

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

Department 1, Honorable Le Jacqueline Duong, 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 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

DATE: June 21, 2024

TIME: 10 A.M.

*****NOTICE*****

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	2011-1-PR-168031	Mohammad M. Shirazi Living Trust	Click on LINE 1 or scroll down for attached Tentative Ruling.
LINE 2	2011-1-PR-168031	Mohammad M. Shirazi Living Trust	Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3			Click on LINE 3 or scroll down for attached Tentative Ruling.

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Calendar line 1

Case Name: The Mohammad M. Shirazi Living Trust

Case No.: 2011-1-PR-168031

Hearing date, time, and department: June 21, 2024 at 10:00 a.m. in Department 1

INTRODUCTION

Trustor Mohammad Shirazi executed the Mohammad M. Shirazi Living Trust in 1986. Upon the death of Mohammad Shirazi in 2001, his wife Parvaneh Shirazi and son, beneficiary Amir Shirazi (“Amir”)¹ became co-trustees. In 2015, the trust was amended by court order. Beneficiary remained a co-trustee but Petitioner Shadeh Shirazi (“Shadeh”) was substituted in as co-trustee. In 2021, Petitioner successfully petitioned to suspend Amir as co-trustee due to allegations that Amir paid for personal attorney fees out of trust funds and borrowed \$600,000 from the trust. The court’s order granting that petition appointed Mojdeh Shirazi (“Mojdeh”) as successor co-trustee. Amir has filed a petition to compel the current co-trustees to liquidate the assets of the trust and make full distribution of the trust funds.

Currently before the court are (1) a motion, filed by Mojdeh, to compel Amir to provide further responses to requests for production of documents and (2) a motion, filed by Amir, to compel Shadeh to provide further responses to requests for production of documents. The first motion, filed by Mojdeh, is unopposed. The second motion, filed by Amir, is opposed.

DISCUSSION

I. Mojdeh’s Motion to Compel Amir’s Further Responses

A. Preliminary Issues

i. The Nature of the Motion is Unclear

At the outset, it must be noted that Mojdeh cites Code of Civil Procedure² sections 2031.300 and 2031.310 as the basis for the instant motion but what she is seeking appears to be production of responsive documents rather than initial or further responses. Section 2031.300 applies only when the responding party has provided no response at all. (§ 2031.300 [“If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it . . .”].) Section 2031.310, which governs motions to compel further responses, provides, “On receipt of a response to a demand for inspection, copying, testing, or sampling,

the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: [¶] (1) A statement of compliance with

the demand is incomplete. [¶] (2) A representation of inability to comply is inadequate, incomplete, or evasive. [¶] (3) An objection in the response is without merit or too general.” (§ 2031.310, subd. (a).)

Here, however, Mojdeh does not appear to be seeking further responses. Instead, she requests that the court order Amir to provide documents responsive to her requests. Section 2031.320, which Mojdeh does not cite, provides, in pertinent part, “If a party filing a response to a demand for inspection, copying, testing, or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party’s statement of compliance, the demanding party may move for an order compelling compliance.” (§ 2031.320, subd. (a).)

ii. Timeliness

Assuming that the motion is a motion to compel further responses under section 2031.310, unless the parties have agreed to an extension in writing, a notice of a motion to compel further responses must be served, if at all, within 45 days of the service of the responses to the requests for production. (§ 2031.310, subd. (c).) This 45-day limit is extended if served by mail, overnight delivery, fax, or electronically. (See §§ 1010.6, subd. (a)(4) (b), 1013, subd. (a).) The 45-day limit is jurisdictional; the court has no authority to grant late-filed papers. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

Here, an email contained in Mojdeh’s meet and confer declaration indicates that the deadline for her motion to compel was extended to April 29, 2024. But, the motion was not filed until May 10, 2024. Mojdeh does not assert that any further extensions of time were provided. Accordingly, to the extent this is a motion to compel further responses under section 2031.310, it appears to be untimely. To the extent this is a motion to compel further responses under section 2031.310, it must be denied because the 45-day limit is jurisdictional; the court has no authority to grant late-filed papers. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

There is no time limit for a motion to compel compliance with an agreement to produce documents under section 2031.320. (*Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 903.) Accordingly, as the motion is unopposed, this court will treat the motion as one to compel compliance with Amir’s statement in his responses that he will produce responsive documents notwithstanding his objections.

iii. Meet and Confer

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

Here, Mojdeh has provided the declaration of her counsel evidencing sufficient meet and confer efforts. Accordingly, the court will not order further meet and confer at this time.

B. 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. (§ 2031.210.) 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 the request 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.)

