

## Department 5 Probate Notes for Friday, November 7, 2025

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### 8:30 a.m.

1. **Estate of Nies (PR12559).** No appearance is necessary. This is a petition to approve the proposed plan for final distribution and allowance for fees and costs. A review of the proposal with accompanying disclaimer satisfies this Court's concern regarding the propriety of the plan to close the estate. Court intends to enter the proposed order as is.
2. **Estate of Kamps (PR12703).** This is the initial hearing on a probate avoidance by-pass petition to determine testate succession to a decedent's purported primary residence. Notice to all of the interested persons appears to be satisfied. See §§ 13151(b) and 13153. The legal basis for the putative succession (§13152(a)(4)) is by Last Will & Testament, and a review of the proffered instrument provides a satisfactory prima facie showing of validity and due execution for that will to be admissible (though a DE-131 would be icing on that cake). This Court will accept petitioner's sworn statement that "the described real property was the decedent's primary residence" (§13152(a)(3)) even though her statement technically fails to establish personal knowledge of that fact. The only unforgivable issue here is that the petition must contain proof that the residence was "property of the decedent" at the time of his passing (§§ 13152(a)(3), 13154(b)(4)), and the petition does not include any admissible evidence from which to conclude that decedent had a 100% ownership interest in the subject property. Petitioner's statement of ownership, without more, is insufficient. A preliminary title report or similar evidence would suffice.
3. **Estate of Bellinger (PR12414).** No appearance is necessary. The Court, having received and reviewed the TUO-PR-125, finds by a preponderance of the evidence that good cause exists to extend the period for administration of this estate for an additional 120 days and sets a §12200 review hearing for 03/06/26 at 8:30 a.m.
4. **In re Mangan 2022 Revocable Trust (PR12684).** This is one of several disputes between neighbors over a sub-terranean water line which sprung a leak. This case is related to CV65403, CV65404, CV65161, CV64802, CV64802, CV66925 and CVL65595.

As the parties were recently advised, this Court noted a disconnect with the manner in which this exact dispute is presented. This case is styled "In the Matter of the Carol Mangan Trust" because the property being served by the allegedly-unauthorized water line (the dominant tenement) is held in the name of a trust. However, the wrongdoing which forms the basis for *this particular dispute* was committed by Katherine Patterson in her *individual* capacity, even though she just so happens to also be the successor trustee to the Carol Mangan Trust. The

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claimants allege that Katherine trespassed, exceeded the scope of an easement, usurped riparian rights, and harassed the neighbors in an effort to strongarm access to water during her occasional occupancy. While previous disputes related to Katherine's access to the residence to clear the property and ready it for sale (a service performed in her capacity as trustee), Katherine could in theory have turned off the water to the property, stopped the leak, and not been accused of trespass or riparian violations while still taking care of the property. That is why the current §850 petition is really just a civil lawsuit: §855 allows parties to append civil claims within a bona fide probate petition, not to convert a civil action into a probate claim in order to (1) avoid a right to jury or (2) trigger a statutory right to double damages and attorney fees under §859. It seems to this Court that a dispute between neighbors regarding an easement and water rights is a civil action belonging to the current owners of those parcels, regardless of how ownership of those parcels is held. It was astutely noted by counsel that since the probate and civil calendars in this courthouse are both assigned to Department 5, the election to proceed via probate or civil was likely to result in little difference if all parties agreed to waive a jury. Perhaps, but at the risk of exalting form over substance, this Court has no intention of splitting the disputes and allowing further judge-shopping as appears to have taken place already – so every case of any kind involving these parties will be consolidated for all purposes right here in Department 5 absent order from the Presiding Judge.

Back to the regularly-scheduled program for today – plaintiff's demurrer to the cross-petition.

On 09/12/2025, Katherine filed a cross-petition (aka cross-complaint) containing four causes of action, to wit: intentional interference with prospective economic advantage; negligent interference with prospective economic advantage; prescriptive easement; and unreasonable interference with easement. Plaintiffs have demurred to the cross-petition *in toto* (standing), and to each of the four causes of action contained therein (uncertainty). A demurrer is a legal challenge to the adequacy of a pleading, not a challenge to the validity of the claims themselves. See *Greif v. Sanin* (2022) 74 Cal.App.5th 412, 426.

Defendants first attack via CCP §430.10(b) on the ground that Katherine does not have the legal capacity to prosecute these four causes of action because a non-attorney trustee with more than one beneficiary cannot appear in court on behalf of the trust. See *Boshernitsan v. Bach* (2021) 61 Cal.App.5th 883, 894; *Donkin v. Donkin* (2020) 47 Cal.App.5th 469, 471-473; *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548. A review of the operative pleading makes rather plain that all four causes of action belong to Katherine in her representative trustee (not individual) capacity. Since it can be inferred within the four corners of the operative pleading (reference to her siblings) that there are other trust beneficiaries, Katherine is not authorized to appear in court without an attorney. The demurrer on this basis alone must be sustained with 30 days leave to amend. Katherine will either need to retain an attorney, or file an amended pleading making plain that she is the only beneficiary of the now-irrevocable Carol Mangan Trust.

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Although it would be reasonable, and perhaps prudent, to stop here, this Court notes that the parties deserve some guidance on the other issues raised by demurrer, to wit: failure to state and uncertainty. CCP §§ 430.10(e) and (f). As to the former, if upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. *New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566. In other words, a general demurrer for failure to state a cause of action must be overruled, if the pleading states, however inartfully, facts disclosing some right to relief. *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352. As to the latter, a demurrer for uncertainty will be sustained only where the complaint is so bad that the defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695; *Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822; *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; *Houry v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.

The trust's first two cross-claims are for tortious interference with prospective economic advantage. In both versions, the pleader must allege facts showing (1) an economic relationship between the pleader and some third party, with a reasonable probability of future economic upside for the pleader; (2) the defendant's knowledge of that relationship; (3) disruption of that relationship; and (4) economic harm proximately caused thereby. For the *intentional* version, the pleader must include facts showing that the defendant engaged in intentional and independently wrongful acts *designed* to disrupt that relationship. For the *negligent* version, the pleader must include facts showing that the defendant was (or should have been) aware that if it did not act with due care, its negligent conduct would disrupt that relationship. Either way, the defendant's conduct must be independently "wrongful" by some objective measure – that is, proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard. *Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512; *Optronic Technologies, Inc. v. Celectron Acquisitions, LLC* (2025) 108 Cal.App.5th 770, 788; *Crown Imports, LLC v. Superior Court* (2014) 223 Cal.App.4th 1395, 1404-1405. Since it is alleged that Carolyn "requested that she be notified any time a prospective buyer made an appointment to see" the property, and that the realtor was expected to coordinate "the showings directly with Carolyn" (see Para 6), it is reasonable to surmise that Carolyn *probably* knew about the \$550,000 offer described in Para 9. *However*, the trustee must allege that the defendants had actual knowledge of the economic relationship – not just that it was predictable that some offer might roll in at some point. Moreover, it seems that these causes of action really only apply to Carolyn – the alleged mastermind of what Katherine claims to be something akin to a Ponderosa extortion club. It is not clear what role Mark and Penny White played in the alleged sabotage, or why Nancy Martinez is not more involved in this. Either way, this

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Court would require a more precise pleading for these two causes of action, and but for the standing issue would sustain the demurrer with 30 days leave to amend.

