

**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: September 30, 2024 TIME: 10:00 A.M.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22PR191808	<i>Frank C. and D. Jean Duffy 1991 Living Trust</i>	Click or scroll to line 1 for tentative ruling.
LINE 2	21PR190187	<i>Lincoln Johnson-Himenes Special Needs Trust</i>	Parties to appear
LINE 3			
LINE 4			
LINE 5			
LINE 6			

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Petitioners Linda Shires and Salena Marie Williams (together, “Petitioners”) filed a petition (the “Petition”) to invalidate the Living Trust of Frank C. and D. Jean Duffy (the “Trust”) against respondents Sheri Duffy and Michael Duffy (together, “Respondents”) based on amendments to the Trust made in 2021. Respondents now bring a motion for summary adjudication on seven issues pertaining to the second, third, fourth, fifth, sixth, seventh, and eighth causes of action.

I. Background According to the allegations of the petition, D. Jean Duffy (“Decedent”) and her husband Frank C. Duffy executed the Trust in 1991. (Petition, ¶ 2.) Respondents and Petitioners are Decedents’ four children. (Id. at ¶ 1.) Article 11, Paragraph 11.04 of the Trust allegedly gave Decedent the power to amend the trust in its entirety when her husband passed away. (Id. at ¶ 2.) In 2012, Decedent allegedly executed a will. (Id. at ¶ 5.) On December 6, 2012, Decedent allegedly restated the Trust in full (the “Restatement”). (Id. at ¶ 3.) Beginning in 2013, Decedent was allegedly hospitalized with serious health issues, including an aortic aneurysm rupture in 2018, lung cancer in 2020, and the return of cancer in 2021. (Id. at ¶¶ 6-9.) On March 2, 2021, Decedent allegedly executed a codicil, witnessed by two of Respondents’ associates, to the will of D. Jean Duffy eliminating Decedent’s nephew and niece as executors and instead designating Respondents to serve as co-executors. (Id. at ¶ 11.) On March 11, 2021, Decedent allegedly amended the Trust (the “First Amendment”), changing the successor and co-trustees by appointing Respondents to act as successor co-trustees. (Id. at ¶ 12.) On August 21, 2021, Decedent allegedly executed a second amendment (the “Second Amendment”) to the Trust requiring that Petitioners and Respondents, all four children, receive substantially equal shares of the remaining trust assets. (Id. at ¶ 15.) On January 21, 2022, Petitioners filed the Petition against Respondents, asserting 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 Respondents as Co-Trustees; and 8) To Determine Title and Require Transfer of Wrongfully Taken Trust Property to Estate. Respondents move for summary adjudication on seven issues as to the second, third, fourth, fifth, sixth, seventh, and eighth causes of action on statute of limitations grounds. Petitioners have opposed the motion. Respondents did not file a reply.

II. Respondents’ Motion for Summary Adjudication A. Legal Standard A party may move for summary adjudication as to any cause of action, affirmative defense, or claim for damages. (Code Civ. Proc., § 437c, subd. (f)(1).) A motion for summary adjudication “shall proceed in all procedural respects as a motion for summary judgment.” (Id. at subd. (f)(2).) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an “issue of duty.” (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass’n* (2010) 189 Cal.App.4th 947, 975 [“If a cause of action is not shown to be barred in its entirety, no order for summary judgment— or adjudication—can be entered.”]) “A defendant seeking summary judgment must show that at least one element of the plaintiff’s cause of action cannot be established, or that there is a complete defense to the cause of action. . . . The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue.” (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72, internal citations omitted.) “There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar*, supra, 25 Cal.4th at p. 850.) “A party cannot avoid summary judgment by asserting facts based

on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact.” (Christina C. v. County of Orange (2013) 220 Cal.App.4th 1371, 1378, internal citations and quotation marks omitted; see also McHenry v. Asylum Entertainment Delaware, LLC (2020) 46 Cal.App.5th 469, 479 [because speculation is not evidence, speculation cannot create a triable issue of material fact].) The pleadings limit the issues presented for summary judgment or summary adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See Laabs v. City of Victorville (2008) 163 Cal.App.4th 1242, 1258; Nieto v. Blue Shield of Calif. Life & Health Ins. (2010) 181 Cal.App.4th 60, 74 [“[T]he pleadings determine the scope of relevant issues on a summary judgment motion. [Citations.]”].) “A moving party seeking summary judgment or adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion. [Citations.]” (Jacobs v. Coldwell Banker Residential Brokerage Co. (2017) 14 Cal.App.5th 438, 444, quoting Howard v. Omni Hotels Management Corp. (2012) 203 Cal.App.4th 403, 421.) The moving party’s declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff’s claim “in order to resolve any evidentiary doubts or ambiguities in plaintiff’s favor.” (Johnson v. American Standard, Inc. (2008) 43 Cal.4th 56, 64.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (Yanowitz v. L’Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1037.)

