

A long time ago (well, actually, today) in a galaxy far, far away (or in Martinez, California)....

THE LAW & MOTION SAGA

 **A SERIES OF SEMINARS FOR
TRUST & ESTATE
PRACTITIONERS**

INTRODUCTION TO THE LAW & MOTION UNIVERSE

SIX SEPARATE SEMINARS ON LAW & MOTION TOPICS OF IMPORTANCE TO TRUST AND ESTATE PRACTITIONERS SET AGAINST THE STAR WARS UNIVERSE

- **Prologue – General Procedural Requirements (*Today*)**
- **Episode I: The Phantom Pleading – Demurrers & MJOP (*Today*)**
- **Episode II: The Discovery Wars – Discovery Motions (*February 8*)**
- **Episode III: The Interlocutory Orders of the Sith – Miscellaneous Motions (*February 28*)**

THE LAW & MOTION UNIVERSE

- **Episode IV: A New Hope (For Judgment) – MSJ/MSA (*March 14*)**
- **Episode V: The Evidence Strikes Back – Motions In Limine (*March 21*)**
- **Episode VI: The Return of the Motion – Nonsuit & Post-trial Motions (*March 28*)**

DISCLAIMER

- I am happy to take questions during and after the program, time permitting.
- I am a quasi-judicial court employee bound not only by the Rules of Professional Conduct, but by the Canons of Judicial Ethics.
- I cannot answer questions about cases that are pending in the Contra Costa County Superior Court.
- I cannot answer questions about how particular judges would rule on any issue. Nothing in this seminar should be construed as any indication of how a judge would rule.
- All fact patters, examples and sample forms are fiction.

ABBREVIATIONS

APJ – All-Purpose Judge	MSJ/MSA – Motion for Summary Judgment/Summary Adjudication
COA – Cause of Action	MTC – Motion to Compel
CoCoCo – Contra Costa County	NOE – Notice of Entry
F&S – File & Serve	POD – Request for Production of Documents
j/x – Jurisdiction	RFA – Request for Admission
M&C – Meet & Confer	RFJN – Request for Judicial Notice
MIL – Motion <i>In Limine</i>	Rog – Interrogatory (either Special or Form)
MJOP – Motion for Judgment on the Pleadings	SOL – Statute of Limitations
MPA – Memorandum of Points and Authorities	

THE LAW & MOTION UNIVERSE

All of the Episodes of the Law & Motion Saga will give examples based on the following set of hypothetical facts:

Darth Vader (fka Annikan Skywalker) died during the Battle of Endor. At the time of his death, Vader was unmarried. His wife, Padme Skywalker (nee Amidala), predeceased him in childbirth. Vader was survived by twin children, Luke Skywalker and Princess Leia Solo (nee Organa).

Approximately two months after Vader's death, Luke and Leia received a Trustee's Notification pursuant to Probate Code § 16061.7. The Trustee's Notification included a copy of The Darth Vader Revocable Living Trust. The Trust provides that the successor trustee following Vader's death is to be Emperor Palpatine or, if he does not survive (he didn't), then "Supreme Leader Snoke" is to serve as successor trustee. Upon Vader's death, all of the assets of the Trust (assumed to be worth approximately 10 million Galactic Credits) are to be distributed to Vader's Grandson, Ben Solo, except that Luke and Leia are to each receive a bantha, if any are assets of the Trust.

THIS IS A BANTHA:



Shocked, Luke (but not Leia) hired an attorney to file a Petition in the Probate Division of the Contra Costa County Superior Court alleging, among other claims, that the Trust is invalid because (1) Vader lacked the requisite mental capacity to execute the Trust; (2) Vader was unduly influenced by Emperor Palpatine, Ben Solo and/or "Supreme Leader Snoke" into executing the Trust; and (3) Vader was under duress when he executed the Trust.

Assume that CoCoCo has personal and subject matter jurisdiction over this case and that service of the petition was proper and timely.

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- Probate Code § 1000(a):

“to the extent that this code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings and proceedings under Title 3a (commencing with Section 391) of Part 2 of the Code of Civil Procedure, apply to, and constitute the rules of practice in, proceedings under this code. All issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions.”

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- How do you know when Probate Code governs or when the Code of Civil Procedure governs?

