SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 09
JUDICIAL OFFICER: JOHN P DEVINE
HEARING DATE: 06/30/2025

ALL APPEARANCES WILL BE BY ZOOM

For matters where an appearance is required, the parties should appear by Zoom unless told to appear by another method. For all other matters, if argument is requested appearances will be by Zoom.

Please email Dept09@contracosta.courts.ca.gov and opposing counsel by 4:00 p.m. if oral argument is requested and include specification to be argued.

Zoom hearing information
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Law & Motion

1. 9:00 AM CASE NUMBER: C22-01880
CASE NAME: HERNANDEZ VS. SATHRI
HEARING ON DEMURRER TO: 2ND AMENDED COMPLAINT
FILED BY: AVIS RENT A CAR SYSTEM, LLC
TENTATIVE RULING:

Defendant Avis Rent A Car System, LLC's demurrer to the second amended complaint as to cause of action one and two is **overruled.** Avis shall file and serve its answer by July 14, 2025.

Plaintiff is suing Avis for (1) assault, (2) battery, (6) intentional infliction of emotional distress and (7) Defamation. The Court previously overruled the Avis' demurrer to causes of action six and seven and sustained with leave to amend as to causes of action one and two. Previously, the Court found that Plaintiff had sufficiently alleged that Avis was an employer of both Plaintiff and Sathri. The Court sustained with leave to amend because Plaintiff had not yet alleged that Sathri's assault and battery was within the scope of his employment. Plaintiff filed a second amended complaint. Avis has again demurred to causes of action one and two for assault and battery under Code of Civil Procedure section 430.10(e) for the failure to allege facts to constitute a claim against Avis.

For the assault and battery claims, Avis argues that the facts alleged are insufficient to make Avis vicariously liable for Sathri's torts. "Although an employee's willful, malicious, and even criminal torts may fall within the scope of employment, 'an employer is not strictly liable for all actions of its employees during working hours.' [Citation.] For the employer to be liable for an intentional tort, the

employee's act must have a 'causal nexus to the employee's work.' (*Lisa M*. [*v. Henry Mayo Newhall Mem'l Hosp.* (1995)] 12 Cal. 4th [291,] 297.) Courts have used various terms to describe this causal nexus: the incident leading to the injury must be an ' "outgrowth" ' of the employment; the risk of tortious injury must be ' " 'inherent in the working environment' " '; the risk must be ' " 'typical' " ' or ' " 'broadly incidental' " ' to the employer's business; the tort was ' "a generally foreseeable consequence" ' of the employer's business. [Citation.]" (*Montague v. AMN Healthcare, Inc.* (2014) 223 Cal.App.4th 1515, 1520.)

When determining whether there is a sufficient nexus, courts apply "a two-prong disjunctive test. [Citation.] The conduct of an employee falls within the scope of his or her employment if the conduct either (1) is required by or incidental to the employee's duties, or (2) it is reasonably foreseeable in light of the employer's business. (*Id*. at p. 1559; see CACI No. 3720.)" (*Montague, supra,* 223 Cal.App.4th at 1521.)

In its prior ruling, the Court noted that in *Mary M. v City of Los Angeles* (1991) 54 Cal.3d 202, the court found that an on-duty police officer's rape of a motorist was within the scope of employment. But since then, very few cases have found an employer vicariously liable for intentional torts. (See, e.g *Doe 1 v City of Murrieta* (2002) 102 Cal.App.4th 899 (refusing to hold city vicariously liable for sexual torts of police officer against minors); *John Y. v Chaparral Treatment Ctr., Inc.* (2002) 101 Cal.App.4th 565 (no vicarious liability for residential facility for sexual molestation of patient by counselor).)

The Court's prior ruling discussed mostly cases involving sexual assault, however, Plaintiff has pointed to several non-sexual assault cases where the employees' conduct was within the scope of employment. In *Stansell v. Safeway Stores* (1941) 44 Cal.App.2d 822 the court of appeal affirmed the trial court's finding that a store manager's assault during a dispute with customer over an order was within the scope of employment. In *Hiroshima v. Pacific Gas & Electric Co.* (1936) 18 Cal.App.2d 24 an employee's attack on a customer was within the scope of employment when the attack occurred while the employee was sent to the customer's property to either disconnect power or collect on the bill.

In *Flores v. AutoZone West, Inc.* (2008) 161 Cal.App.4th 373 an employee attacked a customer with a metal pipe after briefly exchanging words. The employee had seen the customer at the store before but never spoken with him. (*Id*. at 378.) The court held that the trial court erred in granting summary judgment for the employer because these facts raised a triable issue on whether the employee was acting within the scope of his employment. (*Id.* at 381-384.) The court noted that there was no meaningful distinction between the risk of violence between coworkers and an employee and customer. (*Id*. at 380-381.) "In either scenario… 'flare-ups [and] frustrations' are commonplace for employees during the course of their work." (*Id*. at 381.)

The fact that coworkers had previously engaged in work-related disputes is not dispositive of an attack being outside the scope of employment. In *Yamaguchi v. Harnsmut* (2003) 106 Cal.App.4th 472 a cook attacked his coworker with a knife and threw hot oil on the coworker and a responding police officer. The attack occurred at work. The cook and coworker did not socialize outside of work, but the two had engaged in work-related disputes previously. (*Id*. at 482.) The court found that the jury should have been permitted to decide whether the attack was within the scope of employment. (*Ibid*.)

Here, Plaintiff has alleged Sathri began accusing Plaintiff of stealing by letting cars stay out beyond their time limits and accepting cash payments for approximately one year before the alleged battery. (SAC ¶¶30, 43, 44.) Plaintiff alleges that Sathri's attack occurred right after Sathri accused Plaintiff of stealing. (SAC ¶44.) Plaintiff alleges that Sathri was verbally abusive to the employees at Avis and he was highly suspicious of his employees, regularly accusing them of stealing. (SAC ¶¶31-33.) Further, Plaintiff alleges that Sathri had repeated loud outbursts and accusations against multiple employees and that, based upon these facts, Plaintiff believes that Sathri would have attacked any employee present at the time. (SAC ¶45.) At the same time, Plaintiff also alleged that Sathri's attack was motivated in part by Sathri's ill will and hatred towards Plaintiff. (SAC ¶¶59, 66.)

These facts are sufficient to show that Sathri's attack was based upon a work-place dispute, namely Sathri's belief that Plaintiff was stealing from work and failing to follow work procedures, and as such was within the scope of employment. There are other inferences to be drawn from these facts, but on demurrer, the Court cannot say that Plaintiff's interpretation is unreasonable.

Montague is distinguishable from this case. There, the court found that when an employee poisoned a coworker it was not within the scope of employment. At summary judgment, the plaintiff failed to provide evidence of the scope of the attacker's employment, including whether she had access to the poison as part of her regular duties, and plaintiff also failed to show that the poisoning occurred during working hours or what motivated the employee. (*Montague, supra,* 223 Cal.App.4th at 1523.) Here, by contrast, Plaintiff has alleged that the attack occurred at work and was motivated, at least in part, by Sathri's complaints about Plaintiff's job performance and concerns that Plaintiff was stealing.

Therefore, the demurrer to causes of action one and two is overruled.

2. 9:00 AM CASE NUMBER: C23-01184
CASE NAME: THEO LIM VS. DEBBY LAN IE
***HEARING ON MOTION IN RE: ORDER FOR APPOINTMENT OF AN APPRAISER AND FOR DETERMINATION OF THE FAIR MARKET VALUE OF REAL PROPERTY**
FILED BY:
****TENTATIVE RULING:****

Appearance required.

3. 9:00 AM CASE NUMBER: C23-01184
CASE NAME: THEO LIM VS. DEBBY LAN IE
***HEARING ON MOTION IN RE: PREFERENCE**
FILED BY: LIM, THEO
****TENTATIVE RULING:****

Appearance required.

4. 9:00 AM CASE NUMBER: C23-01665
CASE NAME: TERRIE JONES VS. LEON TEASLEY
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: TEASLEY, LEON
TENTATIVE RULING:

Defendant's demurrer is denied without prejudice, as no proof of service filed with the court indicates that plaintiff was provided notice of the hearing date.

5. 9:00 AM CASE NUMBER: C23-01884
CASE NAME: JANIS STURDEVANT VS. CSAA GENERAL INSURANCE COMPANY
***HEARING ON MOTION IN RE: TO APPOINT UMPIRE FILED BY JANIS STURDEVANT.**
FILED BY:
TENTATIVE RULING:

Vacated pursuant to notice filed June 6, 2025.

6. 9:00 AM CASE NUMBER: C23-03139
CASE NAME: NORTHERN CALIFORNIA COLLECTION SERVICE, INC. VS. JOHN PHAIR, ET. AL
***HEARING ON MOTION IN RE: AN ORDER REQUIRING PLAINTIFF AND PLAINTIFF'S COUNSEL TO COMPLY WITH COURT'S ORDERS, GRANTING MONEY SANCTIONS**
FILED BY: BONGI, MARK
TENTATIVE RULING:

Appearance required.

7. 9:00 AM CASE NUMBER: C24-00154
CASE NAME: GURPREET SINGH VS. EL TAZUMAL RESTAURANT
***HEARING ON MOTION IN RE: FOR RECONSIDERATION**
FILED BY: SINGH, GURPREET
TENTATIVE RULING:

Plaintiff's motion for reconsideration is denied. Plaintiff fails to demonstrate that any new or different facts, circumstances or law" exist to reconsider. (Code of Civ. Proc. §1008.) Moreover, the motion is untimely. (*Ibid*.)

