SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 03/21/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Local Rule 3.43(2).) CourtCall will **NOT** be used by D18. Zoom is approved for all hearings except Issue Conferences and Trials. **Dept. 18's telephone number is: (925) 608-1118.**

NOTE: In order to minimize the risk of miscommunication, Dept. 18 prefers and encourages email notification to the department of the request to argue and specification of issues to be argued.

Dept. 18's email address is: dept18@contracosta.courts.ca.gov.

Submission of Orders After Hearing in Department 18 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. The order must include appearances. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: C22-02171
CASE NAME: ERNIE & SONS SCAFFOLDING, DBA UNIQUE SCAFFOLD, A CALIFORNIA CORPORATION VS. JOHN SOTO
***HEARING ON MOTION IN RE: TO ENFORCE JUDGMENT**
FILED BY: NEGRETE, JR., ERNESTO
****TENTATIVE RULING:****

The Court continues the hearing on this matter to March 28, 2025, at 9:00 a.m.

2. 9:00 AM CASE NUMBER: C23-01988
CASE NAME: MATTHEW PARRY VS. GELCO FLEET TRUST

HEARING IN RE: APPLICATION TO APPEAR PRO HAC VICE OF SEAN P. MURPHY FOR AMAZON
FILED BY: AMAZON LOGISTICS, INC.
TENTATIVE RULING:

Vacated.

3. 9:00 AM CASE NUMBER: C23-02953
CASE NAME: JAGIL STAFFORD VS. XAVIER TRUONG
***HEARING ON MINOR'S COMPROMISE AS TO JALEAH STAFFORD**
FILED BY: STAFFORD, JALEAH
TENTATIVE RULING:

Approved.

4. 9:00 AM CASE NUMBER: C23-02953
CASE NAME: JAGIL STAFFORD VS. XAVIER TRUONG
***HEARING ON MINOR'S COMPROMISE OF HARLEM STAFFORD**
FILED BY: STAFFORD, HARLEM
TENTATIVE RULING:

Approved.

5. 9:00 AM CASE NUMBER: C23-03237
CASE NAME: RECLAMATION DISTRICT NO. 799 VS. SUNSET HARBOR MARINA, LLC
HEARING ON DEMURRER TO: CROSS COMPLAINT
FILED BY: RECLAMATION DISTRICT NO. 799
TENTATIVE RULING:

Before the Court is Plaintiff and Cross-Defendant Reclamation District No. 799's Demurrer to First Amended Quiet Title Cross Complaint.

Factual and Procedural Background

On December 21, 2023, Plaintiff Reclamation District No. 799 filed a Verified Complaint for Quiet Title; Declaratory and Injunctive Relief naming Sunset Harbor Marina, LLC, Sunset Harbor Marina & RV LLC, and 3030 Dutch Slough LLC as defendants.

On June 13, 2024, Defendants Sunset Harbor Marina & RV LLC, and 3030 Dutch Slough LLC filed a Quiet Title Cross Complaint against Plaintiff District. The operative First Amended Quiet Title Cross Complaint ("FACC") was filed on September 13, 2024. The FACC alleges that both Cross-Complainants operate a recreational boat launch and vehicle storage facility at the properties at issue – 3040 Dutch Slough Road and 5998 Bethel Island Road, City of Oakley. (¶ 1.) It also alleges that "Cross-Complainant owns full fee title to the Subject Property." (¶ 16.) Notably, this allegation indicates that "Cross-Complainant" – singular - owns the Subject Property. It does not, however, indicate which of the two Cross-Complainants owns the Subject Property.

The District demurrers to the FACC on the basis that it fails to plead facts sufficient to state a cause of action for a quiet title claim.

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.) The complaint must allege facts "sufficient to establish every element of each cause of action." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.)

"In an action to quiet title, the complaint should allege, *inter alia*, the interest of the plaintiff in the property at the time the action is commenced." (*Stafford v. Ballinger* (1962) 199 Cal.App.2d 289, 292.) "If plaintiff owns the property in fee, a general allegation of ownership of the described property is sufficient." (*Ibid*.)

Analysis

As noted by the District: "Defendants' Cross-Complaint does not identify which of the two cross-complainants owns the Subject Property and does not allege any interest of the remaining cross-complainant." (Demurrer at 4:18-19.) In addition: "With regard to the non-fee-owning cross-complainant, there is no allegation in the Cross-Complaint which indicates what property interest, if any, that cross-complainant claims." (*Id.* at 4:25-27.)

In opposition, Cross-Complainants do not dispute that the FACC fails to properly identify which entity has an ownership interest in the Subject Property. Instead, they indicate that Cross-Complainant 3030 Dutch Slough LLC is the owner in fee of the Subject Property. Cross-Complainant Sunset Harbor Marina & RV LLC does not have an ownership interest in the Subject Property, but does have a tenancy. Given this information, Cross-Complainants request leave to amend to "clarify ownership of the property in dispute."

On Reply, the District does not argue that leave to amend should not be given.

It does points out that during meet and confer discussions Cross-Complainants informed the District on October 29, 2024, that "3030 Dutch Slough LLC owns the land." On that same date, after receiving that information, the District indicated it would be willing to sign a stipulation to allow the filing of a second amended cross-complaint. (Schrimp Decl. Ex. B.) Instead of working with the District to remedy the defect in the FACC, Cross-Complainants required the District to instead file the instant Demurrer – which it then did not substantively oppose. There is no explanation as to why Cross-Complainants' counsel declined the offer to stipulate to the filing of an amended cross-complaint. The Court expects counsel to work together to avoid unnecessary motion practice that needlessly clogs the court's motion calendar.

Conclusion

The District's demurrer is **sustained** with leave to amend.

6. 9:00 AM CASE NUMBER: C24-00779
CASE NAME: MOORE OKEH VS. HARDEEP SINGH
***HEARING ON MOTION IN RE: COMPEL ARBITRATION**
FILED BY: U.S. BANK NATIONAL ASSOCIATION SUCCESSOR IN INTERESTTO CALIFORNIA SAVINGS BANK
TENTATIVE RULING:

Hearing continued by stipulation of the parties to May 2, 2025, at 9 am.

7. 9:00 AM CASE NUMBER: C24-01550
CASE NAME: DANDREA WALKER VS. CITY OF RICHMOND
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: COUNTY OF CONTRA COSTA
TENTATIVE RULING:

Vacated. Motion is moot as Contra Costa County was dismissed on March 10, 2025.

8. 9:00 AM CASE NUMBER: C24-02037
CASE NAME: JOSE MARTINEZ VS. BELINDA MCKENZIE
***HEARING ON MOTION IN RE: LEAVE TO AMEND ANSWER**
FILED BY: MCKENZIE, BELINDA
TENTATIVE RULING:

The Court does not have proof that the motion served included the date and time of the motion nor the department where the motion would be heard. The matter is continued to May 9, 2025, at 9 am.

9. 9:00 AM CASE NUMBER: L23-01865
CASE NAME: ONEMAIN FINANCIAL GROUP, LLC VS. ISAIAH REED
***HEARING ON MOTION IN RE: MOTION TO FOR ORDER SETTING ASIDE JUDGMENT BY DEFAULT/DISMISSING W/OUT PREJUDICE FILED BY PLN ON 10/16/24**
FILED BY: ONEMAIN FINANCIAL GROUP, LLC
TENTATIVE RULING:

Granted.