B. Grounds for Respondents’ Motion Respondents argue that the 120-day statute of limitations period outlined in California Probate Code section 16061.8 bars Petitioners’ second, third, fourth, fifth, sixth, seventh, and eighth causes of action. (Memorandum of Points and Authorities in Support of Respondents’ Motion for Summary Adjudication (“MPA”), p. 10:21-11:4, citing Prob. Code, § 16061.8.) Respondents also argue that the present lawsuit triggers the Trust’s “no contest” clause. (Id. at pp. 22:17-23:28.) Respondents’ motion is supported by a separate statement of undisputed material facts, a declaration from Respondents’ counsel with fifteen exhibits attached, and a declaration from Sheri Jean Duffy. Petitioners submit opposing evidence, objections to Respondents’ evidence, a separate statement objecting to Respondents’ undisputed facts, and declarations from Shires and Williams.

C. Discussion a. Statute of Limitations i. Valid Notice Respondents argue that Petitioners received valid notice of the First and Second Amendments and violated Probate Code section 16061.8 by bringing an action “to contest the trust” more than 120 days from the date Petitioners received notice. (See MPA, pp. 12:12-22:16.) “A person upon whom the notification by the trustee is served pursuant to paragraph (1) of subdivision (a) of [Probate Code] Section 16061.7, whether the notice is served on the person within or after the time period set forth in subdivision (f) of Section 16061.7, shall not bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon the person, or 60 days from the date on which a copy of the terms of the trust is delivered pursuant to Section 1215 to the person during that 120-day period, whichever is later.” (Prob. Code, § 16061.8.) Respondents contend that they personally served Petitioner Linda Shires on September 6, 2021 with a “Notice to Beneficiaries Pursuant to California Probate Code [section] 16061.7,”¹ as well as a copy of the Restatement, the First and Second Amendments, and Decedent’s will. (MPA, p. 9:10-13, citing Separate Statement of Undisputed Material Facts (“SUMF”), ¶ 11.) “Despite attempted rejection of this service, Petitioner Linda Shire’s spouse retrieved the documents on the following day” – according to Respondents, there “is no question that [Petitioner Linda Shires] was in possession of the Notice and Trust documents no later than September 7th.” (Id. at p. 12:25-27, citing SUMF ¶¶ 12, 13.) Respondents, allegedly “concerned with Petitioner’s behavior,” attempted to effect a second service on Petitioner Linda Shires by mailing the Notice Letter and Trust documents on