8. 9:00 AM CASE NUMBER: C24-00682
CASE NAME: GIOVANNI RUIZ VS. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS SET ONE**
FILED BY: RUIZ, GIOVANNI
****TENTATIVE RULING:****

Plaintiff's motion to compel is granted; defendant is ordered to produce the video – in its entirety – depicting the incident at issue in the lawsuit within 10 days of this order.

The parties shall execute a mutually acceptable protective order, if needed, limiting disclosure of the video within 10 days of this order.

9. 9:00 AM CASE NUMBER: C24-01921
CASE NAME: A-S PIPELINES INC., A CALIFORNIA CORPORATION VS. DAVID SEENO
HEARING ON DEMURRER TO: FIRST AMENDED COMPLAINT
FILED BY: SEENO, DAVID
****TENTATIVE RULING:****

Before the Court is Defendant David Seeno and Gold Coast Pipelines, Inc. (collectively, "Defendants")'s Demurrer. The Demurrer relates to Plaintiff A-S Pipelines Inc. ("Plaintiff")'s First Amended Complaint ("FAC") for (1) unjust enrichment, (2) conversion, (3) violation of Penal Code § 496, (4) tortious interference, (5) breach of fiduciary duty of loyalty, (6) breach of fiduciary duties of due care and good faith, and (7) fraud.

For the following reasons, the Demurrer is **overruled-in-part** and **sustained-in-part**, with leave to amend.

Legal Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) Legal conclusions are insufficient. (*Id*. at 1098–1099; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Analysis

This is a business dispute between entities in the construction business. Plaintiff is an underground

pipe and construction company that owns the real property located at 2025 E. Leland Rd, Pittsburg, California (the "Yard"). (FAC at ¶ 10.) Plaintiff alleges generally that Defendants and/or their predecessor entities and owners surreptitiously stopped performing work under and for the benefit of Plaintiff and instead performed work under and for the benefit of themselves. (*Id*. at ¶ 13.)

(1) unjust enrichment

Defendants demur to this cause of action on the grounds that "California does not recognize a cause of action for unjust enrichment." (Demurrer at 7:21-27 [citing *Hooked Media Grp., Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 336; *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793; and *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387].)

As the First District has noted, "[t]he point is largely academic because this district has long taken the position that, even if unjust enrichment does not describe an actual cause of action, the term is 'synonymous with restitution,' which *can* be a theory of recovery." (*O'Grady v. Merchant Exchange Productions, Inc*. (2019) 41 Cal.App.5th 771, 791 [emphasis original].)

Here, while the third cause of action is titled "Unjust Enrichment," the title is not dispositive. Instead, the Court must look past the title to the substance of the claim. In order to state a claim for unjust enrichment, as well as for a claim for restitution, the plaintiff must allege receipt of a benefit and unjust retention of the benefit at the expense of another. (See e.g., *Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc*. (2018) 29 Cal.App.5th 230, 238; *Tufeld Corp. v. Beverly Hills Gateway, L.P.* (2022) 86 Cal.App.5th 12, 31-32.)

The FAC alleges that Defendants used Plaintiff's personal property for Gold Coast business operations without Plaintiff's permission and without making remuneration. (FAC at ¶¶ 37, 39.) Plaintiff further alleges that Defendants charged their customers "for the use and rental of equipment that belonged and belongs to ASP, but Gold Coast kept all such monies and never remunerated ASP any such amounts." (*Id.* at ¶ 39.)

The above allegations are sufficient to allege to state a claim for restitution and/or "unjust enrichment," no matter how it is titled.

Defendants' Demurrer to the first cause of action is **overruled**.

(2) conversion

Defendants demur to this cause of action on the grounds that the property in question was never "dispossessed." Specifically, they argue that the FAC "makes clear that the ASP granted Defendants *permission to use* the property[.]" (Dem. at 8:20-21 [emphasis original].)

In opposition, Plaintiff argues that "[t]he refusal to return property upon demand of the party entitled to possession is actionable conversion." (Opp. at 14:17-19 [citing *Schroeder v. Auto Driveaway Co*. (1974) 11 Cal.3d 908, 918; *Edwards v. Jenkins* (1932) 214 Cal. 713, 720].)

The elements of a conversion cause of action are "(1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181.)

Here, Plaintiff alleged that they made several demands for either payment or return of the ASP Personal Property. (FAC at ¶ 15, 18, 20, 27, 30, 45.) The FAC alleges that Defendants converted ASP's Personal Property to their own use in denial of Plaintiff's rights. (*Id*. at ¶ 14, 15, 17-19.) Plaintiff has

alleged facts sufficient to state a cause of action for conversion.

Defendants' Demurrer to the second cause of action is **overruled**.

(3) violation of Penal Code § 496

Defendants demur to this cause of action on the grounds that the FAC does not establish the elements of a violation of Penal Code § 496.

Penal Code § 496(a) provides: "[e]very person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170." "Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees." (Penal Code § 496(c).)

"Section 496(a) extends to property 'that has been obtained in any manner constituting theft.' Penal Code § 484 describes acts constituting theft." (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1048.) Among the acts included in § 484 is fraudulent appropriation of property which has been entrusted to a person.

Plaintiffs allege Defendants fraudulently appropriated their property. This is sufficient to state a cause of action under Penal Code § 496.

The Demurrer to the third cause of action is **overruled**.

(4) tortious interference with prospective business opportunity

Defendants demur to this cause of action on the grounds that Plaintiff fails to allege any of the essential elements.

The elements of the tort of intentional interference with prospective economic advantage are "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." (*Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1153.)

Here, the FAC lacks the requisite detail. It alleges generally that Plaintiff "enjoyed a prominent economic position in the Northern California market as a premier underground pipe and construction company" (FAC at ¶ 58) but does not identify specific parties with whom it had a business relationship. Instead, the FAC characterizes the interference as with its "economic position." (See *id*. at ¶ 59.) This is insufficient.

"[A]n essential element of the tort of intentional interference with prospective business advantage is the existence of a business relationship with which the tortfeasor interfered." (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 546 [allegation that defendant interfered with relations with future customers was insufficient.)

Plaintiff has failed to allege facts sufficient to state a cause of action for tortious interference with prospective economic advantage.

The Demurrer to the fourth cause of action is **sustained**, with leave to amend.

(5) breach of fiduciary duty of loyalty

(6) <u>breach of fiduciary duties of due care and good faith</u>

Defendants demur to the fiduciary duty claims on the grounds that there was no fiduciary relationship. This argument is premised on the allegation in the FAC that David Seeno was a former officer of ASP and that his role of president terminated in February 2020 (See FAC at ¶ 64 & fn. 4) as well as *GAB Bus. Servs., Inc. v. Lindsey & Newsom Claim Services, Inc*. (2000) 83 Cal.App.4th 409, 421.

Breach of fiduciary duty "is a species of tort distinct from a cause of action for professional negligence." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.) The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach. (*Ibid*.) "There are two kinds of fiduciary duties—those imposed by law and those undertaken by agreement." (*GAB Bus. Servs., Inc*., *supra*, 83 Cal.App.4th at p. 416, disapproved on other grounds by *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1153-1154.) A fiduciary duty is imposed "as a matter of law" in "certain technical, legal relationships" such as those between partners or joint venturers, husbands and wives, guardians and wards, trustees and beneficiaries, principals and agents, and attorneys and clients." (*Ibid*., citations omitted.) A fiduciary duty is "undertaken by agreement" when "one person enters into a confidential relationship with another," (*i.e.*, where a "confidence is reposed by one person in the integrity of another" and the other person "voluntarily accepts or assumes to accept the confidence"). The existence of such a relationship is generally a question of fact. (*Id*. at 417.)

Here, Plaintiff alleges "[a]s an officer of ASP, David Seeno owed fiduciary duties of due care and good faith to ASP." (FAC at ¶ 69.) Plaintiffs also allege breaches of this duty prior to David Seeno's termination as president in 2020. (See, e.g., FAC at ¶ 14.) The Court makes no ruling at this time as to whether David Seeno had continuing fiduciary duties after his termination; the FAC alleges at a minimum that he owed fiduciary duties and breached them while he was an officer of ASP.

(Defendants' additional argument that the FAC fails to allege breach in sufficient detail lacks merit; Plaintiffs are not required to allege these causes of action with heightened specificity and nothing in this order would preclude Defendants from future motion practice should discovery reveal a statute of limitations issue with respect to individual breaches of Defendants' fiduciary duties.)

The Demurrer to the fifth and sixth causes of action are **overruled**.

(7) <u>fraudulent concealment</u>

Defendants demur to this cause of action on the grounds that it is not pled with the required specificity. They also argue that the FAC fails to allege facts that would give rise to a duty to disclose.

"The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. [Citation.]" (*Rattagan v. Uber Technologies, Inc*. (2024) 17 Cal.5th 1, 40 ("*Rattagan*").)

"Fraud, including concealment, must be pleaded with specificity. [Citation.]" (*Dhital v. Nissan North America, Inc*. (2022) 84 Cal.App.5th 828, 843-844 ("*Dhital*").) To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were

tendered." (*Hamilton v, Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.) Plaintiff is held to an even higher standard when alleging a fraud claim against a corporate defendant. In that case, plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Lazarv. Superior Court* (1996) 12 Cal.4th 631, 645.) However, this level of specificity may not be required in cases involving nondisclosure. (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) "One of the purposes of the specificity requirement is 'notice to the defendant, to "furnish the defendant with certain definite charges which can be intelligently met." ' [Citation.] Less specificity should be required of fraud claims 'when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy," [citation]; "[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party ...."' [Citation.]" (*Ibid*.)