General Rule of Thumb:

If the Probate Code is silent on the relief you want, it's governed by the CCP

Examples: Demurrers (CCP § 430.30, nothing in the Probate Code); MSJ/MSA (CCP § 437c, nothing in the Probate Code)

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- Generally, all motions have the following three elements:
 - Notice of Motion
 - Evidence
 - MPA
- Notice
 - CRC 3.1110: Nature of order sought, grounds, time and place of hearing, list of papers in support
 - Due process requirement
 - Probate Notice of Hearing? Maybe, maybe not

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- Evidence
 - Declarations, RFJN, Depo Transcripts, Etc.
 - Evidence must be *admissible*. Pajaro Valley Water Mgmt. Agency v. McGrath (2005) 128 Cal. App. 4th 1093, 1107.
 - Must accompany the moving papers (CCP § 1005(b)) (Exception: Motion for New Trial/Vacate Judgment)
 - Oral testimony is usually not permitted (CRC 3.1306)
 - Declarations: Under penalty of perjury and based on declarant's *personal knowledge* (Evid. Code § 702).
 - RFJN: Cite to the *specific subdivision* of Evid. Code § 452 that applies.

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- **MPA**
 - Motion will be denied if missing (CRC 3.1113(a))
 - Must accompany Notice (CRC 3.1113(a))
 - Must include statement of facts, concise statement of the law, evidence and arguments relied on, and a discussion of applicable authorities (CRC 3.1113(b))
 - Exceptions: Motion to be Relieved as Counsel; Motion to Appoint GAL
 - Page Limits (CRC 3.1113 (d)):
 - Opening & Opposition briefs: 15 pages
 - Reply brief (Optional): 10 pages
 - Exception: MSJ/MSA (20/15 pages)
 - Over length? Court has discretion to treat as late-filed and may disregard. CRC 3.1113(g)

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- **Other Required Papers**
 - Demurrer
 - Separate Statements (Discovery motions; MSJ/MSA)
 - Evidentiary Objections
 - Compendium of evidence (MSJ/MSA)
 - Proposed Order (CoCoCo L.R. 7.45 or consult local practice; see also CRC 3.1312)

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- **Filing & Service (16/9/5 Rule)**
 - **Opening Papers: At least 16 court days prior to hearing (CCP § 1005(b))**
 - **Opposition: 9 court days prior to hearing (CCP § 1005(b))**
 - **Must be served so that it is reasonably expected to be delivered the next court day (CCP § 1005(c))**
 - **Reply (optional): 5 court days prior to hearing (CCP § 1005(b))**
 - **Must be served so that it is reasonably expected to be delivered the next court day (CCP § 1005(c))**
 - **Late filing of Objection or Reply: Court has discretion to consider. CRC 3.1300(d)**
 - **Exceptions: MSJ/MSA (Episode IV); Motion for New Trial/Vacate (Episode VI)**

PROLOGUE: GENERAL PROCEDURAL REQUIREMENTS

- **Law & Motion Tentative Rulings:**
 - **CoCoCo: Not used except for Probate Notes in Probate Department.**
 - **Usual procedure:**
 - **Tentative ruling on the merits posted morning or afternoon before hearing.**
 - **Any party has until a specified time (usually 4:00 p.m.) to contact the court and opposing counsel to contest tentative ruling.**
 - **Nobody contests: Tentative ruling becomes the order of the court.**
 - **Prevailing party prepares order pursuant to CRC 3.1312**
 - **Contest: Oral argument.**

EPISODE I: THE PHANTOM PLEADING

DEMURRERS & MOTIONS FOR JUDGMENT ON THE PLEADINGS

What's the difference? Why discuss them together?



EPISODE I: THE PHANTOM PLEADING

DEMURRERS & MOTIONS FOR JUDGMENT ON THE PLEADINGS

What's the difference? Why discuss them together?

One word:

Timing

Demurrers are filed before an Answer/Objection is filed

MJOPs are filed after an Answer/Objection is filed

Otherwise, Demurrers and MJOPs are functionally the same motion!

What Are They? What Function Do They Serve?

It's the "So What?" Defense!

Assume everything in the Petition is true. SO WHAT?! You still can't win!

