

**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 29, 2024

TIME: 10:00 A.M.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	19PR186607	<i>Estate of Abraham Ma</i>	Click or scroll to line 1 for tentative ruling.
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Case Name: *The Estate of Abraham Ma*

Case No.: 19PR186607

Hearing date, time, and department: August 29, 2024 at 10:00 a.m. in Department 2

INTRODUCTION

Michael Ma (“Responding Party”) is the executor of the estate of Decedent Abraham Ma (“Decedent”), Responding Party’s brother. Grace Jiahui Ma and Spring Jiaxing Rao Ma are the children of Decedent and his former wife Christine Rao (“Rao”) and Guardians ad Litem for Addison J. Ma (“Propounding Parties”).

On July 26, 2019, Responding Party prepared six wills for Decedent. Decedent executed the wills before his assistants at his company, Ma Labs, Keqing Cathy Gong (“Cathy”) and Yijong Anita Tsai (“Anita”). On August 23, 2019, Decedent committed suicide. A seventh holographic will was found in Decedent’s personal items. The alleged effect of these wills is to leave Decedent’s entire estate to Responding Party, disinheriting Propounding Parties. In June 2020, Propounding Parties filed a petition to invalidate the seven wills.

Propounding Parties contend that Decedent caused a will to be prepared in 2017 prior to the six wills prepared in 2019. That will provided for them to share equally in Decedent’s estate but an executed copy of that will was never found. However, Responding Party contends that, after contentious dissolution proceedings with Rao, Decedent’s feelings regarding his daughters changed and he changed his estate plan accordingly.

Currently before the court is Propounding Parties’ motion to compel further responses to the requests for production of documents, set six. Responding Parties are also seeking an order allowing them to inspect certain devices. Responding Party opposes the motion and Propounding Parties have filed a reply.

BACKGROUND

In 2022, Propounding Parties filed multiple motions to compel further responses to various discovery requests served on Responding Party. On June 23, 2022, a stipulation and order was filed indicating that Responding Party would provide further, code-compliant responses to the discovery requests at issue.

On March 20, 2024, the parties attended an informal discovery conference. It was agreed that Propounding Parties would propound additional discovery, requests for production, set six, which would represent all outstanding discovery remaining from the discovery requests covered by the June 23, 2022 stipulation.

On April 2, 2024, Propounding Parties served requests for production of documents, set six. Responding Party responded on May 1, 2024. On July 10, 2024, Propounding Parties filed the instant motion.

DISCUSSION

I. Evidentiary Objections

Responding Party objects to certain portions of the Declaration of Erin A. Norcia in support of the motion. The court declines to rule on the objections as Responding Party provides no authority requiring the court to rule on evidentiary objections in the context of a discovery motion and the court finds that the challenged declaration is immaterial to the outcome of the instant motion.

II. Requests for Production of Documents

A. Legal Background

A responding party to an inspection demand must respond separately to each item in the demand by stating one of the following: (1) an agreement to comply; (2) a representation of inability to comply, or (3) objections. (Code Civ. Proc., § 2031.210.)¹ Additionally, section 2031.230 requires that a representation of an inability to comply with the particular demand for inspection must also “affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with the demand.” If a party demanding a response to an inspection demand deems: (1) a statement of compliance with the demand is incomplete; (2) a representation of inability to comply is inadequate, incomplete, or evasive; or (3) an objection in the response is without merit or too general, that party may move for an order compelling further response to the demand. (§ 2031.310, subd. (a).)

In general, a motion for an order compelling further responses to requests for production of documents “shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand.” (§ 2031.310, subd. (b)(1).) In order to establish good cause, the burden is on the moving party to show relevance to the subject matter and specific facts justifying the discovery. (See *Glenfed Develop. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) Once a showing of good cause is made, the burden shifts to the opposing party to justify his or her objections. (See *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.)

B. Merits of the Motion

The parties separate the requests for production (“RPDs”) at issue into three main categories: (1) Documents in Hopkins and Carley’s² file for Decedent related to his relationship with his daughters (RPDs 126-128), (2) Documents in Hopkins and Carley’s file for Decedent related to his estate plan (RPD 129) and (3) Documents sent or received by Cathy and Anita related to Decedent’s estate plan (RPDs 130-138). Responding Party responded to each of these RPDs with objections.

With respect to the first category of documents, documents in Hopkins and Carley’s file for Decedent related to his relationship with his daughters, Responding Party agreed to search “pleadings, discovery requests and responses, hearing transcripts, and exhibits from its

¹ All further undesignated statutory references are to the Code of Civil Procedure.