Here, the FAC lacks the requisite specificity. Plaintiff's allegation that "Defendants concealed from ASP that Gold Coast either had no intention or lacked the financial wherewithal to purchase ASP's equipment or lease the Yard" (FAC at ¶ 74) is inadequate, even under a lower standard for nondisclosure.

The Demurrer to the seventh cause of action is **sustained**, with leave to amend.

10. 9:00 AM CASE NUMBER: C24-01921
CASE NAME: A-S PIPELINES INC., A CALIFORNIA CORPORATION VS. DAVID SEENO
***HEARING ON MOTION IN RE: TO STRIKE RE FIRST AMENDED COMPLAINT**
FILED BY: SEENO, DAVID
****TENTATIVE RULING:****

Before the Court is Defendant David Seeno and Gold Coast Pipelines, Inc. (collectively, "Defendants")'s motion to strike. The Motion is directed towards paragraph 35 of the First Amended Complaint, which consists of alter ego allegations. Plaintiff A-S Pipelines Inc. ("Plaintiff") opposes the motion.

For the following reasons, the motion is **granted**, with leave to amend.

Analysis

A corporate identity may be disregarded—the "corporate veil" pierced—where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. (*Roman Catholic Archbishop v. Superior Court* (1971) 15 Cal. App. 3d 405, 411.) Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners. (*Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 892; *Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 993-994.)

To recover on an alter ego theory, a plaintiff need not use the words "alter ego," but must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor. (*Vasey v. California Dance Co*. (1977) 70 Cal.App.3d 742, 749.) An allegation

that a person owns all of the corporate stock and makes all of the management decisions is insufficient to cause the court to disregard the corporate entity. (*Meadows v. Emett & Chandler* (1950) 99 Cal.App.2d 496, 499.)

Here, Plaintiff's allegations regarding alter ego liability are insufficient. The conclusory allegation that "Gold Coast is the alter ego of David Seeno" and that "the formalities of the separate corporate existence of Gold Coast is not maintained and Gold Coast's finances are allowed to commingle and overlap with David Seeno with David Seeno utilizing Gold Coast's assets for personal use" is inadequate.

The Motion is **granted**, with leave to amend.

11. 9:00 AM CASE NUMBER: C24-02210
CASE NAME: AMIRALI SHARIFY VS. LAW OFFICES OF CARISSA KRANZ, A FLORIDA PROFIT CORPORATION
HEARING ON DEMURRER TO: COMPLAINT FILED BY MICHAEL SCRANTON, A PROFESSIONAL CORPORATION.
FILED BY:
TENTATIVE RULING:

Before the Court is a demurrer by defendants Michael C. Scranton and Jamie Vroman Retmier to Plaintiff's complaint. For the reasons set forth, the general demurrer to the first, second and third causes of action on the ground of the statute of limitations is **sustained, with leave to amend.** Any amended complaint shall be filed **by July 14, 2025**.

Background

Plaintiff through his guardian ad litem alleges that he was seriously injured in a hit-and-run car accident on December 24, 2015. (Compl. ¶ 10.) He alleges that the crash and "the events immediately succeeding the car crash, caused Plaintiff's physical and mental health to quickly deteriorate." (Compl. ¶ 12.) He alleges he is an incapacitated adult and became homebound, needs round the clock assistance for daily functioning, and suffers from serious physical injuries as a result of the accident. (Compl. ¶¶ 9, 12, 14.)

Plaintiff asserts he had $250,000 in uninsured motorist insurance with Allstate. He alleges he hired defendant Michael C. Scranton, a professional corporation, dba Scranton Law Office ("Scranton Law"), and that defendant Jamie Retmier of Scranton Law was his primary counsel (collectively, the "Scranton Defendants"). (Compl. ¶ 16.) Plaintiff alleges that his mother Eshghpour, who is his guardian, and Plaintiff engaged another firm to represent him in August 2021, defendants Carissa Kranz and Law Offices of Carissa Kranz ("Kranz Firm") based in Florida, which associated with California attorney defendant Nicole Rawling. (Compl. ¶¶ 21, 22.) He alleges in December 2021, the Kranz defendants "illegally" settled his claim with the insurer for $45,000 with a waiver of reimbursement of medical payments coverage without Plaintiff's or his mother's knowledge or consent, and without Plaintiff signing a settlement agreement. (Compl. ¶¶ 23, 25, 26, 30.)

Plaintiff alleges the Kranz defendants and Rawling "enlisted the help of Plaintiff's former attorney" Retmier to push Plaintiff to settle. (Compl. ¶ 28.) Plaintiff alleges a March 17, 2022 check was issued to the Kranz Firm and Plaintiff in the amount of $41,925.71 that the Kranz Firm deposited without Plaintiff's or his mother's consent on April 4, 2022, and that "on the same day" (presumably March 17, 2022), a check in the amount of $3,074.29 was issued to Scranton Law to satisfy its lien which was cashed on March 23, 2022. (Compl. ¶¶ 30, 31.) Plaintiff alleges that he refused and returned the settlement check sent to him by the Kranz Firm, that another check from a trust account of the Kranz Firm in the amount of $44,782.93 was sent to him on June 20, 2024 that he refused to cash and returned, and that his insurer has refused to rescind the settlement. (Compl. ¶¶ 34-36.)

Legal Standards Governing Demurrer

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the complaint, but not legal or factual conclusions or contentions of law. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 374.) The Court gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation omitted.]" (*Evans v. City of Berkeley* (2006) 38 Cal. 4th 1, 6.) (*See also* Code Civ. Proc. § 452.)

"A demurrer on the ground of the bar of statute of limitations will not lie where the action may be, but is not necessarily barred." (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.) A general demurrer on statute of limitations grounds can only be sustained if it "clearly and affirmatively" appears on the face of the complaint that the cause of action is barred, not that it might be barred. (*Committee v. Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232.)

Generally, a complaint is sufficient if it pleads "ultimate" facts. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550; *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) What constitutes an "ultimate fact" rather than a conclusion is not always clear. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1098-1099 [recognizing the distinction "involves at most a matter of degree"].) "In theory, a determination is one of ultimate fact if it can be reached by logical reasoning from the evidence, but one of law if it can be reached only by the application of legal principles. [Citations omitted.]" (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 698, fn. 3.) (*See also Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912, fn. 5 [same].) "Ultimately, the complaint is sufficient if 'the adversary has been fairly apprised of the factual basis of the claim against him.' [Citations, internal quotations omitted.]." (*Randall v. Ditech Financial, LLC* (2018) 23 Cal.App.5th 804, 810.)

Demurrers for uncertainty are disfavored. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 [" '[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend.' [Citations omitted.]"].)

If a complaint fails to state a cause of action but there is a reasonable possibility of amendment to cure the deficiencies, then leave to amend must be granted. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 39.)

Meet and Confer Requirement

Demurrers and motions to strike require the parties to meet and confer in person, by telephone, or by videoconference on the merits of the issues before the demurrer or motion to strike is filed. (Code Civ. Proc. §§ 430.41(a) and 435.5(a).) The original hearing on the motion was continued in part based on the Court's inability to discern from the McCormick Declaration whether the parties complied with the requirement. Exhibit 6 to the corrected McCormick Declaration appears to indicate the parties conferred by telephone, and the Court will rule on the merits. (Not. of Errata Exh. 1.1 and Exh. 6 thereto.)

Notes on Declarations Filed with Opposition and Reply

In ruling on a demurrer, the Court is limited to consideration of the complaint and matters of which the Court can take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994 [in ruling on a demurrer "a court cannot consider . . . the substance of declarations, matter not subject to judicial notice, or documents judicially noticed but not accepted for the truth of their contents. [Citations omitted.]"].) The Court therefore does not consider the two McGonigle Declarations filed in opposition to the demurrer (initial opposition and reply to McCormick corrected declarations), except to the extent they may be construed as an offer of proof of facts that could be added in any amended complaint. The Court also does not consider the Simone McCormick Further Declaration filed with the reply brief, or the corrected version of that declaration with the exhibits. (Not. of Errata Exh. 2.1.) Arguments in the reply brief regarding the lack or insufficiency of "evidence" presented in the opposition are not relevant to the determination of a demurrer.

Analysis

The Complaint filed August 16, 2024 initiating this action alleges three causes of action against the demurring defendants for professional negligence (1st C/A), breach of fiduciary duty (2nd C/A), and breach of written contract (3rd C/A). The Scranton Defendants generally demur to these causes of action on the grounds they are barred by the statute of limitations of Code of Civil Procedure section 340.6 and fail to allege facts sufficient to state a cause of action against the demurring defendants. They also make special demurrers for uncertainty to each of the three causes of action.

A. Statute of Limitations

Code of Civil Procedure section 340.6(a) provides, "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first." The statute also provides that the period for filing an action is tolled "during the time that any of the following exist: [¶] (1) The plaintiff has not sustained actual injury; [¶] (2) the attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred; . . . [¶] the plaintiff is under a legal or physical disability that restricts plaintiff's ability to commence legal action. . . ."

The parties do not dispute that regardless of the legal theories alleged against the Scranton Defendants, whether tort or contract, the claims are grounded in malpractice in the Scranton

Defendants' representation of Plaintiff. Therefore, Code of Civil Procedure section 340.6 is the statute of limitations that governs the causes of action. (Code Civ. Proc. § 340.6(a); *Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 68 [one-year statute of limitations applied to breach of contract and breach of fiduciary duty causes of action arising out of attorney-client relationship and legal services even though intertwined with non-legal services]; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 223.)

