

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

**Department 1, Honorable Daniel Nishigaya, Presiding**  
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113  
Telephone 408.882-2120

**To contest the ruling, call (408) 808-6856 Or Email at  
Department1@scscourt.org before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS  
DATE: October 18, 2024 TIME: 10:00 A.M.**

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

**APPEARANCES IN DEPT. 1 MAY BE IN PERSON OR REMOTE  
THROUGH MICROSOFT TEAMS**

**PLEASE GO TO:**

**[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml) to find  
the appropriate link.**

**State and local Court Rules prohibit recording of court proceedings without a  
Court order. This prohibition applies while on Microsoft Teams.**

**Prevailing party shall prepare the order by e-file, unless stated otherwise below  
The court does not provide official court reporters for civil/probate law and motion  
hearings. See court website for policy and forms for court reporters at hearing**

**TROUBLESHOOTING TENTATIVE RULINGS**

If do not see this week's tentative rulings, they have either not yet been posted or  
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"REFRESH" or "QUIT" your browser and reopen it, or adjust your internet settings to  
see only the current version of the web page. Your browser will otherwise access old  
information from old cookies even after the current week's rulings have been posted.

**This is NOT Probate Examiner's note. For that please click here**

**And look for probate advance case status.**

**[https://santaclara.courts.ca.gov/divisions/probate-division/probate-advance-case-  
status-reports](https://santaclara.courts.ca.gov/divisions/probate-division/probate-advance-case-status-reports)**

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23PR194132	Estate of Weiwei Hsieh	Click on <a href="#">LINE 1</a> or scroll down for attached Tentative Ruling.

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**PROBATE LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 2</a>			Click on <a href="#">LINE 2</a> or scroll down for attached Tentative Ruling.
<a href="#">LINE 3</a>			Click on <a href="#">LINE 3</a> or scroll down for attached Tentative Ruling.
<a href="#">LINE 4</a>			
<a href="#">LINE 5</a>			
<a href="#">LINE 6</a>			

Line 1

**Case Name:** *The Estate of WeiWei Hsieh*

**Case No.:** 23PR194132

**Hearing date, time, and department:** October 18, 2024 at 10:00 a.m. in Department 1

Petitioner Andrey Jivsov (“Petitioner”) initiated this case by filing a petition to probate a purported will of Decedent’s executed in 2020. The petition was not opposed and the court admitted Petitioner’s proffered will to probate, which leaves the entirety of the estate to Fiona Jivsov, Petitioner’s and Decedent’s daughter.

Respondent HW Spencer Hsieh (“Respondent”), Decedent’s former husband, filed a petition for revocation of probate of will, to suspend and remove Petitioner as executor of Decedent’s estate and trustee of a trust of Decedent’s executed in 2020, to determine interference with expected inheritance, and alleging claims for return of estate property, wrongful taking of estate property, conversion, elder abuse, fraud, misappropriation of estate property, breach of fiduciary duty, and constructive trust. Respondent asserts that Decedent executed a valid trust in 2022 a few days before she committed suicide. The purported beneficiaries of the trust are Fiona Jivsov and Respondent. Petitioner has opposed Respondent’s petition, contending, inter alia, that the trust proffered by Respondent is invalid on multiple grounds.

Currently before the court is Petitioner’s motion to expunge a lis pendens recorded by Respondent.<sup>1</sup> Respondent has opposed the motion and Petitioner has filed a reply.

As a threshold matter, Respondent asserts that Petitioner lacks standing to move to expunge the lis pendens because he has no interest in the real property. “At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice.” (§ 405.30.) Petitioner is not named as a beneficiary in connection with the 2020 will admitted to probate in this case, the 2020 trust, or the 2022 trust. However, letters of administration were issued and he is currently the personal representative of Decedent’s estate. He was also the named trustee under the terms of the 2020 trust but he was not named trustee under the 2022 version of the trust.

Petitioner asserts that there is trust litigation pending in a court in Nevada and that the Nevada court has assumed jurisdiction over the trust. Neither party cites authority or makes any reasoned argument as to whether the title Petitioner may hold as trustee is sufficient to

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<sup>1</sup> As explained by the California Supreme Court in *Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 647, “ ‘A lis pendens is a recorded document giving constructive notice that an action has been filed affecting title or right to possession of the real property described in the notice.’ [Citation.]” “At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice.” (Code Civ. Proc., § 405.30.)

impart standing on Petitioner for the purposes of moving to expunge the lis pendens. The court requests supplemental briefing regarding: (1) whether Petitioner is the acting trustee of the trust pursuant to the litigation occurring in Nevada and (2) whether an acting trustee has standing to move to expunge a lis pendens recorded by a beneficiary.

Further, Fiona Jivsov is a beneficiary under either version of the trust. At the time Petitioner filed the motion to expunge lis pendens, the court had appointed a guardian ad litem for Fiona but Petitioner had moved for removal of that guardian ad litem and the court had scheduled a hearing on the propriety of the appointment. After the court took that matter under submission, counsel for Fiona contacted the court to schedule a hearing date for a motion to remove Fiona's guardian ad litem. Although Fiona herself was served with notice of the motion to expunge, her counsel was not.<sup>2</sup> Now that Fiona is represented by a guardian ad litem and independent counsel, she may wish to be heard regarding the motion to expunge. As the hearing will be continued, Fiona's counsel may be served with the motion and take any appropriate action on her behalf. Petitioner is ordered to serve Fiona's counsel with the motion and supporting documents and provide notice of the continued hearing on this matter.

The hearing on this matter is hereby continued to December 6, 2024 at 10:00 a.m. in Department 1. The court requests supplemental briefing from Petitioner and Respondent regarding: (1) whether Petitioner is the acting trustee of the trust pursuant to the litigation occurring in Nevada and (2) whether an acting trustee has standing to move to expunge a lis pendens recorded by a beneficiary. Fiona may file her own opposition or joinder to the motion. All briefing must be filed by November 15, 2024.

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<sup>2</sup> The court does not suggest that service was improper as counsel had not yet appeared in this case at the time the motion was filed and served.

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