

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

**Department 3
Honorable William J. Monahan, Presiding**

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 7/2/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (7/1/2024) 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 prefers in-person or Teams appearances. If you must appear virtually, please use video. Please use the link on the Court's website for **Department 3**.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Court's website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

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's website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV416863	Angelica Carr vs Hui Liu	Hearing: Order of Examination to Hui Liu by Petitioner Angelica Carr [**C/F 5/16/2024 **] APPEAR IN PERSON (not by Teams).
LINE 2	23CV420300	Northeast Securities Co., Ltd. vs Que Wenbin et al	Motion: Quash Plaintiff Northeast Securities Co.'s Service of Summons by Defendant Shixi Lin Ctrl Click (or scroll down) on Lines 2-3 for tentative ruling. The court will prepare the order.
LINE 3	23CV420300	Northeast Securities Co., Ltd. vs Que Wenbin et al	Motion: Quash service of summons, complaint, and to Dismiss for lack of personal Jurisdiction by Defendant He Xiaolan Ctrl Click (or scroll down) on Lines 2-3 for tentative ruling. The court will prepare the order.

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

**Department 3
Honorable William J. Monahan, Presiding**

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 7/2/2024 TIME: 9:00 A.M.

LINE 4	23CV425984	Ofelia Mccoy vs Sonja Gutierrez et al	Hearing: Demurrer to the First Amended Complaint and to the First and Second Causes of Action of Plaintiff Ofelia McCoy by Defendant Sonja Gutierrez Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	23CV426083	N.R. WATERLOO, LLC et al vs FIRST COMMERCE, LLC et al	Motion: Compel First Commerce, LLC to Produce Documents to Plaintiffs' Requests for Production, Set One by Plaintiffs N.R. Waterloo, LLC and Betty Sha. OFF CALENDAR. Notice of withdrawal without prejudice filed 6/18/2024.
LINE 6	21CV376435	American Express National Bank vs TONYA KEE	Motion: Order Motion: Order vacating Dismissal and entering Judgment against Defs Pursuant to 664.6 by Plt American Express National Bank [**Set per Dept. 3**] Unopposed and GRANTED. Moving party to submit order and judgment.
LINE 7	22CV404692	EQUINIX vs LARC NETWORKS, INC., a Delaware corporation	Motion: Order for Service via Secretary of State by Plaintiff Good cause appearing, GRANTED. Moving party to submit order.
LINE 8	23CV427613	NewCo Capital Group VI LLC vs Paul Hoyt et al	Motion: Vacate Sister State Judgment by Plaintiff Newco Capital Group VI LLC OFF CALENDAR. No proof of service.
LINE 9	23CV428176	Abdul Mohammed vs Coinbase Global Inc et al	Hearing: Other To declare Plaintiff Abdul Mohammed a Vexatious Litigant, to Require him to furnish a Bond, to enter a prefiling order, and for stay by Defendants Coinbase Global Inc. and Coinbase Inc. [** set per Dept. 3 **] Ctrl Click (or scroll down) on Line 9 for tentative ruling. The court will prepare the order.
LINE 10	24CV432742	Srinivas Mandyam vs Neuron Fuel, Inc. et al	Hearing: Other for Right to attach order, Order for Issuance of Writ of Attachment by Plaintiff Srinivas Mandyam OFF CALENDAR. The time date and department for this hearing is 7/10/2024 at 1:30 p.m. in Department 18a.

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

Department 3

Honorable William J. Monahan, Presiding

Courtroom Clerk

191 North First Street, San Jose, CA 95113

Telephone: (408) 882-2130

DATE: 7/2/2024 TIME: 9:00 A.M.

LINE 11	22CV400748	Visby Medical, Inc. vs TACKL Health	<p>Motion: Strike Defendant TACKL Health's Answer to Complaint by Plaintiff Visby Medical, Inc.</p> <p>Plaintiff Visby Medical, Inc. ("Plaintiff")'s motion to strike defendant TACKLE Heath ("Defendant")'s answer is UNOPPOSED. The court however struck the Defendant's answer at an OSC Dismissal Failure to Appear on 6/6/2024. (See Minute Order dated 06/06/2024.) Thus, the Plaintiff's motion to strike the Defendant's answer is MOOT.</p> <p>The court will prepare the order.</p>
LINE 12			

- oo0oo -

Calendar Line 1

- 00000 -

Calendar Lines 2-3

Case Name: Northeast Securities Co., Ltd. v. Que Wenbin et al.

Case No.: 23CV420300

I. Factual and Procedural Background

On August 3, 2023, Northeast Securities Co., Ltd. (“Plaintiff”) brought an action against several defendants, including Que Wenbin (“Wenbin”), He Xiaolan (“Xiaolan”), and Shixi Lin (“Lin”).

