

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

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: May 28, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does not provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:

<https://reservations.scsccourt.org/>

FREE MCLE Civil Bench Presentation:

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Date: June 20, 2024

Time: 12-1:00

Place: Microsoft Teams: <https://msteams.link/YGLE>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	15CV289481	Elisa Calderon vs Doroteo Oropeza	Labor Commissioner's motion to amend judgment is GRANTED. The judgment entered on December 17, 2015 against Defendant Doroteo Oropez in the amount of \$13,902.05 is amended to remove her name and reflect judgment only as to co-defendant, Felipe Hernandez. This order will be reflected in the minutes. Moving party to promptly prepare amended judgment.
2-3	18CV337836	Cryplex, Inc. vs Bitmain Technologies Holding Co.	The Court requires additional time to analyze this issue and therefore continues the hearing on these motions to June 6, 2024 at 9 a.m. in Department 6. Cryplex is ordered to provide the Court with a hard copy of its privilege log by delivering it to Department 6 no later than May 31, 2024.
4	19CV356936	Cytobank, Inc. vs Costanzo Law Firm, APC, et al.	Constanzo Law Firm, APC's motion to tax costs is DENIED. Ward was a prevailing party; this issue has been addressed previously. The reporter fees were reasonably necessary and are recoverable under the statute. Court to prepare formal order.
5	20CV374177	Ling Wang vs James McClenahan	William B. Look, Jr.'s motion to withdraw as counsel for Eagle Home Loans and Investments, LLC and Home Loan Eagle, Inc. is GRANTED. However, a company, regardless of corporate form, cannot represent itself in civil litigation in California.(See <i>Clean Air Transp. Sys. v. San Mateo County Transit Dist.</i> (1988) 198 Cal. App. 3d 576, 578 (“[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent.”); <i>Ferruzzo v. Superior Court</i> (1980) 104 Cal. App. 3d 501, 503 (“The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court.”); <i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978)21 Cal. 3d 724, 727 (“the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record in behalf of another person, including a corporate entity.”) Accordingly, Eagle Home Loans and Investments, LLC and Home Lona Eagle, Inc. are ordered to appear in Department 6 on July 18, 2024 at 10:00 and show cause why their answers should not be stricken and default entered against them for failure to obtain counsel. Court will use modified order on file.
6	21CV392116	MTD Drywall, Inc. vs Shaycore Enterprises, Inc., et. al.	Case dismissed.
7	23CV417274	Mia Luna vs Lillian Schmidt	Motion withdrawn by moving party on May 15, 2024.
8	23CV419297	Avital Lando vs Missy Davis, et. al.	Defendants' motion to strike portions of Plaintiff's SAC is GRANTED WITHOUT LEAVE TO AMEND. Scroll to line 8 for complete ruling. Court to prepare formal order.

9	23CV420188	Medtronic, Inc. vs George Triadafilopoulos MD	Plaintiff Medtronic, Inc.'s motion to strike Geroqe Triadafilopoulos MD, Inc.'s answer is GRANTED. A notice of motion with this hearing date and time was served on Defendant by overnight mail on March 21, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) And this request is meritorious. This entity's counsel withdrew as of March 7, 2024. No other counsel has appeared on the entity's behalf. A company, regardless of corporate form, cannot represent itself in civil litigation in California.(See <i>Clean Air Transp. Sys. v. San Mateo County Transit Dist.</i> (1988) 198 Cal. App. 3d 576, 578 ("[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent."); <i>Ferruzzo v. Superior Court</i> (1980) 104 Cal. App. 3d 501, 503 ("The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court."); <i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978)21 Cal. 3d 724, 727 ("the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record in behalf of another person, including a corporate entity.") Accordingly, Plaintiff's motion to strike Geroqe Triadafilopoulos MD, Inc.'s answer is granted. Court to prepare formal order.
10-11	23CV428384	James L. Sorden vs Carol E. Sordenstone	Defendant's motion for stay is GRANTED, and her motion to quash deposition subpoenas is GRANTED and for sanctions is DENIED WITHOUT PREJUDICE. Scroll to lines 10-11 for complete ruling. Court to prepare formal order.
12	2013-1-CV-239298	Unifund CCR, LLC vs Emerald Craig	Debtor's claim of exemption is GRANTED. Court to prepare formal order.
13	2015-1-CV-279969	Thomas Schweikert vs P.W. Stephens Environmental, Inc.	Defendant Las Brisas Homeowners Association's motion to disqualify Axis as an expert witness for Plaintiff Thomas Schweikert is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on April 26, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) And this motion is meritorious. It is clear Plaintiff's disclosed expert previously worked on the same issues on behalf of the Defendant, creating a conflict of interest. Moving party to promptly prepare formal order.