Authorities:

Demurrers: CCP §§ 430.10-430.90; CRC 3.1320

MJOP: CCP § 438

Terminology:

Demurrers are either sustained or overruled

MJOPs are either granted or denied

Pros & Cons

Pros

- End the case early
- Eliminate high-stakes COAs
- Educate Opponent
- Focus discovery
- Educate the judge about your case (APJs only)

Cons

- Delay (esp. Demurrers to Answers)
- Expense
- Educate Opponent
- High likelihood of granting leave to amend
- Grounds can be raised by answer
- Judicial policy to try cases
- De Novo review on appeal

GROUNDINGS

Demurrer to Complaint (CCP § 430.10)

- Lack of subject matter j/x (“not in my house!”)*
- Lack of legal capacity to sue (“who are you?”)*
- Abatement (“don’t repeat yourself!”)*
- Defect or misjoinder of parties
- Failure to state a cause of action (“so what?”)*
- Uncertainty (“wha?”)*
- Failure to plead oral or written contract
- Failure to file required pre-filing certificate

GROUNDS

Demurrer to Answer (CCP § 430.20)

- **Answer fails to state facts to constitute a defense**
- **Uncertainty**
- **Failure to plead oral or written contract as a defense**

GROUNDS

MJOP by Respondent (CCP § 438(c)(1)(B))

- **Court lacks subject matter j/x.**
- **Petition fails to state a COA.**



GROUNDS

MJOP by Petitioner (CCP § 438(c)(1)(A))

- **Petition states facts sufficient to support a COA and Objection does not state facts sufficient to constitute a defense.**

TIMING

Demurrer:

- **Respondent's Demurrer to Petition: F&S Not later than the initial hearing on the Petition.**
- **BUT, CCP § 430.40 says Demurrer to be filed within 30 days after service of Complaint.**



TIMING

- **CCP § 430.40 is *not mandatory*, and the court has discretion to consider a “late Demurrer,” so long as the Petitioner’s substantial rights are not affected.**
McAllster v. County of Monterrey (2007)
147 Cal. App. 4th 253, 280.

TIMING

- **CCP § 430.10: “The party against whom a complaint or cross-complaint has been filed may object, by demurrer...”**
- **Therefore, a Demurrer is an objection.**
- **Prob. Code § 1000: CCP applies only where the Probate Code is silent.**
- **Prob. Code § 1043: Objector may make objection at or before the hearing.**

TIMING

Demurrers

- **Petitioner's Demurrer to Answer: F&S 10 days after service of Objection. CCP § 430.40(b).**

TIMING

MJOP

- **After answer filed but not later than 30 days before the initially-set trial date. CCP § 438(e), (f).**

DOCUMENTS

DEMURRER (Moving Party)

- **Demurrer (Required)**
- **Notice (Required)**
- **MPA (Required)**
- **Declaration per CCP § 430.41 (Required)**
- **RFJN (Optional)**

DOCUMENTS

DEMURRER (Opposing Party)

- **MPA (Required)**
- **Evidentiary Objections to RFJN (Optional)**
- **Opposition RFJN (Optional)**

DEMURRER (Reply – All Optional)

- **Reply MPA**
- **Evidentiary Objections to Opposition RFJN**

OPTIONAL RESPONSE BY OPPOSING PARTY TO DEMURRER

- **CCP § 472(a):** Petitioner may file an amended Petition (without leave of court) *after* a Demurrer is filed but only up to the time the Opposition to the Demurrer is due (9 court days before the hearing).
- **Effect:** Demurrer goes *off calendar* and Respondent must either answer or demur.
- **Demurrers only. Not MJOP.**
- **Applies to a Demurrer to original Petition only.**

DOCUMENTS

MJOP (Moving Party)

- **Notice (Required)**
- **MPA (Required)**
- **Declaration per CCP § 439 (Required)**
- **RFJN (Optional)**

DOCUMENTS

MJOP (Opposing Party)

- MPA (Required)
- Evidentiary Objections to RFJN (Optional)
- Opposition RFJN (Optional)

MJOP (Reply – All Optional)

- Reply MPA
- Evidentiary Objections to Opposition RFJN

MEET & CONFER REQUIREMENT

- Applies to both Demurrers & MJOP (CCP §§ 430.41, 439).
- Does not apply where a party is *pro per* (CCP §§ 430.41(d)(1), 439(d)(1)).
- Must M&C in person or by phone (not in writing) in order to resolve pleading issues.
- Must file Declaration with Demurrer/MJOP showing a good faith attempt to M&C or refusal by other side to participate.
- Failure to M&C is not grounds to overrule demurrer/deny MJOP.
- BUT...court could continue hearing and order parties to M&C. Could also sanction per CCP § 177.

