

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

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 11-21-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

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

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. 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 and contest the ruling  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court will call the cases of those who appear in person first. **If you appear virtually, please use video.** To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). **You must use the current link.**

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	24CV432191 Hearing: Order of Examination	Balboa Capital Corporation vs Anne M. Cummings, MD et al	All parties are to appear in Department 16 at 9:00 AM. Because Plaintiff has prevailed on lines 2 and 3, the Court will administer the oath and the examination will take place off line.
<a href="#">LINE 2</a>	24CV432191 Motion: Quash	Balboa Capital Corporation vs Anne M. Cummings, MD et al	See Tentative Order. Plaintiff shall submit the final order.
<a href="#">LINE 3</a>	24CV432191 Motion: Quash	Balboa Capital Corporation vs Anne M. Cummings, MD et al	See Tentative Order. Plaintiff shall submit the final order.
<a href="#">LINE 4</a>	24CV435217 Hearing: Demurrer	Debasish Roy vs JP Morgan Chase Bank, N.A. et al	Off Calendar
<a href="#">LINE 5</a>	20CV361307 Motion: Admissions Deemed Admitted	Kristy Bailey et al vs Vintage Towers et al	Notice appearing proper, the unopposed motion of Defendants Vintage Towers and First United Methodist Church Properties to have requests for admissions deemed admitted against Dianne Bailey is GRANTED. No sanctions are warranted given the deeming of admissions.
<a href="#">LINE 6</a>	24CV439631 Motion: Quash	Miriam Ben Abdallah, MD vs Stephen Fackler et al	See Tentative Order. Defendant shall submit the final order.
<a href="#">LINE 7</a>	22CV404566 Motion: Leave to Amend	Angel Lomeli vs Angela Solorio	See Tentative Order. The Court will prepare the final order.

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<a href="#">LINE 8</a>	22CV408330 Mtn to enforced Order attorney's fee	Armando Cortes et al vs General Motors LLC	Notice appearing proper, the unopposed motion to enforce is GRANTED, including the request for sanctions in the amount of \$2000. Plaintiff shall submit the final order. Defendant shall pay the sanctions within 10 days of receipt of the final order.
<a href="#">LINE 9</a>	23CV415901 Motion: Enforce Settlement	TOWNE 38 COMMUNITY ASSOCIATION vs WILLIAM LYON HOMES, INC.	Off Calendar
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

## **Calendar Lines 2-3**

Plaintiff, judgment creditor Balboa Capital Corp., seeks to compel a debtor's examination of defendants, judgment debtors, Dr. Anne Cummings and her medical practice, Anne M. Cummings, MD. The order of examination is set for November 11, 2024. Defendants move to quash the order for appearance and examination claiming that because Dr. Cummings was not personally served, as required, the court lacks jurisdiction.

## **Requests for Judicial Notice**

Judicial notice of Exhibits 9 and 10 is GRANTED under Evid. Code § 452(d). Judicial notice of Exhibit 11 is unopposed and is GRANTED under § 452(h). Judicial notice of the remaining documents is DENIED as unnecessary to the decision.

## **Discussion**

California Code of Civil Procedure (CCP) § 708.110(a) provides that a "judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court . . . at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment." Section 708.110(d) provides that a "judgment creditor shall personally serve a copy of the order on the judgment debtor" and that "[s]ervice shall be made in the manner specified in Section 415.10." Section 415.10 provides, in pertinent part, that "[a] summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served."

## **Anne Cummings, the Individual**

In this case, Defendant Anne Cummings ("Cummings"), the individual, was served via substitute service, as Plaintiff served Jessica Rodriguez on June 18, 2024. The proof of service was filed on June 21, 2024. See Ex. 10 attached to Defendants' Request for Judicial Notice (RJN).