² Hopkins and Carley is one of the law firms that represented Decedent in his divorce proceedings and currently represents Responding Party. The firm did not represent Decedent in drafting his estate plan.

litigation files” for information about Propounding Parties’ relationship with Decedent. (Opposition to Motion to Compel, p. 7:7-9.) They contend that they produced responsive documents from these sources on May 24, 2024. Propounding Parties assert that they are entitled to a review of the entire file rather than just the specific sources identified above. Responding Party contends that it would be unduly burdensome for him to produce documents from its entire file as Hopkins and Carley represented Decedent for 10 years and the file holds 645 megabytes of data in addition to nearly 100,000 emails, an amount which does not include emails between Hopkins and Carley attorneys and Rao’s attorneys. They claim it would cost over one million dollars and take two years to search their file for responsive documents.

The court must determine whether Propounding Parties have shown good cause for the documents requested. (§ 2031.310, subd. (b)(1).) The court finds that the documents would be relevant to Responding Party’s claim that Decedent’s feelings regarding Propounding Parties changed as a result of the dissolution of Decedent’s marriage to Rao. However, Propounding Parties do not dispute that Responding Party has already turned over approximately 40,000 pages of responsive documents from the portions of Hopkins and Carley’s file that Responding Party agreed to search.³ Thus, in light of the burden associated with producing documents from the remainder of the file, the court finds that Propounding Parties must evaluate the 40,000 pages of discovery already produced before seeking the remainder of the file. Accordingly, the hearing on the motion is continued. If, after reviewing the some 40,000 pages of responsive documents already produced, Propounding Parties believe there is good cause to search the remainder of the file, they must provide supplemental briefing to the court addressing this issue.

With respect to the second category of documents, documents in Hopkins and Carley’s file for Decedent related to his estate plan (RPD 129), Responding Party indicated that a diligent search of the file was conducted and no responsive documents were found. Propounding Parties make no argument as to how this response is insufficient. However, the court cannot tell whether Responding Party is representing in its response that it conducted a diligent search with respect to the entirety of Hopkins and Carley’s file for Decedent for documents related to Decedent’s estate plan or whether it has only searched certain portions of its file. Accordingly, the court orders Responding Party to provide an updated response to RPD 129 to clarify whether it searched its entire file for Decedent or which portions of the file were searched. The updated response must be provided within 10 days of the date of the court’s final order. If Responding Party has not searched the entirety of the file, and if, after review of the 40,000 pages of documents discussed above, Propounding Parties believe they have good cause for search of further portions of the file, they may include this in the supplemental briefing mentioned above.

With respect to the third category of documents, documents sent or received by Cathy and Anita related to Decedent’s estate plan (RPDs 130-138), it is not clear whether Propounding Parties are seeking documents from Hopkins and Carley’s files or documents on the devices they seek to search or both. The RPDs themselves do not mention Hopkins and

³ Propounding Parties argue that Responding Party failed to provide an index for these documents explaining which discovery requests they are responsive to. Responding Party has represented that it will provide such an index before the hearing on this matter. To the extent no index has been provided by the time of the hearing, the court orders Responding Party to provide an index within 10 days of the date of this court’s final order.

Carley's files. But, Propounding Parties' memorandum of points and authorities in support of the motion indicates that Hopkins and Carley represents Cathy and Anita.

In opposition, Responding Party argues that he has already produced more than 800 documents from Cathy's and Anita's desktops. Again, Propounding Parties contend that these documents were produced without an index. Accordingly, the court orders Responding Party to provide an index explaining which RPDs the documents are responsive to within 10 days of the court's final order. Responding Party is also ordered to update its responses to the RPDs to indicate that a search has been made for these documents and what devices were searched. If, after reviewing the documents already produced, Propounding Parties believe they have good cause for further searches, they may include this discussion in their supplemental briefing. Propounding Parties must explain what further search they believe must be conducted.

III. Device Inspection

Cathy testified at her deposition that her emails and documents on her Ma Labs computer from Spring 2020 and earlier are no longer available because of some sort of, as Propounding Parties term it, "deletion event." Responding Party contends that Ma Labs suffered a ransomware attack.⁴ But, Propounding Parties assert that the timing of the Event coincided with the filing of their June 2020 petition to invalidate the seven wills. Thus, they suggest that the Event was caused by Responding Party in order to prevent discovery of evidence contrary to his position in this lawsuit. Propounding Parties wish to search Responding Party's home computer and the work computers of Responding Party, Cathy, and Anita for evidence related to Decedent's estate planning (via a word search) and evidence relating to the Event.⁵