10. 9:00 AM CASE NUMBER: MSC19-01309
CASE NAME: RODRIGUEZ VS MASOUDI
***HEARING ON MOTION IN RE: TO QUASH SERVICE OF SUMMONS, VACATE AND SET ASIDE DEFAULT AND DEFAULT JUDGMENT, RECALL AND QUASH WRITS AND ABSTRACTS, AND DISMISS ACTION**
FILED BY: MASOUDI, ELISABETH B
TENTATIVE RULING:

Before the Court is a motion by defendant Elisabeth Masoudi to vacate and set aside default and default judgment, recall and quash writ of execution, and return of property levied upon. For the reasons set forth, the motion and all relief requested therein is **granted in its entirety.**

Background

This matter arises out of a claim for attorneys' fees for services rendered by plaintiff Robert Rodriguez to his former client defendant Elisabeth Masoudi. Plaintiff filed his complaint against defendant Masoudi initiating this action on July 1, 2019. In April 2020, Plaintiff filed an application for service of the summons and complaint on Masoudi by publication, asserting in his declaration in support of the application that he had attempted personal service on her at her last known address, "408 La Gonda Way, Danville" and was unable to serve her there and was unable to locate her. (Masoudi Decl. ¶¶ 2-6 and Exh. A.) Based on the application and the Rodriguez Declaration, the Court issued an order for service by publication.

When Masoudi failed to file a responsive pleading, Rodriguez requested entry of her default on October 16, 2020, which was granted, and then sought and obtained a default judgment against her on March 23, 2021 in the amount of $81,352.51. The request for entry of default on October 16, 2020 was not mailed by Plaintiff, even to Defendant's last known address; Plaintiff instead asserted Masoudi's address was "unknown." (10/16/2020 Req. for Def.) The request for entry of clerk's judgment filed by Plaintiff on January 7, 2021 was also not mailed to Defendant based on Plaintiff's attestation that her address was "unknown." (1/7/2021 Req. for Clerk's Judg.) A judgment was entered March 23, 2021. The Court's files do not reflect any notice of entry of the judgment was served on Defendant.

Defendant Masoudi, though her current counsel, filed this motion to vacate the default and default judgment under a "limited scope" representation on October 30, 2024. Defendant contends the default and default judgment are void and/or that she is entitled to equitable relief therefrom. Rodriguez opposes the motion.

Requests for Judicial Notice

A. Defendant's Request

Defendant asks the Court to take judicial notice of the State Bar Court of California Review Department, Opinion and Order In the *Matter of Robert Daniel Rodriguez,* SBC-19-O-30583 ("State Bar Order"). (Def. RJN Exh. A.) Rodriguez objects to the request on multiple grounds, including that the State Bar Order has not been properly authenticated. The Court agrees that the copy of the State Bar Order attached to the request has not been authenticated by a declaration, and the Court therefore **denies** the request.

B. Plaintiff's Request

Plaintiff requests the Court take judicial notice of five pleadings previously filed in this action which Plaintiff indicates are "true and correct" copies of the records attached. The request is unnecessary because the documents are records of the Court filed in this action. Nevertheless, the Court will **grant** the request as unopposed, except that the Court does not take judicial notice of the truth of the content of any of the documents where the content is reasonably disputable. (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.)

Plaintiff's Procedural Objections Regarding Service of Moving Papers and Supplemental Declaration

It is uncontested that Defendant served Plaintiff by electronic mail with the moving papers, without a

hearing date, on October 30, 2024 and that he was later served a notice of the motion hearing date by electronic mail on November 7, 2024, setting the hearing for March 21, 2025. Plaintiff also does not contest that Defendant served him electronically on December 2, 2024 with the supplemental Masoudi Declaration, roughly two and a half months before the scheduled hearing. He does not contest his receipt of the pleadings, but argues electronic service was improper and defective.

A. Service of Notice of Motion After Motion Papers

Plaintiff argues that service of the moving papers without a hearing date, followed by service of a notice of hearing advising him of the hearing date, is invalid under Code of Civil Procedure section 1005 and Rules 3.1300(a) and 3.1112(a) of the California Rules of Court. The Court disagrees. Service of the moving papers in that manner is consistent with both the statute and rules, and with the well-established practice for service of motions and notices of the scheduled hearings in this Court. (Rodriguez Decl. ¶ 4 [conceding the motion papers filed on October 30, 2024 and served on him on that date did not have a hearing date on their face pages "as none was yet issued by the clerk of the court until 11/7/2024].) The Court agrees that service of a motion is not completed until a notice of the hearing date on the motion is served. (Code Civ. Proc. § 1005(b) and Cal. R. Ct., Rules 3.1300(a) and 3.1112(a).) However, nothing in the statute or Court Rules precludes service of the notice setting the hearing date separate from or following the service of the motion papers. Service of the motion papers on the date they were filed, pending issuance of the hearing date by the clerk, provided Plaintiff with additional time to review the papers. The notice of hearing was served months before the scheduled hearing, well in advance of the 16-court day deadline under Code of Civil Procedure section 1005(b). There is no service defect on this ground.

B. Service of Supplemental Masoudi Declaration on December 2, 2024

Plaintiff argues that service of a supplemental declaration by Masoudi on December 2, 2024, approximately one month after service of the motion and more than two months before the hearing on the motion is a procedural defect since "all" the motion papers were not served and filed concurrently. (Code Civ. Proc. § 1005.) The filing and service of a supplemental declaration more than two months before the hearing date and well in advance of any deadline under Code of Civil Procedure section 1005(b) is not a procedural defect. Plaintiff has had ample opportunity to address the additional information in that short supplemental declaration.

C. Defective Service of Moving Papers Based on Electronic Service

Plaintiff contends service of the motion papers by electronic mail is defective service, as he is appearing as an unrepresented party and has not expressly consented to receive service by electronic means. Plaintiff is correct that the motion papers should have been served on him by nonelectronic means under the applicable statute and rules. (Code Civ. Proc. § 1010.6; Cal. R. Ct., Rule 2. 253(b)(2) and (3); Local Civ. Rule 2.87(b).) Defects in the service of a motion, however, can be waived by a party making a fulsome substantive response on the merits of the motion with evident knowledge of the date and time set for the hearing and without requesting a continuance of the hearing because of any perceived prejudice in his ability to respond on the merits. (*Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930 ["It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of the motion."]; *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697 [defective notice of less than

statutory notice period for motion for summary judgment waived by opposition on the merits without argument regarding prejudice or request for continuance]; *Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7; *De Witt v. Board of Supervisors* (1960) 53 Cal.2d 419, 425.)

All three of Plaintiff's opposition pleadings bear the date, time, and place set for the hearing. They were all filed on March 10, 2025, one court day later than the deadline under Code of Civil Procedure section 1005(b), but the moving party has not objected to the untimely opposition. Plaintiff does not contend that he did not receive all the motion pleadings. He has not identified in his declaration or opposition any prejudice he has suffered as a result of being served electronically the date each of Defendant's pleadings were filed rather than by mail at his post office box (or based on any other procedural defects raised in his opposition). He opposed the motion on the merits, and he has not argued in his opposition that the hearing should be continued to provide him with more time to make any additional response on the merits that he was unable to make because of the defective service. Plaintiff has waived any defects based on electronic service of the motion papers.