September 15, 2021. (Id. at p. 13:3-6, citing SUMF ¶ 13; Declaration of Christopher J. Young in Support of Respondent's Motion for Summary Adjudication ("Young Decl." or "Young Declaration"), Ex. J.) Respondents contend that they mailed a separate Notice Letter to Petitioner Salena Williams on September 9, 2021. (Id. at p. 13:1-2, citing SUMF ¶ 14; Young Decl., Ex. I.) Petitioners filed the Petition on January 21, 2022. Petitioners contend that Respondents have not met their burden to prove, through admissible evidence, that there are no disputed facts requiring a trial. (Petitioners' Opposition to Respondents' Motion for Summary Adjudication ("Opposition"), p. 13:3- 5.) Specifically, Petitioners contend that disputed facts exist as to when Respondents served any non-defective notice documents upon Petitioners and what notice, if any, Respondents served upon Petitioners. (Id. at pp. 7:21-11:10, 13:3-23.) Petitioners also contend that there "are five (5) different Notifications by Trustee," all of which are deficient under Probate Code section 16061.7. (Id. at pp. 13:26-15:7.) Respondents contend that the notice documents they allegedly sent to Petitioners complied with Probate Code section 16061.7, subdivisions (g) and (h). (MPA, pp. 13:19- 17:27.) Probate Code section 16061.7, subdivision (g) provides that a notification by a trustee shall contain the following information: (1) The identity of the settlor or settlors of the trust and the date of execution of the trust instrument (Probate Code § 16061.7(g)(1)); (2) The name, address, and telephone number of each trustee of the trust (Probate Code § 16061.7(g)(2)); (3) The address of the physical location where the principal place of administration of the trust is located, pursuant to Section 17002 (Probate Code § 16061.7(g)(3)); (4) Any additional information that may be expressly required by the terms of the trust instrument (Probate Code § 16061.7(g)(4)); and (5) A notification that the recipient is entitled, upon reasonable request to the trustee, to receive from the trustee a true and complete copy of the terms of the trust (Probate Code § 16061.7(g)(5)). (Prob. Code, § 16061.7, subd. (g).) 1 Hereinafter, the court refers to the various versions of the letter allegedly sent by Respondents as the "Notice Letter." Probate Code section 16061.7, subdivision (h) provides that: If the notification by the trustee is served because a revocable trust or any portion of it has become irrevocable because of the death of one or more settlors of the trust, a warning, that states, "You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the date on which a copy of the terms of the trust is delivered to you during that 120-day period, whichever is later." (Prob. Code, § 16061.7, subd. (h).) Respondents argue that California courts have "shied away from requiring strict compliance with the other requirements of the notice, instead focusing on whether or not any defect prejudiced the noticed party." (MPA, p. 14:13-15, citing *Germino v. Hillyer* (2003) 107 Cal.App.4th 951, 956 (*Germino*)). Respondents state that none of the deficiencies Petitioners have previously noted in prior pleadings in this matter – namely, that the documents sent with the Notice Letter "were out of order," the Notice Letter failed to include a co-trustee's contact information, the notice documents failed to include the final page of a will, or the Notice Letter failed to state how "many times the Trust was amended" – prejudiced Petitioners' ability to bring suit, nor have Petitioners argued prejudice in prior pleadings. (Id. at p. 15:5-11.) Respondents further argue that even if Petitioners had alleged prejudice on the basis of these deficiencies, none of Petitioners' claimed defects would have actually prejudiced Petitioners. (Id. at pp. 17:13-14, 22:10- 11.) Petitioners do not address Respondents' arguments that the deficiencies they note in the notice documents they received must have prejudiced them. The court agrees with Respondents that "[w]here the statute does not require a particular form of notice, cases consistently hold that courts will look to the issue of prejudice when a party seeks to excuse its own failings – such as appellant's failure to file his petition attacking the trust within 120 days of the trustee's notice – based on a defect in statutory notice provided by the other party – such as the claimed omission from the trustee's notice in this case." (*Germino*, supra, 107