The third cause of action is for prescriptive easement. A nonexclusive easement acquired by prescription is an easement acquired by use and occupancy. Civil Code §1007. To establish the elements of a prescriptive easement, plaintiff must establish by clear and convincing evidence that it has made specific and definable use of some portion of defendant's property (see CRC 3.1151) for at least five years which was (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the landowner; and (4) under claim of right. *Husain v. California Pacific Bank* (2021) 61 Cal.App.5th 717, 725-726; *Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032; *Grant v. Ratliff* (2008) 164 Cal.App.4th 1304, 1310; *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449. The concept of hostility is synonymous with adversity, and is loosely defined as use without any express or implied recognition of the owner's property rights, or in defiance of the owner's property rights. Stated another way, whether the use is hostile or is merely a matter of neighborly accommodation is a question of fact to be determined in light of the surrounding circumstances and the relationship between the parties. *Husain* at 726; *McBride* at 1181; *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252 [adverse use means that the claimant's use was made without the explicit or implicit permission of the landowner]. The Court in *Vieira Enterprises, Inc. v. McCoy* (2017) 8 Cal.App.5th 1057, provided a comprehensive discussion of how passive use is generally insufficient to establish the kind of adversity and hostility needed to acquire legal rights to the land of another. *Id* at 1075-1085. Since Katherine here claims that the right to access water across the White property is by an express easement via the CC&Rs, it seems to this Court that establishing the requisite hostility would only exist once the dispute actually came to light – which only existed since 2022 (not five or more years). It seems to this Court that Katherine is actually describing in her pleading an easement by necessity (*Murphy v. Burch* (2009) 46 Cal.4th 157, 163; *Kellogg v. Garcia* (2002) 102 Cal.App.4th 796, 803-804) or an equitable easement (*Wang v. Peletta* (2025) 112 Cal.App.5th 478, 491; *Shoen v. Zacarias* (2015) 237 Cal.App.4th 16, 19-22; *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1008; *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265) rather than a prescriptive easement. This Court would require a more precise pleading for this cause of action, maybe even a different horse altogether.

Finally, the trustee pleads a cause of action for interference with easement. Since it is impossible to assess any interference, let alone a permissible scope, without first identifying the type of easement, this cause of action would rise and fall with the third case of action, and suffer the same fate.

Before the parties embark on a long(er) and (more) arduous legal journey, this Court proposes that all interested parties come together for a single settlement conference on a day convenient for all with the singular goal of putting all of this to bed once and for all.

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5. **In re Harray Family Trust (PR12700).** No appearance is necessary. Before the Court this day is a petition to declare APN 044-525-043-000 an asset of the Harray Family Trust dtd 12/18/98. A trial court may make a transfer of assets into an irrevocable trust beyond the life of the surviving settlor, pursuant to §856, if the settlor(s) presently own(s) the asset in question, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence to find by a preponderance of the evidence that the settlor(s) intended said property to be held in that trust but failed to make the transfer by mistake, surprise, excusable neglect or innocent omission. See, e.g., *Carne v. Worthington* (2016) 246 Cal.App.4th 548, 558-560; *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156, 160-161; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1443; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 950-951. Since there is often little if any objection to what practitioners colloquially refer to as a *Heggstad* petition, the quantum of evidence needed to prevail on an unopposed petition is said to be “fairly light” and “just enough to do equity.”

Pursuant to the Page 1 declarations of the trust instrument, the res of the Harray Family Trust dtd 12/18/98 was to include (1) “all the property described in an inventory” attached and marked as Exhibit ‘A’ and (2) “any other property that may hereafter be transferred or conveyed to and received by the trustee.” It was expressly noted on Page 2 that “the trustors, or either of them, may from time to time add other property acceptable to the trustee to the estate.” On 09/12/07, when authorized to act as the sole settlor/trustee, Sandra Harray executed a grant deed transferring into the trust APN 044-525-043-000. On 12/26/23, when still authorized to act as the sole settlor/trustee, Sandra Harray executed an amendment to the trust instrument directing the successor trustee upon her demise to distribute APN 044-525-043-000 in a specified manner. It is patently clear that Sandra intended, and believed, APN 044-525-043-000 to be an asset of the trust. It is also clear that it was removed from the trust in October of 2012 to permit a loan refinance on the property, but for no other purpose. All indications are that Sandra failed to make the transfer back into the trust by mistake, surprise, excusable neglect or innocent omission. The petition shall be GRANTED.

6. **Estate of Holland (PR12327).** John Robert Holland (hereinafter “John”) was born in Chicago, Illinois, in 1948. He grew up in Southern California. After completing his primary education, John embarked on a distinguished career as a law enforcement officer: first with the Los Angeles Police Department, and then with the Tuolumne County Sheriff’s Department. During his years in law enforcement, John fathered three children: a daughter in 1966 he named Francesca; a son in 1974 he named Michael; and a daughter in 1977 he named Michelle. John retired from law enforcement in 1998. Soon thereafter, he accepted a position at Butte College teaching Administration of Justice. It appears from the record that John then purchased a home on Jack Hill Drive to be close to the college. In 2008, John married Frances E. Mendenhall (hereinafter “Frances”).

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On 05/10/2010, John prepared a relatively anemic Last Will & Testament leaving all his worldly possessions to Frances. Six months later, John prepared a similarly anemic Last Will & Testament, this time leaving all his worldly possessions in equal amounts to Frances, Francesca, Michael and Michelle (see detailed discussion *infra*).

On 05/24/2016, John and Frances purchased a parcel of land in Apple Valley Ranches (APN 085-422-018-000) for \$120,000. The record permits an inference that it was John's dream to build a custom home and retire here in Tuolumne County. Frances was no doubt on board.