Plaintiff asserts it obtained a judgment against the named defendants in the People’s Republic of China on November 16, 2019, in the amount of RMB 500,000,000 plus interest. No appeal was filed within the time allotted and the judgement became final on December 2, 2018.

Plaintiff brought its complaint pursuant to the Uniform Voidable Transfers Act, Civil Code sections 3439 et seq. to avoid transfers of assets and real properties in furtherance of a scheme to defraud creditors conducted within California.

On November 9, 2023, Plaintiff filed a motion for alternative service as to Wenbin, Xiaolan, and Lin. On February 9, 2024, this Court (Hon. Monahan) issued its order granting Plaintiff’s motion and ordering Plaintiff to effectuate service on Lin by two methods: 1) via USPS certified mail to a Sunnyvale address; and 2) via hand delivery upon the law firm of MagStone Law in Sunnyvale. (See Court’s February 9 Lin Order, p. 4.) Additionally, in a separate February 9, 2024 Order, the Court granted Plaintiff’s motion as to Wenbin and Xiaolan and ordered Plaintiff to effectuate service by two methods: 1) via FedEx 2-Day mail to a Palo Alto address; and 2) via U.S. Mail upon their known counsel in Walnut Creek.

On March 21, 2024, Wenbin and Xiaolan filed a motion to quash the Court-ordered service of summons and dismiss for lack of personal jurisdiction. On April 8, 2024, Lin filed a motion to quash the Court-ordered service of summons. Plaintiff opposes both motions.

Shixi Lin’s Motion to Quash

Lin moves to quash Plaintiff’s service of the summons and complaint carried out in accordance with this Court’s orders. Specifically, Lin argues Plaintiff did not show reasonable diligence in ascertaining Lin’s address in China and Plaintiff’s statement that it was unable to ascertain Lin’s address “was probably a misrepresentation to mislead the court.” (Lin Memo, p. 5:11-13.)

First, Lin’s unsupported assertion that Plaintiff’s statements to the Court were “probably a misrepresentation” and that the Court was misled is not well taken. (See e.g., *Walton v. Anderson* (1970) 6 Cal.App.3d 1003, 1009 [“A trial court may not engage in mere speculation and conjecture. Evidence must have ponderable significance.”].) Moreover, there is nothing in the docket indicating Lin opposed Plaintiff’s motion for alternative service, and further, the minute order for the February 6, 2024 hearing on the motion for alternative service does not indicate that Lin’s counsel contested any tentative ruling made by the Court. Finally, given that the Court granted Plaintiff’s motion, it determined that Plaintiff showed reasonable diligence in ascertaining Lin’s address.

Given the above, a motion to quash is the improper vehicle to dispute the Court’s prior order. The Court declines to now address Lin’s arguments regarding Plaintiff’s reasonable

diligence in ascertaining Lin's address in China. If Lin seeks to challenge the Court's ruling, he must file a motion for reconsideration¹ or an appeal.²

The motion to quash is DENIED.

Wenbin and Xiaolan's Motion to Quash

Similar to Lin, Wenbin and Xiaolan assert that Plaintiff misrepresented to the Court that they are residents of California and that the Court issued its February 6, 2024 order for alternative service based on the misrepresentations. (Wenbin Memo, pp. 3:4-8, 4:14-18.) Again, neither Wenbin nor Xiaolan, or their counsel, filed an opposition to Plaintiff's motion, contested the Court's tentative, or appeared at the hearing on the matter. The Court issued its order after reviewing the evidence presented and determined that Plaintiff showed reasonable diligence in ascertaining Wenbin and Xiaolan's addresses. As stated above, a motion to quash is improper to now challenge the Court's prior order.

Wenbin and Xiaolan request an order to show cause why Plaintiff should not be sanctioned for failure to serve and file pleadings as required under California Rules of Court, Rule 3.110. The Court declines to do so, as the motion fails on its merits. (Cal. Rules of Court, Rule 3.110, subd. (f) [stating a court may issue an order to show cause why sanctions shall not be imposed for failure to serve as required under Rule 3.110].)

The motion to quash is DENIED. The request for order to show cause is DENIED.

The court will prepare the order.

- oo0oo -

¹ The 10-day period to file a motion for reconsideration has since passed. (*Novak v. Fay* (2015) 236 Cal.App.4th 329, 335 [“Code of Civil Procedure section 1008, subdivision (a) requires a reconsideration motion to be filed within 10 days of service of ‘notice of entry’ of the order sought to be reconsidered.”].)