Cal.App.4th at p. 956.) The court further agrees with Respondents that several of the purported deficiencies with the notice documents Petitioners allegedly received would not have prejudiced Petitioners' abilities to bring suit. Whether the Notice Letters listed Frank Duffy as a co-settlor of the Trust or included Michael Duffy's address and telephone number, when Respondents had included Petitioner Sherri's address and phone number, would not prejudice a party's ability to file a "petition attacking the trust within 120 days of the trustee's notice." (Germino, *supra*, 107 Cal.App.4th at p. 956.) The court, however, finds other potential deficiencies, when viewed in conjunction, with the notice documents Petitioners allegedly received potentially prejudicial. Petitioners contend that the notice documents that they received did not "have a complete copy of the terms of the Trust – which would include the First and Second Amendments – enclosed with it," did not "identify whether the initial Trust, the Restatement, the First Amendment, and/or the Second Amendment [were] enclosed," and did not identify that Petitioners were entitled to the Trust's terms. (See Opposition, pp. 14:4-9 ["The Notifications state that the recipient is 'entitled to receive a copy of the trust instrument' and does not identify that the recipient is entitled to the Trust's terms, which include all amendments. The phrase 'terms of the trust' means not only the trust instrument in effect at the settlor's death, but also the amendments to the trust. (See Probate Code § 16060.5.)"], 14:22-24 ["Here, the Notification Marie received (Notification No. 1) and the Notification Linda received (Notification No. 2) did not have a complete copy of the terms of the Trust – which would include the First and Second Amendments – enclosed with it."], 14:24-27 ["Further, all five Notifications state that '[a] copy of her [Jean's] trust and will is being provided with this notice' and do not identify whether the initial Trust, the Restatement, the First Amendment, and/or the Second Amendment are enclosed."].) Petitioners cite the Shires, Williams, and Young declarations to support these contentions. (See MPA, p. 14:22-28.) Respondents state that "both amendments were provided in full to Petitioners as attachments to the notice, along with the rest of the Trust documents" (MPA, p. 16:23- 24.) According to Respondents, a declaration submitted by Linda Shires in this matter "contains the trust documents served on Linda Shires on September 6, 2021." (Id. at pp. 16: 27-17:1; see also Declaration of Linda Shires in Support of Linda Shires and Salena Marie Williams' Trial Brief ("2023 Shires Declaration"), filed Oct. 18, 2023.) Respondents attached this declaration and an associated exhibit as Exhibits N and O to the Young Declaration. (See Young Decl., ¶¶ 10, 11.)² According to the 2023 Shires Declaration, Shires "was in California visiting [Decedent] right before and after she passed away. Two days after our mother passed away, on September 6, 2021, Sheri placed the trustee notification and alleged trust documents on the kitchen table of our mother's house. My partner picked up the documents the next day. True and correct copies of the Notification by trustee and documents left behind are attached hereto and incorporated herein by this reference as Exhibit I." (Young Decl., Ex. N, ¶ 19; 2023 Shires Declaration, ¶ 19.) Exhibit I to the 2023 Shires Declaration includes what appears to be a Notice Letter, a copy of the Trust, a codicil to the will of D. Jean Duffy executed on December 6, 2012, an amendment to the Trust dated March 11, 2021, an amendment to the Trust dated August 21, 2021, and 2 Petitioners challenge the admissibility of both Exhibits N and O to the Young Declaration. (Petitioners' Evidentiary Objections to Respondents' Evidence Submitted in Support of Motion for Summary Adjudication ("Petitioners' Objections"), Objection Nos. 8, 9.) The court overrules Petitioners' objections and more fully discusses its decision below. In short, Young, counsel for Respondents, swears under penalty of perjury Exhibits O and N are documents Petitioners filed in this court in the present matter and Petitioners filed these documents with the court in the present matter. (See Young Decl., ¶¶ 1, 17, 18.) the will of D. Jean Duffy. (See Young Decl., ¶ 19, Ex. N; 2023 Shires Declaration, Ex. I.) Thus, it appears Shires had access to the First and Second Amendments to the Trust at some point – her 2023