Cummings claims this is insufficient because she was not personally served, as required by §§ 708.110 and 415.10. Substitute service is allowed for an individual defendant, however, under § 415.20, by "leaving a copy of the [document] at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address . . . in the presence of a . . . a person apparently in charge of his or her office, place of business, or usual mailing address . . . , at least 18 years of age . . ." § 415.20(a). A person may be served by substitute service "only after a good faith effort at personal service has first been made: the burden is on the plaintiff to show that the summons and complaint 'cannot with reasonable diligence be personally delivered' to the individual. . . . Two or three attempts to personally serve a defendant at a proper place ordinarily qualifies as 'reasonable diligence.'" *American Express Centurion Bank v. Zara* (2011) 199 Cal. App. 4th 383, 389.

Here, this is precisely what Plaintiff did. Plaintiff left a copy of the relevant documents at Cummings' business address with Jessica Rodriguez, a medical assistant. There is no claim that she was not a person "apparently in charge." Plaintiff also included a declaration of diligence establishing that service was tried on eight prior occasions over a three-week period at varying hours of the day. On six of those occasions, the process server was told that

Cummings was not in or that she was in, but unavailable. This is sufficient to show that a reasonably diligent effort was made. Evidence Code section 647 provides that a registered process server's declaration of service establishes a presumption affecting the burden of producing evidence of the facts stated in the declaration. Cummings proffers no evidence to rebut this presumption.

Cummings' claim that substitute service is allowed for a summons and complaint, but not an order for a debtor exam is unavailing. See Reply at pp3-4. In so arguing, Defendants cite to §708.110(d) which specifically requires personal service. Yet § 708.110(d) says that service is to be made "in the manner specified in Section 415.10," which is the statute for serving summonses. It follows that if substitute service is an exception to § 415.10 for a summons, then substitute service is an exception to whatever is required to be served under § 415.10. Moreover, the rule proposed by Defendants does not comport with California' jurisprudence on this issue, which states that process statutes should be construed liberally. *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387 1392. Substitute service is what is allowed when personal service cannot be performed. To hold that no other form of process other than personal service is allowed would permit a party to purposefully evade service without consequence. Such a result cannot be countenanced.

### **Anne Cummings, M.D., the Corporation**

Defendant Anne Cummings M.D., the corporation ("Corporation"), was served on Mary 23, 2024 by serving the papers on Jessica Rodriguez. See Ex. 9 attached to Defendants' RJN. Defendants contend that service of Jessica Rodriguez for the corporation was not proper because she is not the registered agent for the corporation. Motion, pp5-6. Plaintiff's proof of service states that service was made under 416.10(b), not (a) and as such the registered agent need not be served. But under 416.10(b) service for a corporation must be made to "the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process." According to the document from the Secretary of State's office, Jessica Rodriguez is none of these things. Ex. 11 attached to Defendants' RJN. Service of Jessica Rodriguez could be sufficient for service on the corporation if Plaintiff had made substitute service on the corporation under § 415.20 instead, as that provision allows service on a person "apparently in charge." Because the same declaration of diligence attached to the proof of service for Cummings applies to the service attempts on the Corporation, this Court finds that service was substantially compliant for purposes of the Corporation. See *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 313 ["It is well settled that strict compliance with statutes governing service of process is not required. Rather, in deciding whether service was valid, the statutory provisions regarding service of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant. [Citations.] Thus, substantial compliance is sufficient."].) The process statutes are to be liberally construed, the corporation had actual notice, and it is clear that personal service on the corporation was attempted eight times prior to the documents being left with Jessica Rodriguez rather than Dr. Cummings. Accordingly, this Court finds that service on the Corporation was proper, even if the proof of service was not perfectly completed. *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1201 ("The evident purpose of Code of Civil Procedure section 415.20 is to permit service to be completed upon a good faith attempt at physical service on a *responsible person* ... ." [Citation.] Service must be made upon a person

whose ‘relationship with the person to be served makes it more likely than not that they will deliver process to the named party.’”).

### **Conclusion**

Because service on both Defendants was proper, the motion to quash is DENIED. Plaintiff shall submit the final order.