D. Defective Service of Reply Papers

Defendant Masoudi filed a second supplemental declaration and reply on March 14, 2025. Despite Rodriguez's detailed objections in his opposition to electronic service and his lack of consent to electronic service as an unrepresented litigant, defendant's proof of service shows the reply papers were served only electronically. The Court will not consider the reply papers in ruling on the motion.

Legal Standards Applicable to the Motion

Defendant moves for relief from the default and default judgment on the grounds the default and default judgment are void for lack of proper service and because they were entered based on extrinsic fraud and subject to the Court's inherent authority to grant equitable relief. (Mot. p. 2, ¶ 2.) (*See California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 227 [expressing no opinion on "how or whether Hoehn's extrinsic mistake claim is substantively distinct from his claim to vacate a void judgment for lack of proper service under Code of Civil Procedure section 473(d)" but holding Hoehn in that case was "free to raise in the Court of Appeal the issue of whether the default judgment at issue here is void due to 'extrinsic fraud or mistake.' "].)

A. Code of Civil Procedure Section 473(d) and Void Judgments

Code of Civil Procedure section 473(d) states that "[t]he court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." (*See also generally Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 834.) "To determine 'whether an order [or judgment] is void for purposes of section 473, subdivision (d), courts distinguish between orders [or judgments] that are void on the face of the record and orders [or judgments] that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence. . . . If the invalidity can be shown only through consideration of extrinsic evidence, such as declarations or testimony, the order/judgment is not void on its face. [Citation omitted.]" (*Kremerman v. White* (2021) 71 Cal.App.5th 358, 370.)

The Court in *California Capital Inc. Co. v. Hoehn, supra,* 17 Cal.5th 207 stated that a default judgment is void if it is entered against a defendant where the summons was not service in compliance with the

statutes governing service of process. (*Id.* at 214.) The Court explained, " 'Failure to give notice violates "the most rudimentary demands of due process of law." ' [Citation omitted.] Accordingly, the high court has held that due process does not permit a state to require parties not properly served to show a meritorious defense in the underlying action before they can have their default judgments vacated. [Citation omitted.]" (*Id.* [quoting and citing *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 84, 86, relied on by defendant].) (*See also David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1016 ["A judgment is void for lack of jurisdiction of the person where there is no proper service of process on or appearance by a party to the proceedings."].)

B. Equitable Relief from Default and Default Judgment

"After six months from entry of default, a trial court may still vacate a default on equitable grounds even if statutory relief is unavailable. [Citation omitted.]" (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) When a default judgment has been entered, courts have used a "stringent test to qualify for equitable relief from default" based on extrinsic mistake (or extrinsic fraud). (*Id.* at 982.) " 'To set aside a judgment based upon extrinsic mistake one must satisfy three elements. First, the defaulted party must demonstrate that it has a meritorious case. Second[], the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Last[], the moving party must demonstrate diligence in seeking to set aside the default once … discovered.' [Citation omitted.]" (*Id.* at 982.) Other courts have applied this standard where a party seeks to vacate a judgment based on extrinsic fraud. (*In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1071.)

Extrinsic fraud and extrinsic mistake have been construed "expansively." (*California Capital Inc. Co. v. Hoehn, supra,* 17 Cal.5th at 227 [citing *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181].) "While the grounds for an equitable action to set aside a default judgment are commonly stated as being those of extrinsic fraud or mistake, the terms are given a very broad meaning which tends to encompass all circumstances that deprive an adversary of fair notice of hearing whether or not those circumstances would qualify as fraudulent or mistaken in the strict sense. Thus a false recital of service although not deliberate is treated as extrinsic fraud or mistake in the context of an equitable action to set aside a default judgment. [Citations omitted.]" (*Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181.)

" 'Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding. [Citation.] Examples of extrinsic fraud are: . . . failure to give notice of the action to the other party, and convincing the other party not to obtain counsel because the matter will not proceed (and then it does proceed). [Citation.] The essence of extrinsic fraud is one party's preventing the other from having his day in court.' [Citations omitted.] Extrinsic fraud only arises when one party has in some way fraudulently been prevented from presenting his or her claim or defense. [Citations omitted.]" (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300-1301.)

Analysis

Plaintiff contends Masoudi has not demonstrated that the service by publication was invalid, that the default and default judgment were entered as a result of extrinsic mistake or extrinsic fraud, that she has a meritorious defense to his claim, and that she acted diligently to obtain relief after discovering the default judgment. For the reasons detailed below, the Court rejects Plaintiff's arguments.

A. Extrinsic Fraud in Plaintiff Obtaining Order for Publication and Defective Service for Failure to Comply with Service of Process Requirements for Service by Publication

In *Rios v. Singh* (2021) 65 Cal.App.5th 871, the Court of Appeal summarized the statutory requirements for service by publication and relevant case law:

> Section 415.10 et seq. governs the manner of service of a summons. A summons may be served by various methods. If service of a summons by other means proves impossible, service may be effected by publication, upon the trial court's approval. [Citation omitted.] Section 415.50 governs this method of service. Subdivision (a) of section 415.50 provides, in pertinent part, "A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in [section 415.10 et seq.] and that . . . [¶] . . . [a] cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action."
>
> A number of honest attempts to learn the defendant's whereabouts through inquiry and investigation generally are sufficient. [Citation omitted.] A plaintiff must show such efforts because it is generally recognized that service by publication rarely results in actual notice. [Citations omitted.] Whether the plaintiff exercised the diligence necessary to justify resort to service by publication depends on the facts of the case. [Citation omitted.] The question is whether the plaintiff took the steps a reasonable person who truly desired to give notice of the action would have taken under the circumstances. [Citation omitted.]

(*Id.* at 880-881 [emphasis added].)

The Court in *Donel, Inc. v. Badalian* (1978) 87 Cal.App.3d 327, cited by Plaintiff, explained that " '[In] proceeding to avail himself . . . for constructive service of summons, a plaintiff must, in fact, have exercised due diligence. A mere formal compliance with the provisions of the statute, or a statement to that effect in his affidavit, will not suffice; nor will an order for publication based upon such an affidavit, or a judgment following a service of publication thereon, be conclusive of the fact that such diligence was exercised.' [Citation omitted.]" (*Id.* at 333 [emphasis added].) (*See also David B. v. Superior Court, supra,* 21 Cal.App.4th 1010, 1016 ["Where the party conducting the investigation ignores the most likely means of finding the defendant, the service is invalid even if the affidavit of diligence is sufficient."]; *In re D.R.* (2019) 39 Cal.App.5th 583, 592 [same].)

The Court in *Kott v. Superior Court* (1996) 45 Cal.App.4th 1126 expanded on the diligence requirement in holding that the affidavit supporting the order for publication in that case was deficient:

> The Judicial Council comment to this section [Code Civ. Proc. § 415.50] is instructive in defining the showing required before a trial

> court is justified in finding a party has exercised reasonable diligence in attempting to locate the party to be served. "The term 'reasonable diligence' takes its meaning from the former law: it denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney [citations omitted]. A number of honest attempts to learn defendant's whereabouts or his address by inquiry of relatives, friends, and acquaintances, or of his employer, and by investigation of appropriate city and telephone directories, the voters' register, and the real and personal property index in the assessor's office, near the defendant's last known location, are generally sufficient. These are likely sources of information, and consequently must be searched before resorting to service by publication." [Citation omitted.] However, the showing of diligence in a given case must rest on its own facts and "[n]o single formula nor mode of search can be said to constitute due diligence in every case." [Citation omitted.]