Calendar Line: 8

Case Name: *Avital Lando v. Burke Williams, Inc., et.al.*

Case No.: 23CV419297

Before the Court are Defendants', Burke Williams, Inc., Missy Davis, Jeri Sydnor, and Theresa Armour motion to strike portions of Plaintiff, Avital Lando's second amended complaint ("SAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. BACKGROUND

A. Factual

This action arises from Defendants' refusal to provide service and the removal of the Plaintiff from the business premises. According to the SAC, Plaintiff went to the Burke Williams day spa in San Jose for her reserved facial on July 8th. (SAC, ¶ 13.) Using the women's locker room, Plaintiff removed all her clothing and put on a robe that was provided in the locker. (SAC, ¶ 15.) While waiting for her facial, Plaintiff confided with others that she had had a few alcoholic drinks at lunch and was ready to relax. (SAC, ¶ 16.)

Once in the designated room, Plaintiff disrobed and laid under the coverings on the massage table. (SAC, ¶ 16.) Soon after, Ms. Davis and another employee abruptly entered the room, barked at her that Burke Williams was a dry facility, no services would be provided, and informed her that she needed to leave immediately or the law enforcement would be called. Plaintiff was then escorted to the locker room to get dressed while Ms. Davis and another employee stood guard and watched as if she was in orientation at Chowchilla women's correction facility. Plaintiff was then escorted out of the spa completely distraught. (SAC ¶¶ 17, 18, 19.)

B. Procedural

Plaintiff initiated this action on July 17, 2023, and filed her operative SAC on February 6, 2024, alleging causes of action for (1) invasion of privacy against Defendant Davis and Does 1, (2) assault against Defendant Davis and Does 1, (3) intentional infliction of emotional distress against Defendants Davis, Jeri Sydnor, and Does 1, (4) negligence against all Defendants, (5) negligence hiring and supervising against Defendants Burke Williams Inc., Jeri Sydnor, and Theresa Armour, (6) conversion against Defendants Sydnor, Davis and Does 1.

On March 26, 2024, Plaintiff dismissed her intentional infliction of emotional distress claim against Defendant Jeri Sydnor and dismissed Defendant Theresa Armour from this action. On April 4, 2024, the parties stipulated to strike the prayer for attorney's fees from the SAC. On May 14, 2024, Plaintiff dismissed her sixth cause of action for conversion.

Defendants have now filed their motion to strike certain portions of the SAC; Plaintiff opposes.

II. LEGAL STANDARD

California law authorizes a party's motion to strike matter from an opposing party's pleading if it is irrelevant, false, or improper. (Code Civ. Proc. §§ 435; 436(a).) Motions may also target pleadings or parts of pleadings which are not filed or drawn in conformity with applicable laws, rules, or orders. (Code Civ. Proc. § 436(b).) A motion to strike is used to address defects that appear on the face of a pleading or from judicially noticed matter but that are not grounds for a demurrer. (*Pierson v Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342; see also *City & County of San Francisco v Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913 (motion may not be based on a party's declaration or factual representations made by counsel in the motion papers).) In particular, a motion to strike can be used to attack the entire pleading or any part thereof – in other words, a motion may target single words or phrases, unlike demurrers. (*Warren v. Atchison, Topeka & Santa Fe Railway Co.* (1971) 19 Cal.App.3d 24, 40.) The Code of Civil Procedure also authorizes the Court to act on its own initiative to strike matters, empowering the Court to enter orders striking matter “at any time in its discretion, and upon terms it deems proper.” (Code Civ. Proc. § 436.)

III. ANALYSIS

A. Sixth Cause of Action for Conversion

On May 14, 2024, Plaintiff dismissed this cause of action. Therefore, Defendants' motion is moot as it relates to this claim.

B. Fourth & Fifth Causes of Action for Negligence and Negligence Hiring

Plaintiff admits and acknowledges that her fourth and fifth causes of action are based on negligence, where punitive damages cannot be awarded. However, the SAC generally prays for punitive damages without specification or reference to the enumerated claims.