In May of 2017, John retired from his teaching post at Butte College, and began putting into action the plan to migrate to Sonora for retirement. He and Frances put together plans for the construction of their custom home, and – in October of 2017 – hired John's son Michael (or rather Michael's company Granite) to serve as the general contractor for the project. At a contract price at just shy of \$1M, the home would come to be almost 6,000 sq ft, with 4 bedrooms and 6 bathrooms.

John, Michael and Frances encountered some disputes along the way – largely over finances. Although the contemporaneous emails and letters fired off between the various camps used the construction project as the ostensible base for the disagreements, it was evident that money was a sore subject in this family over the course of many years. The parties were arguing over money advanced for a car, a cabin, a recycling venture, a retaining wall, and a few other things which had no direct relationship to the palatial estate being constructed on Apple Hill Drive. During this same period of time, John and Frances sold the Oroville property and moved into an RV, awaiting the completion of the Apple Hill house. The conflation of many issues caused an unfortunate rift to develop between Michael and John. While there appears to be some disagreement between Michael, John and Frances regarding "fault" for the problems with the house, John and Frances were compelled to assume early occupation of the home in late December of 2020. This prompted a premature "final inspection" by the County, and a considerable "fix-it" correction notice.

On 02/10/2022, Michael caused his company Granite Building and Developing Inc. to commence litigation for contract damages against John and Francine (see CV64346), and then manufactured a false basis for effectuating service via publication. While John was developing dementia, and slowly losing his battle with Parkinson's disease, Michael's attorney took defaults (which this Court eventually set aside).

On 09/17/2022, while still embroiled in litigation with his son, John died.

Michael's lawsuit was voluntarily dismissed in favor of contractual arbitration, which Michael then voluntarily abandoned.

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On 08/29/2023, Frances took her turn at bat, filing her own lawsuit against Michael and Granite Building and Developing Inc. (see CV65546). The claim against Granite pertained to the Sonora residence, while the other causes of action involved financial disputes personal to Michael (basically loans that Frances and John reportedly made to Michael over the years). This filing resurrected for Granite the opportunity to bring a cross-claim asserting its previously abandoned claims for breach of the construction contract, which it filed soon thereafter.

On 09/15/2023, Michelle filed this probate action (PR12327) seeking to admit John's second will to probate, and to have Frances, Francesca, Michael and herself all appointed to serve as co-executors of John's will. Michelle also lodged on that day her own creditor claim against the estate for \$1M. The petition was assigned an initial hearing date of December 8. Rather than wait for Letters, Michelle caused to be issued in early November subpoenas for John's financial banking records from U.S. Bank, JP Morgan, LAPD Credit Union, Wells Fargo, Charles Schwab, Bank of America, Edward Jones, Umpqua Bank, and Fidelity. Frances objected on relevance, privacy and breadth. This Court issued a written ruling resolving Frances' motions to quash/limit the aforementioned subpoenas – allowing Michelle limited discovery despite the fact that she had not (yet) been appointed to serve as executor, and had not yet acquired standing to use discovery for her creditor claim (see *infra*).

At the initial hearing on Michelle's petition for probate, Frances objected to the proffer to admit the November 2011 will – contending alternatively that (1) John had no assets subject to probate and (2) if he did, the May 2011 will – leaving everything to Frances – was controlling and allowed Frances to use a by-pass spousal petition to avoid probate. As this qualified as a will contest, the matter was set for trial.

On 04/19/2024, the parties filed a joint stipulation to continue the will contest trial. That was granted, and the trial was continued to late July.

On 07/15/2024, the parties filed another joint stipulation to continue the will contest trial. That was granted, and the trial was eventually re-set to late January 2025.

On 11/08/2024, Frances caused to be served upon Michelle a first round of written discovery (FRogs, SRogs, RPD, RFA). Just prior to the response date, Michelle's lawyer bailed.

On 01/02/2025, Frances filed three discovery motions (RPD, RFA, SRogs), seeking immediate relief via *ex parte* notice. The motions were served via email on New Year's Eve, shortly before Ryan Seacrest dropped the ball in Times Square.

On 01/09/2025, Frances filed a fourth discovery motion (FRogs), seeking immediate relief via *ex parte* notice. That same day, Michelle filed a written response to the motions with the Court,

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in letter form, advising that she has served both an original and a supplemental response to all discovery requests.

On 01/10/2025, both sides indicated that the will contest trial was probably no longer needed.

On 01/16/2025, Michelle filed written opposition to the four motions to compel.

On 01/22/2025, the will contest trial dates were vacated, and the Court agreed to take under submission the concern raised by Frances that the discovery provided by Michelle was not substantially compliant “pending receipt from respondent’s counsel of accurate updated discovery responses and probate inventory and appraisal documents.” The issue, from this Court’s perspective, is that it did not have an updated separate statement or Michelle’s supplemental discovery responses in order to assess whether there was substantial compliance.

On 03/26/2025, this Court issued an Order After Judicial Review, setting a hearing date and noting that it had not yet received the documents needed to evaluate substantial compliance.

On 04/07/2025, Frances filed a motion for summary judgment/adjudication. The motion was noticed for a hearing date of May 9.

On 04/18/2025, this Court advised Frances that her recently-filed MSJ/MSA did not comply with CCP §437c and Probate Code §1000.

On 05/13/2025, the parties filed a joint request to continue the review hearing so that they could try to resolve a related case.

On 07/31/2025, Michelle filed a request to continue the upcoming review hearing on August 15. Frances objected.

On 08/08/2025, Michelle filed a motion for the appointment of a limited-purpose receiver to assist with an Inventory & Appraisal. Frances objected.

On 08/11/2025, Frances filed a “Notice of No Opposition” to the previously-filed discovery motions and the previously-filed motion for summary judgment/adjudication.

On 08/14/2025, this Court posted a lengthy probate note, taking the August 15 hearing off calendar and pointing out certain anomalies in the case that had recently come to light. This Court pointed out that Frances was mistaken in her belief that her MSJ/MSA was set for hearing on August 15, and was further mistaken by her representation that Michelle did not file opposition to the motions to compel further discovery responses (which were likewise not set for hearing on August 15). Two days later, Michelle filed opposition to the MSJ/MSA.

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### Frances' MSJ/MSA

#### A. Procedural Anomaly

On 04/08/2025, Frances served via email a motion for summary judgment/adjudication. Pursuant to Probate Code §1000(a) and CCP §§ 437c(a)(2), 1010.6, “notice of the motion and supporting papers shall be served on all other parties to the action at least 81 [calendar plus 2 court] days before the time appointed for hearing.” That would have made July 2, 2025, the earliest the motion could have been set for hearing. The motion was set to be heard on May 9, 2025 – which was considerably premature. The only cure for a non-compliant MSJ is to refile and start anew. See *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268. Moving out the hearing date is not an option. As such, the motion was, as it were, procedurally defective and essentially dead on arrival.