² The Court also notes that Lin has now provided his proper address (Lin Memo, p. 5:19-20) and it is in the interest of all parties, and judicial economy, to move this case past the service stage.

Calendar Line No. 4

Case Name: *Ofelia McCoy v. Sonja Gutierrez*

Case No.: 23-CV-425984

Demurrer to the First Amended Complaint by Defendant Sonja Gutierrez

Factual and Procedural Background

This is an action for breach of contract and constructive trust by plaintiff Ofelia McCoy (“Plaintiff” or “Ofelia”) against defendant Sonja Gutierrez, individually and as Executor of the Estate of Salvador Gutierrez (“Defendant” or “Sonja”).³

According to the first amended complaint (“FAC”), Maria Castaneda (“Maria”) owned real property located at 1343 San Juan Avenue, San Jose, California 95110 (“Subject Property”). (Attachment to FAC at p. 1:2-3.) Maria had three children: (1) Salvador Gutierrez (“Salvador”); (2) Leonard Castaneda (“Leonard”); and (3) Ofelia. (Id. at p. 1:3-4.) After her husband died, Maria lacked the ability to financially support herself and maintain the house. (Id. at p. 1:4-5.) She also could not qualify for any lending that would allow her to pull money out of the house. (Id. at p. 1:5-6.) As a precursor to the refinance, Maria added Salvador as a joint tenant by Grant Deed dated November 1, 2022. (Id. at pp. 1:6-7, 2:8-9; Ex. A.)

Maria always maintained that the house belonged to all her children but that she wanted Salvador and Leonard to live at the house. (Attachment to FAC at pp. 2:26-3:1.) Thus, on June 6, 2005, Maria executed a Last Will and Testament which provides in part:

THIRD – Specific Bequest: I give my real property located at 1343 San Juan Avenue, San Jose, California 95110 and all of its contents to be divided equally between my three issue, Ofelia Hardin, Salvador Gutierrez, and Leonard Castaneda. **Right of Survivorship will extend to Leonard Castaneda and Salvador Gutierrez for as long as they shall live.** All household furnishings shall remain in the residence for the lifetime use and with right to survivorship for Leonard and Salvador. The mortgage and property taxes shall be paid by Leonard Castaneda and Salvador Gutierrez. (FAC at Ex. E, emphasis added.)

Maria died on August 6, 2006. (Attachment to FAC at p. 1:20.) Leonard died in 2018 and left no spouse or children. (Id. at p. 1:27.) Thus, Salvador continued to live in the house. (Id. at p. 1:28.) Salvador’s ex-wife, Sonja, came back into his life and he created a trust naming her as the primary beneficiary. (Id. at p. 2:1-3.) On August 10, 2022, Salvador married Sonja and he later died on November 22, 2022. (Id. at p. 2:3-4.) Sonja thereafter transferred the house to herself. (Id. at p. 2:4.) Ofelia alleges she was wrongfully denied her interest in the Subject Property as her portion was given to Sonja as the primary beneficiary. (See Attachment BC-2 to FAC.)

On November 9, 2023, Plaintiff filed a verified judicial council form complaint against Defendant alleging causes of action for breach of contract and common counts.

³ At times, the court refers to the parties by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

On March 4, 2024, Defendant filed a demurrer to the complaint. Thereafter, on March 15, 2024, Defendant filed a motion for sanctions against Plaintiff and her counsel. The motions were set for hearing on April 18, 2024. This court (Hon. Monahan) ruled the demurrer was moot given the filing of a verified form judicial council form FAC on April 4, 2024. The court denied the motion for sanctions.

On May 14, 2024, Defendant filed the motion presently before the court, a demurrer to the FAC. Defendant filed a request for judicial notice in conjunction with the motion. Plaintiff filed written opposition. Defendant filed reply papers.

Demurrer to the FAC

Defendant argues the FAC is subject to demurrer on multiple grounds including uncertainty and failure to state a cause of action. (Code Civ. Proc., § 430.10, subds. (e), (f).)

Request for Judicial Notice

“Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support of the motion, Defendant requests judicial notice (“RJN”) of the following:

- Affidavit of Death of Joint Tenant dated 11-1-02;
- Grant Deed dated 11-1-02;
- Affidavit of Death of Joint Tenant dated 9-28-06;
- Trust Transfer Deed dated 2-8-22;
- Grant Deed dated 12-13-22. (See RJN at Exs. A-E.)