Accordingly, Defendants' motion to strike is GRANTED. The punitive damages prayer for the fourth and fifth causes of action is STRICKEN.

C. First, Second, & Third Causes of Action for Invasion of Privacy, Assault, and Intentional Infliction of Emotional Distress

Defendants move to strike the punitive damage claim and reference to (1) "guilty of malice, oppression and bad faith" (SAC, ¶ 10), (2) "punish Defendants for their despicable and inhumane conduct" (SAC, ¶ 10), (3) "maliciously, fraudulently and oppressively" (SAC, ¶ 28), and (4) "evil motive amounting to malice" (SAC, ¶ 28). Defendants argue the SAC does not allege sufficient facts to support a punitive damage award and the allegations are conclusory in nature and fail to satisfy pleading requirements entitling a party to such recovery under Civil Code section 3294.

Plaintiff contends the SAC alleges sufficient facts to support a prayer for punitive damages because Ms. Davis's conduct in abruptly entering the massage room, barking that Plaintiff had to leave since the spa was a "dry" facility, threatening to contact law enforcement, escorting Plaintiff to the locker room watching her disrobe and dress herself, and escorting Plaintiff out of the facility, all tantamount to willful and conscious disregard of Plaintiff's rights and mental anguish, which the jury must decide if it rises to the level of malice and oppression. Plaintiff adds that Ms. Davis's conduct is considered a crime under the "Peeping Tom" statutes and at minimum shows criminal indifference towards the Plaintiff.

To obtain punitive damages, a plaintiff must plead and prove one of the following: malice, oppression, or fraud. (See Civil Code, § 3294, subd. (a).) "Malice" is defined as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civil Code, § 3294, subd. (a)(1).) "Oppression" is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civil Code, § 3294, subd. (a)(2).)

Therefore, to survive a motion to strike a claim or prayer for punitive damages, a plaintiff must plead ultimate facts to show oppression, fraud, or malice. (See *Jackson v. Johnson* (1992) 5 Cal. App. 4th 1350, 1354, quoting *Grieves v. Superior Court* (1984) 157 Cal. App. 3d 159, 166 ["The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages.

Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim.”], citations omitted.) Consequently, conduct carried on with a willful and conscious disregard of the rights or safety of others, but that is not “despicable,” will not support an award of punitive damages. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal. 4th 704, 725.) Instead, “despicable conduct” refers to circumstances that are so vile, base, or contemptible that it would be looked down on and despised by reasonable people. (*Ibid.*; *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal. App. 4th 702, 715.) “Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff’s rights, a level which decent citizens should not have to tolerate.” (*Lackner v. North* (2006) 135 Cal. App. 4th 1188, 1210, citations and quotation marks omitted.) Such conduct has been described as “having the character of outrage frequently associated with crime.” (*Scott v. Phoenix Schools, Inc.*, *supra*, 175 Cal. App. 4th at p. 715.) Further, “[t]here must be evidence that defendant acted with knowledge of the probable dangerous consequences to plaintiff’s interests and deliberately failed to avoid these consequences.” (*Flyer’s Body Shop Profit Sharing Plan v. Ticor Title Ins. Co.* (1986) 185 Cal. App. 3d 1149, 1155.) Moreover, conclusory allegations are not sufficient to support a claim for punitive damages. (*Brousseau v. Jarrett* (1977) 73 Cal. App. 3d 864, 872.)

Here, just because Ms. Davis’s conduct was allegedly intentional or willful or done in conscious disregard of the rights or safety of the Plaintiff does not necessarily lead to the conclusion that such conduct can support the imposition of punitive damages. Rather, the conduct alleged must be “despicable.” Defendants’ alleged conduct was not so vile, base, or contemptible that it would be looked down on and despised by reasonable people. Nor did it rise to the level of extreme indifference to the Plaintiff’s rights such that decent citizens should not have to tolerate. The conduct alleged here involve Ms. Davis entering the massage room, refusing to provide services due to Plaintiff’s disclosure of consuming alcoholic beverages, escorting her to the locker room, watching her disrobe and get dressed, and escorting her out of the facility. This conduct does not lead to the sense of outrage frequently associated with crime despite Plaintiff’s contentions.