The Court "explained in *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881, ' "A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred." [Citations.] It must appear clearly and affirmatively that, upon the face of the complaint [and matters of which the court may properly take judicial notice], the right of action is necessarily barred. [Citations.] This will not be the case unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the applicable statute of limitation as an affirmative defense.' (Accord, *Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1421 [although general demurrer does not ordinarily reach affirmative defenses, it ' "will lie where the complaint 'has included allegations that clearly disclose some defense or bar to recovery' " ']." (*Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 223.)

Code of Civil Procedure section 340.6 "commences the limitations period with the attorney's wrongful act or omission, or with the plaintiff's actual or constructive discovery of the attorney's error. However, several specified circumstances toll the prescriptive period, including that 'The plaintiff has not sustained actual injury . . . .' [Citation omitted.]" (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 742-743.) "Actual injury occurs when the client suffers any loss or injury legally cognizable as damages in a legal malpractice action based on the asserted errors or omissions. [Citations omitted.] Under the Legislature's codification of *Budd*, section 340.6, subdivision (a)(1), will not toll the limitations period once the client can plead damages that could establish a cause of action for legal malpractice. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 743.)

Plaintiff alleges that (1) Plaintiff engaged new legal representatives (the Kranz Firm and Rawling) in August 2021, and the Scranton Defendants became Plaintiff's "former" attorneys (Compl. ¶¶ 21, 28); and (2) the Kranz Firm allegedly improperly accepted Allstate's $45,000 settlement, two checks were issued by Allstate to the Kranz Firm and to Scranton Law, and on March 23, 2022 Scranton Law cashed its $3,079.29 check which satisfied its lien on the settlement proceeds after the Scranton Defendants allegedly pressured Plaintiff to settle (Compl. ¶¶ 28, 30, 31). The allegations of the complaint are that the last act or omission by the Scranton Defendants in their representation of Plaintiff was the attempt to pressure Plaintiff to accept the settlement offered by Allstate which necessarily occurred no later March 23, 2022, when Plaintiff alleges Scranton Law deposited the check from the insurer from the insurance settlement for payment of the firm's lien.

In the complaint, Plaintiff alleges two theories of why the statute of limitations for his claims was tolled "with respect to his claims against Kranz and Kranz Law," namely, based on "continuous representation" and "legal and physical disability." (Compl. ¶ 39 [emphasis added].) The allegation in paragraph 39 is not directed toward the Scranton Defendants, but Plaintiff makes a similar allegation as to all defendants in paragraphs 46, which is incorporated into the second and third causes of

action. (Compl. ¶¶ 48, 55.)

1. Continuous Representation Theory for Tolling

More specific facts alleged in the complaint pertinent to the statute of limitations on claims against the Scranton Defendants undermine the general allegation that the statute of limitations is tolled for continuous representation. Scranton Law's alleged improper attempt to "pressure" Plaintiff to settle occurred prior to March 23, 2022. (Compl. ¶¶ 28-31.) The Scranton Defendants' representation of Plaintiff on the facts alleged in the complaint terminated no later than March 23, 2022 when it cashed its lien check based on the settlement. Plaintiff does not dispute that these allegations show he sustained actual injury when Scranton Law negotiated and deposited its share of the settlement proceeds under the allegedly unconsented to and improper settlement no later than March 23, 2022. (Code Civ. Proc. § 340.6(a)(1).) The specific facts defeat any theory of continuous representation by the Scranton Defendants after March 23, 2022 at the latest. (*Skopp v. Weaver, supra,* 16 Cal.3d at 437 [stating general rule that specific allegations in a complaint control over an inconsistent general allegation].)

In the opposition, Plaintiff also argues delayed discovery by Plaintiff of the Scranton Defendants' "role in the unauthorized settlement until after it was finalized in April 2022." (Opp. p. 6 [emphasis added].) (*See also* Compl. ¶ 31.) But the complaint was filed in August 2024 which was more than one year after this alleged date of discovery (April 2022). Plaintiff does not allege delayed discovery in the complaint, including in paragraphs 39 or 46, to make the August 2024 complaint filing timely. The specific facts alleged and Plaintiff's admission in the opposition of his knowledge of the settlement in April 2022 set the date by which Plaintiff knew or should have known of the facts giving rise to his claim.

2. Tolling for Incapacity Under Code of Civil Procedure Section 352(a)

As to Plaintiff's "legal and physical disability," Plaintiff alleges he suffered serious physical injuries and his physical health deteriorated after the accident, and his physical symptoms are bodily shaking and that he requires physical aid in performing normal daily functions. (Compl. ¶¶ 12, 14.) As to his mental capacity, Plaintiff alleges after the accident his mental health "deteriorated," and that he suffers from anxiety since the accident. (Compl. ¶¶ 12, 14.)

In the opposition, Plaintiff contends that the statute of limitations was tolled for an unspecified time period based on Plaintiff's mental incapacity under Code of Civil Procedure section 352(a). That statute states in pertinent part, "If a person entitled to bring an action . . . is, at the time the cause of action accrued . . . lacking the legal capacity to make decisions, the time of the disability is not part of the time limited for the commencement of the action." (Code Civ. Proc. § 352(a) [emphasis added; statute was amended in 2014 to substitute phrase "lacking the legal capacity to make decisions" for insane].) (*See also* Probate Code section 812.)

The complaint alleges that Plaintiff's mother has been appointed as his "guardian" (presumably guardian ad litem based on the caption of the complaint) and that he is an incapacitated adult. (Compl. ¶ 1.) The complaint nowhere alleges when Plaintiff was determined to be mentally incapacitated and/or when his mother was appointed guardian ad litem, but the opposition to the demurrer asserts she was appointed guardian ad litem in 2024, more than one year after the claim against the Scranton Defendants accrued by March 23, 2022 or April 2022 based on the opposition.

(Compl. ¶ 31; Opp. p. 6.)

The complaint does not allege facts showing that during the period when he was represented by the Scranton Defendants and thereafter, when the settlement was accepted by the Kranz Firm and the settlement check paid and negotiated by Scranton Law in March 2022, and when he knew of the improper settlement by April 2022, that Plaintiff either had a guardian ad litem appointed over him, or other facts showing he was mentally incapacitated because he lacked "the legal capacity to make decisions." (Code Civ. Proc. § 352(a).)

Incapacity for purposes of tolling under Code of Civil Procedure section 352(a) has been defined to mean that the injured party was not able to care for his property, transact business or understand the nature or effect of his actions. (*See Alcott Rehabilitation Hospital v. Superior Court* (2001) 93 Cal.App.4th 94, 101; *Hsu v. Mt. Zion Hospital* (1968) 259 Cal.App.2d 562, 571-572 [cited by Plaintiff, referring to prior term "insane," also rejecting that an adjudication of insanity conclusiveness determines the person lacks mental capacity for tolling purposes under Code of Civil Procedure section 352(a)]; *Feeley v. Southern Pacific Transportation Co.* (1991) 234 Cal.App.3d 949, 952-953 [holding unconsciousness where the party is in a coma constitutes insanity or mental derangement for purposes of Code of Civil Procedure section 352, even if a psychiatric illness is not present].)

The allegation that Plaintiff had a "legal . . . disability . . . which restricted his ability to commence legal action" is a legal conclusion or contention of fact; Plaintiff has not alleged facts showing that Plaintiff lacked the "legal capacity to make decisions." (*See Board of Education v. Jack M., supra,* 19 Cal.3d 691, 698, fn. 3; *Boling v. Public Employment Relations Bd., supra,* 5 Cal.5th at8 912, fn. 5.) By pleading only that Plaintiff suffers physical shaking and "anxiety" and then the conclusion that he had a "legal" disability, the complaint does not fairly apprise the demurring defendants of the factual basis for Plaintiff's claim that he lacked the legal capacity mentally to make decisions for purposes of tolling the statute of limitations under Code of Civil Procedure section 352(a). (*Randall v. Ditech Financial, LLC, supra,* 23 Cal.App.5th at 810.)

The complaint does not plead facts sufficient to show that the claims against the Scranton Defendants are not barred by Code of Civil Procedure section 340.6 and that the statute of limitations was tolled for a lack of a decision-making capacity under Code of Civil Procedure section 352(a). The general demurrer on that ground is **sustained, with leave to amend**.

B. General Demurrer for Failure to State Causes of Action and Special Demurrer for Uncertainty

Defendants contend the complaint fails to allege facts sufficient to state the professional negligence, breach of fiduciary duty, and breach of contract causes of action against them. Most of the arguments in the initial memorandum are unsupported by any legal authority. Plaintiff responds to the deficiencies cited by the Scranton Defendants in his opposition, and the Scranton Defendants' reply does not address the responsive arguments and instead focuses only on the statute of limitations. Given the ruling above sustaining the general demurrer to the first, second, and third causes of action based on the statute of limitations, the Court does not need to reach the general demurrer for failure to state causes of action or the special demurrer for uncertainty.

12. 9:00 AM CASE NUMBER: C24-02210
CASE NAME: AMIRALI SHARIFY VS. LAW OFFICES OF CARISSA KRANZ, A FLORIDA PROFIT CORPORATION
MOTION TO STRIKE FILED BY NICHAEL C SCRANTON, A PROFESSIONAL CORPORATION
FILED BY:
TENTATIVE RULING:

Before the Court is a motion by defendants Michael C. Scranton and Jamie Vroman Retmier to strike portions of Plaintiff's complaint. The Court has concurrently sustained, with leave to amend, a demurrer to the three causes of action of the complaint alleged against the Scranton Defendants. Based on the sustaining of the demurrer, the motion is **denied as moot**.

