

**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 1, 2024**

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

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

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

**Case Name:** *The Frank C. Duffy and D. Jean Duffy 1991 Living Trust*

**Case No.:** 22PR191808

**Hearing date, time, and department:** August 1, 2024 at 10:00 a.m. in Department 2

### INTRODUCTION

In 1991, Settlor Frank C. Duffy and D. Jean Duffy established the Frank C. Duffy and D. Jean Duffy 1991 Living Trust (“trust”). Decedent D. Jean Duffy (“Decedent”), as the surviving spouse, amended the trust twice in 2021, shortly before her death.

On January 21, 2022, Petitioners Linda Shires and Salena Marie Williams (“Petitioners”), two of Decedent’s children, filed their petition to invalidate the trust (“the petition”). The petition alleged, inter alia, that Respondents Sheri Duffy and Michael Duffy (“Respondents”) committed financial elder abuse and unduly influenced Decedent to change her estate plan. The petition raises eight enumerated causes of action for: (1) financial elder abuse, (2) lack of capacity, (3) undue influence, (4) breach of fiduciary duty, (5) constructive trust, (6) intentional interference with expected inheritance, (7) removal of co-trustees,<sup>1</sup> and (8) to determine title to and transfer wrongfully taken trust property (Prob. Code, § 850).

Currently before the court is Petitioners’ motion to compel further responses to their discovery requests propounded on both Respondents. Respondents have opposed the motion and Petitioners have filed a reply.

### DISCUSSION

Petitioners’ moving papers are far from clear but it appears that they seek further responses to certain of their form and special interrogatories and requests for production of documents served on Respondents.

#### I. Procedural Violations

In their opposition, Respondents do not substantively address Petitioners arguments. Instead they allege that Petitioners’ moving papers are riddled with procedural violations, including the failure to file separate motions as to each Respondent and each type of discovery request at issue and deficiencies in Petitioners’ separate statement in support of the motion.

As to the failure to file separate motions, the authorities Respondents cite in support of their contention that separate motions are required do not, in fact, support that proposition other than Respondents’ citation to a trial court decision. But, a trial court order has no precedential value. (*Schachter v. Citigroup, Inc.* (2005) 126 Cal.App.4th 726, 738.) While the court acknowledges that the filing of multiple motions would result in payment of multiple filing fees, as Petitioners contend, nothing in Government Code section 70617 [setting forth amounts of filing fees for various motions] requires filing of separate motions for each type of discovery request. Accordingly, the court will not deny the motion based on Respondents’

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<sup>1</sup> Michael Duffy has since resigned as co-trustee.

contention that a separate motion should have been filed for each Respondent and each type of discovery request.

As to the separate statement, Rules of Court, rule 3.1345(a) provides that a separate statement is required for a motion to compel further responses to discovery requests. (Cal. Rules of Court, rule 3.1345(a)(1)-(3).) “A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference.” (Cal. Rules of Court, rule 3.1345(c).)

The separate statement must include--for each discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested--the following:

- (1) The text of the request, interrogatory, question, or inspection demand;
- (2) The text of each response, answer, or objection, and any further responses or answers;
- (3) A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute . . . .

(Cal. Rules of Court, rule 3.1345(c)(1)-(3).) The court has discretion to deny a motion to compel where the separate statement is deficient. (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 893.)

Respondents contend that, because separate motions are required for each type of discovery request, separate separate statements are also required for each type of discovery request. Respondents also argue that the separate statement is required to provide the full text of the request and the response and a separate statement of the factual and legal reasons for compelling further responses as to each discovery request. This argument is well taken.

Notably, the memorandum of points and authorities in support of the motion contends that both Respondents’ responses to Petitioners’ requests for admission are deficient but the separate statement does not make any mention of the requests for admission. Petitioners provided three additional separate statements with their reply but none of them contains any mention of the requests for admission. Confusingly, the conclusion of the memorandum of points and authorities, which summarizes the relief requested in the motion makes no mention of the requests for admission. However, because the argument regarding the requests for admissions is simply that the responses were not verified, the court will overlook this issue as Petitioners have provided the text of the responses in their counsel’s declaration in support of the motion.