These exhibits are subject to judicial notice as real property documents recorded in Santa Clara County. (See Evid. Code, § 452, subd. (h); see also *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265, disapproved on other grounds in *Yvanova v. New Century Morg. Corp.* (2016) 62 Cal.4th 919 [court may take judicial notice of the existence and recordation of real property records]; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 803 [“A court may take judicial notice of a recorded deed.”].) Plaintiff does not oppose the request. Furthermore, the exhibits are relevant to points raised in support of the instant demurrer. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].)

Accordingly, the request for judicial notice is GRANTED.

Legal Standard

“In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.’ ” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213–214.)

“The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. ... [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Gregory v. Albertson’s, Inc.* (2002) 104 Cal.App.4th 845, 850.)

First Cause of Action: Breach of Contract

Law

To prevail on a cause of action for breach of contract, the plaintiff must allege and prove: (1) the contract, (2) the plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

Both sides concede the breach of contract claim is an attempt by Plaintiff to allege a cause of action for “a contract to make a will” in accordance with Probate Code section 21700. Subdivision (a) of that section states:

“(a) A contract to make a will or devise or other instrument, or not to revoke a will or devise or other instrument, or to die intestate, if made after the effective date of this statute, can be established only by one of the following:

- (1) Provisions of a will or other instrument stating the material provisions of the contract.
- (2) An expressed reference in a will or other instrument to a contract and extrinsic evidence proving the terms of the contract.
- (3) A writing signed by the decedent evidencing the contract.
- (4) Clear and convincing evidence of an agreement between the decedent and the claimant or a promise by the decedent to the claimant that is enforceable in equity.
- (5) Clear and convincing evidence of an agreement between the decedent and another person for the benefit of the claimant or a promise by the decedent to another person for the benefit of the claimant that is enforceable in equity.” (Prob. Code, § 21700, subd. (a)(1)-(5).)

Uncertainty

“ “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is incomprehensible that a defendant cannot reasonably respond.” ’ [Citations.] “A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” ’ [Citations.]” (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.)

“[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Here, the operative pleading appears to be uncertain as Plaintiff alleges she entered into an oral agreement with Salvador on November 26, 2022. (See FAC at BC-1.) But, the FAC alleges that Salvador died on November 22, 2022. (*Id.* at Introduction to FAC at p. 2:3-4.) Thus, it would be impossible for Salvador to enter into an oral agreement with Plaintiff if he died four days earlier. Plaintiff appears to concede the ground for uncertainty as she does not address or resolve this argument in the opposition papers. (See *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is “equivalent to a concession”]; see also *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal. App. 4th 507, 529 [failure to challenge a contention in a brief results in the concession of that argument].)

Therefore, the demurrer to the first cause of action is SUSTAINED on the ground of uncertainty.

Failure to State a Cause of Action

“ ‘The absence of any allegation essential to a cause of action renders it vulnerable to a general demurrer. A ruling on a general demurrer is thus a method of deciding the merits of the cause of action on assumed facts without a trial.’ [Citation.] ‘Conversely, a general demurrer will be overruled if the complaint contains allegations of every fact essential to the statement of a cause of action, regardless of mistaken theory or imperfections of form that make it subject to special demurrer.’ [Citation.]” (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 291-292 (*Morris*).)

“A complaint, with certain exceptions, need only contain a ‘statement of the facts constituting the cause of action, in ordinary and concise language’ [citation] and will be upheld ‘ “so long as [it] gives notice of the issues sufficient to enable preparation of a defense.” ’ [Citation.] ‘[T]o withstand a demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law.’ [Citation.]” (*Morris, supra*, 78 Cal.App.5th at p. 292.)

No Breach of Oral Agreement - Joint Tenancy/Right of Survivorship

As stated above, the subject contract is an oral agreement between Plaintiff and Salvador. The essential terms of that agreement include the following:

- Salvador would maintain control over the house as a constructive/implied trustee for the benefit of Maria (constructive/implied trustee of his half) while she was alive, and after her passing, the entire house for the benefit of himself, Leonard, and Plaintiff, while he was alive.
- In exchange for the constructive/implied trustee role, he (Salvador) and Leonard would be able to live at the house while they lived and have use of the personal contents in the home.
- In exchange for his occupancy, he (Salvador) and Leonard would have to pay the mortgage and property taxes.
- Plaintiff would defer receipt of her inheritance or interest in the home until either the sale of the home or upon Salvador's death. Salvador would have to take whatever actions were needed to make that happen. (See Attachment BC-1 to FAC.)

The terms of the subject agreement are the same as those contained in the agreement between Salvador and Maria. (See Attachment BC-1 to FAC.) Plaintiff appears to allege she was denied her interest in the Subject Property when Salvador died and left his interest to his wife, defendant Sonja. But, as explained in the moving papers, there is no breach of the oral agreement, as a matter of law, as Maria created a joint tenancy with Salvador that was never severed and thus Plaintiff never had a valid expectancy in the Subject Property.