Attorney Halligan contends that it was not her fault, blaming the court staff for assigning her a hearing date that was not code-compliant (see Response to Probate Notes dtd 10/24/25). Pursuant to TCSC Local Rule 5.04.0, “for existing cases, parties are encouraged to call the clerk's office in advance of filing their papers in order to reserve a hearing date if they have a preferred hearing date. If a party's papers reflect a hearing date that was not reserved in advance and is not available, the clerk's office may assign a different hearing date.” Counsel claims that she called the courthouse, requested a proper hearing date, and was told to send in the motion without a date and that one would be assigned for her. While this would conflict with the local rule of court, this Court has no way (or desire) to disprove the representation. Assuming a clerk did mess this up, counsel should have immediately moved *ex parte* for a proper hearing date on clerical impedance grounds. Counsel did not do so. Instead, counsel read into this Court's statement that it would “address the MSJ” in the ruling regarding the discovery motions as this Court's intention to cure the defect sua sponte. It was never this Court's intention to save Frances' MSJ/MSA, but rather than kick it and invite a repeat filing, this Court is amenable to reaching the merits with the understanding that Frances will not also be getting a “leg up” by disregarding Michelle's opposition, which was “late” according to Frances even though the MSJ/MSA was never assigned a valid hearing date.

#### B. The Actual Reach of the MSJ/MSA

The notice of motion must state with precision the nature of the relief sought and the grounds therefore. CCP §1010; CRC 3.1110(a). It is a basic tenant of motion practice that the notice of motion carefully define the issues to be presented for the information and attention of both the adverse party and the court. See *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277. Here, the notice of motion accompanying the MSA/MSJ stated that Frances was entitled to judgment as a matter of law because (1) there are no assets subject to probate, (2) the November will was

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not duly executed, and (3) Michelle is ineligible to serve as personal representative because she cannot qualify for a bond. These are the three issues that Frances has noticed her motion for; however, these are not the issues she has briefed.

The third issue – Michelle’s ability to qualify for a bond (presumably under CCP §995.240) – is a red herring. First, with an MSA, the separate statement must tie each “undisputed material fact” to the particular claim, defense or issue sought to be adjudicated. CRC 3.1350(b); see *Truong v. Glasser* (2010) 181 Cal.App.4th 102, 118. There is nothing in the separate statement referencing Michelle’s ability, or inability, to secure a bond. Second, pursuant to CRC 3.1113, a party filing a motion must serve and file a supporting memorandum containing “a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.” See *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 577-578. Although the specific format of a memorandum is left mostly to the style of the party, “the court may construe the absence of a memorandum as an admission that the motion is not meritorious and cause for its denial.” CRC 3.1113(a). The memorandum supporting the MSJ/MSA does not reference, let alone, analyze, Michelle’s ability to secure a bond.

Both the separate statement and the memorandum of points and authorities do, however, include an issue that was left out of the notice of motion, to wit: whether Michelle has statutory priority to serve as personal representative. This, of course, is not an issue that is subject to resolution via summary adjudication because the individual selected by this Court to serve as the personal representative does not rise to the level of “one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty.” CCP §437c(f)(1)). Although it is certainly a “legal issue” worthy of early resolution via MSA, the parties did not jointly agree to submit this issue to the Court for resolution via MSA to “further the interest of judicial economy” prior to the time Frances filed her MSJ/MSA. See CCP §437c(t). It was always the preference of the parties to have the issue decided as part of a full will contest, which was set and vacated at the behest of the parties many times. While the MSA is technically denied, this Court is addressing in detail the question of who shall be appointed to serve as personal representative (*infra*).

### C. The “No Asset” Argument - Denied

If an interested party does not agree with the assets listed by the personal representative on the Inventory & Appraisal, that person can bring a petition to conduct discovery and adjust the inventory accordingly. See Probate Code §§ 850(a)(2)(C) and (D), 8870-8872.

If an interested party does not agree with the valuation given to the assets listed by the personal representative on the Inventory & Appraisal, that person can bring a petition for judicial intervention to adjust the valuation accordingly. See Probate Code §8906.

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If, “after appointment of a personal representative, it appears there is no property of any kind belonging to the estate and subject to administration, the personal representative may petition for the termination of further proceedings.” See Probate Code §12251.

The question of whether there are assets in John’s estate subject to probate cannot be answered as a matter of law prior to the filing of the I&A. There is no statutory minimum threshold which must be met in order to trigger subject-matter jurisdiction for the probate court, and no statute empowering interested persons to block probate just because those seeking appointment have been unable to identify the assets first. Although the Code provides a myriad of probate avoiding by-pass options, the personal representative is never obligated to use a by-pass and is free to proceed via ordinary probate if that is their preference. There is a reason the Code gives the personal representative four months after Letters are issued (see §8800(b)), and that is because one assumes it takes some time after getting legal authority to act (the Letters) to actually figure out what the assets are (see §§ 9600(a), 9650(a)(1)). That is precisely why §12251 is termed in favor of the personal representative seeking permission to terminate the proceedings if no assets come to light. Interested persons do not have the power to terminate the probate proceedings, only the personal representative does. The decision in *In re Robinson’s Estate* (1942) 19 Cal.2d 534 is controlling. In that case, the trial court took the bait and vacated an order appointed a personal representative on the motion of an interested person claiming that the estate had no assets. The Supreme Court reversed, holding that “if it should develop that there is no property of any kind belonging to the estate and subject to administration in the State of California, the appropriate course would be the filing of a petition signed and filed by the administrator or on his behalf showing such fact and praying for termination of the proceedings.” *Id.* at 539-540.

### D. The November Will

A will is considered presumptively valid if:

1. Testator is at least 18 years of age (§6100(a))
2. Testator is of sound mind (§6100(a));
3. The will is in writing (§6100(a));
4. The will is signed by or behalf of the testator (§6100(b));
5. There is present testamentary intent;
6. There is identifiable property to be devised (§6101);
7. There are identifiable devisees (§6102);
8. Testator is not acting under duress, menace, fraud, or undue influence (§6104);
9. There are two simultaneous witnesses to the will (§6110(c));
10. Both witnesses sign the will, at some point before testator died (§6110(c)).

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See *Estate of Berger* (2023) 91 Cal.App.5th 1293, 1302; *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1355; *Estate of Ben-Ali* (2013) 216 Cal.App.4th 1026, 1036-1038; *Estate of Williams* (2007) 155 Cal.App.4th 197, 212-213; *Estate of Burdette* (2000) 81 Cal.App.4th 938, 946.