(*Id.* at 1137-1138 [emphasis added].)

1. Summary of the Evidence Relevant to the Order for Service by Publication and Claim of Extrinsic Fraud

Plaintiff's April 3, 2020 application for service by publication includes a supporting declaration by Plaintiff, a copy of which is also attached as an exhibit to Plaintiff's RJN. Rodriguez declared he conducted a search of records in the "County of Santa Clara" (not Contra Costa) through a 2019 telephone directory and an internet search. (4/10/2020 Rodriguez Decl. ¶ 4a. and b.) He attaches his "internet skip search" results for the Defendant, and he says he called the numbers listed on that search. (4/10/2020 Rodriguez Decl. ¶ 4 and Exh. A.)

Defendant Masoudi is his former client. She presents unrefuted declaration testimony in support of this motion that Rodriguez knew her cell phone number and made no attempt to contact her by telephone. (Masoudi Decl. ¶ 7; Rodriguez Opp. Decl. [no statement refuting his knowledge of her cell phone number and failure to attempt to contact her at that number].) Rodriguez testifies he tried to reach her on the telephone numbers listed in the internet search, but not that he tried to reach her on her known cell phone number, which is different from the numbers listed on the internet search. (Rodriguez ¶¶ 16, 13 and Exh. 1; Masoudi Decl. ¶ 7.) Rodriguez's declaration for the publication order omits that he knew defendant's cell phone number and did not make any effort to reach her by telephone to advise her of the action and attempt to arrange service.

Rodriguez also does not address or refute that he knew Masoudi's email address and that he made no attempt to email her regarding the lawsuit to attempt to arrange for service. (Masoudi Decl. ¶ 7; Rodriguez Opp. Decl. [no statement refuting his knowledge of her email address and failure to try to reach her by that means].) While email service of the summons and complaint would not be sufficient, he could have asked to arrange for physical service or asked her if she would accept service by notice and acknowledgement. He does not deny that he made no attempt to do so.

Rodriguez disputes that he had an affair with Defendant, that he stayed overnight with her, or that he

sent her flowers at her Danville address. (Compare Masoudi Decl. ¶ 5 to Rodriguez Opp. Decl. ¶¶ 4, 5.) Rodriguez, however, does not dispute in his opposition declaration that he had visited her at her Danville apartment and that he knew her apartment number at the Danville address (#206). (Rodriguez Opp. Decl. ¶ 8.) (*See also* Rodriguez Decl. ISO Req. for Judg. Exh. B [7/1/2019 Invoice, the date of filing the complaint, showing mailing address without the apartment number].) He omits from his declaration in support of the application for service by publication that he was not using a complete mailing address with the known apartment number for the Danville address when he asserted he could not serve her because he had received returned mail for that address. (4/10/2020 Rodriguez Decl. ¶ 2.)

Rodriguez also seems to admit that he was aware that Masoudi may have been living at the 2180 Geary Rd., Pleasant Hill address listed in his internet skip search, but that he did not attempt to serve her there because the address on the internet search did not list an apartment number. (Rodriguez Opp. Decl. ¶¶ 13-15 and Exh. A.) His declaration in support of the publication application merely states the specific unit "could not be ascertained"; he states the other addresses on the internet skip search belonged to relatives. (4/10/2020 Rodriguez Decl. ¶ 4.) He did not describe any attempt to serve her or locate her through the addresses of the "relatives" or what steps he took to actually investigate the apartment building to locate a unit number. Rodriguez now contends "there was no reasonable way to determine which unit Defendant resided at" without "knocking on about 100 doors." (Rodriguez Opp. Decl. ¶ 15.) Rodriguez does not explain what "investigation" he did to reach that conclusion.

Rodriguez declares in his opposition declaration that he knew Masoudi was represented by counsel in her divorce proceeding, that he knew who her divorce attorney was, and that he made no attempt to locate her or serve her through her counsel in that action because he speculates that he "would have been told [her new address] was confidential." (Rodriguez Opp. Decl. ¶ 10.) Rodriguez essentially admits he made no attempt to arrange service of Masoudi through her counsel in the dissolution action.

Rodriguez does not refute Masoudi's declaration when she attests that Rodriguez knew that the address 2858 Miranda Avenue in Alamo was her ex-husband's address, which Rodriguez would reasonably be expected to know as he was her original divorce counsel. (Masoudi Decl. ¶ 12.) She states that address was still a good mailing address for her when this action commenced if documents had been mailed there and that he could have effectuated substitute service there. (Masoudi Decl. ¶ 12.) Rodriguez in response merely asserts that at some unspecified date, she told him she allegedly "lost her house in Alamo" because she could not obtain a loan to buy out her husband's interest, but he also declares that she took out a loan against that property in 2024. (Rodriguez Opp. Decl. ¶ 7.) It is not clear what "lost her house" means in this context, especially since her inability to buy out her husband to acquire sole title does not mean the husband did not still own the house, or that she did not still have a community property ownership interest in it, or that she did not receive mail there or could not have been sub-served there. (Rodriguez Opp. Decl. ¶ 7.)

Rodriguez also admits he knew her former spouse and his address and made no effort to try to locate her through him "because he was represented by counsel." (Rodriguez Opp. Decl. ¶ 11.) He also knew who her ex-husband's attorney was, and he made no effort to reach her or try to serve her by contacting her ex-husband's counsel either. (Rodriguez Opp. Decl. ¶ 11.) He declares he did not try to

reach her through either of the two divorce attorneys because they knew he had a charging lien in the dissolution matter, and he did not "expect them to cooperate with" him. (Rodriguez Opp. Decl. ¶ 11.)

Rodriguez's current justifications for not trying to contact known associates of Masoudi who would have likely had information on her location effectively admits the statements he made in his April 2020 declaration in support of the application for an order for publication were false. Rodriguez attested in his April 2020 declaration in support of his application for service by publication, "I made no attempts to locate the party through relatives, friends, or others likely to know the whereabouts of the party **because they are unknown to me, nor, in reasonable diligence, could I ascertain such**." (4/10/2020 Rodriguez Decl. ¶ 5 [emphasis added].) In his declaration in opposition to this motion, Rodriguez admits facts showing his prior statement that "relatives, friends, or others likely to know the whereabouts of [Masoudi] . . . **are unknown to me, nor, in reasonable diligence, could I ascertain such**" was not true. Rodriguez knew of others he could contact to locate Masoudi, including her ex-husband, her ex-husband's attorney, and her then-current divorce attorney, but Rodriguez both made no attempt to contact them to locate Masoudi. More important, he **misrepresented to the Court in his declaration that he had no knowledge of other sources of contact information** for Masoudi, facts on which the publication order was based.