13. 9:00 AM CASE NUMBER: C24-02210
CASE NAME: AMIRALI SHARIFY VS. LAW OFFICES OF CARISSA KRANZ, A FLORIDA PROFIT CORPORATION
***HEARING ON MINOR'S COMPROMISE RE: AMIRALI SHARIFY**
FILED BY: SHARIFY, AMIRALI
TENTATIVE RULING:

The petition for minor's compromise denied because the attorney's fees sought exceed 25% of the entire settlement amount for this defendant. The declaration of Timothy McGonigle fails to produce sufficient facts that would support the higher fees sought. The nature of both the work and the prior billings similarly do not reflect that the amount sought under the circumstances is warranted.

14. 9:00 AM CASE NUMBER: C24-02569
CASE NAME: RONALD SPITZ VS. KIA AMERICA, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**
FILED BY: SPITZ, RONALD OTTO
TENTATIVE RULING:

Appearance required.

15. 9:00 AM CASE NUMBER: C24-02651
CASE NAME: STARS HOLDING CO., LLC VS. KARIM MEHRABI
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: MEHRABI, KARIM
TENTATIVE RULING:

Before the Court is Defendant Karim Mehrabi's Demurrer to Plaintiff's Complaint.

Defendant's Request for Judicial Notice is granted. (Cal. Evid. Code § 452 (d).) The Court can take judicial notice of the existence of the documents but cannot take judicial notice of the truth of the factual matters asserted in those documents. (*Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1090.)

Defendant's Demurrer is **overruled** in full for the reasons set forth below.

Factual Allegations

Defendant Karim Mehrabi was the owner of real property, and a gasoline station and convenience store located at 4507 Howard Street in Westley, California as of January 1, 2007 (collectively the "Property"). (¶ 7.) At some unspecified date in 2007, an individual named Kiumars E. Khajevandi entered into a Purchase Agreement with Defendant wherein he purchased the Property. (¶ 8-9, Ex. A.) The one-page Purchase Agreement indicated that total sale price was $1,350,000. (¶ 9.) Mr. Khajevandi was entitled to take possession of the Property upon payment of $270,000 and some additional amounts for inventory, determined by formal inventory. (¶ 9, Ex. A.) Mr. Khajevandi was required to make an interest payment of $3,250 on May 1, 2007, and monthly payments of $6,300 until the remaining balance ($1,080,000) was paid off. (*Ibid.*) The Purchase Agreement indicated that "Interest shall be calculated at seven percent." (*Ibid.*)

Mr. Khajevandi paid the initial $270,000 payment and inventory costs and took possession of the Property in mid-2007. (¶ 10.) He also paid the initial $3,250 interest payment and began making the monthly $6,300 payments. (*Ibid.*)

On or about November 13, 2010, Mr. Khajevandi assigned his interest in the Purchase Agreement and his ownership interest in the Property to the entity Ameri Oil, Inc. (¶ 11.) "Although the Purchase Agreement contained no restriction on the right of assignment, Defendant was informed of the assignment and consented to the same." (*Ibid.*) Ameri Oil continued to make the monthly payments. (*Ibid.*) On or about July 1, 2011, Ameri Oil assigned its rights and interests in the Purchase Agreement and ownership interest in the Property to Plaintiff. (¶ 12.) Defendant was informed of this assignment, and Plaintiff continued to make the required monthly payments. (*Ibid.*)

In 2022, Plaintiff was informed by the State of California that the underground gasoline storage tanks needed to be replaced by December 31, 2025. (¶ 13.) Plaintiff obtained multiple bids and applied to the State for grants and financial assistance. (*Ibid.*) During this process, Plaintiff was informed that Defendant, as title holder of the Property and registered owner of the tanks, needed to be the party

approving the work and applying for financial assistance. (*Ibid.*)

Plaintiff repeatedly attempted to contact Defendant to seek his cooperation in the process but never received any response. (¶ 14.) On May 22, 2023, Plaintiff's counsel wrote to Defendant and his counsel informing them that Plaintiff wished to proceed with paying off the outstanding amounts under the Purchase Agreement and completing the sale of the Property. (¶ 15.) Plaintiff calculated there was an outstanding balance of $686,214 remaining. (*Ibid.*) No response was ever received. (*Ibid.*) On June 23, 2023, Plaintiff's counsel again wrote to Defendant and his counsel about the offer, noting that they never received a response to the earlier communication and informing Defendant that if they did not receive a response, they would consider that an anticipatory breach of the Purchase Agreement. (*Ibid.*) No response was ever received. (*Ibid.*)

Thereafter, Plaintiff filed its Complaint on October 2, 2024, alleging claims for (1) breach of contract – anticipatory breach; (2) declaratory relief; and (3) breach of covenant of good faith and fair dealing. In essence, Plaintiff wants an order allowing it to pay off the remaining amounts of the Contract and enforce Defendant's obligation to sign over title to the Property to allow Plaintiff to move forward with the required gas tank remediation.

Standard for Demurrer

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) A complaint must be "liberally construed" and a demurrer "overruled if any cause of action is stated by the plaintiff." (*Amacorp Industrial Leasing Co. v. Robert C. Young Associates, Inc.* (1965) 237 Cal.App.2d 724, 727.)

Legal conclusions are insufficient. (*Id*. at 1098–99; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) A demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (CCP 430.40; *see Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer may be filed to one of several causes of action in a complaint. (Cal. R. Ct. 3.1320(b).)

Analysis

Breach of Contract – Anticipatory Breach

Assignments

Defendant first argues that, while Plaintiff does attach a copy of the Purchase Agreement at issue, he does not attach or sufficiently plead the terms of the assignment agreements which give him standing to pursue his action on the Purchase Agreement. However, Defendants' cited authority contains no such pleading requirement. In *Cockerell v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284, the Court

reviewed an appeal from a judgment after trial and the admission of evidence.

"No particular form is required for an assignment." (*Mahony v. Crocker* (1943) 58 Cal.App.2d 196, 203.) What is essential to an assignment is that the assignor manifest an intention to transfer the right. (*Sunburst Bank v. Executive Life Ins. Co.* (1994) 24 Cal.App.4th 1156, 1164.) Here, the Complaint alleges that Mr. Khajevandi "assigned his interest in the Purchase Agreement and his ownership interest in the Westly Station and Westley Property to the entity Ameri Oil, Inc." and that Ameri Oil likewise assigned the same to Plaintiff. (¶¶ 11-12.)

"To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) "What is important is that the complaint as a whole contain sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief." (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 citation and italics omitted.) The Complaint sufficiently alleges that assignments were made transferring the rights under the Purchase Agreement to Plaintiff.

Bankruptcy Filings

Defendant next argues that Mr. Khajevandi's bankruptcy filings in 2013 somehow undermine the validity of his alleged assignment of interest in the Purchase Agreement. While the Court did take judicial notice of the existence of those documents, it cannot and does not take judicial notice of the truth of any statements made therein. As such, Defendant's arguments regarding how they impact the alleged assignments is not properly before the Court on a demurrer.

Uncertainty

Defendant argues that Plaintiff's claim is "uncertain due to its failure to clarify whether it performed all obligations required under the contract or was excused from performance." (Demurrer at 6:12-14.) He then contends that the Purchase Agreement should have been completed in 2021 if continuous monthly payments were made. (*Id.* at 6:14-16.) He also argues that it is unreasonable for a real estate purchase agreement entered into in 2007 to remain uncompleted in 2025 without any express provision for such an extended duration.

"[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 quoting *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848 fn.3.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Ibid.* citations omitted.) "[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend.'" (*Ibid.* citations omitted.)

"The objection of uncertainty does not go to the failure to alleged sufficient facts. It goes to the doubt as to what the pleader means by the facts alleged." (*Brea v. McGlashan* (1934) 3 Cal.App.2d 454, 459.)

As noted by Plaintiff, his obligations under the Purchase Agreement were limited to making the

monthly payments and depositing the purchase price into escrow to complete the sale. The Complaint specifically alleges that Ameri Oil and Plaintiff continued to make the required monthly payments and "perform all its obligations under the Purchase Agreement…." (¶¶ 11-12.) He is attempting to complete the sale via this lawsuit.

Regarding Defendant's calculation of payments, they do not appear to accurately reflect the payment timeline. While it is true that the remaining amount of $1,080,000 paid at a rate of $6,300 per month would be completed in 172 months (Demurrer at 3:8-12), that does not account for the 7% interest that is included under the Purchase Agreement. Seven percent interest on $1,080,000 for the first year alone would be approximately $75,000 – and the twelve-monthly payments would total $75,600. Thus, on its face, it appears that it would take longer than 172 months to pay off the balance of the Purchase Agreement when interest is factored in. These calculations also explain the duration of the transaction.

As such, Defendant's demurrer is **overruled** to the first cause of action.

Declaratory Relief

Plaintiff seeks a declaration of rights under the Purchase Agreement. Defendant argues that "Plaintiff's allegations regarding Defendant's refusal to cooperate with escrow instructions or acknowledge the outstanding balance owed under the contract lack specificity and fail to establish an independent basis for declaratory relief." He also argues that this cause of action is duplicative of the breach of contract cause of action and thus should be

"A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court." (*Ludgate Ins. Co. v. Lockheed Martin Corp*. (2000) 82 Cal.App.4th 592, 606 *quoting Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947.)

The Complaint sufficiently outlines Plaintiff's position with regarding to the rights and obligations of the Parties under the Purchase Agreement. The fact that Defendant disputes these claims shows that there is an "actual controversy" regarding the legal rights and duties of the parties under the Purchase Agreement.

"[T]rial courts have discretion at the demurrer stage of a dispute to weed out disputes in which a declaration would not be necessary or proper at the time." (*Osseous Tech. of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 372.) "Our Supreme Court held that in a dispute involving an alleged breach of contract, courts may provide declaratory relief under section 1060 if the relief sought would *also* govern the future conduct of the parties." (*Ibid.* citing *Ermolieff v. R.K.O. Radio Pictures* (1942) 19 Cal.2d 543, 545-49.)