“A joint tenancy, with its attendant ‘right of survivorship,’ is an estate designed primarily to allow two or more persons who jointly own property to avoid probate upon the death of one of the joint tenants. At common law, four unities were required to create a joint tenancy: interest, time, title, and possession. [Citation.] [Citation.] If one of the unities were destroyed, a tenancy in common would result.” (*Estate of England* (1991) 233 Cal.App.3d 1, 4.)

“Joint tenancy creates a right of survivorship, whereby title passes to the surviving spouse without going through probate. [Citation.] In addition, joint tenants typically have separate interests in the property. [Citation.] This means that one joint tenant's interest cannot be reached by the creditors of the other joint tenant. One joint tenant can also unilaterally sever the joint tenancy or alienate his or her share. [Citation.]” (*In re Brace* (2020) 9 Cal.5th 903, 916-917.)

“A joint tenant may sever a joint tenancy in real property unilaterally by: (1) executing and delivering a deed to a third person, (2) executing a deed to him or herself, (3) executing a written declaration of severance, or (4) executing any other written instrument evidencing an intent to sever.” (*Estate of Mitchell* (1999) 76 Cal.App.4th 1378, 1385 (*Mitchell*)).

According to the FAC, Maria added Salvador as a joint tenant by Grant Deed dated November 1, 2022. (See Attachment to FAC at p. 2:8-9.) Maria's subsequent will also confirmed the joint tenancy relationship as it specifically extended the right of survivorship to Salvador and Leonard. (*Id.* at p. 3:3-8; FAC at Ex. E.) There are no allegations in the operative pleading to suggest that either Maria or Salvador severed the joint tenancy. As a consequence, when Salvador died, his share in the Subject Property lawfully passed to Defendant, his wife. Thus, given the existence of a joint tenancy, Plaintiff had no expectancy

in the Subject Property following Salvador's death and therefore there is no breach of an alleged oral agreement.

It may be that Plaintiff intended for Maria's will to supersede (or sever) any alleged joint tenancy that might exist between Maria and Salvador. But, such a position is not persuasive as California law allows for severance *only* where the deed, declaration, or other written instrument is recorded before the severing joint tenant dies. (See *Mitchell, supra*, 76 Cal.App.4th at p. 1385; see also *Pearce v. Briggs* (2021) 68 Cal.App.5th 466 [appellate court held that language in a will stating joint tenancy was community property did not unilaterally sever the joint tenancy when executed because it did not unequivocally show such intent, nor did severance occur at the testator's death because the will was not recorded and there was no severance by other means because the form of title presumption was not overcome].) Here, Plaintiff attaches a copy of Maria's will to her FAC as Exhibit E which has not been recorded and thus cannot, as a matter of law, demonstrate severance of the joint tenancy. Nor does the will itself illustrate an intent to sever the joint tenancy. In fact, the will confirms the existence of a joint tenancy as it extends the right of survivorship to Salvador and Leonard. (See Attachment to FAC at p. 3:3-8; FAC at Ex. E ["Right of survivorship will extend to Leonard Casteneda and Salvador Gutierrez for as long as they shall live"].) Plaintiff fails to substantively address the joint tenancy argument in her opposition. The demurrer is therefore sustainable on this ground.

Plaintiff's Reliance on Probate Code Section 21700, Subsection (5)

Despite allegations of an oral agreement, Plaintiff, in opposition, contends there is a valid claim stated under Probate Code section 21700, subsection (5). (See OPP at p. 3:11-19.) Again that section provides:

- (5) Clear and convincing evidence of an agreement between the decedent and another person for the benefit of the claimant or a promise by the decedent to another person for the benefit of the claimant that is enforceable in equity. (Prob. Code, § 21700, subd. (a)(5).)

Plaintiff however fails to explain how subsection (5) is applicable to the facts of this case. (See *Diamond Springs Lime Co. v. American River Constructors* (1971) 16 Cal.App.3d 581, 608 ["A point suggested by appellant's counsel without supporting argument or authority may be rejected by the reviewing court without discussion."].) Instead, there is only the bare conclusion in opposition stating "[t]hat is sufficiently plead – it now comes down to the weight of evidence." (OPP at p. 3:19.) To the extent Plaintiff intended to refer to any agreement or promise, the operative pleading includes *only* the allegations of the oral agreement stated above. And, the terms of that agreement do not entitle Plaintiff to any relief for breach of contract given the existence of the joint tenancy and lack of severance explained in detail above.