2. The Evidence Shows There Was Extrinsic Fraud in Obtaining the Default and Default Judgment

Rodriguez made a material, false representation to the Court in his declaration in support of the publication application that others who potentially knew her whereabouts were "unknown" to him and could not with reasonable diligence be ascertained. He also omitted material information. In addition to having defendant's cell phone number and email address by which he could have contacted her and potentially located her directly, Rodriguez knew people who knew her whereabouts and deliberately failed to reach out to those persons to try to obtain her location for service, or in the case of her attorney, to try to arrange service through him. Reaching out to those persons, of course, would have meant that Masoudi would have likely received notice of the lawsuit against her, but that is the purpose of due process and making service of a summons by publication the method of service of last resort. (*Rios v. Singh, supra,* 65 Cal.App.5th at 880-881.)

Plaintiff's material misrepresentation to the Court to support the service by publication supports a finding that the default and default judgment were entered based on extrinsic fraud on the Court. It supports that this part of the three-prong test is met for vacating and setting aside the default and default judgment on equitable grounds for extrinsic fraud. Plaintiff's conduct in misrepresenting his exercise of due diligence and inability to locate Masoudi for service precluded Masoudi from being informed of the lawsuit and being able to defend the action before her default and default judgment were entered. (*Sporn, supra,* 126 Cal.App.4th at 1300-1301.)

Citing *Sporn,* Plaintiff argues that Masoudi must show a causal relationship between the misrepresentation and the defendant's failure to present a defense (Opp. p. 11), and she has done so. She did not defend the action because she had no notice of the action because Plaintiff was allowed to serve her by publication, a method unlikely to give actual notice, and he was allowed to serve in that manner based on false representations and omissions detailed above.

Plaintiff argues that Masoudi's general appearance in the action more than three years after the default judgment was entered, and four years after the complaint was filed, when she appeared in the post-judgment proceedings at her judgment debtor examination in July 2024 precludes her from obtaining relief from the default or default judgment. There is no evidence that Masoudi had any knowledge of Plaintiff's lawsuit until she was required to appear for a judgment debtor examination more than three years after the default judgment was entered. (Masoudi Decl. ¶ 2; Masoudi Suppl. Decl. filed 12/2/2024 ¶ 3.) Plaintiff cites no legal authority that supports his proposition. The law is to the contrary. (*See Dale v. ITT Life Ins. Corp.* (1989) 207 Cal.App.3d 495, 499, fn. 4 ["Dale's argument that ITT made a general appearance in seeking to set aside the default and default judgment is of no avail. A general appearance after the period for service has run does not give the court jurisdiction over the defendant. [Citations omitted.]"].)

Plaintiff argues relief is not available if the defendant's negligence "permitted the fraud to be practiced," quoting *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47. Plaintiff has not shown defendant was negligent. The argument in the opposition that Masoudi was "concealing herself from Plaintiff" is unsupported by any evidence. (Opp. p. 12, l. 3.) The argument is further undermined by the fact Masoudi has continued to have the same cell phone number and email address known to Plaintiff both before and after the action was filed, methods of contact Plaintiff simply chose not to employ. Further, the Court in *Manson* held that the trial court properly granted relief from a default and default judgment in that case based on extrinsic fraud after the defendant discovered the entry of the default and default judgment against her when she appeared for a judgment debtor examination. (*Id.* at 49.)

3. <u>The Evidence Shows Plaintiff Did Not Comply with the Service by Publication Statute as He Did Not In Fact Exercise Due Diligence to Serve Masoudi Before Seeking An Order for Service by Publication</u>

The evidence supports that the conditions for service by publication under the statute and case law were not met and service was therefore invalid. (*Donel, Inc. v. Badalian, supra,* 87 Cal.App.3d at 333; *California Capital Inc. Co. v. Hoehn, supra,* 17 Cal.5th at 214.) Rodriguez did not exercise the kind of reasonably diligent effort to notify Masoudi of the lawsuit and serve her with the summons and complaint that is required before resorting to service by publication. Rodriguez did not take "the steps a reasonable person <u>who truly desired to give notice of the action would have taken under the circumstances</u>." (*Rios v. Singh, supra,* 65 Cal.App.5th at 880-881 [emphasis added].)

The facts and evidence summarized above also demonstrate that Plaintiff did not in fact exercise due diligence to try to locate Masoudi and to try to serve her with the summons and complaint before resorting to service by publication. (Code Civ. Proc. § 415.50; *Rios v. Singh, supra,* 65 Cal.App.5th at 880-881 [plaintiff filed to take "the steps a reasonable person who truly desired to give notice of the action would have taken under the circumstances"]; *Kott v. Superior Court, supra,* 45 Cal.App.4th at 1137-1138 [no "thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney"]; *Donel, Inc. v. Badalian, supra,* 87 Cal.App.3d at 333.) Defendant did not receive actual notice of the litigation, and the order allowing service by publication was premised on false information that denied Masoudi notice and an opportunity to respond to the complaint and litigate Plaintiff's claims on the merits in violation of her due process rights.

In *California Capital Ins. Co. v. Hoehn, supra,* the Court held that the two-year time limitation under Code of Civil Procedure section 473.5 does not apply to a motion for relief from a judgment that is void for lack of notice. (*California Capital Ins. Co. v. Hoehn, supra,* 17 Cal.5th at 226.) Relying on *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, cited by defendant in support of her motion, the Court explained the due process implications supporting its holding: "The right of civil defendants to proper service is essential to their basic due process right to notice and to their ability to defend against liability claims that may lead to unwarranted financial hardship. [Citation omitted.] If, as Hoehn asserts in his declaration, he first learned of this lawsuit when his wages were garnished almost nine years after a default judgment had been entered, this case well illustrates the fundamental injustice that results from the lack of notice." (*Id.*)

B. Meritorious Defense

Under *Peralta, supra,* addressed in *California Capital Ins. Co. v. Hoehn, supra,* 17 Cal.5th 207, defendant may not be required to demonstrate she has a meritorious defense to the action because she has demonstrated a denial of due process from the invalid service not in compliance with the California service statutes. (*Id.* at 214.) Nevertheless, defendant has shown a meritorious defense to the claim to support relief based on the three-part test for relief from a judgment based on extrinsic fraud.

Masoudi has submitted uncontested evidence that Plaintiff failed to send her the required notice offering her the opportunity to have the attorneys' fees claim addressed in arbitration. (Masoudi Decl. ¶ 14.) She declares Rodriguez never sent her a final bill. (Masoudi Decl. ¶ 14.) She has denied that Plaintiff is entitled to recover the amount of fees claimed in the action, and she has declared that his billing at the end of his representation was half the amount claimed in his complaint and subject to the default judgment. (Masoudi Decl. ¶ 14.)

C. Diligence

The Court also finds that Masoudi acted with sufficient diligence to obtain relief from the default and default judgment. The evidence shows she was only alerted to the default judgment when she was served in June 2024 with a notice to appear for a judgment debtor examination on July 10, 2024. (Masoudi Suppl. Decl. filed 12/2/2024 ¶ 3.) She had to locate and engage counsel willing to represent her to seek relief, and that counsel filed the current motion on October 30, 2024, within roughly three months. The Court notes that her counsel is engaged pursuant to a limited scope of appearance agreement. (10/30/2024 Not. of Ltd. Rep.) The time for a defendant to seek relief under these circumstances is a "reasonable time from the discovery of the default judgment irrespective of when it may actually have been entered. [Citations omitted.]" (*Munoz v. Lopez, supra,* 275 Cal.App.2d at 181 [cited in *California Capital Ins. Co. v. Hoehn, supra,* 17 Cal.5th at 227].)