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## **Calendar Line 6**

**Case Name:** *Abdallah v. Fackler et al.*

**Case No.:** 24CV439631

### **I. Factual and Procedural Background**

Plaintiff Miriam Ben Abdallah, M.D. (“Plaintiff”) brings this action against defendants Stephen Fackler, Madeline Fackler, Matthew Fackler, and Aditi Gupta (collectively, “Defendants”). The action arises out of a personal injury that occurred on June 12, 2022 at a party hosted by Defendants. At some point during the party, Plaintiff, without knowledge that someone had closed a glass sliding door, walked into that door, and suffered serious injuries when the glass shattered.

On May 22, 2024, Plaintiff filed her Judicial Form Complaint, asserting a single cause of action for premises liability.

On July 3, 2024, Defendants issued four subpoenas to: (1) American Medical Response; (2) Stanford Hospital – Medical Records; (3) Stanford Hospital – Billing Records; and (4) Stanford Hospital – Radiology Records. Defendants listed the production date as July 31, 2024.

On July 19, 2024, Plaintiff filed a motion to quash the subpoenas, currently before the Court. On November 7, 2024, Defendants filed an opposition to the motion. Plaintiff has filed a reply and objections to Defendants’ evidence.

### **II. Legal Standard**

“The procedure to obtain documents from a nonparty is through a ‘records only’ or ‘records and testimony’ deposition subpoena.” (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1287, citing Code Civ. Proc., § 2020, subds. (a)(2), (3), and (d)(1).)

Code of Civil Procedure section 1987.1 contains permissive language regarding motions to quash, which states: “If a subpoena requires . . . the production of books, documents, electronically stored information, . . . the court, upon motion reasonably made by [a party,] . . . may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.” (Code Civ. Proc., § 1987.1, subd. (a); see also *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1287-1288.)

### **III. Plaintiff’s Objections**

Along with her reply brief, Plaintiff has filed evidentiary objections to the Declaration of Kelly Hill (“Hill Decl.”) and a motion to strike and seal from the public record exhibit four to the Hill Decl. In particular, Plaintiff objects to exhibit four and paragraph 10 of the Hill Decl.

Exhibit 4 apparently contains 491 pages of Plaintiff’s medical records produced in response to a request for production of documents. The Court declines to rule on this objection

because Defense counsel failed to file any of the exhibits referenced in the Hill Decl. with the Court. Accordingly, it is unnecessary to address Plaintiff's arguments regarding the motion to strike and seal her medical records.

Paragraph 10 states: "On October 17, 2024, I spoke with defendant Aditi Gupta regarding the delay in litigation due to the delay in obtaining Plaintiff's medical records and she informed me that she had knowledge that Plaintiff Miriam has preexisting conditions including, but not limited to, her previously having cancer and also having lupus." Plaintiff objects to this paragraph as hearsay. The objection is SUSTAINED.

#### **IV. Procedural Arguments**

Defendants contend that Plaintiff's motion is procedurally defective because she does not provide the Court with a separate statement as required by the California Rules of Court. (Opposition, p. 9:16-18, citing Cal. Rules of Court, rule 3.1345.) However, a separate statement is not required where no response has been provided to the request for discovery. (Cal. Rules of Court, rule 3.1345, subd. (b)(1).) Here, there is no indication that there has been any response to the subpoenas. Accordingly, the Court will not deny the motion to quash for failure to provide a separate statement.

#### **V. Motion to Quash Deposition Subpoenas**

Plaintiff moves to quash four subpoenas issued by Defendants to two of Plaintiff's healthcare providers: Stanford Hospital and American Medical Response. Each subpoena indicates: "The date range of records needed is Any and all records." (Motion, p. 2:15-16.) Plaintiff asserts these requests invade her right to privacy.

According to the papers submitted by both sides, the only remaining issue is whether the subpoena requests should be limited to ten years, as requested by Defendants, or five years, as requested by Plaintiff. (See Motion, p. 3: 18-28; Opposition, p. 5:3-6; Hill Decl., ¶ 8.)