Respondents also argue that the separate statement is deficient because it does not address their objections. But, Petitioners do not seek objection-free responses. Accordingly, the court finds that this is not a reason to deny the motion.

## **II. Meet and Confer**

A motion to compel further responses must be accompanied by a meet and confer declaration under section 2016.040. (§§ 2030.300, subd. (b) [interrogatories], 2031.310, subd. (b)(2) [inspection demands], 2033.290, subd. (b) [requests for admission].) Section 2016.040 requires that a moving party make a “reasonable and good faith attempt at an informal resolution of each issue presented by the motion.”

Respondents’ contend that Petitioners failed to meet and confer in good faith. This argument is well taken. Petitioners sent a meet and confer letter on May 23, 2024. (See Declaration of Talia R. Gallo in Support of Motion at ¶ 14.) On May 29, 2024, Respondent Michael Duffy provided updated discovery responses. (*Id.* at ¶ 15.) On May 30, 2024, Respondent Sherri Duffy provided what Petitioners describe as a meet and confer response. (*Id.* at ¶ 19.) But, in their motion, Petitioners now argue that the amended responses they received<sup>2</sup> do not comply with the Code of Civil Procedure. For example, Petitioners contend that Respondents’ responses to the requests for admission were not verified. It does not appear that the parties met and conferred regarding the fact that the responses were not verified. Notably, Petitioner’s counsel indicates that she sent one meet and confer letter after receiving the amended responses and that letter, sent on May 30, 2024 only stated that Petitioners would be filing the motion to compel.

Additionally, although Petitioners’ counsel’s meet and confer letter contended that the requests for production at issue failed to comply with Code of Civil Procedure section 2031.210, which provides, “A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also *specify whether* the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. *The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.*” (Italics added.) But, it does not appear that counsel for Respondents addressed this argument in their responsive meet and confer letters.

Accordingly, counsel for the parties are directed to conduct face to face meet and confer (in person, remotely by Zoom or other platform or by telephone) on the issues raised in Petitioners’ motion. The court has already determined that it will consider the motion despite the defects in the separate statement. Accordingly, the parties need not meet and confer on that issue. The motion is continued for status on September 16, 2024, 10:30 A.M. in Department 2 and if discovery issues remain, the matter may be ordered to Informal Discovery Conference or

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<sup>2</sup> It is extremely unclear to the court whether the responses provided by Respondents are meant to be supplemental or amended responses to the discovery requests themselves or simply responses to Petitioners’ meet and confer efforts. This is further compounded by Petitioners confusing arguments in the memorandum of points and authorities. (See, e.g., Memorandum of Points and Authorities in Support of Motion at p. 9, lns. 24-28 [“Here, Mr. Duffy failed to meet the requirements under C.C.P. § 2030.210 in his *amended responses* based on his failure to provide a verification and failure to state the identity of the responding party, the set number, and the identity of the propounding party. (See TRG Decl. p.5, ¶ 15, exhb. I, p.6, ¶ 17, exhb. K). Therefore, Mr. Duffy should be compelled to amend his *meet and confer responses* so that they are in compliance with C.C.P. section 2030.210.”], italics added.) Code of Civil Procedure section 2030.210 refers to the requirements for the content of responses to interrogatories.

set for hearing. Ten days prior to the status hearing, the parties shall file a joint statement not exceeding three pages identifying any unresolved discovery issues.

### **CONCLUSION**

The hearing on the motion is continued for status on September 16, 2024, 10:30 A.M. in Department 2 to allow the parties to meet and confer on the issues raised in the motion. Ten days prior to the continued hearing, the parties shall file a joint statement not exceeding three pages identifying any unresolved discovery issues.

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