SUMMARY OF GROUNDS FOR DEMURRER/MJOP

- **Lack of Subject Matter j/x (CCP § 430.10(a))**: “General” demurrer, i.e., not waived if not raised.
- **Not personal j/x.**
- **Not transfer from Probate to Civil or vice versa.**
- **Example: Prob. Code § 850 claim over out-of-state real property.**

SUMMARY OF GROUNDS FOR DEMURRER/MJOP

- **Lack of Legal Capacity to Sue (CCP § 430.10(b))**: “General” demurrer, i.e., not waived if not raised.
- **Not usually apparent from the face of the petition. Use RFJN.**
- **Examples: Minors, conservatees. CCP § 372.**

SUMMARY OF GROUNDS FOR DEMURRER/MJOP

- **Abatement (CCP § 430.10(c)):** “Special” demurrer. Waived if not raised.
 - Another action pending between the same parties on the same COA.
 - Requires:
 - Earlier-filed action is *pending*. Leadford v. Leadford (1992) 6 Cal. App. 4th 571, 575.
 - *Absolute identity* of parties. Plant Insulation Co. v. Fibreboard Corp. (1990) 224 Cal. App. 3d 781, 789;
 - Same COA(s), i.e., invasion of same primary right. Bush v. Superior Court (1992) 10 Cal. App. 4th 1374, 1384.
 - Most likely requires RFJN.
 - Demurrer sustained: Action is *stayed* pending judgment in the earlier action. Branson v. SunDiamond Growers (1994) 24 Cal. App. 4th 327, 335.

SUMMARY OF GROUNDS FOR DEMURRER/MJOP

- **Uncertainty (CCP § 430.10(f)) – DON'T DO IT!**
Demurrers for uncertainty are rarely granted. Must be so bad that Respondent cannot reasonably respond. Khoury v. Maly's of California, Inc. (1993) 14 Cal. App. 4th 612, 616.
 - Will not be sustained if the uncertainty does not dispose of the Petition or a COA therein. Khoury v. Maly's of California, supra.
 - Alleged “uncertainties” must be specified (where and how). Fenton v. Goveland Comm. Services Dist. (1982) 135 Cal. App. 3d 797, 809.

FAILURE TO STATE A CAUSE OF ACTION

(CCP § 430.10(e)/438(c)(1)(B)(ii))

- Each cause of action is analyzed individually. Label is irrelevant.
- Any cause of action defeats a demurrer/MJOP, even if it's not the one intended by petitioner. Quelimane Co., Inc. v. Stewart Title Guar. Co. (1998) 19 Cal.4th 26, 38-39.
- Admits as true all facts alleged, but not contentions or legal conclusions. Aubry v. Tri-City Hosp. Dist. (1992) 2 Cal.4th 962, 966-967.
- Example: In a trust contest, admits that the Settlor had Alzheimer's disease, but not that he lacked the legal mental capacity to execute the instrument.
- Demurrer is sustained/MJOP granted if an essential element of the COA is missing.

- Problems of proof are *irrelevant*. Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 213-214.
- Analysis includes exhibits attached to the Petition. Facts in exhibits will supersede allegations in the petition where they conflict. Moran v. Prime Healthcare Mgmt., Inc. (2016) 3 Cal. App. 5th 1131, 1145-1146.

- **Example: Trust terms will govern over description of the same terms in the Petition.**
- **BUT, where the terms of the instrument are ambiguous, Petitioner's interpretation will control. Aragon-Haas v. Family Security Ins. Services, Inc. (1991) 231 Cal. App. 3d 232-239.**
- **Example: Petition for Instructions for interpretation. Petitioner's interpretation will control, assuming the instrument is ambiguous.**

- **Examples of complete defenses that lead to a "failure to state a cause of action":**
 - **Statute of limitations**
 - **Not all SOLs**
 - **YES: CCP §§ 366.2, 366.3**
 - **NO: Prob. Code § 16061.8**
 - **"On or about" allegations overcome a demurrer on SOL grounds. Childs v. State of Calif. (1983) 144 Cal. App. 3d 155, 160.**
 - **SOL can be alleged generally in the Demurrer. Bainbridge v. Stoner (1940) 16 Cal.2d 423, 431. SOL as an affirmative defense in an Answer must be alleged *specifically* otherwise it is WAIVED. CCP § 458**
 - **Lack of standing**
 - **Statute of frauds**
 - ***Res judicata*/Collateral estoppel**

RULING ON DEMURRER/MJOP

- **Court is required to construe the Petition liberally with a view towards substantial justice between the parties. CCP § 452.**
- **All conflicting inferences are to be resolved in favor of the Petitioner. Perez v. Golden Empire Transit Dist. (2012) 209 Cal. App. 4th 1228, 1238.**