As noted by Plaintiff, he is in possession of the Property but title remains in the name of Defendant. There are continuing payment obligations at issue. As such, depending on how the case plays out, there may be the need for relief that would "also govern the future conduct of the parties." While the declaratory relief cause of action may turn out to be duplicative, it is premature to make that determination at the demurrer stage.

As such, Defendant's demurrer is **overruled** to the second cause of action.

Breach of Covenant of Good Faith and Fair Dealing

Defendant makes the same standing and uncertainty arguments as those set forth above regarding the breach of contract cause of action. Those arguments are rejected as explained above.

Defendant also argues that the Plaintiff "does not explain how Defendant's involvement was necessary for compliance [with the tank replacements] or why Plaintiff could not proceed independently with replacement efforts." (Demurrer at 11:3-4.) The Complaint, does however, alleged that Plaintiff was informed the "Defendant, as the title holder of the Westley Property and registered owner of the tank, ***needed to be the party*** approving the work and applying for the State grants and financing." (¶ 13 emphasis added.) That allegation sufficiently explains why Defendant's cooperation was/is required.

Based on the above, Defendant's demurrer is **overruled** to the third cause of action.

Conclusion

Defendant's Demurrer is **overruled** in full.

16. 9:00 AM CASE NUMBER: C24-02971
CASE NAME: ROBERT HARELSON, II VS. ROBERT HARELSON
HEARING ON DEMURRER TO: DEMURRER FILED BY ROBERT W HARELSON AND JUNE M HARELSON TO F.A.C FILED ON 3/11/25
FILED BY: HARELSON, ROBERT W
TENTATIVE RULING:

The Demurrer of Defendants Robert W. Harelson and June M. Harelson to the First Amended Complaint of Plaintiffs Robert J. Harelson II and the Estate of Anna M. Harelson is **sustained with leave to amend** as to the fraud-based causes of action and **overruled** as to the cause of action for financial elder abuse. Defendants shall prepare a proposed order consistent with this ruling and shall serve and file notice of its entry. Plaintiffs shall have 15 days from service of notice of entry of the order to file and serve a Second Amended Complaint.

Background

This action arises from alleged financial elder abuse and related misconduct involving decedent Anna M. Harelson, who died on May 18, 2020. Plaintiffs are Robert J. Harelson II, the decedent's grandson and a beneficiary of her estate, and the Estate of Anna M. Harelson (Plaintiff). Defendants are Robert W. Harelson, Anna's son and the personal representative of her estate, and his spouse, June M. Harelson. Plaintiff alleges that Defendants exploited a position of trust while Anna was suffering from cognitive impairment to wrongfully take control of Anna's real and personal property.

According to the First Amended Complaint (FAC), beginning in or around 2015, Defendants resided in Anna's La Jolla home and used her financial assets to improve the property for their own benefit, while placing Anna in an assisted living facility against her wishes. On or about August 16, 2016, Anna executed a grant deed transferring the La Jolla residence to Robert W. Harelson as his sole and separate property. Plaintiff alleges this transfer, and other financial transactions undertaken by Defendants, were the product of undue influence and were concealed from Anna's beneficiaries. Plaintiff alleges that Robert W. Harrelson caused Anna to execute the grant deed after he and June M. Harelson knew that Anna lacked capacity. The misconduct that Plaintiff alleges in this case is not limited to the transfer of the La Jolla property. Plaintiff alleges that during this period until Anna's death, Defendants continued to liquidate property and withdraw funds from Anna's accounts.

Plaintiff alleges he discovered the basis for his elder abuse claim on November 3, 2020, when he gained access to documents filed in probate proceedings showing that Anna lacked the capacity to transfer assets. Plaintiff further alleges he had insufficient knowledge of Defendants' alleged pattern of misconduct prior to that time and even if he had suspected wrongdoing, he lacked the ability to uncover the facts earlier despite reasonable diligence. Plaintiff invokes the delayed discovery rule in his complaint and asserts that the statute of limitations on his claims did not begin to run until discovery of the relevant facts.

Plaintiff filed the original complaint on November 4, 2024, and the operative First Amended Complaint (FAC) on December 16, 2024. The FAC appears to assert causes of action for (1) financial elder abuse, (2) fraud (based on intentional or negligent misrepresentation), (3) concealment, and (4) promise made without intent to perform. However, as discussed below, there is some inconsistency between the causes of action listed at the outset of the pleading and those actually described in the body and attachments, which complicates interpretation of the claims asserted. Defendants filed a demurrer to the FAC on March 11, 2025, challenging all causes of action on the ground that they are barred by the applicable statutes of limitation or because laches applies.

Legal Standard

A demurrer tests the legal sufficiency of the challenged pleading. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.) A demurrer lies only where the asserted defects appear on the face of the pleading or from matters properly subject to judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) In ruling on a demurrer, the Court accepts as true all properly pleaded material allegations, as well as reasonable inferences drawn from those allegations, and construes the pleading liberally in context. (*Wilson v. Transit Authority of City of Sacramento* (1962) 199 Cal.App.2d 716, 720–721.)

Request for Judicial Notice

Defendants request judicial notice of twelve documents in support of their demurrer. These include: (1) A grant deed for the La Jolla property recorded October 6, 1997; (2) A grant deed for the La Jolla property recorded August 31, 1998; (3) A grant deed for the La Jolla property recorded June 30, 1999;

(4) A grant deed for the La Jolla property recorded November 21, 2003; (5) Robert J. Harelson II's California State Bar attorney profile; (6) A probate petition filed on July 21, 2020 in Contra Costa County Superior Court Case No. P20-00715; (7) Robert W. Harelson's response and objection to the probate petition in Case No. P20-00715; (8) A petition to confirm invalidity of trust restatement, etc., filed on October 28, 2020 in Case No. P20-01302; (9) A notice of hearing for the Petition to Confirm Invalidity in Case No. P20-00715; (10) Plaintiff's January 28, 2020 verified objection to confirmation of mutual release and settlement agreement in Case No. P20-01302; (11) A Notice of Entry of Judgment in Case No. P20-01302; (12) The docket in Case No. P20-01302.

Judicial notice can be taken of recorded documents. (*Scott v. JP Morgan Chase Bank* (2013) 214 Cal.App.4th 743, 755.) As such, the request for judicial notice of various property deeds is granted.

Judicial notice may be taken of records of any court in this state. (Evid. Code, § 452, subd. (d)(1).) Because these documents are part of the court record, the Court may take judicial notice of their existence. (*Ibid*.) However, while courts may take notice of the existence and filing of documents in a court file, including the fact that orders were issued, they may not take notice of the truth of hearsay statements contained within such documents. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.)

The Court will take judicial notice of the existence of the documents. Although the Court grants judicial notice, it does not take notice of the truth of any factual assertions contained within the documents or any inferences regarding Plaintiffs' knowledge or diligence. Moreover, defendants' cited documents may raise factual disputes for later proceedings, such as summary judgment, but they do not establish on the face of the pleadings that Plaintiff knew of the alleged fraud before November 3, 2020.

Analysis of Demurrer

Defendants argue that all causes of action are barred by the statute of limitations. They contend that the alleged misconduct, including the transfer of Anna M. Harelson's La Jolla property and the misappropriation of her financial assets, was known to Plaintiffs more than 4 years before the November 4, 2024 filing of the complaint in this action. Defendants assert that the applicable limitations periods for the asserted claims range from three years for fraud and conversion to four years for breach of fiduciary duty, and that those periods expired well before this action was commenced. Though Plaintiffs attempt to invoke the delayed discovery rule, Defendants argue the allegations are conclusory and insufficient under Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797.

Defendants also argue that Plaintiffs cannot rely on equitable tolling to preserve otherwise untimely claims. They argue that Plaintiffs' claims are barred by the doctrine of laches now that Anna has died. They ask the Court to sustain the demurrer without leave to amend.

Plaintiffs oppose on multiple grounds, arguing first that the demurrer is procedurally improper. They assert that Defendants failed to timely request judicial notice of attached exhibits and improperly

seek to introduce extrinsic evidence that is not subject to judicial notice. Plaintiffs also contend that Defendants violated California Rules of Court, rule 3.1113(d), by filing an over-length memorandum without leave of court, and therefore the demurrer should be treated as untimely under rule 3.1113(g). Plaintiffs argue that the complaint was timely filed on November 4, 2024, the next court day following the expiration of the statute of limitations on November 3, 2020, which fell on a Saturday. Plaintiffs argue the FAC sufficiently pleads delayed discovery, including a specific discovery date, lack of prior knowledge, and lack of ability to investigate the facts earlier. They argue that even if the pleading is found deficient, any defect can be cured by amendment. Plaintiffs also assert that they have alleged facts supporting equitable estoppel to assert the statute of limitations based on Defendants' representations and concealment, and further facts can be pled to support tolling theories. As to laches, Plaintiffs argue that its applicability is a factual question and cannot be resolved on demurrer because Defendants fail to show both unreasonable delay and resulting prejudice.

Financial Elder Abuse

Here, Plaintiffs specifically invoke the delayed discovery rule in the FAC. To invoke delayed discovery, the plaintiff must plead facts showing (1) the time and manner of discovery, and (2) the inability to have discovered the claim earlier despite reasonable diligence. (Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 808.) Plaintiff Robert J. Harelson II, who also purports to sue on behalf of Anna's estate, alleges he discovered the elder abuse on November 3, 2020 after receiving documents filed in the probate case, and asserts that prior to that date, he lacked knowledge of the alleged wrongdoing. The FAC further alleges that Plaintiff Robert J. Harelson II could not have discovered the misconduct earlier, given his lack of access to relevant documents and Defendants' exclusive control over Anna's finances and affairs.