Section 2031.320, on the other hand, provides, in pertinent part, “If a party filing a response to a demand for inspection, copying, testing, or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party’s statement of compliance, the demanding party may move for an order compelling compliance.” (§ 2031.320, subd. (a).)

C. Merits of the Motions

Mojdeh seeks further responses and documents responsive to her requests for production nos. 1, 2, 4, 6, 7, 9, and 10. As discussed above, a motion to compel

further responses under section 2031.310 is no longer available as the deadline in which to file such a motion appears to have passed on April 29, 2024. Thus, the only relief the court can grant is to order Amir to produce any further responsive documents in his possession or control or that he may obtain after a diligent search and reasonable inquiry has been made. As the motion is unopposed, the court will make such an order. However, the court notes that Amir's objections are preserved because Mojdeh did not timely seek objection-free responses.

Accordingly, the court orders that Amir produce, subject to his objections, any further documents in his possession or control or that he may obtain after a diligent search and reasonable inquiry has been made responsive to Mojdeh's requests for production nos. 1, 2, 4, 6, 7, 9, and 10 within 30 days of the date of this court's final order. The court also orders that, to the extent Amir is withholding documents on the basis of privilege, he must provide an updated privilege log within 30 days of the date of this court's final order. (See § 2031.240, subd. (c)(1))

[“If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.”].) Amir must also provide legible copies of the documents Mojdeh contends are illegible within 30 days of the date of this court's final order.

D. Mojdeh's Request for Sanctions

Mojdeh requests sanctions in the amount of \$21,579.75 for the time spent working on the instant motion.

Section 2031.320, subdivision (b) provides, “Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

Mojdeh's counsel declares that preparing the motion and supporting documents took 34.5 hours of attorney time at \$625.50 per hour. However, counsel provides no information regarding his experience to justify his hourly rate. Further, 34.5 hours spent on working on a motion to compel further responses is unreasonable.

The court will grant the request for sanctions in part in the amount of \$5,000.

E. Conclusion

Mojdeh's motion to compel is GRANTED IN PART. The motion is DENIED to the extent it is a motion to compel further responses under section 2031.310. The court orders that Amir produce, subject to his objections, any further documents in his possession or control or that he may obtain after a diligent search and reasonable inquiry has been made responsive to Mojdeh's requests for production nos. 1, 2, 4, 6, 7, 9, and 10 within 30 days of the date of this court's final order. The court also orders that, to the extent Amir is withholding documents on the basis of privilege, he must provide an updated privilege log within 30 days of the date of this court's final order. (See § 2031.240, subd. (c)(1) ["If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log."].) Amir must also provide legible copies of the documents Mojdeh contends are illegible within 30 days of the date of this court's final order. Mojdeh's request for sanctions is GRANTED IN PART in the amount of \$5,000.

II. Amir's Motion to Compel

A. Preliminary Issues

i. Timeliness

As mentioned above in the context of Mojdeh's motion to compel, unless the parties have agreed to an extension in writing, a notice of a motion to compel further responses must be served, if at all, within 45 days of the service of the responses to the requests for production. (§ 2031.310, subd. (c).) This 45-day limit is extended if served by mail, overnight delivery, fax, or electronically. (See §§ 1010.6, subd. (a)(4) (b), 1013, subd. (a).) The 45-day limit is jurisdictional; the court has no authority to grant late-filed papers. (Sexton v. Superior Court (1997) 58 Cal.App.4th 1403, 1410.)

Here, the court granted, pursuant to section 473, Amir's request to relieve him of the failure to timely file his motion. Accordingly, the motion is considered to be timely.

ii. Meet and Confer

A motion to compel further responses must be accompanied by a meet and confer declaration under section 2016.040. (§ 2031.310, subd. (b)(2).) Section 2016.040 requires that a moving party make a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion."

Here, Amir has provided the declaration of his counsel evidencing sufficient meet and confer efforts. Accordingly, the court will not order further meet and confer at this time.

B. 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. (§ 2031.210.) 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 the request 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.)

C. Merits of the Motion

Amir moves for an order compelling Shadeh to provide further responses to his requests for production of documents nos. 2 through 5. With respect to requests 2 through 4, Amir asserts that Shadeh produced some, but not all of the documents requested. Namely, he contends that she did not produce responsive documents from the time period of 2015 to 2020. But, he argues, Shadeh’s responses to these requests did not indicate any inability to comply with the requests. He further contends that Shadeh objected to the requests on privilege grounds but that she did not provide a privilege log. In opposition, Shadeh maintains that the responsive documents from the time period of 2015 to 2020 have already been produced to Amir during the time he was the trustee. The court will order Shadeh to provide further responses to requests 2 through 4, identifying which documents have been previously produced and when within 30 days of the date of the court’s final order. Further, to the extent Shadeh is withholding documents on the basis of privilege, she must provide a privilege log within 30 days of the date of this court’s final order. (See § 2031.240, subd. (c)(1) [“If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall

provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.”].)