In support of her motion, Plaintiff contends that she has a right to privacy of her past medical records. Plaintiff relies on *Binder v. Superior Court* (1987) 196 Cal.App.3d 893, 901 (*Binder*), which states: "Since medical records are the type of information which is protected by the right of privacy, the first question is whether the private information sought to be discovered is directly relevant to the issues of the instant litigation. It is not enough the information may lead to relevant evidence." (*Binder, supra*, 196 Cal.App.3d at p. 901 [internal citations omitted]; citing *Board of Trustees v. Superior Court of Santa Clara County* (1981) 119 Cal.App.3d 516, 525 [overruled in part by *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557 [holding "To the extent prior cases require a party seeking discovery of private information to always establish a compelling interest or compelling need, without regard to the other considerations articulated in *Hill v. National Collegiate Athletic Assn.*, *supra*, 7 Cal.4th 1, they are disapproved."]]). Defendants assert that *Binder* is inapposite because it involved multiple plaintiffs. (Opposition, p. 9:7-10.) However, in stating the above law, the *Binder* Court referred only to medical records in general, and not to the particular facts of the case. Thus, the Court finds *Binder* persuasive.

Plaintiff also relies on *Britt v. Superior Court* (1978) 20 Cal.3d 844, 864 (*Britt*) to argue that she is entitled to retain the confidentiality of unrelated past medical records. (Motion, p.



3:6-10.) In *Britt*, the California Supreme Court, in discussing the patient-litigant's privilege, held that "[d]isclosure cannot be compelled with respect to other aspects of the patient-litigant's personality even though they may, in some sense, be 'relevant' to the substantive issues of litigation. The patient thus is not obligated to sacrifice all privacy to seek redress for a specific mental or emotional injury; the scope of the inquiry permitted depends upon the nature of the injuries which the patient-litigant [herself] has brought before the court." (*Britt, supra*, 20 Cal.3d at p. 864 [emphasis omitted].)

Here, as noted above, the issue is not whether Plaintiff's medical records are relevant to her personal injury claim, but rather, the scope of the document request. In opposition, Defendants appear to argue that ten years of medical records is relevant to determine if Plaintiff had preexisting injuries that made her more susceptible to the injuries currently at issue. While neither party denies that Plaintiff's medical records are relevant, the Court does not find that Defendants have sufficiently explained why **ten years-worth** of Plaintiff's medical history, including billing history, is necessary or relevant. And while Defendants contend that Plaintiff may have had past illnesses, there is no proper evidence before the Court to support this assertion. Further, it is not clear why five years-worth of medical history would not be sufficient to defend against Plaintiff's single cause of action for premises liability based on the fact that she walked into a glass door that shattered onto her.

Accordingly, the motion to quash the deposition subpoenas is GRANTED in part, without prejudice. The Court limits the requests to five years. Should the five years' worth of documents reveal that additional documents are needed beyond the five-year limitation, Defendants are not precluded from later seeking additional specific and relevant documents outside of that limitation.

Given the Court's ruling, it does not find that Plaintiff's motion to quash was brought in bad faith or without substantial justification and declines to award monetary sanctions requested by Defendants.

## **VI. Conclusion and Order**

The motion to quash is GRANTED, in part without prejudice. The scope of the requests in the four subpoenas is limited to five years. Plaintiff shall prepare the final order.