Claims for financial elder abuse are subject to a four-year statute of limitations. (Cal. Welfare & Institutions Code § 15657.7 ["An action for damages . . . for financial abuse of an elder or dependent adult . . . shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial elder abuse."].) While the manner of discovery of the facts supporting the elder abuse cause of action is not described in evidentiary detail, the allegations are sufficient to invoke the delayed discovery rule. At page 20, paragraph 68 of their demurrer, Defendants assert that "no reasonable person would have relied" on their alleged assurances regarding the La Jolla property because they were living there, had installed a pool, and held title to the property via a recorded deed. Similar arguments are made in the reply. These assertions invite factual inferences about the reasonableness of Plaintiff's reliance, which are inappropriate at the demurrer stage. Whether or not Plaintiff acted diligently and whether or not his delay was reasonable to implicate the delayed discovery rule is a question of fact. The court cannot categorically say that, as pled, the delayed discovery rule does not apply to the elder abuse claim.

Fraud Claims Unlike the elder abuse claim, Plaintiffs' fraud-based causes of action are governed by a three-year statute of limitations. (CCP § 338(d).) To the extent that Plaintiffs rely on the delayed discovery rule to assert timely fraud claims, and if November 3, 2020 is the date on which they

discovered the facts, the fraud claims are time-barred since the original complaint was not filed until November 4, 2024. Plaintiffs have requested leave to amend in the event the Court finds their pleading deficient.

Where, as here, a plaintiff relies on a theory of delayed discovery, tolling, and/or estoppel to save a cause of action that otherwise appears on its face to be time-barred, a plaintiff must specifically plead facts which, if proved, would support the theory. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.) Plaintiff shall have leave to amend to clarify the timing and factual basis for delayed discovery of her fraud claims or to assert facts supporting tolling or estoppel.

Defendants next argue the fraud claims are not pled with the specificity required under California law. The Court agrees. Causes of action in the nature of fraud, including intentional misrepresentation, promise made without intent to perform, or concealment, must be pleaded with particularity; "general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) Where affirmative misrepresentation is alleged, "[t]his particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered." (*Ibid*.)

As currently pleaded, the fraud claims do not meet this standard. It is not sufficiently clear whether the cause of action is based on affirmative misstatements, false promises, or concealment of material facts, or some combination of the three, as the allegations shift between theories in a disjointed and confusing manner. In addition, certain allegations included in the fraud-related attachments appear aimed at supporting delayed discovery or equitable estoppel rather than establishing a freestanding fraud cause of action. Plaintiffs are granted leave to amend to clarify the theory or theories they intend to pursue and to allege the elements of each fraud-based cause of action factually and specifically.

Laches Defense

Defendants argue that the entire action is barred by laches. While this defense may be raised by demurrer, it is proper only where the elements of laches, unreasonable delay and prejudice, clearly appear on the face of the complaint. (*Neet v. Holmes* (1944) 25 Cal.2d 447, 460.) The elements of laches do not clearly appear on the face of the complaint. In addition, laches is generally a question of fact not appropriately resolved at the pleading stage. (*In re Marriage of Plescia* (1997) 59 Cal.App.4th 252, 256.)

Observations and Guidance for Future Filings

Although the Court does not sustain Plaintiffs' procedural objections, it reminds all parties that they are expected to comply with applicable rules of court, including the page limitations set forth in California Rules of Court, rule 3.1113.

The Court observes that the FAC lacks clarity as to the specific causes of action asserted. At page 3, paragraph 10, Plaintiffs list the claims as "Elder Financial Abuse; Willful Misconduct; Fraudulent Concealment; Constructive Fraud; Breach of Fiduciary Duty." However, the "Intentional Tort" and

"Fraud" attachments to the form complaint appear to allege only financial elder abuse and various fraud-based theories. To assist both the Court and opposing parties, Plaintiffs shall clearly identify and consistently label each cause of action in any amended pleading.

In addition to the documents referenced in the Request for Judicial Notice, the demurrer itself attaches numerous exhibits upon which Defendants rely in support of their arguments. On demurrer, however, the Court's review is confined to the face of the complaint, attached exhibits, and matters properly subject to judicial notice. Reliance on extrinsic factual materials appended to the demurrer and incorporated into the arguments is improper. It also hampers the Court's ability to distinguish between arguments grounded in the operative pleading and those based on matters outside its four corners. If Defendants elect to demur to any amended complaint Plaintiffs may file, the Court expects that any renewed demurrer will adhere to these limitations. Defendants are also encouraged to cite to specific factual allegations in the complaint where feasible, although the Court recognizes that doing so may be more challenging where the pleading incorporates Judicial Council form attachments.

Disposition

The Demurrer of Defendants Robert W. Harelson and June M. Harelson to the First Amended Complaint of Plaintiffs Robert J. Harelson II and the Estate of Anna M. Harelson is sustained with leave to amend as to the fraud-based causes of action and overruled as to the financial elder abuse cause of action. Defendants shall prepare a proposed order consistent with this ruling and shall serve and file notice of its entry. Plaintiffs shall have 15 days from service of notice of entry of the order to file and serve a Second Amended Complaint.

17. 9:00 AM CASE NUMBER: C25-00577
CASE NAME: ROBERT RODRIGUEZ VS. TOORAN POPAL
HEARING ON DEMURRER TO: ANSWER TO COMPLAINT
FILED BY: RODRIGUEZ, ROBERT DANIEL
TENTATIVE RULING:

The unopposed demurrer to defendant's answer is sustained with leave to amend. Defendant shall filed a responsive pleading by July 11, 2025.

18. 9:00 AM CASE NUMBER: C25-00577
CASE NAME: ROBERT RODRIGUEZ VS. TOORAN POPAL
***HEARING ON MOTION IN RE: STRIKE THE WHOLE OF DEFENDANTS' ANSWER, OR IN THE ALTERNATIVE, PORTIONS OF DEFENDANT'S ANSWER**

FILED BY: RODRIGUEZ, ROBERT DANIEL
TENTATIVE RULING:

The motion to strike is moot in light of the court's ruling on the demurrer.

19. 9:00 AM CASE NUMBER: C25-00917
CASE NAME: MENGJIAO REN VS. YONGKE YU
***HEARING ON MOTION IN RE: TO QUASH SERVICE OF SUMMONS AND DISMISS COMPLAINT**
FILED BY: YU, CHUXIN
TENTATIVE RULING:

Continued to July 14, 2025, at 9:00 a.m. in Department 9.

20. 9:00 AM CASE NUMBER: MS21-0168
CASE NAME: TEO SEEGER, TRUSTEE OF THE GEROLD FAMILY TR VS. SARAH WILLIS
HEARING IN RE: MOTION TO SET ASIDE JUDGMENT
FILED BY:
TENTATIVE RULING:

Introduction

Before the Court is Defendant Sarah Willis' Motion to Set Aside Void Judgment And Recall Writ(s) of Execution (if any). For the reasons below, **Defendant Sarah Willis' Motion to Set Aside Void Judgment and Recall Writ(s) of Execution is denied**.

Procedural Background

On August 31, 2021, the initial Complaint in the above-entitled action was filed. On September 20, 2021, an Application for Order to Post Summons and Complaint was filed, and the order was subsequently filed on September 24, 2021. According to the Proof of Service, filed on December 13, 2021, Summons was served by posting documents at Defendant's residence on September 28, 2021, and certified copies were mailed to the Defendant on September 29, 2021. (See Exh 1 to Opposition.)

Defendant filed a Demurrer with the Court on October 15, 2021. An order overruling Defendant's Demurrer posted on November 16, 2021. Defendant then filed an Answer to the Complaint on November 23, 2021.

On December 30, 2021, Plaintiff successfully moved to have the Unlawful Detainer reclassified as an ordinary civil action pursuant to Civil Code § 1952.3. Judgment was entered by the Court after Defendant did not show up to Trial on April 13, 2022. On December 12, 2022, a Notice of Entry of Judgment and a copy of the Judgment was mailed to the Defendant. (See Exh 2 to Opposition.)

Standard

The distinction between void and voidable orders is frequently framed in terms of the court's jurisdiction. Essentially, jurisdictional errors are of two types, the Court lacking fundamental jurisdiction or the court exceeding its jurisdiction. (*Lee v. An* (2008) 168 Cal.App.4th 558, 563.) Courts refer to jurisdiction over the parties and subject matter as "fundamental jurisdiction," and where this is lacking there is an entire absence of power to hear or determine the case. (*Airlines Reporting Corp. v. Renda* (2009) 177 Cal.App.4th 14, 19-20; citing *Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 538.) "A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) A judgment is void if the court lacked jurisdiction over the subject matter or parties, for example, if the defendant was not validly served with summons. (*Neumann v. Melgar* (2004) 121 Cal.App.4th 152, 164.)

In contrast, a judgment is valid but voidable if it is the result of the court's failure to follow proper procedure. (*Ibid*.) "Errors which are merely in excess of jurisdiction should be challenged directly, for example by motion to vacate the judgment, or on appeal … ," and generally are not subject to collateral attack once the judgment is final in the absence of unusual circumstances which prevented an earlier, more appropriate attack. (*People v. American Contractors Indemnity Co., supra*, 33 Cal.4th at p. 661.) "The difference between a void judgment and a voidable one is that a party seeking to set aside a voidable judgment or order must act to set aside the order or judgment before the matter becomes final." (*Lee v. An* (2008) 168 Cal.App.4th 558, 565-566; citing *Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 780.)