declaration does not state when she reviewed the documents or when her partner gave them to her. Respondents argue that not only did Shires have access to the documents, but Respondents personally served Shires with them. (MPA, 12:14-15, citing SUMF ¶ 11; Declaration of Sheri J. Duffy in Support of Respondents' Motion for Summary Adjudication ("Duffy Decl."); Young Decl., Exs. G, L, M, N, and O.) Exhibit G to the Young Declaration is a Notice purportedly personally served upon Shires, without a proof of service attached. (Id. at ¶ 10, Ex. G.) Exhibit L is a "true and correct copy of the 'Objections to Petition to Invalidate Trust'" filed by Respondents in this matter on July 12, 2022, wherein Respondents state that on "September 6, 2021, Sheri J. Duffy gave a copy of the Probate Code section 16061.7 notice to Linda Shires when Ms. Shires visited the property at 797 Fife Way, Sunnyvale, CA. At the same time that she gave her the 16061.7 notice, Sheri J. Duffy provided Ms. Shires a copy of the 2012 Restatement of Trust, and copies of both amendments which were executed in 2021. Ms. Shires left her copy of the 16061.7 notice behind at the house, but her husband came the next day (September 7, 2021) to pick it up, along with the Trust papers." (Id. at ¶ 15, Ex. L, ¶ 17.) Exhibit M is a "true and correct copy of the 'Notice of Motion and Motion for Order to Dismiss Petition' filed by Respondents on October 18, 2023" wherein Respondents state that "Linda Shires received her packet on September 6, 2021 . . . [t]he fact that Linda Shires did not take the documents with her when she left is not considered a failure to serve, [as] she was identified as the person being served and was told and aware of what the documents were. Linda sent her husband the next day (September 7, 2021) to pick up the documents." (Id. at Ex. M, p. 2:7-21.) Duffy states in a separate declaration in support of the present motion that on "September 6, 2021, at my mother's house, I personally served Petitioner Linda Shires a Notice to Beneficiaries Pursuant to California Probate Code 16061.7 as well as a copy of the 2012 Restatement, both amendments, and Decedent's Will. I made her aware of the contents of the documents and the purpose of the Notice. Linda refused to take the documents and they were left on a table. Linda's husband retrieved the documents the next day." (Duffy Decl., ¶ 11.) Shires contends that "Sherri did not personally serve [her] with any documents on or around September 6, 2021. On September 7, 2021, [her] partner picked up an envelope that Sheri tossed to him onto the kitchen table of our mother's house." (Declaration of Linda Shires in Support of Opposition to Motion for Summary Adjudication ("Shires Decl."), ¶ 12.) Furthermore, the court acknowledges that there appears to be differences between the two Notice Letters Respondents claim to have personally served upon Shires. Respondents claim to have personally served Exhibit G to the Young Declaration upon Shires, and this document is dated September 6, 2021. (See Young Decl., Ex. G.) Exhibit M, Respondents' motion to dismiss previously filed in this case, includes Exhibit A, a "precautionary back-up (See Exhibit 'A') [Respondents] also mailed" to Shires. (Young Decl., Ex. M, p. 2:22-23; Notice of Motion to Dismiss and Motion for Order to Dismiss Petition ("Motion to Dismiss"), p. 2:22-23.) Exhibit A is dated September 8, 2021. (Motion to Dismiss, Ex. A.) Based on Shires' declaration and the evidence both parties have submitted, the court cannot declare, as a matter of law, that Respondent Sheri Duffy personally served Shires. Unlike *Crescendo Corp. v. Shelted, Inc.* (1968) 267 Cal.App.2d 209, a case cited by Respondents wherein the party to be served admitted receiving and reading the documents to be served "within the following day or two" of receiving them, Shires disputes that Sheri Duffy served her personally, and she does not declare when, if at all, she received the Notice Letter or any other trust documents from her partner. (MPA, p. 12:14-24, citing *Crescendo Corp. v. Shelted, Inc.*, supra, 267 Cal.App.2d at pp. 212-213.) As such, while Respondents have presented evidence that they personally served Shires, Shires has submitted to the court conflicting evidence that creates a triable issue of fact. (See Shires Decl., ¶ 12.) The court also cannot find, as a matter of law, that Respondents served Williams or Shires by mail with a notice that complied with Probate Code section