In *Manson, supra*, 176 Cal.App.4th 36 cited by Plaintiff, the judgment debtor discovered the default and default judgment in a similar manner, when she had to appear for a judgment debtor examination in 2005. She did not seek relief until 2008. (*Id.* at 47.) In finding the defendant in that case had been diligent in seeking relief, the Court explained, "Black discovered the default and judgment against her in October 2005, when she received the order requiring her to appear for a judgment debtor examination and Manson's attorney informed her that there was a judgment against her. The court noted Black thereafter consulted two attorneys, but received inaccurate advice

that there was nothing she could do. She brought her motion to set aside the judgment in 2008, after Manson attempted to obtain an order for the sale of her residence and she learned from her own legal research that a motion to set aside the judgment was an available remedy. Implicitly, the court found Black acted diligently, in light of the discouraging legal advice she received." (*Id.* at 49 [emphasis added].) (*See also California Capital Ins. Co. v. Hoehn, supra,* 17 Cal.5th at 213 [defendant learned of default judgment in January 2020 and filed motion for relief in March 2020].) The Court finds that under the circumstances, the approximate four month period from the service of the judgment debtor examination order and the filing of the motion for relief shows sufficient diligence and that the motion was filed within a reasonable time of her discovery of the judgment.

Conclusion and Relief

Plaintiff only addresses whether the default and default judgment should be set aside but does not address any of the other relief sought in the motion. Defendant seeks to quash the service of the summons and complaint by publication on the ground personal jurisdiction was not obtained over defendant based on the "false proof of service of the summons." (Mot. p. 2, ¶ 1.) The Court has found the declaration supporting the application to serve by publication contained material false statements, and the order for publication and subsequent default and default judgment were obtained based on extrinsic fraud and misrepresentations to the Court. The Court will quash service of the summons and complaint on that ground. (Code Civ. Proc. §§ 418.10 and 415.50 and authorities cited above.)

Defendant seeks an order recalling and quashing all writs of execution and abstracts of judgment and ordering return of any property obtained by Plaintiff based on enforcement of the default judgment. (Mot. p. 2, ¶ 3.) Where a default judgment is set aside, there is no support for the writ of execution issued based on the void judgment. (*Bedi v. McMullan* (1984) 160 Cal.App.3d 272, 275.) An appropriate remedy is to recall and quash the writ of execution. (*Stegge v. Wilkerson* (1961) 189 Cal.App.2d 1, 5 [after reversal of a judgment, party holds property obtained under the judgment in trust and same rule should apply when a default judgment is vacated].)

Defendant also seeks to dismiss the action under Code of Civil Procedure sections 583.210 and 583.250 for failure to serve the summons and complaint within three years of the commencement of the action. (Mot. p. 2, ¶¶ 1, 5.) *Damjanovic v. Ambrose* (1992) 3 Cal.App.4th 503 cited by defendant does not arise in the context of a default judgment that was set aside, but the case holds that the time limitations for service of a summons under Code of Civil Procedure section 583.210 are to be strictly construed in light of the purpose of the statute, which is to give a defendant timely notice of an action. (*Id.* at 510.) That decision cites Code of Procedure section 583.240 which provides that certain time periods are excluded from the calculation of the three-year time period for service under Code of Civil Procedure section 583.210:

> In computing the time within which service must be made pursuant to this article, there shall be excluded the time during which any of the following conditions existed:
>
> (a) The defendant was not amenable to the process of the court.
>
> (b) The prosecution of the action or proceedings in the action was

stayed and the stay affected service.

(c) The validity of service was the subject of litigation by the parties.

(d) Service, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control. Failure to discover relevant facts or evidence is not a cause beyond the plaintiff's control for the purpose of this subdivision.

The facts do not show any stay was in effect, that there was any period during which defendant was not amenable to process, or that service was impossible, impractical, or future "due to causes beyond the plaintiff's control." (Code Civ. Proc. § 583.240 [emphasis added].) Plaintiff's use of false information to obtain an order for service by publication was within Plaintiff's control; he had the ability to make genuine efforts to provide notice of the action to defendant through personal service or subservice, or even service by publication, but only after reasonable diligence to locate her. He failed to make those efforts, and he misled the Court with inaccurate information regarding his inability to locate defendant for service when he sought the order for service by publication. (*See Dale v. ITT Life Ins. Corp., supra,* 207 Cal.App.3d at 502 ["Following *Ippolito*'s lead, we conclude entry of the default and default judgment against ITT tolled the dismissal period only if the claimed impracticability of service was due to causes beyond Dale's control. The facts indicate it was not."].) (See also *Shipley v. Sugita* (1996) 50 Cal.App.4th 320, 324-328 [holding mandatory dismissal under three-year statute applied where plaintiff's counsel made a false declaration of service and service was invalidated; attorney's misconduct did not excuse failure to properly serve summons and complaint within three years]; *Inversiones Papaluchi S.A.S. v. Superior Court* (2018) 20 Cal.App.5th 1055, 1060 [holding actions should have been dismissed for failure to effectuate proper service of defendants under Hague Convention within three years].) The provisions for excluding time from the three-year period for service of the summons and complaint do not apply here. The action shall be dismissed as requested by defendant.

11. 9:00 AM CASE NUMBER: MSC20-00732
CASE NAME: BERRYHILL VS. MCKENZIE GRAY BUILDERS
***HEARING ON MOTION IN RE: RE DGFS BETWEEN BERRYHILL AND FAGGIANO CONSTRUCTION**
FILED BY: FAGGIANO CONSTRUCTION
****TENTATIVE RULING:****

Vacated. Entire case reached an unconditional settlement.

12. 9:00 AM CASE NUMBER: N22-1685
CASE NAME: JINGHUI XU VS. MELVINDER GILL
***HEARING ON MOTION IN RE: TO ENFORCE SETTLEMENT AGREEMENT**
FILED BY: XU, JINGHUI
****TENTATIVE RULING:****

13. 9:00 AM CASE NUMBER: N24-1460
CASE NAME: VALE OPERATING COMPANY, LP DBA VALE HEALTHCARE CENTER VS. DEPARTMENT OF

HEALTHCARE SERVICES
HEARING ON DEMURRER TO: 1ST AMENDED COMPLAINT
FILED BY: DEPARTMENT OF HEALTHCARE SERVICES
TENTATIVE RULING:
Introduction

Before the Court is Respondents California Department of Health Care Services' ("Respondents") Demurrer to Petitioner Vale Operating Company's First Amended Petition for Writ of Mandate ("FAP") concerning the penalties assessed to Petitioner by Respondent in accordance with Respondent's March 4, 2024, OAHA Order.

For the following reasons, Respondent's **Demurrer is overruled**.

Statement of Facts

Since the transferring hospital failed to disclose this psychiatric condition and associated behaviors, the Former Resident was admitted to Vale on January 30, 2024. (Id. at ¶ 33, Exhibit G at 1.) Just two days later, on February 1, 2024, the Former Resident attempted to hit Vale employees with a heavy object while screaming that he was going to kill them. (Petition at ¶ 34, Exhibit B at 3.) The police arrived and escorted him to Contra Costa Regional Medical Center (the "Hospital") for a 72-hour psychiatric hold pursuant to Welfare & Institutions Code § 5150 (the "5150"). (Petition at ¶ 34.) The Former Resident remained at the Hospital past the expiration of the 5150 hold. (Id. at ¶ 35.) On information and belief, the Former Resident was discharged to another post-acute facility in May of 2024 (i.e., approximately two months before DHCS issued the first penalty).