Consequently, the demurrer to the first cause of action is SUSTAINED for failure to state a claim.

Second Cause of Action: Constructive Trust

“An action to impose a constructive trust is a suit in equity to compel a person holding property wrongfully to transfer the property interest to the person to whom it rightfully belongs. [Citations.]” (*Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 658-659 (*Higgins*).)

“The general principles for imposition of a constructive trust are set forth in Civil Code sections 2223 and 2224. [Citation.] Civil Code section 2223 states, ‘One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.’ Civil Code section 2224 provides, ‘One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.’ ” (*Higgins, supra*, 11 Cal.App.5th at p. 659.)

“Three conditions must be shown to impose a constructive trust: (1) a specific, identifiable property interest, (2) the plaintiff’s right to the property interest, and (3) the defendant’s acquisition or detention of the property interest by some wrongful act. [Citations.]” (*Higgins, supra*, 11 Cal.App.5th at p. 659.)

Defendant argues a constructive trust is a remedy, not a stand-alone cause of action and therefore must be dismissed as it is not supported by a valid breach of contract claim for reasons articulated above. (See *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1332 [a constructive trust is an equitable remedy]; see also *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3 [a constructive trust is not an independent cause of action but merely a type of remedy].) Plaintiff appears to concede this point as she fails to address this argument in her opposition.

Accordingly, the demurrer to the second cause of action is SUSTAINED for failure to state a claim.

Leave to Amend

“The plaintiff bears the burden of proving there is a reasonable possibility of amendment.” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43 (*Rakestraw*).) To satisfy this burden, a plaintiff “must show in what manner he (or she) can amend his (or her) complaint and how that amendment will change the legal effect of his pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “Plaintiff must clearly and specifically set forth the ‘applicable substantive law’ [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary.” (*Rakestraw, supra*, 81 Cal.App.4th at pp. 43-44.)

As stated above, Plaintiff has already amended her pleading in response to the filing of a demurrer. Here, Plaintiff does not submit any specific request for leave to amend in her opposition or otherwise explain how any such amendment will change the legal effect of her pleading. Nor does it appear that any amendment can cure the legal deficiencies of the operative FAC. (See *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931, 942 [“[W]here the nature of plaintiff’s claim is clear, but under substantive law no liability exists, leave to amend should be denied, for no amendment could change the result.”].)

As a consequence, leave to amend is DENIED. (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 [“The onus is on the *plaintiff* to articulate the ‘specifi[c] ways’ to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend ‘only if a potentially effective amendment [is] both apparent and consistent with the plaintiff’s theory of the case. [Citation.]’ ”].)

Disposition

The demurrer to the FAC is SUSTAINED WITHOUT LEAVE TO AMEND on the grounds of uncertainty and failure to state a claim. Having sustained the demurrer on these grounds, the court declines to address the remaining arguments raised in the motion.

The court will prepare the Order.

- oo0oo -

- oo0oo –

Calendar Line 5

- oo0oo -

Calendar Line 6

- oo0oo -

Calendar Line 7

- oo0oo -

Calendar Line 8

- oo0oo -

Calendar line 9

Case Name: Abdul Mohammed vs Coinbase Global Inc., et al.

Case No.: 23CV428176

Good cause appearing, Defendants Coinbase Global Inc. and Coinbase Inc. (“Defendants”)’ motion to declare plaintiff Abdul Mohammed, a self-represented litigant (“Plaintiff”) a vexatious litigant, to require him to furnish a bond, to enter a prefiling order, and for stay is GRANTED.

Plaintiff’s requests in his opposition and supplemental papers are DENIED.

Background

On December 21, 2023, Plaintiff, a self-represented litigant, filed his complaint against Defendants.

Plaintiff asserts that Defendants siphoned 100 Bitcoins and 10.6 billion Shiba Inu coins from his Coinbase Pro account and blocked his access to the account.

On May 9, 2024, Defendants filed their motion to declare Plaintiff a vexatious litigant, to require him to furnish a bond, and to enter a prefiling order.. On May 10, 2024, Plaintiff filed his response to the motion. On May 17, 2024, Plaintiff filed a supplemental response to the motion.

On June 11, 2024, Defendants filed their reply to Plaintiff’s opposition papers along with a supplemental request for judicial notice.

Defendants’ Request for Judicial Notice

In support of its motion, Defendants request the Court to take judicial notice of 19 documents, including records on file with the Court and other Court documents. The request is GRANTED. (See Evid. Code, § 452, subds. (a), (d), (h).)

On June 11, 2024, Defendants filed a supplemental request for judicial notice of 6 more additional documents, including records on file with the Court and other Court documents. The request is GRANTED. (See Evid. Code, § 452, subds. (a), (d), (h).)