Analysis

Defendant is requesting the Court for an order requesting that the void judgment be set aside, and that any Writ(s) of Execution be recalled.

This Motion Is Not Bound By A Statute of Limitations

The *Hoehn* Court held that not only can a party move to vacate a judgment or order that is facially valid but claimed to be void based on extrinsic evidence may be attacked, collaterally, in an independent equitable action without time limits, but a party can also move to vacate a judgment void for lack of proper service under Code Civ. Proc. Section 473(d) without the imposition of the two year limitation. (*California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 215, 225.)

The Judgment Entered In The Amount Of $36,412.60 Is Not Void On Its Face.

Defendant argues the Court has no authority (i.e., jurisdiction) to award a judgment in excess of $25,000. (See *Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 274-175; C.C.P. Section 85).

The issue in *Ytuarte* was that plaintiff was denied reclassification from Limited jurisdiction to Unlimited jurisdiction because the lower court deemed that it was unlikely that plaintiff could meet the threshold of the amount in controversy. Here Plaintiff had the action reclassified from an Unlawful Detainer to an "ordinary" civil action pursuant to Civil Code § 1952.3. Thus, this argument fails.

Service Of Summons

Defendant contends Plaintiff failed to comport with the court's publication requirements because the judgment roll shows Plaintiff did not complete the reasonable diligence required of CCP section 415.45, and not in accordance with due process. No efforts at personal service were made. (See MPA at p. 4: 20-24.) Defendant cites to *Calvert* for their position, however Defendant's dependency on *Calvert* is misled. (See MPA at p. 4: 20-24.) The Court in Calvert found the judgment void on its face because plaintiffs' published the summons in the wrong newspaper. The Calvert Court reasoned, "[p]ublication in the newspaper named by the court is essential, as it ensures notice is given via the periodical that the trial court finds most likely to give the defendant notice. Plaintiffs' failure to comport with the court's publication requirements renders the judgment void on its face. (*Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 962.)

This is not the case here. Here, Plaintiff's counsel filed a code compliant declaration outlining the steps taken with reasonable diligence to serve Defendants. (See Brian Rosales Decl. filed September 20, 2021.) This declaration was reviewed and a corresponding order to post the Summons and Complaint was filed by the Commissioner on September 24, 2021. (See Order filed September 24, 2021.)

Conclusion

For the reasons analyzed above, **Defendant Sarah Willis' Motion to Set Aside Void Judgment and Recall Writ(s) of Execution is denied**.

21. 9:00 AM CASE NUMBER: MSC20-01944
CASE NAME: ESSEX VS. FIGHT CLUB PLEASANTON
***HEARING ON MOTION IN RE: FOR ENTRY OF STIPULATED JUDGMENT**
FILED BY: ESSEX WALNUT OWNER, L.P. A CALIFORNIA LIMITED PARTNERSHIP
****TENTATIVE RULING:****

Plaintiff's unopposed motion for entry of stipulated judgment is granted for the reasons stated in the motion.

22. 9:00 AM CASE NUMBER: MSC20-02656
CASE NAME: ALFONSO ALFARO VS. FORD MOTOR COMPANY A DELAWARE CORPORATION
***HEARING ON MOTION IN RE: ATTORNEYS FEES, COSTS AND EXPENSES FILED BY ALFONSO ALFARO.**
FILED BY:
****TENTATIVE RULING:****

Before the Court is Plaintiff Alfonso Alfaro ("Plaintiff" or "Alfaro")'s "Motion for Attorney Fees Costs, and Expenses." The motion is opposed by Defendants Ford Motor Company and Does 1 through 10 ("Defendants").

Plaintiff moves pursuant to California Civil Code (C.C.P.) § 1794(d) for an order awarding attorney fees, costs, and expenses in the total amount of $94,009.32. Defendants oppose this motion and request that the Court deny all attorney fees, costs, and expenses to the Plaintiff because C.C. P. section 1793.2 of the Song-Beverly Act does not apply to used cars, and Plaintiff's Counsel acted unreasonably throughout discovery. (*Rodriguez v FCA* (2024) 17 Cal. 5th 189, 206.)

The Court orders the parties to provide supplemental briefing on the issues below.

Background

Plaintiff bought a used 2016 Ford Explorer in 2018 from Volkswagen of Oakland. (Alfaro Compl. at ¶ 8.) Plaintiff initiated this Lemon Law lawsuit in December 2020 after experiencing issues with the vehicle. (*Id*.) Alfaro sought relief under C.C.P. sections 1794 and 1793.2 of the Song-Beverly Act. (*Id*. at ¶ ¶ 18, 32, 37, 43-45, 48-49, 51, 53.) However, in April 2022, the Fourth District Court of Appeal held that the remedies available under C.C.P. section 1793.2 do not apply to used cars. (*Rodriguez* (2022) 77 Cal. App. 5th 209, 225.) C.C.P. section 1793.2 governs manufacturers' liability regarding warranty violations in the sale of new cars. (§ 1793.2.) The Supreme Court took up *Rodriguez* in July 2022 and granted courts permission to use the Fourth District's ruling in the interim. (See (2022) 2022 Cal. Lexis 3829.)

During Alfaro's June 2023 deposition, Plaintiff Counsel refused to let Alfaro answer basic questions like "You bought the subject vehicle, a 2016 Explorer, at Volkswagen of Oakland, is that correct, Mr. Alfaro?" "Do you see where it says the word 'used,' U-S-E-D?" and "Do you see to the right of that where it says odometer and the number 13,310?" (Alfaro Dep. at pp. 16:24-17:3, 22:11-16, 23:1-5.) Plaintiff Counsel's conduct prompted the previous judge in this action, Judge Fanin (ret.), to remark that Plaintiff Counsel's behavior at the deposition was "border line [sic] State Bar reportable. If I were deciding attorney fees, I wouldn't give you anything…" (Def. Mem. P. & A. Opp'n Pl.'s Mot. Att'y Fees at pp. 2:3-4.)

The parties agreed to settle the case for $7,500 on July 20, 2023. The parties then executed an Offer to Compromise pursuant to C.C.P. section 998 on November 27, 2023. (Decl. of Kevin Y. Jacobson Supp. Reply re Pl.'s Mot. Att'y Fees, Costs. And Expenses, Ex. 2 at p. 3.) The 998 indicates that the Court will award attorney fees pursuant to C.C.P. Section 1794, absent agreement by the parties. (*Id.* at ¶ 3.)

In October 2024, the Supreme Court upheld the Fourth District's decision that C.C.P. section 1793.2 does not apply to used cars sold without new car warranties. (*Rodriguez* 17 Cal. 5th at 202.) Plaintiffs filed the present motion requesting the Court award attorney fees about a month later on November 21, 2024.

Analysis

C.C.P. section 1794 provides the statutory basis for awarding attorney fees for a section 1793.2 claim. Section 1793.2 does not apply *to used cars* purchased without new car warranties in litigation against *manufacturers*, as is the case here. (See *Rodriguez* 17 Cal. 5th at 206.; *Kiluk v Mercedes-Benz USA, LLC* (2019) 43 Cal. App. 5th 334, 339.) ("The Song-Beverly Act provides similar remedies in the context of the sale of used goods, except that the manufacturer is generally off the hook...")

The parties' 998 agreement specifically references 1794(d) as the statutory basis for awarding attorney fees. (Jacobson Decl., Ex. 2 at ¶ 3.) But it is unlikely that 1794(d) provides the Court authority to award attorney fees here given that section 1793.2 is inapplicable here. Moreover, section 998 does not provide independent statutory authority for courts to award attorney fees. (*Linton v County of Contra Costa* (2019) 31 Cal. App. 5th 628, 634-635.)

Still, the parties executed the 998 prior to the Supreme Court's decision in *Rodriguez*, when Courts may have had the option to find warranty liability against manufacturers for used cars under 1793.2 (though even this is doubtful given the Second District's decision in *Kiluk*.) Defendants knew of the pending litigation yet still went forward with the settlement. (Decl. of Kevin J. Tully Supp. Defs.' Opp'n to Pl.'s Mot. for Atty Fees at 3:5-22). This suggests the parties consciously disregarded the pending litigation and intended for the 998 to allow the Court to assess attorney fees.

Given this tension, the Court questions the statutory basis for awarding attorney fees and the parties' intent when executing the 998. Consequently, the Court requests supplemental briefing on the following points from both parties:

1. What is the statutory basis for awarding attorney fees given that 1793.2 is inapplicable to the Plaintiff?

2. The Court has not found any cases where the parties executed a 998 before *Rodriguez* but attorney fees were not decided until after *Rodriguez.* Are there examples of courts ordering attorney fees after a decision that changed the underlying law? Are there examples of a court invalidating a 998 because of statutory changes?

3. Why did Defense Counsel accept the 998 offer if Defense Counsel was certain that they would succeed at trial in light of the Fourth District's decision in *Rodriguez*?

This analysis does not consider whether Plaintiff Counsel's apparent misconduct warrants terminating any attorney fee award. There appears to be a well-documented basis for reducing, if not terminating, any such award. However, the Court must first determine whether the statute permits awarding attorney fees at all.

The hearing is continued to July 21, 2025 at 9:00 a.m. in Department 9. Both Plaintiff and Defendant shall file their respective supplemental briefs no later than July 11, 2025.

23. 9:00 AM CASE NUMBER: C23-01184
CASE NAME: THEO LIM VS. DEBBY LAN IE
HEARING ON ORDER TO SHOW CAUSE IN RE: FOR DEFENSE COUNSEL RYAN WRIGHT'S FAILURE TO APPEAR ON 06/16/2025
FILED BY:
TENTATIVE RULING:

Appearance required.