3 POSSIBLE OUTCOMES

- **Overrule/Deny**
- **Sustain/Grant With Leave to Amend**
- **Sustain/Grant Without Leave to Amend**
- **If the Demurrer is sustained/MJOP granted, court must state the statutory ground(s), but not the reason(s). CCP § 472d; Fremont Indem. Co. v. Fremont Gen. Corp (2007) 148 Cal. App. 4th 97, 111-112.**

STANDARDS FOR GRANTING LEAVE TO AMEND

- Demurrer sustained/MJOP granted: Court has discretion to grant leave to amend.
- Leave to amend is routinely and liberally granted. Angie M. v. Superior Court (1995) 37 Cal. App. 4th 1217, 1227.
- Generally, Petitioner has the burden to demonstrate that the pleading defect can be cured by amendment. Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.
- BUT, in the case of an original Petition, no request for leave is required. McDonald v. Superior Court (1986) 180 Cal. App. 3d 297, 303-304.

STANDARDS FOR GRANTING LEAVE TO AMEND

- It is an *abuse of discretion* to deny leave to amend if *reasonable possibility* exists to cure the defect. Goodman v. Kennedy, supra at 349.
- However, if the issue is strictly legal and the court rules in favor of Respondent as a matter of law, leave to amend may be denied. Lawrence v. Bank of America (1985) 163 Cal. App. 3d 431, 436.

STANDARDS FOR GRANTING LEAVE TO AMEND

- **Moving party: Do not expect leave to amend to be denied on the first Demurrer, even if the issue is purely legal.**
- **Moving party: Do not expect leave to amend to be denied if the reason for the pleading defect is a missing essential element. More likely to deny leave to amend based on a complete defense (e.g., SOL, *res judicata*).**

STANDARDS FOR GRANTING LEAVE TO AMEND

- **Opposing party: There is no harm in asking for leave to amend and showing how the Petition can be amended.**
- **CCP § 430.41(e)(1): After three amendments (exclusive of amendments as a matter of right), a Petition cannot be further amended unless Petitioner makes an offer to the court as to the facts that could be added to cure the defect.**

DEMURRER OVERRULED/MJOP DENIED

- **As to all COAs.**
- **MJOP: Litigation resumes as normal.**
- **Demurrer: Respondent usually answers.**
 - **Default deadline is 10 days from date order is served or as otherwise specified by the court. CRC 3.1320(g).**
 - **Order prepared per CRC 3.1312: Time begins from NOE per CCP § 472b.**
 - **Order prepared and served by court: Time begins from service by court. Robbins v. Los Angeles USD (1992) 3 Cal. App. 4th 313, 318.**

DEMURRER OVERRULED/MJOP DENIED

- **Appellate remedy**
 - **Take a writ (mandate or prohibition).**
 - **No direct appeal available.**
 - **Extremely rare. Writ only granted where there are jurisdictional issues or where the Petition is plainly and irrevocably defective.**

**DEMURRER SUSTAINED/MJOP GRANTED
WITH LEAVE TO AMEND**

- **Default deadline to F&S amended Petition is 10 days from date order is served or as otherwise specified by the court. CRC 3.1320(g).**
 - **Order prepared per CRC 3.1312: Time begins from NOE per CCP § 472b.**
 - **Order prepared and served by court: Time begins from service by court. Robbins v. Los Angeles USD (1992) 3 Cal. App. 4th 313, 318.**
- **Scope of Amendment**
 - **May only amend the COAs to which the demurrer was sustained. No additional COAs. Patrick v. Alacer Corp. (2008) 167 Cal. App. 4th 995, 1015.**
 - **Unauthorized COAs are subject to a Motion to Strike.**

**DEMURRER SUSTAINED/MJOP GRANTED
WITH LEAVE TO AMEND**

- **Appellate remedy: Take a writ before amending.**
 - **Amending before taking a writ waives all claims of error. Fireman's Fund Ins. Co. v. Sparks Const., Inc. (2004) 114 Cal. App. 4th 1135, 1144.**
- **If Petition is amended:**
 - **Respondent has 30 days to answer or demur. CCP § 471.5.**
 - **If Respondent demurs, must M&C per CCP 430.41(a), (b).**
 - **Respondent may re-argue issues raised in the first Demurrer without seeking reconsideration under CCP § 1008. Clausing v. San Francisco USD (1990) 221 Cal. App. 3d 1224, 1232.**
- **If Petition is not amended:**
 - **Demurrer sustained as to some COAs: Answer remaining COAs within 10 days after expiration of due date. CRC 3.1320(j).**
 - **Demurrer sustained as to all COAs: Seek dismissal with prejudice by *ex parte* application. CCP § 581(f)(2); CRC 3.1320(h).**