Pursuant to its discharge obligations, Vale issued to the Former Resident a Notice of Transfer for Acute Care/Emergency (the "Notice of Transfer") on February 7, 2024. (Id. at ¶ 37.) The Notice of Transfer stated that the Former Resident was being transferred to an acute-care hospital because his medical needs could not be met at Vale, and informed him of his right to appeal his transfer before OAHA. (Petition, Exhibit H.) Vale can be described as a "standard" skilled nursing facility and cannot accommodate patients with psychiatric issues that manifest in severe behavioral outbursts because it lacks an onsite psychiatrist, security, special treatment programs ("STPs"), or the ability to administer psychotropic medications without the patient's consent. (Petition, Exhibit G at 1.) It was therefore not an appropriate facility for the Former Resident, who suffered from psychiatric issues that resulted in severe behavioral outbursts. (Id.) The Ombudsman, acting on the Former Resident's behalf, appealed Vale's transfer decision on February 8, 2024. (Id. at ¶ 38.)

On February 14, 2024, while appeal was pending, the Superior Court of California for the Country of Contra Costa granted Vale a Temporary Restraining Order that required the Former Resident to (a) not directly or indirectly contact the named Vale employees, and (b) stay at least 100 yards away from their workplace, that is, Vale. (Petition at ¶ 39, Exhibit F.) On March 5, 2024, this order was extended until March 4, 2027. (Id. at ¶ 42, Exhibit C.) In other words, a court order made it impossible for Vale to be the Former Resident's health care provider for three years.

On March 4, 2024, OAHA issued its decision granting the Ombudsman's appeal of the Former Resident's transfer to the Hospital (the "OAHA Order"). (Petition, Exhibit B at 9.) However, recognizing that there was a restraining order in place, in the final section of the OAHA Order entitled "Decision

and Order," the OAHA Hearing Officer required Vale to readmit the Former Resident only if (a) "a bed in Facility becomes available," (b) "the TRO is lifted," and (c) the Former Resident "still requires the services provided by Facility." (Petition, Exhibit B at 8.) The Hearing Officer also generally ordered Vale to comply with the requirements to discharge the Former Resident set forth in 42 Code of Federal Regulations part 483.15(c)(1)-(c)(7). (Id.) To comly with the OAHA Order, Vale must file a certification of compliance within three calendar days, then again "every seven days until it certifies that Resident was readmitted to Facility, or the Department excuses this requirement." (Id.)

On March 6, 2024, Vale informed DHCS that the restraining order against the Former Resident had been extended until March 4, 2027, making readmission impossible. (See Emails Between the Parties in March 2024, attached hereto as "Attachment A," at 7.) Although DHCS acknowledged the restraining order, it maintained that Vale must file certifications of compliance every seven days "until the facility certifies that the resident has been readmitted to the facility or the Department excuses this requirement." (Id. at 7-8.)

On March 15, 2024, DHCS informed Vale that the restraining order does not excuse Vale's compliance with the OAHA Order, and that Vale must generally follow federal discharge requirements. (Petition, Exhibit D at 1.) However, DHCS did not explain exactly which discharge requirements Vale failed to meet, or precisely what DHCS wanted Vale to do to meet such requirements. (Id.) DHCS reiterated its demand that Vale file certifications of compliance until it readmits the Former Resident or is excused from doing so. (Id.)

On March 20, 2024, Vale asked DHCS for clarification on what exactly Vale must do to comply with its discharge obligations, as it had already discharged the Former Resident with a Notice of Transfer and could not readmit him due to the restraining order. (Attachment A, at 4.) Trying to preempt potential pitfalls, Vale also explained that it could not place the Former Resident due to logistical, clinical, and legal challenges even if that was what DHCS wanted. (Id.) DHCS was still unable to address Vale's concerns and promised to "look into the issues." (Id. at 3.) However, on March 29, 2024, and for the first time, DHCS unilaterally demanded that Vale place the Former Resident, stating that "[i]f the Facility is unable to readmit the Resident to Vale Healthcare Center, the Facility must find a placement that is suitable to the Resident or their authorized representative." (Petition, Exhibit D at 2.) This demand was not accompanied by any legal reasoning or practical explanation as to how Vale could accomplish the Former Resident's placement.

Between March and May of 2024, Vale sent DHCS multiple emails explaining in detail why it could not place the Former Resident. (Petition, Exhibit E.) For instance, Vale noted that it did not know his current condition and needs, and could not communicate with him to find out. (Id., Exhibit E at 3, 4.) Vale also asked what specific steps it could take to address DHCS's concerns, which was never answered. (Id. at 2, 3.) To bring a clinical perspective to the issue, Vale's Chief Medical Officer—Dr. Karl Steinberg—explained that, due to Vale's lack of a behavioral unit, its personnel do not know how to locate a specialized facility that could meet the Former Resident's needs. (Id., Exhibit G at 2.) Dr. Steinberg reiterated that it would be "inappropriate and frankly unethical" for Vale to place the Former Resident given that it lacked direct knowledge of his status. (Id.) Moreover, Dr. Steinberg explained that the Former Resident's involuntary admission at another facility would require first appointing a conservator, which Vale could not do. (Petition, Exhibit G at 2.)

Vale also pointed out that the Hospital, which admitted the Former Resident after his discharge from Vale, was best equipped to plan his eventual placement at a post-acute facility. Most critically, the Hospital had a provider-patient relationship with the Former Resident; Vale did not. (Petition, Exhibit E at 7.) The Hospital had a regular on-site psychiatrist; Vale did not. (Id., Exhibit G at 1.) The Hospital had a robust case management and discharge planning team with multiple nurses and social workers; Vale did not. (Id.) The Hospital had direct knowledge of the Former Resident's medical status; Vale did not. (Id. at 2.) The Hospital could seek a conservator for the Former Resident; Vale could not. (Id.) Going above and beyond its obligations, Vale even offered to help the Hospital obtain a conservator, such as by reporting the matter to the Public Guardian's office. (Id. at 2.)

On May 9, 2024, DHCS sent an email stating that Dr. Steinberg's letter "does not change the Department's position on this matter," without addressing the merits of Dr. Steinberg's clinical assessments or proposals to help the Former Resident. (Petition, Exhibit D at 3.) Instead, DHCS required Vale "to readmit the Resident to your facility or find an alternative SNF that is suitable to the Resident by May 23, 2024, or fines may be assessed." (Id.) DHCS apparently justified its demand by pointing to the OAHA Order section titled "Reasons for Decision," which is separate from the "Decision and Order" section setting forth Vale's obligations. (Id.; see Exhibit B at 7.) On information and belief, the Former Resident was already placed at a post-acute facility prior to May 23, 2024.