16061.7. The Notice Letters sent to Petitioners by mail stated that “the California Probate Code provides that when a revocable trust becomes irrevocable by reason of the death of the Settlor, the Trustee must give notice of the fact to each beneficiary of the trust.” (Shires Decl., ¶ 13, Ex. A; Declaration of Salena Marie Williams in Support of Opposition to Motion for Summary Adjudication (“Williams Decl.”), ¶ 12, Ex. A.) According to the Notice Letters, the trust “was executed on December 17, 1991, and Restated in its entirety on December 6, 2012, and last amended on August 21, 2021.” (Ibid.) A copy of Decedent’s “trust and will is being provided with this notice.” (Ibid.) The Notice Letters do not state that Respondents attached a copy of the First and Second Amendments to the Notice Letter. Nor do the Notice Letters state that Petitioners may request them. The Notice Letters state Petitioners were “entitled to receive a copy of the trust instrument.” (Shires Decl., ¶ 13, Ex. A, Williams Decl., ¶ 12, Ex. A.) The Notice Letters do not state Petitioners were entitled to receive the “terms of the trust,” defined as the “written trust instrument” and “signatures, amendments, disclaimers, and any directions or instructions to the trustee that affect the disposition of the trust.” (Prob. Code, § 16060.5.) Williams and Shires also appear to dispute that they received the complete terms of the Trust – including the First and Second Amendments – via mail with the notice. (Opposition, p. 14: 22-24 [“Here, the Notification Marie received (Notification No. 1) and the Notification Linda received (Notification No. 2) did not have a complete copy of the terms of the Trust – which would include the First and Second Amendments – enclosed with it.”]; see also Shires Decl., ¶ 13 [“Inside the envelope was the document entitled Notice to Beneficiaries that is unsigned and dated September 6, 2021 . . . [t]here were also pages of the Trust and Restatement enclosed with the mailing.”], Williams Decl. ¶¶ 12, 13 [“Sometime in September 2021, I received a Notification by Trustee in the mail. . . . I received an incomplete copy of the Restatement.”].) In paragraphs 13 and 14 of Respondents’ SUMF, Respondents attempt to substantiate their claim that they mailed a copy of the “2012 Restatement, both amendments, and Decedent’s will” along with the Notice Letter to Shires and Williams by citing Exhibits J, I, L, and M to the Young Declaration. (See SUMF, ¶¶ 13, 14.)³ Exhibits J and I consist of two receipts, dated September 9, 2021 and September 15, 2021, but appear to include no recipient address beyond stating the deliveries were sent to “Denver, CO” and “Arvada, CO” and do not list the contents of what was delivered. (Young Decl., Exs. I, J.) Exhibit L, Respondent’s objection to the petition, states Respondents “mailed a Probate Code section 16061.7 notice by certified mail” to Shires and Williams and does not reference any other documents sent by Respondents. (Id., Ex. L, ¶¶ 18, 19.) Exhibit M is Respondent’s motion to dismiss, and while it does state that Respondents mailed a “copy of the trust, will, and its amendments” as well as Notice Letters to Williams on September 9, 2021 and Shires on September 15, 2021, the motion to dismiss includes two exhibits to substantiate this claim – two Notice Letters and two receipts, not copies of the trust, will, or its amendments that Respondents purportedly mailed. (Id., Ex. M, p. 2:21-25; see also Notice of Motion and Motion for Order to Dismiss Petition, Exs. A, B.) Respondents argue, relying on *Germino* for support, that a notice “requires neither a statement in particular terms nor a statement in particular format.” (MPA, p. 14:16-17.) The court in *Germino* found that even though the notice under Probate Code section 16061.7 did not “specifically state that a recipient of the notice is entitled to a copy of the terms of the trust upon reasonable request” the disputed notice was still sufficient because “prior to service of the section 16061.7 notice, but after the death of the settlor, one of the trustees provided a copy of the trust instrument to appellant by personal delivery.” (*Germino*, supra, 107 Cal.App.4th at p. 955.) However, unlike in *Germino*, where the party disputing notice had been personally delivered with the relevant trust instrument (see *Germino*, supra, 107 Cal.App.4th at p. 955), here the court cannot determine as a matter of law that Respondents provided sufficient service under Probate Code section 16061.7 given the Notice Letters did not state Petitioners were