**DEMURRER SUSTAINED/MJOP GRANTED
WITHOUT LEAVE TO AMEND**

- **Sustained as to all COAs:**
 - **Seek dismissal with prejudice by *ex parte* application. CCP § 581(f)(2); CRC 3.1320(h).**
 - **Direct appeal lies from judgment of dismissal.**
 - ***De novo* review on the merits of the Demurrer or MJOP. Aryeh v. Canon Business Solutions, Inc. (2013) 55 Cal.4th 1185, 1189 n.1 (Demurrer); Protect Agricultural Land v. Stanislaus County Local Agency Formation Com. (2014) 223 Cal. App. 4th 550-556-557 (MJOP)**
 - **Abuse of discretion review on denial of leave to amend. McAllister v. County of Monterey (2007) 147 Cal. App. 4th 253, 297.**

**DEMURRER SUSTAINED/MJOP GRANTED
WITHOUT LEAVE TO AMEND**

- **Sustained as to less than all COAs:**
 - **Answer remaining COAs within 10 days after NOE. CCP § 472b.**
 - **No direct appeal. COAs where Demurrer sustained will be dismissed at trial.**

QUESTIONS???



Presented by:
Mark Schmuck
Probate Research Attorney
Contra Costa County Superior Court



SAMPLE DEMURRER & OPPOSITION

MLN/ΔFN ↑ - ↓EN
UNEN↓ΔN ΔN↓ΔN

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5 Attorneys for BEN SOLO

6 SUPERIOR COURT OF CALIFORNIA

7 COUNTY OF CONTRA COSTA

8
9 In re the

Case No.: P74-00001

10
11 DARTH VADER REVOCABLE LIVING
12 TRUST.

BEN SOLO'S DEMURRER TO LUKE
SKYWALKER'S PETITION TO
INVALIDATE TRUST

13
14 Respondent BEN SOLO ("Respondent") hereby demurs to LUKE SKYWALKER'S
15 ("Petitioner's") "Petition to Invalidate Trust" (the "Petition") as follows:

16 1. Respondent demurs to the Petition and every cause of action therein stated on the
17 ground that it fails to state a cause of action upon which relief can be granted in that it was filed
18 after the expiration of the applicable statute of limitations. Code of Civ. Proc. § 430.10(e);

19 2. Respondent demurs to the Petition and every cause of action therein stated on the
20 ground that it fails to state a cause of action upon which relief can be granted in that it is barred
21 by the doctrine of *res judicata*. Code of Civ. Proc. § 430.10(e);

22 3. Respondent demurs to the First Cause of Action in the Petition on the ground that
23 it is uncertain. Code of Civ. Proc. § 430.10(f);

24 4. Respondent demurs to the Second Cause of Action in the Petition on the ground
25 that it is abated in that the same claim is currently pending between the same parties in the
Alameda County Superior Court. Code of Civ. Proc. § 430.10(c).

26 Date: _____

_____/s/_____
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7 COUNTY OF CONTRA COSTA

8
9 In re the

Case No.: P74-00001

10 DARTH VADER REVOCABLE LIVING
11 TRUST.

12 NOTICE OF HEARING ON BEN SOLO'S
13 DEMURRER TO LUKE SKYWALKER'S
14 PETITION TO INVALIDATE TRUST

15 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

16 NOTICE IS HEREBY GIVEN, that on May 25, 2077, in Department 30 of the above-
17 captioned court, located at 725 Court Street, Martinez, California, BEN SOLO ("Respondent")
18 will and hereby does demur to LUKE SKYWALKER'S "Petition to Invalidate Trust" (the
19 "Petition"). The grounds for the Demurrer are set forth in the accompanying "Demurrer to Luke
20 Skywalker's Petition to Invalidate Trust".

21 The Demurrer is based on this Notice, the "Demurrer to Luke Skywalker's Petition to
22 Invalidate Trust"; the Memorandum of Points and Authorities; the Request for Judicial Notice;
23 the Declaration of Darth Maul, all on file herewith; the file herein; and on such further argument
24 as will be received at the hearing on this matter.