With respect to the word search, the court's understanding is that Responding Party has already forensically imaged the devices, extracted the data, and converted it into a searchable format. Responding Party also represents that the extracted data has already been searched using search terms listed in Exhibit F to the Declaration of Steven A. Ellenberg in support of the opposition to the instant motion. These search terms appear reasonably calculated to discover documents related to Decedent's estate planning and his relationship with his daughters. Propounding Parties now request that the data be searched in the presence of their counsel and IT professional pursuant to the protocol agreed to by the parties on the record at the June 24, 2024 hearing on this matter. They also request that two additional terms be added to the list of search terms, namely, the words "probate" and "beneficiary". They contend that Responding Party has not explained the program used to conduct the search, nor has he explained how items that would not ordinarily be searchable, such as PDFs, were made searchable. The court orders Responding Party to provide such information to Propounding Parties within 10 days of the date of the court's final order. Responding Party must also explain the timeframe of the search already conducted. If, after reviewing the documents already produced and with the additional information ordered to be provided, Propounding Parties believe they have good cause for a further search of the same terms at which their IT

⁴ The court will refer to the "deletion event" or ransomware attack as the "Event". By this discussion, the court does not mean to imply that it is endorsing any particular version of the facts or any particular interpretation of Cathy's testimony. It is merely providing background information for discussion purposes.

⁵ Propounding Parties assert that they are not seeking to review the "network shares and servers" of Ma Labs at this time.

professional is present, they must include the same in their supplemental briefing described above.

The court grants Propounding Parties' request to search for the additional terms "probate" and "beneficiary". The court orders that the search for these two terms to the time period of May 1, 2017 (the approximate time when Decedent began to make a will including a bequest for Propounding Parties) to August 23, 2019, the date of Decedent's death. The court also orders the parties to meet and confer to select a date for this limited search.

With respect to the issue of the Event, Propounding Parties argue that they should be allowed to search for evidence of the Event as well as to conduct a word search as to the cause and extent of the Event. Responding Party has provided the Declaration of Cole Manaster, which indicates that Manaster found no evidence that the devices at issue were impacted by the event and he "found no evidence of the ransom note, files encrypted by the ransomware, or execution of the ransomware binary on any of the four devices[.]" (Declaration of Cole Manaster, ¶ 7.) Propounding Parties appear to be requesting that the court order both that the devices themselves may be inspected for evidence of the cause and extent of the deletion event and that a word search be conducted to find evidence of same. The court will allow Propounding Parties to add 10 search terms, calculated to discover evidence of the existence and extent of the Event, in addition to the list attached to the Declaration of Steven A. Ellenberg as part of Exhibit F and the two terms suggested by Propounding Parties in reply. The court will limit the search for items related to the Event to the timeframe of June 26, 2020 (when Propounding Parties' petition was filed) to September 1, 2020 (as the Event allegedly occurred in August 2020). If, after the search has been conducted and Propounding Parties have received any documents to be produced, they believe there is good cause to search the devices themselves for evidence related to the Event, the court will consider a motion for same. The motion must be accompanied by declaration explaining exactly what further search needs to occur and how it will be conducted.

The court orders a further search of the data downloaded from the four devices for the two additional terms proposed by Propounding Parties and for 10 terms related to the Event to be proposed by Propounding Parties within 10 days of the date of the court's final order. Propounding Parties' counsel and IT professional may be present when the word search occurs. The search periods shall be limited to the timeframe of May 1, 2017 to August 23, 2019 for the search of the terms "beneficiary" and "probate" and June 26, 2020 to September 1, 2020 for the search related to the Event. The parties are ordered to meet and confer to select an appropriate date for the search. Propounding Parties are ordered to provide the name of the individual IT professional who will attend the search. To the extent the motion seeks a search of the devices themselves as opposed to the data Responding Party has already derived from the devices, that request is DENIED WITHOUT PREJUDICE as discussed herein.

The parties also disagree as to who should bear the cost for the search. In light of the limited additional searches to be conducted, the court will not shift the cost onto Propounding Parties. Responding Party conducted the search and produced the documents without waiting for Propounding Parties to provide input on their search terms.

IV. Privilege Log

Propounding Parties contend that they are entitled to a privilege log relating to documents Responding Party is refusing to produce on privilege grounds. Responding Party contends that it would be unduly burdensome to produce a privilege log. The court orders Responding Party to provide a privilege log to the extent he is currently refusing to provide, on privilege grounds, responsive documents from locations that have already been searched. Responding Party requests that, if a privilege log is ordered, that he only be ordered to provide the names of the parties to the communications withheld. However, Responsive documents would necessarily be those related to either Decedent's estate plan or his relationship with his daughters. Accordingly, at this time, the court orders Responding Party to provide a privilege log with the names of the parties to the communications, the dates of the communication, and also identifying whether the communications are related to the estate plan or Decedent's relationship with his daughters or both. This order does not require Responding Party to search any locations other than what have already been searched at this time.