Vexatious Litigant Generally

The vexatious litigant statutes, California Code of Civil Procedure (“CCP”) section 391 et seq., provide that a defendant may move for an order requiring the plaintiff to furnish security on the ground the plaintiff is a vexatious litigant.⁴ A party may also move to enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in pro per without first obtaining leave of the presiding judge. As relevant here, “a vexatious litigant is one who, commenced at least five pro se litigations in the preceding seven years that have been finally determined against him” (*Wolfe v. George* (9th Cir. 2007) 486 F.3d 1120, 1124); and

⁴ All unspecified statutory references are to the California Code of Civil Procedure.

“while self-represented, repeatedly relitigates or attempts to relitigate matters already finally determined against them or repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.” (*In re Marriage of Deal* (2022) 80 Cal.App.5th 71, 77 [internal quotations omitted].)

Under CCP section 391, subdivision (b), a vexatious litigant means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

“While there is no bright-line rule as to what constitutes ‘repeatedly,’ most cases affirming the vexatious litigant designation involve situations where litigants have filed dozens of motions either during the pendency of an action or relating to the same judgment.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 972.) Ultimately, “[w]hat constitutes ‘repeatedly’ and ‘unmeritorious’ under subdivision (b)(3), in any given case, is left to the sound discretion of the trial court.” (*Id.* at p. 971.)

Analysis

Defendants argue that Plaintiff is a vexatious litigant pursuant to CCP section 391(b)(1) and (2). They also request the Court to order Plaintiff to furnish security, enter a prefiling order prohibiting Mohammed from filing new litigation without prior leave of court, and the action be stayed pending this motion.

Section 391(b)(1)

Defendants argue that Plaintiff's litigation record in the seven years preceding the filing of Defendants' motion permits this Court to determine Plaintiff is a vexatious litigant. Defendants contend Plaintiff has commenced more than five pro se litigations in the past seven years, in which all have been determined against him. (See Defendants' MPA, pp. 9-10.) These cases include:

- Mohammed v. Lyft, Inc., et al. (Case No. 1:16cv2470)
- Mohammed v. Hamdard Ctr. for HHS (Case No. 2017-L-356)
- Mohammed v. Hamdard Center et al (Case No.1:18cv2638)
- Mohammed v. Prairie State Legal Services, Inc., et al. (Case No. 1:18cv4248)
- Mohammed v. Anderson et al. (Case No. 1:18cv08393)
- Mohammed v. State of Illinois, et al. (Case No. 3:20cv50133)
- Mohammed v. Jenner & Block, LLP, et al. (Case No. 1:21cv3261)
- Mohammed v. Robinhood Financial LLC, Case No. 22CV405586

(See Request for Judicial Notice pp. 2-5.)

Further, pursuant to section 391(a), "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court." (Emphasis added.) Therefore, based on Defendants' evidence, the Court finds Plaintiff has maintained over five cases that have been finally determined adversely to him and he may be declared a vexatious litigant under section 391, subdivision (b)(1).

Section 391(b)(2)

Defendants argue that Plaintiff has repeatedly attempted to relitigate in propria persona factual and legal issues that have been determined against him. Additionally, Plaintiff is attempting to challenge the validity of prior court decisions that have been decided against him. (See Defendants' MPA, p. 10.)

To support their contention, Defendants provided an opinion from the Seventh Circuit Court of Appeals regarding Plaintiff:

Mohammed has filed at least fourteen cases in the Northern District of Illinois since February 2016, all of which have been dismissed for reasons including failure to state a claim, lack of subject-matter jurisdiction, and frivolousness. Mohammed's cases mostly stem from domestic-relations disputes. The various defendants have included legal aid and nonprofit organizations that provided services to his ex-wife, administrators at his children's school who reported suspicions of abuse, and dozens of state and federal judges who dismissed his claims or otherwise ruled against him.

(*In re Mohammed* (7th Cir. 2021) 834 F. App'x 540.)

Additionally, Defendants state that Plaintiff has filed numerous cases and appeals in multiple jurisdictions repeatedly against the same group of defendants, all of which were dismissed with prejudice for reasons such as failure to state a claim, failure to state a cause of action, and frivolousness (see Defendants' MPA, pp. 10-13). Furthermore, Defendants assert that Plaintiff has been barred from filing more cases in the Northern District of Illinois Eastern

Division (see Request for Judicial Notice, pp. 3-5). Thus, the Court finds that Plaintiff may be declared a vexatious litigant under section 391, subdivision (b)(2).