## **Calendar Line 7**

**Case Name:** *Lomeli v. Solorio*

**Case No.:** 22CV404566

This is a family dispute regarding certain real property. According to the allegations of the second amended complaint (“SAC”), defendant Angela Yuliana Solorio (“Defendant”) is the daughter of plaintiff Angel Solorio Lomeli (“Plaintiff”) and his wife, Bianca Nesme (“Bianca”). (See SAC, ¶ 2.) In April 2019, Plaintiff told Defendant that she could start collecting the monthly rent that Plaintiff had previously been collecting on a small house on Plaintiff’s property at 38760 Dinosaur Point Road in Hollister (“Hollister property”), so that Defendant could make payments on her Jeep as well as Bianca’s new Range Rover. (See SAC, ¶ 18.) Plaintiff continued to collect rent on the large house on the property at the Hollister property. (*Id.*) On October 15, 2019, Plaintiff learned from his immigration attorney that the US Citizen and Immigration Services denied his application for permanent residence and he was given 33 days to leave the United States. (See SAC, ¶ 19.) Plaintiff believed that if he was out of the country, his commercial vehicles could not be sold or traded in if they were registered to him, so he re-registered all of them in the names of either his son, Michael, or Defendant. (See SAC, ¶ 21.) As to the real property, Plaintiff also believed that to be able to assume the responsibilities to manage the property and be in a position to preserve and protect the equity in that property, the manager would have to possess title to the property, and determined that Defendant should be the manager. (See SAC, ¶¶ 22-24.) On October 25, 2019, Plaintiff recorded a deed to the property to Defendant. (See SAC, ¶ 24.) On March 28, 2020, Bianca separated from Plaintiff; Bianca and Defendant moved to 561 Giles Way in San Jose. (See SAC, ¶ 29.) Bianca filed for divorce on May 17, 2021. (See SAC, ¶ 30.) In July 2021, Defendant told the renter of the big house on the Hollister property that she was the legal owner to the property and should be paid rent, and Defendant has collected rent since. (See SAC, ¶ 31.) Since July 2021, Defendant has collected all the rent on the Hollister property and claimed a fee simple interest as a result of a purported unconditional gift by Plaintiff despite knowing that she was to be holding the property for Plaintiff and Bianca in trust. (See SAC, ¶¶ 32-33.)

On February 20, 2024, Plaintiff filed the FAC, asserting causes of action against Defendant for:

- 1) Quiet title; and,
- 2) Imposition of constructive trust and accounting.

Plaintiff now moves for leave to file a third amended complaint (“TAC”), that asserts causes of action against defendant for:

- 1) Imposition of constructive trust and accounting;
- 2) Fraud and deceit;
- 3) Fraud and deceit;
- 4) Fraud and deceit;
- 5) Fraud and deceit; and,
- 6) Fraud and deceit.

## **PLAINTIFF’S MOTION FOR LEAVE TO FILE THE TAC**

Plaintiff moves for leave to file the proposed TAC, noting that it deletes the former first cause of action for quiet title as redundant, and adds certain other allegations known only after the filing of the SAC. (See Tennant decl. in support of motion for leave to filing the TAC, ¶¶ 2-3.) As Plaintiff notes, Code of Civil Procedure section 473, subdivision (a)(1) provides the court with discretion “in furtherance of justice” to “allow a party to amend any pleading... in any... respect.” (Code Civ. Proc. § 473(a)(1); see also *Duchrow v. Forrest* (2013) 215 Cal.App.4<sup>th</sup> 1359, 1377 (stating same; also stating that “[g]enerally, ‘the trial court has wide discretion in determining whether to allow the amendment’”); see also *North Coast Village Condominium Assn. v. Phillips* (2023) 94 Cal.App.5<sup>th</sup> 866, 881 (stating that “[i]t is well established that leave to amend a complaint is entrusted to the sound discretion of the trial court, and that the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse of discretion... [t]his discretion extends to requests to amend both the causes of action and the parties... [i]n particular, section 473 provides that... [t]he court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars”).) “Courts must apply a policy of liberality in permitting amendments at any stage of the proceeding, including during trial, when no prejudice to the opposing party is shown.” (*Duchrow, supra*, 215 Cal.App.4<sup>th</sup> at p.1377; see also *Eng v. Brown* (2018) 21 Cal.App.5<sup>th</sup> 675, 706; see also *Desny v. Wilder* (1956) 46 Cal.2d 715, 751 (stating that “[g]reat liberality is indulged in matters of amendment to the end that lawsuits may be determined upon their merits”).)