V. Non-Disclosure Agreement

The parties have agreed that any individuals who attend the search of the devices should be bound by a non-disclosure agreement ("NDA"). However, they disagree as to the exact terms of the proposed NDA. Propounding Parties assert that the use of the language "directly relevant" in the NDA limits the scope of the production of the documents.⁶ The court finds the use of "directly relevant" appropriate as this is the standard for items covered by privacy protections.

Where the right to privacy is asserted in the discovery context, the items sought must be "directly relevant" to the outcome of the lawsuit. (*Alch v. Superior Court* (2008) 165 Cal.App.4th 1412, 1425.) To establish direct relevance, "[i]t is not enough that the information might lead to relevant evidence[.]" (*Binder v. Superior Court* (1987) 196 Cal.App.3d 893, 901.) Here, the devices at issue are the personal and work computers of Responding Party as well as the work computers of two persons unrelated to the instant lawsuit. In light of the privacy concerns inherent in search of these devices, the court finds that the "directly relevant" limitation is appropriate. In light of this conclusion, the court orders the parties to meet and confer and agree on a version of the NDA with the "directly relevant" language included prior to the additional search of the data from the devices.

CONCLUSION

The hearing on the motion is continued. The parties are ordered to appear at the hearing on this matter for setting of status conference to determine whether a further set for hearing is necessary following compliance with the matters ordered in the tentative. At the subsequent status conference, if further hearing is needed, counsel shall meet and confer in advance to propose timing for Propounding Parties' supplemental briefing as discussed below. Responding Party may also file an opposition to the supplemental briefing and Propounding Parties may file a reply. A briefing schedule will be set at the status conference on this matter.

⁶ The court also notes that Propounding Parties reference an amendment to the proposed NDA but it is not clear whether that amendment is merely Responding Party's proposed changes to the NDA or if there is a separate document containing the amendment.

To the extent Responding Party has not provided an index to any of the sets of documents it has already served in response to RPDs, set six, the court orders Responding Party to provide an index within 10 days of the date of this court's final order.

With respect to RPDs 126-128, if, after reviewing the some 40,000 pages of responsive documents already produced, Propounding Parties believe there is good cause to search the remainder of the file, they must provide supplemental briefing to the court addressing this issue.

With respect to RPD 129, the court orders Responding Party to provide an updated response to clarify whether it searched its entire file for Decedent or which portions of the file were searched within 10 days of the date of the court's final order. If Responding Party has not searched the entirety of the file, and if, after review of the 40,000 pages of documents discussed above, Propounding Parties believe they have good cause for search of further portions of the file, they may include this in the supplemental briefing mentioned above.

With respect to RPDs 130 through 138, Responding Party is ordered to update its responses to the RPDs to indicate that a search has been made for these documents and what devices were searched. If, after reviewing the documents already produced, Propounding Parties believe they have good cause for further searches, they may include this discussion in their supplemental briefing. Propounding Parties must explain what further search they believe must be conducted.

The court orders Responding Party to provide a privilege log as to items responsive to RPDs, set six, with the names of the parties to the communications, the dates of the communication, and also identifying whether the communications are related to the estate plan or Decedent's relationship with his daughters or both. This order does not require Responding Party to undertake any further search for responsive documents at this time.

The court orders a further search of the data downloaded from the four devices for the two additional terms proposed by Propounding Parties and for 10 terms related to the Event to be proposed by Propounding Parties within 10 days of the date of the court's final order. Propounding Parties' their counsel and IT professional may be present when the word search occurs. The search periods shall be limited to the timeframe of May 1, 2017 to August 23, 2019 for the search of the terms "beneficiary" and "probate" and June 26, 2020 to September 1, 2020 for the search related to the Event. The parties are ordered to meet and confer to a select an appropriate date for the search. Propounding Parties are ordered to provide the name of the individual IT professional who will attend the search. In light of the limited nature of the additional search, the court will not order Propounding Parties to bear the cost. To the extent the motion seeks a search of the devices themselves as opposed to the data Responding Party has already derived from the devices, that request is **DENIED WITHOUT PREJUDICE** to filing a motion for inspection of the devices themselves as discussed above.

The court orders the parties to meet and confer and agree on a version of the NDA with the "directly relevant" language included prior to the additional search of the data from the devices.

The court will prepare the order.

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