25 Date: _____

26 _____
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7 COUNTY OF CONTRA COSTA

8 In re the

Case No.: P74-00001

9 DARTH VADER REVOCABLE LIVING
10 TRUST.

11 REQUEST FOR JUDICIAL NOTICE IN
12 SUPPORT OF BEN SOLO'S [DEMURRER
13 TO LUKE SKYWALKER'S PETITION TO
INVALIDATE TRUST] [MOTION FOR
JUDGMENT ON THE PLEADINGS]

14 Respondent BEN SOLO ("Respondent") hereby requests judicial notice of the following
15 matters in support of his "Demurrer to Luke Skywalker's Petition to Invalidate Trust" (the
16 "Demurrer"):

17 1. That the planet Tatooine orbits around twin suns. Evid. Code § 452(g);
18 2. The "Order Confirming Validity of Trust", filed on June 10, 2070, in the Alameda
19 County Superior Court (*In re the Darth Vader Revocable Living Trust*, Alameda County case no.
20 XXXXX), a true and correct filed-endorsed copy of which is attached hereto as **Exhibit A**.

21 Evid. Code § 452(d);

22 3. Darth Vader's Death Certificate, a certified copy of which is attached hereto as
23 **Exhibit C**. Evid. Code § 452(c).

24
25 **[NOTE: THERE IS NO NEED TO REQUEST JUDICIAL NOTICE OF THE**
26 **PETITION THAT IS THE SUBJECT OF THE DEMURRER. THE COURT IS**

27
28 REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF BEN SOLO'S [DEMURRER TO LUKE
SKYWALKER'S PETITION TO INVALIDATE TRUST] [MOTION FOR JUDGMENT ON THE PLEADINGS] -

1 **ALREADY REQUIRED TO ACCEPT ALL FACTS ALLEGED THEREIN AS**
2 **TRUE. Aubry v. Tri-City Hosp. Dist. (1992) 2 Cal.4th 962, 966-967]**

3
4 Date: _____

_____ DARTH MAUL, ESQ.
Attorneys for BEN SOLO

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5 Attorneys for BEN SOLO

6 SUPERIOR COURT OF CALIFORNIA

7 COUNTY OF CONTRA COSTA

8 In re the

Case No.: P74-00001

9 DARTH VADER REVOCABLE LIVING
10 TRUST.

11 MEMORANUDM OF POINTS AND
12 AUTHORITIES IN SUPPORT OF
13 [DEMURRER TO LUKE SKYWALKER'S
14 PETITION TO INVALIDATE TRUST]
15 [MOTION FOR JUDGMENT ON THE
16 PLEADINGS]

17 **I.**

INTRODUCTION

18 Type a brief introduction here. ~~THIS IS THE PLACE TO TYPE A BRIEF INTRODUCTION~~
19 ~~HERE. THIS IS THE PLACE TO TYPE A BRIEF INTRODUCTION~~
20 ~~HERE. THIS IS THE PLACE TO TYPE A BRIEF INTRODUCTION~~

21 **II.**

STATEMENT OF FACTS

22 Describe the facts *as they are presented in the Petition, plus facts to be judicially noticed.*
23 Be accurate in your descriptions of facts from the Petition...they will be compared with what is
24 actually in the Petition. Remember, no extraneous information can be included here.
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28 MEMORANUDM OF POINTS AND AUTHORITIES IN SUPPORT OF [DEMURRER TO LUKE
SKYWALKER'S PETITION TO INVALIDATE TRUST] [MOTION FOR JUDGMENT ON THE PLEADINGS] -

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III.

LEGAL DISCUSSION

Apply the facts to the law. Include rules that govern the Demurrer, plus the substantive law.

IV.

CONCLUSION

Conclude here. ΕΚΛ ΝΕΔ↓ ∇ΓΜΜ7Δ Δ17↓∇

Date: _____

_____/s/_____
DARTH MAUL, ESQ.
Attorneys for BEN SOLO

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8 In re the

Case No.: P74-00001

9 DARTH VADER REVOCABLE LIVING
10 TRUST.

11 DECLARATION OF DARTH MAUL IN
12 SUPPORT OF BEN SOLO'S [DEMURRER
13 TO PETITION TO INVALIDATE TRUST]
14 [MOTION FOR JUDGMENT ON THE
PLEADINGS]

15 I, DARTH MAUL, declare as follows:

16 1. I am an attorney at law duly licensed to practice law in the State of California and
17 an attorney of record for Respondent BEN SOLO. I have personal knowledge of the facts set
18 forth herein and if called on to testify, I could and would do so competently.

