore, Respondent asserts no potential prejudice in allowing the amendment. Further, the case is in the earliest stages. The parties are engaged in discovery and no trial date has been set. The motion is GRANTED.

## **CONCLUSION**

The motion for leave to amend is GRANTED.

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