Security

“When considering a motion to declare a litigant vexatious under section 391.1, the trial court performs an evaluative function. The court must weigh the evidence to decide both whether the party is vexatious based on the statutory criteria and whether he or she has a reasonable probability of prevailing. Accordingly, the court does not assume the truth of a litigant’s factual allegations and it may receive and weigh evidence before deciding whether the litigant has a reasonable chance of prevailing.” (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 635 (*Golin*) [internal citations omitted].)

After a review of the record, the Court does not find that Plaintiff has a reasonable probability of succeeding on his claims against Defendants. The Court does not believe that Plaintiff will be able to prove his claims. Plaintiff submits no evidence on the merits of this claim in opposition to this motion to support his substantive claims. (See *Golin, supra*, 190 Cal.App.4th at p. 642.) Defendants have demonstrated that Plaintiff’s claims are unlikely to succeed and provided ample evidence of Plaintiff’s ongoing abuse of the judicial system.

When the requirements for an order to furnish security are met as to a moving defendant, “the court shall order . . . security in such amount and within such time as the court shall fix.” (CCP § 391.3, subd (a).) The purpose of the security is “to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party’s reasonable expenses, including attorney’s fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.” (Id. at subd. (c).) The trial court may rely on its own experience and expertise to determine the appropriate amount to set the security. (See e.g., *Reynolds v. Ford Motor Co.* (2020) 47 Cal.App.5th 1105, 1113.)

As noted above, the security is intended to cover the Defendants’ reasonable expenses, including attorney’s fees incurred in connection with the litigation caused to be maintained by Plaintiff. The request for security in the present action is supported by the declaration of Wendy Qiu, filed on 5/9/2024, which states that Defendants seek security of \$20,000. The Court finds \$20,000 to be reasonable, and this case will be dismissed unless Plaintiff posts \$20,000 as security within 15 days of service of this order.

Prefiling Order

Once a court has deemed a party to be a vexatious litigant, the court can on its own motion or the motion of any party, enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge. (CCP § 391.7, subd. (a).)

Here, the Court finds that Plaintiff is a vexatious litigant, and Defendants seek a prefiling order. The Court GRANTS the request and will fill out the appropriate Judicial Council form for this order.

Defendants’ Request to Stay

Pursuant to CCP section 391.6, “when a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.” (CCP § 391.6.)

Defendants filed an answer on 4/29/2024. Accordingly, Defendants’ request to stay is GRANTED. This action is stayed until 10 days after the required security has been furnished and the moving Defendants given notice thereof, or until further order of this court. [However, the stay does *not* prevent any request for dismissal or dismissal *pursuant to* CCP section 391.4 when security that has been ordered furnished is not furnished as ordered.]

Plaintiff’s Opposition

In consideration of Plaintiff’s opposition and supplemental opposition papers, this Court holds that all Plaintiff’s requests for relief are DENIED, including:

- Plaintiff’s request to deny Defendants’ motion to declare vexatious litigant is DENIED.
- Plaintiff’s request to deny Defendants’ request to furnish security is DENIED.
- Plaintiff’s request to deny Defendants’ request to stay is DENIED.
- Plaintiff’s request to enter default judgement as a sanction against Defendants’ attorney’s fraud is DENIED.
- Plaintiff’s request for monetary sanction against Defendants’ attorney’s fraud is DENIED.
- Plaintiff’s request for the Court to enter an order for further relief is DENIED.

No good cause has been shown for any of the requests for relief made by Plaintiff in his opposition or supplemental opposition papers.

Conclusion

For the foregoing reasons, Defendants’ motion to declare Plaintiff as a vexatious litigant is GRANTED.

Here, the Court finds that Plaintiff is a vexatious litigant, and Defendants seek a prefiling order. The Court GRANTS the Defendant’s request and will fill out the appropriate Judicial Council form for this order.

Defendants’ request for judicial notice is GRANTED.

Defendants’ supplemental request for judicial notice is GRANTED.

Defendants’ request for Plaintiff to furnish security in the reasonable amount of \$20,000 is GRANTED. This action shall be dismissed pursuant to CCP section 391.4 unless Plaintiff posts \$20,000 as security for Defendants’ reasonable attorney’s fees and costs within 15 days of service of this order.

Defendants' request to stay is GRANTED. This action is stayed until 10 days after the required security has been furnished and the moving Defendants given notice thereof, or until further order of this court.

All Plaintiff's requests for relief are DENIED.

The court will prepare the order.

- oo0oo -

Calendar line 10

- 00000 -

Calendar line 11

- oo0oo -

Calendar line 12

- oo0oo -

Calendar line 13

- oo0oo -