Furthermore, Plaintiff’s allegation that (1) “[t]he acts alleged herein were carried out maliciously, fraudulently and oppressively, with the wrongful intention of harassing Plaintiff, from an

improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights and safety" (SAC ¶ 28), and (2) "Defendants knew, or in the exercise of ordinary care should have known, that conducting themselves in the manner described in the above allegations that physical and emotional wellbeing of the Plaintiff would suffer" (SAC, ¶ 21), are merely conclusory and unsupported by other factual allegations in the complaint.

Therefore, Defendants' motion is GRANTED and the following portions of the SAC are stricken:

1. "guilty of malice, oppression and bad faith" (SAC, ¶ 10);
2. "punitive damages" (SAC, ¶ 10);
3. "punish Defendants for their despicable and inhumane conduct" (SAC, ¶ 10);
4. "maliciously, fraudulently and oppressively" (SAC, ¶ 28);
5. "evil motive amounting to malice" (SAC, ¶ 28);
6. "punitive damages" (SAC, ¶ 28); and
7. "punitive damages" (SAC, prayer ¶ E)

D. Leave to Amend

In ruling on a motion to strike, the court employs the same liberality to amend as used for demurrers. As long as there is a reasonable possibility that plaintiffs can cure the defects, leave to amend is appropriate. (See *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 168; *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360.) However, "for an original complaint, regardless whether the plaintiff has requested leave to amend, it has long been the rule that a trial court's denial of leave to amend constitutes an abuse of discretion unless the complaint 'shows on its face that it is incapable of amendment.'" (*Eghtesad v. State Farm General Insurance Co.* (2020) 51 Cal.App.5th 406, 411, quoting *King v. Mortimer* (1948) 83 Cal.App.2d 153, 158; *Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240 ["Only rarely should a demurrer to an initial complaint be sustained without leave to amend."].)

Here, the operative SAC is not the original complaint, Plaintiff has not requested leave to amend, and the SAC on its face does not show that its claim for punitive damages is capable of amendment. Therefore, leave to amend is DENIED.

Calendar Lines 10-11

Case Name: *James L. Sorden v. Carol E. Sordenstone, et.al.*

Case No.: 23CV428384

Before the Court is Defendant, Carol Sordenstone's motion to dismiss, stay or consolidate this action with pending probate Case Nos. 22PR192746 and 22PR193370. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. BACKGROUND

According to the complaint, James L. Sorden and Anne M. Sorden ("Decedent") were married in 1968. They have two children, Jim Sorden and Carol Sordenstone. (Complaint, ¶ 12.) James and Ann maintained and periodically revised a revocable living trust since approximately 1981. The last revision was in August of 2018, leaving equal shares to their children. ("2018 Trust"). (*Id.*, ¶ 15.)

In preparing the 2018 Trust, James learned Ann had been gifting large sums of money to their daughter and others without his knowledge and consent. James confronted Anne about these gifts and asked her to cease doing so without his consent. (*Id.*, ¶ 15.) Shortly after executing the 2018 Trust, Anne was diagnosed with pancreatic cancer. Anne's disposition toward James became more hostile after their daughter's visit on March 28, 2019. This hostility led to James suffering chest pains, for which he was hospitalized for six days. To avoid stress, James left his home for approximately one month. When he attempted to go back, on May 5, 2019, he found the door locks changed and was informed to stay away. Thereafter James concealed his whereabouts from Anne and their daughter out of fear that any confrontation would aggravate his heart condition. (*Id.*, ¶¶ 16, 17, 18, 19.)

On May 5, 2019, Anne (1) retained an estate planning attorney; (2) attempted to revoke the 2018 Trust; (3) drafted her new living trust ("2019 Trust") leaving everything to her friends and their daughter while disinheriting James and their son; (4) retained a family law attorney; and (5) hired a private investigator to find James. (*Id.*, ¶ 21) On June 4, 2019, Anne filed a petition for legal separation (Case No. 19FL002117). On September 29, 2021, the couple reached an agreement as to the division of their community property, however, Anne did not cooperate in executing the required deeds or transferring James' equalization payment. (*Id.*, ¶¶ 22, 24, 25, 26.) On April 4, 2022, James filed his Request for Order regarding breach of fiduciary duty against Anne on the grounds that she loaned and gifted significant sums to third parties, created secret bank accounts funded with

community property, and liquidated stocks without his consent, among other allegations. (*Id.*, ¶¶ 26, 27.) Before Anne and James could conclude the legal separation proceedings, Anne died on May 6, 2022. Consequently, the family court dismissed the case finding it no longer possessed jurisdiction over the matter. (*Id.*, ¶ 34)