In this case, John is reported to have executed two testamentary instruments – the first in May of 2010, and the second just six months later in November of 2010. Frances contends that if any will controls, it must be the one John first executed in May of 2010 because the one he did in November of 2010 was not duly executed.

On May 10, 2010, decedent affixed his signature to a typed document purporting to be his Last Will & Testament (hereinafter “Will #1”). Therein, he revoked all prior instruments, directed “all [his] belongings, properties, debts and bank account funds” to Frances, and nominated Frances to serve as the executor. Will #1 includes the signatures of two witnesses (Terry and Larry). Will #1 specifically provides that decedent signed “in the presence of” the witnesses, who were “in the presence of each other” when they signed as well. Taking the instrument at face value, John, Terry and Larry appear to have signed Will #1 together. While Will #1 lacks §6110(c)(1)(B) support, that could be curable with a DE-131 from either Terry or Larry. Will #1 *might* be admissible.

On November 11, 2010, decedent affixed his signature to a typed document purporting to be his Last Will & Testament (hereinafter “Will #2”). Therein, he revoked all prior instruments (ie, Will #1), directed that “all [his] belongings, properties, debts and bank account funds” be divided equally between Frances and his three adult children (Francesca, Michael, and Michelle), and nominated all four to serve as co-executors. Will #2 includes the signatures of three witnesses (Matthew, Brenda and Catherine). There is no question that John signed in Matthew’s presence, and that Matthew’s double signature makes him both a witness and a notary (a notary only signs the acknowledgement per Civil Code §1188). Taking the instrument at face value, Brenda and Catherine were “with” John and “in the presence of” both John and Matthew during the signing, even though Matthew did not acknowledge them as signers in the Optional Information section on page 2. Catherine was deposed in this case, and testified that while she had no specific recollection of seeing John, Brenda or Matthew that day fifteen years ago (see Rptr Tx 12:6-11, 14:22-15:2), she did confirm her signature on John’s will and John’s acknowledgement to her of Will #2 (see Rptr Tx 12:1-5). Although a DE-131 from Brenda, or Matthew’s log book, could help connect the dots, Michelle will satisfy her burden of proving by a preponderance of the evidence that Will #2 was duly executed (see §8252(a)) with two simultaneous witnesses to *either* John’s signing or acknowledgement because Will #2 says they were all together and immediately after Will #2 was signed/notarized it was placed inside a closed envelope, re-signed by John on the outside, sealed with tape over his signature/date, and deposited into a secure storage for safe keeping until opened after John’s passing (see below). The sealed document contained the signatures of John, Matthew, Catherine and Brenda, which

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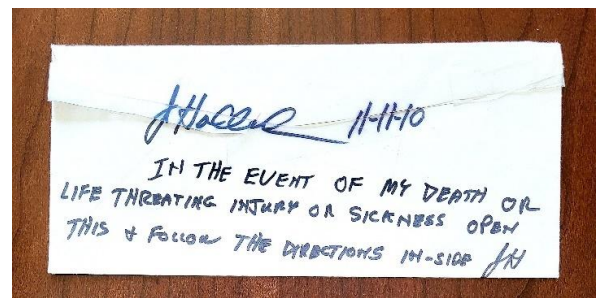
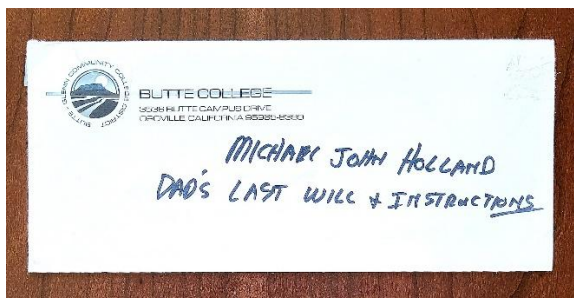
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means that all four of them were present on November 11. Even though it is not necessary for the witnesses to actually sign at the same time, it appears that they in fact did.

Even if Frances were correct that somehow Will #2 lacks some element of due execution (it does not), Frances seems to have forgotten (B&P §6068, CRPC 3.3) about AB 2248 – which has been on the books since 2008. According to the Legislative history, the primary objective of §6110(c)(2) was to “import the principle of harmless error into the construction of a will in order to allow its probate despite the fact it does not meet statutory requirements” and “to allow the probate of wills that, while imperfect because they do not meet the strict requirements of Probate Code Section 6110, are simply the result of oversight or missteps.” The history further provides that “by adopting a harmless error rule with regard to witnesses’ requirements, this bill hopes to reduce the number of wills thrown out of court, increase the number that are actually probated, and reduce potential litigation.” The statute is directly applicable here: “if a will was not executed in compliance with paragraph (1), the will shall be treated as if it was executed in compliance with that paragraph if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator’s will.” Probate Code §6110(c)(2). Stated more succinctly, a defect in the witness attestation requirement does not matter if there is a “high probability” that this was nevertheless the testator’s will. See *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 999. The evidence that John intended Will #2 to be his operative estate plan is overwhelming:

- He went through the trouble and expense of hiring a notary public;
- He easily complied with 9 of the 10 requirements for creating a valid will;
- He acknowledged Will #2 to both Catherine (Rptr Tx 12:1-5) and Matthew (CA All-Purpose Acknowledgement).
- He placed Will #2 in a conspicuously sealed envelope with very explicit instructions:



In addition, it must be noted that holographic wills do not require witnesses at all. Although the statute still requires non-witnessed wills to be in the “handwriting” of the testator, and Will #2 was typed, it is common knowledge that in modern society people are more likely to “type” their holographic wills rather than actually scribe them with pen and paper. As noted in the Legislative history behind §6110(c)(2), “cases involving will execution requirements illustrate

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how the technicalities of Section 6110(c) can surprise even attorneys involved in the will execution process. These technicalities are a minefield for non-lawyers drafting anything other than a hand-written holographic will. The harmless error rule makes sense in any era, but especially in an era when people increasingly make extensive use of computers and type correspondence of any real length. Traditional penned holographic wills will give way to wills typed at the computer or based on an Internet form. Will execution requirements should reflect the rational expectations of society and should not act as traps.”