19 2. Pursuant to Code of Civil Procedure section [430.41] [439], on February 2, 2027,
20 I met and conferred over the phone with Cassian Andor, Esq., counsel for Petitioner LUKE
21 SKYWALKER, regarding the issues raised by my client's [Demurrer] [Motion for Judgment on
22 the Pleadings]. We were not able to reach an agreement regarding those issues.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed this 1st day of March, 2027, at Death Valley, California.

25 Date: _____

26 _____
DARTH MAUL, ESQ.
Attorneys for BEN SOLO

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28 DECLARATION OF DARTH MAUL IN SUPPORT OF BEN SOLO'S [DEMURRER TO PETITION TO
INVALIDATE TRUST] [MOTION FOR JUDGMENT ON THE PLEADINGS] - 1

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7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF CONTRA COSTA

9 In re the

Case No.: P74-00001

10 DARTH VADER REVOCABLE LIVING
11 TRUST.

LUKE SKYWALKER'S OPPOSITION TO
BEN SOLO'S [DEMURRER TO PETITION
TO INVALIDATE TRUST] [MOTION FOR
JUDGMENT ON THE PLEADINGS]

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15 **I.**

16 **INTRODUCTION**

17 Nothing exciting here. Just an introduction.

18 **II.**

19 **STATEMENT OF FACTS**

20 Same as in the Petition and judicially-noticed facts.

21 **III.**

22 **LEGAL DISCUSSION**

23 Counter the arguments made by Respondent. Show how you should win!

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1 **IV.**

2 **CONCLUSION**

3 Therefore, for the foregoing reasons, the Demurrer should be overruled.

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5 Date: _____

6 _____
7 CASSIAN ANDOR, ESQ.
8 Attorneys for LUKE SKYWALKER
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10 DARTH VADER REVOCABLE LIVING
11 TRUST.

LUKE SKYWALKER’S OBJECTIONS TO
BEN SOLO’S REQUESTS FOR JUDICIAL
NOTICE

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13
14 LUKE SKYWALKER (“Petitioner”) hereby objects to BEN SOLO’S (“Respondent’s”) Requests for Judicial Notice in Support of his Demurrer to Petition to Invalidate Trust (the “RFJN”) as follows:

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17 **Objection no. 1**

18 Matter Objected To: RFJN no. 1, in its entirety (“That the planet Tatooine orbits around twin
19 suns. Evid. Code § 452(g).”)

20 Objection: Irrelevant. Evid. Code §§ 350, 352.

21 Date: _____

22 _____
23 CASSIAN ANDOR, ESQ.
24 Attorneys for LUKE SKYWALKER

SAMPLE MJOP NOTICE OF MOTION

↑ ΕΔΟΥ ↓ ΕΚ↓ ΑΔΟΥ
ΚΑΤ ΝΑΥΔΑΥΑΥΑΥ ↓ ΕΝ
ΚΑΥΑΥ

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8 In re the

Case No.: P74-00001

9 DARTH VADER REVOCABLE LIVING
10 TRUST.

BEN SOLO'S NOTICE OF MOTION AND
MOTION FOR JUDGMENT ON THE
PLEADINGS

11 DATE:
12 TIME:
13 DEPT:
14 JUDGE:

15 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

16 NOTICE IS HEREBY GIVEN that on May 25, 2077, in Department 30 of the above-
17 captioned court, located at 725 Court Street, Martinez, California, BEN SOLO ("Respondent")
18 will and hereby does move for judgment on the pleadings in his favor and against LUKE
19 SKYWALKER on his "Petition to Invalidate Trust" (the "Petition"). The grounds for the
20 Motion are (1) the Petition and every cause of action therein stated fails to state a cause of action
21 upon which relief can be granted in that it was filed after the expiration of the applicable statute
22 of limitations. Code of Civ. Proc. § 430.10(e); (2) the Petition and every cause of action therein
23 stated on the ground that it fails to state a cause of action upon which relief can be granted in that
24 it is barred by the doctrine of *res judicata*. Code of Civ. Proc. § 430.10(e); [CONTINUE].

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28 BEN SOLO'S NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE
PLEADINGS DATE: TIME: DEPT: JUDGE: - 1

1 This Motion is based on this Notice, the Memorandum of Points and Authorities; the
2 Request for Judicial Notice; the Declaration of Darth Maul, all on file herewith; the file herein;
3 and on such further argument as will be received at the hearing on this matter.

4
5 Date: _____

DARTH MAUL, ESQ.
Attorneys for BEN SOLO