After Ann's death, James learned that she attempted to unilaterally revoke the 2018 Trust and execute the 2019 Trust funding it with her share of community property. She also withdrew significant amounts from their Morgan Stanley account. (*Id.*, ¶¶ 37, 38.) A large inventory of personal items belonging to James remained in their Shadow Oaks residence, which became their daughter's under the 2019 Trust. The property was sold on May 8, 2023, and his belongings are presumed destroyed or sold. (*Id.*, ¶¶ 40, 43.)

Plaintiff initiated this action on December 29, 2023, alleging (1) breach of fiduciary duty, (2) financial elder abuse, and (3) conversion.

II. LEGAL STANDARD

A. Motion to Dismiss, Stay or Consolidate Actions

When parties file suits against each other in different courts, and both suits relate to the same subject matter, the rule of exclusive concurrent jurisdiction applies. (See *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1175.) The first court to assert subject matter jurisdiction assumes jurisdiction to the exclusion of all others and may enjoin the later proceedings in other courts. (*Ibid.*) Moreover, the second court may stay its action in favor of the first action. (*Shaw v. Sup.Ct. (Beverages & More, Inc.)* (2022) 78 Cal.App.5th 245, 257.) For the purposes of exclusive concurrent jurisdiction, it is sufficient that both actions deal with the same subject matter and the court in the first action has the power to grant complete relief. The rule of exclusive concurrent jurisdiction is a ground for abatement of the subsequent action, but not if the first action cannot provide the relief sought in the subsequent action. (*Plant Insulation Co. v. Fireboard Corp.* (1990) 224 Cal. App. 3d 781, 788-789.)

The rule of exclusive concurrent jurisdiction is similar to the statutory plea in abatement. (*Plant insulation, supra*, 224 Cal. App. 3d at 788) A plea in abatement pursuant to section 430.10, subdivision (c), may be made when there is another action pending between the same parties on the

same cause of action. (*Id.* at 787.) A plea in abatement must be “raised by a demurrer where the issue appears on the face of the complaint and by answer where factual issues must be resolved.” (See Code Civ. Proc., §§ 430.10 (c).) “[W]here the defense of another action pending or a demurrer based upon subdivision (c) of Section 430.10 is sustained (and no other special defense is sustained) an interlocutory judgment shall be entered in favor of the defendant pleading the same to the effect that no trial of other issues shall be had until the final determination of that other action....” (Code Civ. Proc., § 597.) The postponement period by abatement ends when the first becomes final. (*Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 298.) Whether a right to abatement is found under the statutory plea in abatement or the rule of exclusive concurrent jurisdiction, where the conditions for its issuance exist, the issuance of an order to stay is a matter of right. (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal. App. 4th 760, 771-772.)

Furthermore, pursuant to Code of Civil Procedure Section 1048(a), “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” “A consolidation of actions does not affect the rights of the parties. The purpose of consolidation is merely to promote trial convenience and economy by avoiding duplication of procedure, particularly in the proof of issues common to both actions.” (*Wouldridge v. Burns* (1968) 265 Cal. App. 2d 82, 86.) “Under the statute and the case law, there are thus two types of consolidation: a consolidation for purposes of trial only, where the two actions remain otherwise separate; and a complete consolidation or consolidation for all purposes, where the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment.” (*Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147.) “Consolidation under Code of Civil Procedure section 1048 is permissive, and it is for the trial court to determine whether the consolidation is for all purposes or for trial only.” (*Id.* at 1149.)

D. Motion to Quash Deposition Subpoenas for Production of Business Records

When a subpoena has been issued requiring the attendance of a witness or the production of documents, electronically stored information, or other things before a court or at the taking of a

deposition, the court, upon motion “reasonably made” by the party, the witness, or any consumer whose personal records are sought, or upon the court’s own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms and conditions as the court may specify. (Code Civ. Proc. § 1987.1; *Southern Pac. Co. v. Superior Court* (1940) 15 Cal.2d 206.) The court can make an order quashing or modifying a subpoena as necessary to protect a person from “unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.” (Code Civ. Proc., § 1987.1, subd. (a).)