One need look no further than *Estate of Berger* (2023) 91 Cal.App.5th 1293, a case right on point which unfortunately did not make it into Frances’ memorandum. In *Berger*, the Court provided a lengthy explanation for why trial courts are to err on the side of forgiving errors regarding attestation when the will otherwise appears to be valid (*id.* at 1302-1304):

“Requiring a testator to adhere to such formalities serves three functions – namely, (1) an evidentiary function by furnishing reliable evidence about the testator's intent; (2) a protective function by reducing the possibility of interference with the process of execution; and (3) a cautionary or ritual function to help ensure that the will reflects a considered decision. But these prescribed procedures are not without exception. Specifically, the code will overlook a testator's noncompliance with the two-witness requirement if the party seeking to have the probate court recognize the document as a will establishes by clear and convincing evidence that, at the time the testator signed the document, the testator intended the document to constitute the testator's will. These relaxed procedures are designed to give effect to a drafter's clear intent to dispose of property through a proffered document, even when that document has procedural deficiencies or mistakes that cause it to fall short of fully complying with [Code]. Indeed, our Legislature specifically enacted the exception that authorizes a probate court to give effect to a defectively drafted will when the drafter's intent to do so is particularly compelling as a means of deeming ‘harmless’ the commission of drafting errors in the hope that such a harmless error rule would reduce the number of wills thrown out of court, increase the number that are actually probated, and reduce potential litigation. In applying the exception set forth in section 6110, subdivision (c)(2), the probate court's task is to examine whether the drafter must have intended, by the particular instrument offered for probate, to make a revocable disposition of his property to take effect upon his death. In assessing whether an instrument was intended to be testamentary, the probate court is to look to (1) the words in the document itself, and (2) the circumstances surrounding its creation and execution.”

This Court would easily find a high probability that Will #2 accurately reflects John’s testamentary intent and considered decision as of November 11, 2010. Since no superseding testamentary instrument is proffered, that is the controlling instrument, and is therefore entitled to admission to probate.

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With Will #2 clearly entitled to admission to probate, it is necessary to appoint one or more persons to act as representative for the decedent's estate (§8254). Ordinarily, "the person named as executor in the decedent's will has the right to appointment as personal representative." See §8420. In this instance, that would be Frances, Francesca, Michael, and Michelle serving as co-executors. Obviously that would be way too many chefs in this cramped hostile kitchen. Fortunately, §8425 impliedly codifies this Court's authority to appoint fewer than the number of persons nominated by John to serve as executors – but who amongst the four should be stricken from the list? Pursuant to §8402(a), persons who are "incapable" or "unfit" for the job can be stricken from the list. While these conditions are not technically defined, examples of such are set forth in §8502, including proposed executors who are accused of waste, embezzlement, neglect, mismanagement, fraud, or "any other cause provided by statute," including actual or perceived conflicts of interests. See, e.g., *Baker Manock & Jensen v. Superior Court* (2009) 175 Cal.App.4th 1414, 1423; *Estate of Hammer* (1993) 19 Cal.App.4th 1621, 1642.

Francesca lives in Las Vegas, Nevada, has made no appearance in this case, and has shown absolutely no desire to get involved. She did not subscribe an oath to perform (§8403), file an acknowledgement of the duties and liabilities (§8404), or seek appointment within 30 days of decedent's passing (§8001), all which demonstrates a waiver of her right to be appointed. She has (perhaps wisely) remained entirely out of the fray.

Michelle was admittedly late to the courthouse (§8001), and has yet to file her permanent residency statement (§8573). These can be forgiven. What cannot be forgiven is Michelle's creditor claim lodged 09/15/2023, in which she claims a personal entitlement from John's estate of \$1,000,000. To her credit, she was transparent: "I am simultaneously seeking appointment as co-executor of decedent's estate under decedent's will dated 11/11/201 and wish to preserve [my] right to recover funds from decedent's estate." This Court has previously expressed its surprise with the decision to file a creditor claim of this magnitude and simultaneously seek appointment as personal representative, especially since §§ 9252 and 9254 all but guarantee two separate merit-based reviews all because the claim is being pursued by the personal representative. Since the personal representative is responsible for notifying creditors, collecting claims, deciding claims, and exposing the estate to litigation, a personal representative with too much individual skin in the game is presumed to be laboring under a conflict of interest. With an estate alleged to be fairly modest (currently \$10,000), Michelle's skin in this game is far too great to have her sitting in the owner's box.

Frances does not support Will #2 because it results in a 75% cut to her testate share. This Court does not understand why Frances cares about a threatened hair cut on an allegedly bald head, but her excessive resistance signals an unwillingness to do the job. She did not take and subscribe an oath to perform (§8403), file an acknowledgement of the duties and liabilities of

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the office of personal representative (§8404), or seek appointment within 30 days of decedent's passing (§8001), all which demonstrates a waiver of her right to be appointed. In fact, she never proposed the May 2011 will for probate, which could have put all of this estate litigation to rest had she done that in a timely fashion. Instead, she sat back, did nothing, and left room for Michelle to bring a much-delayed petition. Given her contest to Will #2, the potential for an adverse award of costs (§1002), and potential abuse of process claims (see, e.g., *Crowley v. Katleman* (1994) 8 Cal.4th 666, 679), it seems clear to this Court that Frances is incapable or unwilling to faithfully execute the duties of this particular office. §8502(b). Thus, she is ineligible for appointment here (§8402(a)(3)).

Michael is alleged to have a conflict of interest with the estate and the devisees because he has a lawsuit against the estate. Not quite right. On 02/10/2022, Michael filed a lawsuit against John and Frances for failing to pay the balance of the construction contract (see CV64346), but dismissed the case in favor of contractual arbitration. The arbitration claim was also dropped. Frances then filed her own lawsuit against Michael and his construction company (Granite Building & Development Inc) based in part on the same construction project (CV65546), which allowed *Granite* (only) to file a cross-complaint against Frances. As such, Michael has no present claims against the estate, and no apparent conflict of interest that would automatically prohibit him from receiving an appointment to serve as executor of decedent's estate. He is defending a suit by Frances, and is probably not too happy about that, but service as the personal representative helps his two sisters so the chance of a conflict is comparatively small.

Michael will be appointed to serve as the sole executor of this estate. This Court finds good cause exists for his delay in seeking the appointment, to wit:

1. he was entrenched in personal litigation with Frances at the time;
2. he understood that his sister would be taking the lead on the petition for probate;
3. by 12/08/2023, he was already being considered for the job of executor;
4. the court trial to determine whether Michael would be appointed was set for 04/24/2024, then continued at the request of the parties to 07/25/2024, then vacated altogether at the request of the parties – leaving the issue up in the air.