In opposition, Defendant argues that: Plaintiff’s motion fails to comply with California Rule of Court 3.1324; Plaintiff fails to show any good cause or provide any reasonable explanation for the delay in bringing new allegations of foundational facts; Plaintiff’s allegations contradict admissions made in the SAC; and, Plaintiff’s motion is futile because the TAC will not survive a legal challenge in the form of a demurrer or motion to strike.

Plaintiff’s motion does not comply with California Rule of Court 3.1324; however, the Court will nevertheless consider the merits of the motion as Defendant has not been prejudiced.

California Rule of Court 3.1324, subdivision (a) states that a motion to amend a pleading must “[s]tate what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located; and... [s]tate what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located.” (Cal. Rule of Court 3.1324, subd.(a)(2)-(3).) Defendant is correct that Plaintiff’s motion for leave to file the TAC does not include a redlined version of the TAC showing what allegations were proposed to be deleted, and what allegations were proposed to be added. Ordinarily, the Court would continue the motion so that Plaintiff could supplement the motion with such a redlined version; however, Defendant in any event conducted a side-by-side comparison of the SAC and proposed TAC (see Nguyen decl. in opposition to Pl.’s motion for leave to file TAC, ¶ 6). Defendant was not prejudiced by the lack of a redlined version as she was nevertheless able to make arguments regarding the allegations of the proposed TAC in comparison to the allegations of the SAC. The Court also was able to readily note the deletions and new allegations as the allegations of both the SAC and proposed TAC were not lengthy. Therefore, the Court will not deny the motion based on noncompliance with Rule of Court 3.1324.

Plaintiff's new allegations are supporting facts for his existing cause of action for constructive trust.

As to Defendant's arguments regarding a failure to show good cause or provide any reasonable explanation for the delay in bringing new allegations of foundational facts, Defendant contends that the TAC contains "surprisingly very detailed terms of the 'oral agreement'... between Plaintiff and Defendant, prior to the transfer of the Property... to hold the Property in 'trust' for the benefit of Plaintiff" and that Plaintiff did not provide any valid explanation as to why these material factual allegations were only brought for the first time after two years in litigation and were omitted in three previous complaints...." (Def.'s opposition to motion for leave to amend ("Opposition"), p.4:3-15.) Here, the SAC does allege that the Hollister property is subject to a constructive trust (see SAC, ¶ 7) and fraudulent acts supporting such a cause of action (see SAC, ¶ 33). The new allegations provide further facts supporting the basis for such a constructive trust; thus, unlike *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, where the plaintiffs attempted to add a new cause of action based on allegations not previously pleaded, here, the proposed TAC alleges facts that support an existing cause of action. While it may be surprising that the allegations are very detailed, these facts are nonetheless supporting facts that do not prejudice Defendant.

The argument that the TAC is a sham pleading is best addressed on demurrer or a motion for judgment on the pleadings.

Defendant contends that the TAC is a sham pleading because it contradicts admissions made in the SAC which alleges that "Defendant has no right, title, estate, lien or interest in the Property, or any part of it, because Defendant's current fee simple interest claim to the property is subject to a constructive trust." (Opposition, p.6:8-14.) Defendant argues that if Defendant were acting as a trustee for a trust benefitting Plaintiff, Defendant has legal title to the property because "a trustee holds legal title to property held in trust." (Opposition, p.6:14-18, citing *Boshernitsan v. Bach* (2021) 61 Cal.App.5th 883, 891.) However, Defendant misunderstands that, as a trustee, she would hold the title as a trustee, whereas here, the causes of action against her are in her individual capacity. Therefore, there is no contradictory allegation. Moreover, these arguments are better suited at the demurrer or motion for judgment on the pleadings stage. While Defendant also argues that the TAC will not survive a legal challenge in the form of a demurrer or a motion to strike, the Court declines to determine that Plaintiff's motion for leave to file the TAC is futile as a sham pleading.

Plaintiff's motion for leave to file the TAC is GRANTED without prejudice to Defendant filing of a demurrer, motion to strike or motion for judgment on the pleadings. The TAC must be filed with in 10 days of the final Order.

The Court will prepare the final Order.