For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) Generally, all unprivileged information that is relevant to the subject matter of the action is discoverable if it would itself be admissible evidence at trial or if it appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010; *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 711.)

III. JUDICIAL NOTICE

A. Plaintiff’s Request

Plaintiff seeks judicial notice of (1) various documents filed in the case titled *In re Anne M. Sorden Living Trust Dated June 4, 2019*, case number 22PR192746 [Exhibits 2, 3, 4, 5, 6]; (2) true and correct copy of the probate Code § 17200 [Exhibit 1b]; (3) Order re: motion to compel deposition testimony entered in matter titled *In re The Davidson Living Trust, Dated December 6, 1989* [Exhibit 1a]; and (4) copy of the complaint filed in this action [Exhibit 7].

Plaintiff’s request is GRANTED, IN PART. The Court will judicially notice the existence of Exhibits 2, 3, 4, 5, 6, and 7 but not the truth of facts asserted therein. (Evid. Code § 452; *Sosinsky v. Grant* (1992) 6 Cal. App. 4th 1548, 1565.) Exhibit 1a is a statute subject to judicial notice under Evidence Code section 452(a), however, requesting judicial notice of California law is not necessary. (*Appel v. Superior Court* (2013) 214 Cal. App. 4th 329, 342, fn. 6.)

Plaintiff's request to notice Exhibit 1a is DENIED for lack of relevance. While Evidence Code, section 451 provides that certain matters designated therein must be judicially noticed, this is subject to the qualification that the matter is relevant. (Evid Code, §§ 350, 450).

B. Defendant's Request

Defendant requests notice of (1) certain petitions filed in Case Nos. 22PR192746 and 20PR193370 [Exhibits 1a, 1b, 2] and (2) February 14, 2024, minute order issued in Case No. 22PR193370 [Exhibit 3].

Defendant's request is GRANTED, IN PART. The Court will judicially notice the existence of these court records but not the truth of facts asserted therein. (Evid. Code § 452; *Sosinsky v. Grant* (1992) 6 Cal. App. 4th 1548, 1565.).

IV. ANALYSIS

A. Motion to Dismiss, Stay, or Consolidate Actions

Defendant contends:

- (1) This action must be dismissed because (a) the probate court has exclusive jurisdiction over the internal affairs of the 2018 and 2019 trust instruments, and (b) the allegations in this civil complaint must be filed as a compulsory cross-petition in the probate actions.
- (2) Pursuant to the statutory plea of abatement, this civil action must be stayed pending the resolution of the probate actions since they share the same parties and causes of action.
- (3) Pursuant to the rule of exclusive concurrent jurisdiction, this civil action must be stayed pending the resolution of the probate actions since they involve the same questions of law or fact.
- (4) This action must be abated or stayed because Plaintiff's civil complaint is nothing more than an improper attempt to split a single cause of action for separate suits.

Plaintiff opposes the motion on procedural and substantive grounds. As a matter of procedure, Plaintiff contends (1) "there is no such a thing as a 'motion to dismiss' under California law", (2) the notice fails to explain which cited code sections support the three sought grounds of relief, and (3) Defendant wrongly relies on the demurrer statute without filing a demurrer. Plaintiff argues the lack

of clarity is prejudicial to him since he must speculate as to the proper legal standard and authority. The Court is not persuaded.

The rule of exclusive concurrent jurisdiction must be raised by demurrer for plea in abatement or affirmative defense in the answer. (See Code. Civ. Proc. §§ 430.10(c), 597). If the ground for abatement is timely raised, the defendant may then move to dismiss or abate the action (*People ex rel. Garamendi v. American Autoplan, Inc.*, (1993) 20 Cal. App. 4th 760, 771.) The Court's record show that on March 15, 2024, Defendant filed her answer, properly raised the rule of exclusive concurrent jurisdiction, and specifically included her application to dismiss, stay, or consolidate this civil action with the pending probate actions. Plaintiff has not been prejudicially affected by Defendant's purported failure to explain her cited code section as evident by his timely filed and detailed opposition.

As to the merits of the motion, plaintiff argues, (1) the rule of exclusive and concurrent jurisdiction has no bearing on this action since all matters are in the same superior court, (2) the civil action is unrelated to the internal trust affairs but rather concerns Decedent's misappropriation of community funds, (3) the claims in the civil complaint do not involve the same rights or arise from the same harm as the narrow trust petitions, (4) the mere existence of related probate petitions does not warrant stay of the civil action, and (5) consolidation is improper since the civil and probate actions do not share common questions of law or fact.