With respect to request no. 5, it asks Shadeh to “produce ALL DOCUMENTS that REFER TO or RELATE TO YOUR contention that AMIR has stolen millions of dollars from the SHIRAZI TRUST.” Shadeh responded with objections and indicated that she would nonetheless produce all documents in her possession or control. However, during meet and confer, Shadeh’s counsel indicated that she had no responsive documents because Shadeh did not assert that Amir stole trust funds, instead, counsel stated that Shadeh’s contention is that Amir misused trust funds. Amir contends that Shadeh must be required to provide a verified statement to that effect to indicate why she will not or cannot comply with the request. Shadeh, in opposition, maintains that a response indicating that she is not asserting that Amir stole trust funds would not be responsive to Amir’s request for production no. 5.

The court will not require Shadeh to state that she is not asserting that Amir stole trust funds as Shadeh’s argument that such a response is more appropriately the subject of a request for admission or interrogatory is well-taken. However, if Shadeh is representing an inability to comply with the request, she must comply with section 2031.230, which provides, “A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.” Shadeh’s current response does not provide such information.

Amir’s motion to compel is GRANTED IN PART. The court will order Shadeh to provide further responses to requests 2 through 4, identifying which documents have been previously produced and when within 30 days of the date of the court’s final order. Further, to

the extent Shadeh is withholding documents on the basis of privilege, she must provide a privilege log within 30 days of the date of this court’s final order. With respect to request no. 5, the court DENIES the motion to the extent it seeks a verified response that Shadeh is not contending that Amir stole money from the trust. However, the court GRANTS the motion as to request no. 5 to the extent it seeks a further response complying with section 2031.230.

D. Amir’s Request for Sanctions

Amir requests sanctions in the amount of \$885 against Shadeh and her attorney. Section 2031.310, subdivision (h) provides, “Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

Here, although Amir is the prevailing party, the court finds that Shadeh has acted with substantial justification in opposing the motion. Specifically, Shadeh pointed out to Amir during meet and confer that the documents responsive to requests 2 through 4 have already been provided. With respect to request no. 5, although the court has found that a further response is required, the court granted the motion as to that request in part. However, Shadeh correctly asserted that the response Amir is seeking is not required. Accordingly, Amir’s request for sanctions is DENIED.

E. Conclusion

Amir’s motion to compel is GRANTED IN PART. The court will order Shadeh to provide further responses to requests 2 through 4, identifying which documents have been previously produced and when within 30 days of the date of the court’s final order. Further, to the extent Shadeh is withholding documents on the basis of privilege, she must provide a privilege log within 30 days of the date of this court’s final order. With respect to request no. 5, the court DENIES the motion to the extent it seeks a verified response that Shadeh is not contending that Amir stole money from the trust. However, the court GRANTS the motion as to request no. 5 to the extent it seeks a further response complying with section 2031.230. Amir’s request for sanctions is DENIED.

CONCLUSION

Mojdeh’s motion to compel is GRANTED IN PART. The motion is DENIED to the extent it is a motion to compel further responses under section 2031.310. The court orders that Amir produce, subject to his objections, any further documents in his possession or control or that he may obtain after a diligent search and reasonable inquiry has been made responsive to Mojdeh’s requests for production nos. 1, 2, 4, 6, 7, 9, and 10 within 30 days of the date of this court’s final order. The court also orders that, to the extent Amir is withholding documents on the basis of privilege, he must provide an updated privilege log within 30 days of the date of this court’s final order. (See § 2031.240, subd. (c)(1) [“If an objection is based on a claim of

privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.”].) Amir must also

provide legible copies of the documents Mojdeh contends are illegible within 30 days of the date of this court's final order. Mojdeh's request for sanctions is GRANTED IN PART in the amount of \$5,000.

Amir's motion to compel is GRANTED IN PART. The court will order Shadeh to provide further responses to requests 2 through 4, identifying which documents have been previously produced and when within 30 days of the date of the court's final order. Further, to the extent Shadeh is withholding documents on the basis of privilege, she must provide a privilege log within 30 days of the date of this court's final order. With respect to request no. 5, the court DENIES the motion to the extent it seeks a verified response that Shadeh is not contending that Amir stole money from the trust. However, the court GRANTS the motion as to request no. 5 to the extent it seeks a further response complying with section 2031.230. Amir's request for sanctions is DENIED.

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