Michael will be expected to immediately execute, file and serve a DE-147, a DE-150, a proposed DE-140, and as soon as practical file a surety bond in the amount of \$25,000. The probate referee will be appointed. Michael will be granted 90 days from issuance of the Letters to file a Final Inventory & Appraisal. As a reminder, joint bank accounts held in the name of the decedent and another person would not ordinarily be probate assets, as those should have remained in the name of the survivor. Also, personal property purchased during a marriage is presumably community property (Family Code §760), which means that John's probate estate could only include his 50% interest in those assets not held in trust (Probate

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Code §§ 100, 104). See, e.g., *Reich v. Reich* (2024) 105 Cal.App.5th 1282, 1290; *Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1746; *Saunders v. Saunders* (1950) 98 Cal.App.2d 133, 135-137. Since John did not set aside his half of the community to Frances, directed that “all [his] belongings, properties, and bank account funds” be distributed 25% to all four devisees, and only owned a 50% interest in anything that was community property, Michael is going to have to work hard to discern what property, if any, was John’s via the community, and John’s via separate property – and do the calculations accordingly. What did John own prior to marriage? What did John acquire post-marriage with funds traceable to a separate property source? What assets are community property that are not in trust, and not saddled with an existing non-probate successor ownership status (right of survivorship, joint bank account, etc)? This will be an interesting I&A to say the least

This resolves all of the issues raised in Frances’ MSJ/MSA. That motion is denied, There are ancillary requests therein for things like litigation costs (denied), sanctions for frivolity (denied) and attorney’s fees (denied). The fee request deserves a few more words. Counsel cites in support of her request for an award of attorney fees via MSJ/MSA the following statutes: CCP §§ 1021, 1026, 128.5, 1032, 1033.5, 2033.420; and Probate Code §§ 1002, 2622.5, 9354, 11003, 15642, 15645, 17211. Not one of those statutes would provide a basis for an award of legal fees in this instance. Some of the references might be construed as something akin to a prospective “wish list,” but others appear to be a slight of hand in the hopes that this Court might take the bait. Frances has no entitlement to legal fees, period. Asking for them in this particular motion, and citing inapplicable statutes, might be construed as a violation of the duty of candor – but more likely a simply overreach.

### Frances’ Discovery Motions

This Court generally allows the parties significant latitude to gear up and prosecute their disputes in the manner which best befits an efficient resolution within the spirit of the rules of procedure, provided that nobody cries foul too loud. There is perhaps no better example of laissez-faire gone awry than this case, which is why this Court must now rein it in.

As noted, Michelle filed a petition on 09/15/2023 to admit Will #2 to probate and to have the whole family appointed to serve as co-executors. That same day she lodged a \$1M creditor claim. Eight (8) weeks later, Michelle’s attorney fired off ten (10) business record subpoenas to financial institutions holding accounts in John’s name. As each subpoena included a Notice to Consumer addressed to “John Robert Holland c/o Michelle Godino, Frances Mendenhall, Michael Holland, Francesca Lauer” and delivered to each one of them, the only reasonable conclusion to draw is that the business record subpoenas were issued by Michelle *in her individual capacity*, based on her \$1M creditor claim, not in her representative capacity as the anticipated executor. Michelle had no right to use the discovery machinery to start proving up her creditor claim because (1) the creditor claim had only been lodged, not filed and served, and

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(2) that claim had not yet been “rejected in whole or in part.” Probate Code §§ 9150, 9351. Had Frances moved to quash on this basis, that would have been an easy grant, but since Frances only moved to quash on concerns regarding the scope of the subpoenas, this Court felt it more prudent to give all sides a peek behind the curtain in the hopes of putting some of the “*Frances stole money*” claims to bed. According to the records produced, it does appear that at least some of those contentions are now resolved. However, that did not stop the unauthorized use of the discovery machinery.

On 11/08/2024, Frances caused to be served upon Michelle a set of form interrogatories, special interrogatories, request for production of documents, and request for admissions. The discovery did not specify whether it was directed to Michelle in her individual capacity, or in her representative capacity as the proposed executor obligated to defend a will contest. At the time the sets of discovery were served, the parties were only fifty-three (53) days from the will contest discovery cutoff (see CCP §2024.020(a)), so it might seem reasonable to surmise that the discovery was directed to Michelle in her representative capacity. However, the actual discovery requests could suggest just the opposite. For example, the form interrogatories included Series 2 and 6, in addition to the expected 12, 13 and 17. The RFAs were entirely devoted to the issues germane to the will contest. Some of the special interrogatories had to do with the will contest (1-14), while the balance appear to be focused mostly on Michelle’s creditor claim (15-35). The document production request appears to be roughly half will contest, and half creditor claim.

Michelle was presumably obliged to provide substantially compliant verified responses to the discovery on or before December 10. Despite the proximity to trial, an agreement was reached between the attorneys that Michelle could have until December 20 to provide those responses. The day prior to when those were to be served, Michelle’s attorney bailed out of the case – leaving Michelle all alone. Unphased, Michelle still provided responses on the 20<sup>th</sup> as follows:

- FRogs: (Presumably) Boilerplate objections to all (actual responses not in file)
- SRogs: Boilerplate objections to all 35
- RPD: Boilerplate objections to all 49
- RFA: (Presumably) Objections or inability to respond (actual responses not in file)

The discovery machinery operates on a very simple two-prong premise, to wit: parties must provide reasonably accessible information to their adversary when asked, and avoiding that obligation through the pretext of boilerplate objections is a sanctionable offense. See *Marriage of Moore* (2024) 102 Cal.App.5th 1275, 1295; *Masimo Corp. v. The Vanderpool Law Firm, Inc.* (2024) 101 Cal.App.5th 902, 909-910; *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1129; *People ex rel Lockyer v. Superior Court* (2004) 122 Cal.App.4th 1060, 1072-1073. Some of the discovery requests were objectionable, but not all. Michelle’s use of the same, verbatim objection spread across the entire valley of discovery here informs this

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Court that no constructive thought or discernment was actually employed, and that the blanket boilerplate objections were more likely than not an instrument of delay.

That being said, Michelle fell on her sword and admitted that she was overwhelmed with the fact that her attorney bailed on 12-hours' notice and that she threw the responses together very fast to avoid waiving her right to object. Michelle also advised that on January 10 she served supplemental responses to the discovery in an effort to ameliorate the concerns raised by Frances and her attorney. Those supplemental responses are not part of this Court's file, and have not been substantively addressed by Frances in any of her subsequent filings. In fact, this Court notes that Attorney Halligan filed papers on August 11 informing this Court that (1) Michelle never filed opposition to the discovery motions, and (2) omitting any reference to any supplemental responses. Since Michelle did in fact file opposition, this Court believes Michelle when she says she served supplemental responses. As such, the pending four motions are deemed substantively MOOT. Frances will need to evaluate the supplemental response and file new motions if warranted. However, before the issue should arise again, Frances is reminded that a verification is not needed for responses consisting solely of objections. *Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 657-658; *Blue Ridge Ins. Co. v. Superior Court* (1988) 202 Cal.App.3d 339, 344. Also, it must be pointed out that Michelle is not going to be the personal representative, and she does not have a creditor claim pending (yet), so technically speaking she is not a party subject to the discovery machinery at this time. This Court allowed Michelle, and by fairness Frances, to engage one another in a single round of reciprocal discovery, but that courtesy is over. Now they will have to follow the rules.