First, superior courts are courts of general jurisdiction i.e., trial courts can hear all causes except those given by statute to other trial courts. (Cal. Const., art VI, §10.) While "[t]he superior court is divided into departments, including the probate department, as a matter of convenience; ... the subject matter jurisdiction of the superior court is vested as a whole." (*Estate of Bowles* (2008) 169 Cal. App. 4th 684, 695.) A probate court is simply the superior court "sitting in exercise of its probate jurisdiction." (*Copley v. Copley* (1978) 80 Cal. App. 3d at 107.) Therefore, the superior court sitting in probate has exclusive jurisdiction to determine the persons and share that each has in the estate of a decedent. (*Howard v. Bennett* (1942) 53 Cal. App. 2d 546, 548.) "The Probate Code provides one comprehensive, exclusive method for administration upon the estate of decedents." (*Spencer v. Crocker First Nat. Bank of San Francisco* (1948) 86 Cal.App.2d 397,

401 (quoting *Colden v. Costello* (1942) 50 Cal.App.2d 363, 370).) ““The proceeding is in rem and the jurisdiction of the court is complete over the property of the estate and over all persons claiming interests therein under the decedent, as to all matters involved in a complete and effective administration.”” (*Id.* (quoting *Colden, supra*, 50 Cal.App.2d at 370).) Furthermore, the probate department has exclusive jurisdiction of proceedings concerning the internal affairs of trusts. (Prob. Code § 17000(a).)

Second, exclusive concurrent jurisdiction applies when the court hearing the first action “has the power to bring before it all the necessary parties” in both actions and “has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings.” (*Plant Insulation Co., supra*, 224 Cal. App. 3d at 788) “That the parties in the two actions ‘are not entirely identical’ and ‘that the remedies sought by the two actions are not precisely the same’ is not controlling.” [citation.] (*Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal. App. 4th 1168, 1175-76.)

Here, the civil complaint contains causes of action for breach of fiduciary duty, financial elder abuse, and conversion. As alleged, Plaintiff’s claims stem from the notion that the 2019 Trust is invalid since the 2018 Trust was not properly revoked and thus remains the operative instrument giving him the sole legal title and ownership of his and the Decedent’s community property. Plaintiff alleges that Decedent’s attempts to fund her 2019 Trust with the community property assets and use of the community funds to gift or lend money to others constitute breach of fiduciary trust, which was aided by the Defendant. Plaintiff’s conversion claim arises from Defendant’s sale of the Shadow Oaks residence, after inheriting the property and its contents under the 2019 Trust, and her refusal to allow Plaintiff to retrieve his personal property and share of his community property.

The judicially noticeable evidence shows that substantially similar facts and issues are raised in the probate actions. Indeed, Plaintiff’s petition to confirm trust assets, filed on September 28, 2022, in the probate Case No. 22PR193370 seeks to enforce the 2018 Trust and confirm the Decedent’s share of community property to him as the sole legal owner. At the minimum, there are significant overlapping issues presented in the civil and probate actions regarding (1) construction and validity of the 2018 and 2019 Trust instruments and (2) administration of the trusts and the parties’ respective

rights as to the Decedent's share of the community property. The probate department is not only accorded the original jurisdiction but also exclusive jurisdiction over construction and administration of the trust instruments.

Based on the foregoing, the Court finds it most appropriate to stay this action, whether as a matter of abatement or under the Court's discretion to minimize the risk of inconsistent rulings and in the interests of judicial economy. Alternatively, it may be that some findings in the probate actions could serve as collateral estoppel in this action. To the extent Defendant is asking consolidation in the probate department, the Court is unwilling to do so since it would deprive Plaintiff of his right to a jury trial on his civil claims.

Accordingly, Defendant's alternate motion to stay this action until the probate matter is concluded is GRANTED. The June 11, 2024 case management conference is VACATED. A conference regarding the status of the probate action is set for February 6, 2025 at 10:00 in department 6.

B. Motion to Quash Deposition Subpoenas for Production of Business Records

The subpoenas at issue concern discovery for this action, which has been stayed. Accordingly, Defendant's motion to quash the subpoenas referenced in her motion is GRANTED and her request for sanctions is DENIED, both without prejudice to later discovery when the stay in this action is lifted.