entitled to receive the “terms of the trust” and Petitioners have raised a triable issue of fact as to when and whether each received by mail copies of all relevant Trust documents, including the First and Second Amendments. For the reasons stated above, Petitioners have raised a triable issue of fact as to whether Respondents met their burden under Probate Code sections 16061.7 and 16061.8. (See Prob. Code, § 16061.8 [“A person upon whom the notification by the 3 Petitioners challenge the admissibility of Exhibits I and J on the grounds Young lacks the requisite foundation and personal knowledge to introduce these exhibits. The court agrees. The Young Declaration states these are “Mailing Receipts” provided by the United States Postal Service to Respondents when Sheri Duffy mailed them to Petitioners. (Young Decl., ¶¶ 12, 13.) While Young, as counsel for Respondents in the matter, presumably has access to court filings filed by both parties in the matter, it is not clear to the court how Young has “personal knowledge” of whether Exhibits I and J are “true and correct” copies of mail receipts Respondents received three years ago, before the litigation was initiated. (See Evid. Code, § 702.) trustee is served pursuant to paragraph (1) of subdivision (a) of Section 16061.7, whether the notice is served on the person within or after the time period set forth in subdivision (f) of Section 16061.7, shall not bring an action to contest the trust more than 120 days . . .”].) ii. Whether the Causes of Action Constitute a Contest to the Trust Amendments Respondents argue that the second, third, fourth, fifth, sixth, seventh, and eighth causes of action are “direct contests” to the Trust, and therefore are subject to the statute of limitations period outlined in Probate Code section 16061.8. Probate Code section 16061.8 explicitly pertains to “an action to contest the trust.” (Prob. Code, § 16061.8.) A “contest” means a “pleading filed with the court by a beneficiary that would result in a penalty under a no contest clause, if the no contest clause is enforced.” (Prob. Code, § 21310, subd. (a).) A “direct contest” includes actions alleging “the invalidity of a protected instrument or one or more of its terms, based on one or more of” certain enumerated grounds, including “[l]ack of capacity” and “[m]enace, duress, fraud, or undue influence.” (Prob. Code, § 21310, subds. (b)(3)-(b)(4).) “A ‘contest’ is not confined to a direct attack on a will or trust instrument, but may include a separate legal proceeding that would thwart or nullify or unravel the testator’s expressed wishes. [Citations.]” (Estate of Davies (2005) 127 Cal.App.4th 1164, 1175 (Davies).) “In determining [what] constitutes an action to contest the trust within the purview of section 16061.8, we look to the substance of that petition and its ‘practical effect.’ We are not bound by its label. [Citations.]” (Estate of Stoker (2011) 193 Cal.App.4th 236, 241 (Stoker).) Petitioners concede that Petitioners’ causes of action for lack of capacity, undue influence, and intentional interference with expected inheritance “contest the trust.” (See MPA, pp. 1:14-15 [“Probate Code section 16061.8 – which explicitly pertains to ‘an action to contest the trust’ – applies solely to the causes of action for incapacity, undue influence, and intentional interference with expected inheritance.”].) The court finds that these causes of action constitute contests to the trust. Assuming, without deciding, that the remaining causes of action at issue in the present motion also constitute contests to the Trust, such that they are subject to the Probate Code section 16061.8 statute of limitations period, a court can enforce a no contest clause when a party brings a “direct contest that is brought without probable cause.” (Prob. Code, § 21311, subd. (a)(1).) Respondents’ only argument regarding a lack of probable cause is that the statute of limitations bars certain of Petitioners’ causes of action. The court has rejected Respondents’ statute of limitations argument above. Accordingly, the court rejects Respondents’ argument on summary adjudication that any relevant “no contest” clause has been triggered. D. Petitioners’ Evidentiary Objections The court declines to consider Petitioner’s first, second, third, fourth, and fifth evidentiary objections, which are not material to the outcome of the motion. (Code Civ. Proc., § 437c, sub. (q) [“In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems

material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review.”].) The court SUSTAINS Petitioner’s sixth and seventh evidentiary objections. Petitioners challenge the admissibility of Exhibits I and J on the grounds Young lacks the requisite foundation and personal knowledge to introduce these exhibits. (Petitioners’ Objections, Objection Nos. 6, 7.) The court agrees. The Young Declaration states these are “Mailing Receipts” provided by the United States Postal service when Sheri Duffy mailed them to Petitioners. (Young Decl., ¶¶ 12, 13.) While Young, as counsel for Respondents, presumably has access to court filings filed by both parties in the matter, it is not clear to the court how Young has “personal knowledge” of whether Exhibits I and J are “true and correct” copies of mail receipts Respondents received three years ago. (See Evid. Code, § 702.) The court OVERRULES Petitioners’ eighth and ninth evidentiary objections. Petitioners challenge the admissibility of both Exhibits N and O to the Young Declaration, arguing Young “does not state facts sufficient to authenticate the document[s] or support his statement that the document[s] attached as Exhibit[s] N [and O] [are] true and correct. To the extent the contents of the document[s] referred to are offered for their truth, this constitutes hearsay without an exception. The document[s] w[ere] not prepared by Young and [are] not [] record[s] of his law firm. Further, statements regarding any conversations, actions, or intentions that Young was not present for and has no personal knowledge of constitute inadmissible hearsay.” (Petitioners’ Objections, Objection Nos. 8, 9.) The court disagrees with Petitioners that these documents are hearsay and Young has failed to provide sufficient facts to support his statements – he is counsel for Respondents and swears under penalty of perjury that Exhibits N and O are documents filed in this court in the present matter. (Young Decl., p. 4:15-17.) Even if the court agreed these documents were inadmissible as attached to Young’s declaration, Petitioners filed these documents with the court in the present matter. The court takes judicial notice on its own motion of the versions of Exhibits N and O in the court’s file, pursuant to Evidence Code section 452, subdivision (d). (See Evid. Code § 452, subd. (d) [“Judicial notice may be taken of . . . “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.”].) E.

Conclusion The court DENIES Respondents’ motion for summary adjudication.

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