The fact that the original discovery motions are substantively moot does not end the discussion. Frances requested sanctions in each of those motions, and for the most part sanctions are authorized for a motion seeking to compel a further response over invalid objections in each type of discovery involved here against the party who "unsuccessfully opposes a motion to compel a further response unless [the Court] finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." See CCP §§ 2030.300(d), 2031.310(h), 2033.290(d). The phrase substantial justification in this context means that the opposition to the motion was "clearly reasonable because it is well-grounded in both law and fact." *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 75. The concept of a sanction being "unjust" is typically tethered to the party's financial condition. Since boilerplate objections are frowned upon, and it was Michelle's burden to justify her use of objections in lieu of providing substantive answers (see *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255), the fact that she was desperate to get a response out (which she obviously received from her attorney before he bailed) is not reasonable or well-grounded. While this Court appreciates Michelle's candor in the opposition, it does not obviate the harm. Michelle was not required to sign the substitution of attorney allowing her counsel to bail at the last minute, and counsel's decision to do so under the circumstances might qualify as a breach of his ethical obligation not to leave a client in a

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position of prejudice (see *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409, and CRPC 1.16(d)). The fact that she allowed her attorney to leave because he was charging too much means (1) Michelle should have some liquidity to cover discovery sanctions and (2) Michelle should be in a position to recoup some fees from her former counsel who jacked things up with a wild creditor claim.

Attorney Halligan requests a very reasonable hourly rate of \$275.00. She has spent a considerable amount of time on these four motions, which is evident from the sheer size and depth thereof. Although Ms. Halligan might be fairly described as a bit verbose, often employing ten (10) words when four (4) might do, her request for \$1,000 per motion is within the range of what this Court would expect and appears to have been actually incurred. Michelle is hereby ordered to reimburse Frances the sum total of \$4,000.00 within 15 days.

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### 10:00 a.m.

7. **Conservatorship of Jones (PR12702).** This is the initial hearing on a petition to establish a limited conservatorship over the person and estate of a young male by his parents, who seek additional authority to exert power over the “seven” areas of independence unique to limited conservatorships. The court investigator has already been appointed. Court intends to engage the proposed conservatee with the require colloquy regarding his rights and understandings, and to assess whether the conservatee has or plans to retain counsel. If not, §1471(b) requires an immediate appointment of the public defender or private counsel.
8. **Conservatorship of Cattaneo (PR11563).** No appearance is needed. The Court, having received and reviewed the 4<sup>th</sup> accounting, approves the accounting in all respects. Given the conservatee’s limited resources, the Court intends to authorize the conservator’s future use of a summary and simplified accounting (GC-400-SUM) in lieu of a traditional accounting with full schedules.
9. **Conservatorship of Cotta (PR9987).** The Court, anticipating the §1850 report from the court investigator, expects there to be clear and convincing evidence that (1) the conservatee is unable to provide properly for her personal needs for physical health, food, clothing, or shelter; (2) the conservatee is substantially unable to manage her finance or resist undue influence; and (3) a general conservatorship is the least restrictive alternative needed for the conservatee’s protection, taking into consideration the person's abilities and capacities with current and possible supports. Court intends to set annual review.
10. **Conservatorship of Smith (PR10905).** This is the continued hearing on a conservatorship that appears to have been dragged along since 2020 with no actual notice to the conservator or the conservatee. An investigation has been ordered, and the attorney for the family has been tasked with ascertaining the need for the conservatorship of the estate given that a special needs trust appears intact and self-sufficient. Parties to advise.
11. **Guardianship of Green (PR11847).** This is a maternal grandparent guardianship in which the bio mother has filed for, and recently secured, visitation rights. Mother currently enjoys weekends (Fri 5:30 pm → Sun 7pm) which should obviate the need for further action on her motion for visitation. Mother also has a separate motion pending to terminate the guardianship (filed 06/20/2025) which has been in place for five years. Court is awaiting investigative report to determine whether counsel should be appointed for the minor child. The guardians have yet to file a formal response to the motion to terminate, but have indicated a lack of consent following a disagreement over child support in the related action.

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12. **Guardianship of Garcia (PR12704).** This is the continued hearing on a petition to establish a guardianship over a newborn, filed by the paternal grandparents after receiving a short-term Family Safety Plan from Calaveras County CWS. Father consents to guardianship. Mother objects to guardianship. In order to avoid Calaveras initiating a §300 petition, the decision was made to establish the interim guardianship with the Family Safety Plan as the backdrop, and to complete a full investigation here. Court investigator has been appointed and report is anticipated soon. Permanent Letters may be delayed.
13. **Guardianship of Griffin et al (PR12699).** This is the continued hearing on the maternal grandmother's petition to establish a guardianship for two young children – with the consent of the biological mother. According to petitioner, the proposed wards have been residing with her for two months, and that the biological father is presently unfit to parent. The court investigator has been appointed, and is working her way through the backgrounds. Biological father objects to the guardianship. Father lives in Alameda County. Maternal grandmother resides in Groveland with children. Father apparently has full legal and full physical custody of children via a custody case in Alameda County. Petitioner informs the Court that a CPS worker in Alameda County instructed her to apply for guardianship here in Tuolumne County. Jurisdiction to be decided. Awaiting court investigator report.
14. **Guardianship of O'Connor (PR12717).** This is the initial hearing on a petition to establish a guardianship over one child. There is no GC-212 from co-petitioner Faith. Petitioners appear to be maternal grandmother and maternal cousin – but unclear why co-guardians are warranted. Residency and de facto parent status appears to have been established, and court investigator has already been appointed. No consent from bio mom. No notice to (or identification of) bio dad. Will likely require birth certificate.

**1:30 p.m.**

15. **Marriage of Inman (FL18703).** Trial, Day 2.
16. **Petition of Riley (CV67151).** Nonconfidential petition to change last name of minor child; no proof of publication; no consent from, or direct notice to, bio father. See CCP §1277(a)(4). No proffer as to best interests. CCP §1278.5. Petitioner was directed to provide birth certificate, court orders, and declaration as well.