On May 23, 2024, Vale sent to DHCS an email summarizing some of the legal arguments made in the Petition and in this brief. Specifically, Vale explained that (a) federal regulations do not require it to provide care such as discharge planning to former residents; (b) OAHA did not have authority to impose such a requirement on Vale, and notably excluded it from the final Decision and Order section of the OAHA Order; and (c) Vale could not plan the discharge of someone who was not its patient, and was instead a patient of the Hospital. (Petition, Exhibit E.) On May 31, 2024, DHCS acknowledged its receipt of Vale's latest email, and promised to "provide a follow-up." (Id., Exhibit D at 5.) Notably, unlike in its prior emails, DHCS did not demand that Vale find a placement for the Former Resident. (Id.) However, on or about July 9, 2024, DHCS assessed a penalty against Vale for its alleged noncompliance with the OAHA Order. (Id. at ¶ 46, Exhibit A.) DHCS issued this penalty three months after Vale first certified its compliance with the OAHA Order, and only after Vale's 30-day deadline to appeal the OAHA Order had already elapsed on or about April 3, 2024. Further, the notice of penalty claims that Vale's noncompliance began on March 8, 2024 (id.), even though DHCS did not issue its demand for Vale to place the Former Resident until Mach 29, 2024. (Id., Exhibit D at 1-2.) DHCS assessed additional penalties on or about September 16 (Petition at ¶ 47, Exhibit I), October 8, then finally October 22, 2024. In total, DHCS has fined Vale the statutory maximum of $75,000 for 100 days of alleged noncompliance.

Meet and Confer (CCP § 430.41)

It is the responsibility of the demurring party to meet and confer with the opposing party at least five days prior to the responsive pleading is due. (CCP § 430.41(a)(2).) As required by Code of Civil Procedure section 430.4, before filing this demurrer, Respondents initiated, and the parties' counsel participated in, a meet-and-confer via telephone call regarding the FAP's deficiencies raised by this Demurrer. (See Taylor Decl., generally.) Vale declined to amend the FAP, thus necessitating the filing of this demurrer. (Id.)

Legal Standard

Although the statutes make no express provision for a demurrer in a mandamus proceeding, the sufficiency of the petition can be tested either by demurrer or by raising questions of law as well as of fact in the answer, and except as otherwise provided in CCP §§ 1067–1110b, a mandamus proceeding is subject to the general rules of pleading applicable to civil actions (CCP § 1109). (*Gong v. Fremont* (1967) 250 Cal. App. 2d 568.)

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the Amended Petition, but not legal conclusions or contentions. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Carloss v. County of Alameda* (2015) 242 Cal. App. 4th 116, 123.)

> We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which maybe judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion, and we affirm. [Citations and internal quotation marks omitted.]

(Id. at 123; quoting *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

In ruling on a demurrer, the Court "must also consider judicially noticed matters." (*Schifando v. City of Los Angeles* (2003) 31 Cal. 4th 1074, 1081.)

> The courts . . . will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed. [Citations omitted.] Thus, a pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint meritless.

(*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal. App. 3d at 604.)

Analysis

The Form Of Writ

A writ of mandate issues to correct an abuse of discretion or to compel the performance of a ministerial duty. (Code Civ. Proc., § 1085.) "In general, administrative mandate … is used to review the validity of quasi-judicial decisions resulting from a proceeding in which (1) a hearing was required to be given, (2) evidence was required to be taken, and (3) discretion in the determination of facts was vested in the agency." (*Martis Camp Community Assn. v. County of Placer* (2020) 53 Cal.App.5th 569, 593.) Ordinary mandate "is used to review ministerial acts, quasi-legislative acts, and quasi-judicial decisions which do not meet the requirements for review under Code of Civil Procedure section 1094.5." (*Lafayette Bollinger Development LLC v. Town of Moraga* (2023) 93 Cal.App.5th 752, 767.) In *Fritz* v. *Superior Court*, 18 Cal.App.2d 232, it was held that when the facts developed upon the hearing show that petitioner is entitled to the relief sought, but under a different form of writ than that prayed for, the court will grant the proper form of writ. (*Simmons v. Superior Court of Los Angeles*

County (1950) 96 Cal.App.2d 119, 133; See also *Rio Del Mar etc. Club v. Superior Court* (1948) 84 Cal.App.2d 214, 217 ["if mandate is the proper remedy the petitioner will not be denied relief because of the erroneous choice of remedies"].)

Respondents characterize Petitioner's writ as improper attempt to collaterally re-litigate the grounds of OAHA's Order, rather than directly appeal it under section 1094.5. (Demurrer at p. 7: 17-19.) Petitioner argues that under Code of Civil Procedure section 1085 a party may seek a writ of mandamus to correct an agency's abuse of discretion, such as when the agency's act was arbitrary, capricious, lacking evidentiary support, or in excess of its powers. (See *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.Ap.5th 265, 280 [mandamus may correct discretionary acts that are "palpably unreasonable and arbitrary", or "arbitrary, capricious or entirely without evidentiary support"]; *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 562 [stating that "mandamus will lie to correct an abuse of discretion or the actions of an administrative agency which exceed the agency's legal powers"].) The Court has the authority to review whether an agency exercised its discretion in a nonarbitrary fashion, and may mandate procedural safeguards necessary to ensure due process and "promote more accurate and reliable administrative decisions." (*Saleeby*, 39 Cal.3d at 564-565.)

Petitioner pleads in their FAP that they are challenging Respondents attempt to enforce a patient discharging standard that goes beyond the scope of the applicable federal and state laws. (FAP at ¶¶ 53-57.) The Court overrules Respondents' Demurrer as to the first cause of action.

Welfare and Institutions Code § 14126.029

Welf. & Inst. Code § 14126.029, subd. (i) provides that "[a]ny penalty the department assesses on a long-term health care facility pursuant to this section is appealable only to the superior court of the county where the facility is located."

Respondents argue that Petitioner confuses the substantive cause of action that they plead for the right of appeal to the superior court where the county is located as provided in the statute. (Reply at p. 9: 24-27.) Respondents further argue that the provision mandates that the right to appeal must mean an appeal under CCP § 1094.5 and excludes a writ under CCP § 1085. (Reply at p. 10: 3-7.)

The Court does not agree with this interpretation. The code does not specifically only allow CCP §1094.5 writs but allows for any penalty assessed by DHCS to be appealed by the superior court in the county where the facility is located. (Welf. & Inst. Code § 14126.029(i).) Since, Petitioner is located in San Pablo, which is within Contra Costa County, Petitioner properly appealed DHCS's penalties to this Court. (Oppo at p. 18: 8-10.) Respondents' Demurrer is overruled as to this cause of action.

Declaratory Relief Pursuant to CCP § 1060

Respondents contend that Declaratory relief is intended to settle actual, present controversies —not to relitigate finalized issues. (Demurrer at p. 11: 3-4.) Respondents take the position that the matter is settled, the Order final, and Petitioner spends the bulk of the FAP relitigating the underlying Order. (Demurrer at p. 11:13-14.)

The Court views Petitioner's FAP not as re-litigating the underlying order but as challenging Respondents authority to enforce a patient discharging standard that allegedly goes beyond the scope of the applicable federal and state laws. (FAP at ¶¶ 76-79.)

Conclusion

For the reasons mentioned above, **Respondents' Demurrer is overruled in its entirety**.

14. 9:00 AM CASE NUMBER: N24-1615
CASE NAME: IDO ADLER VS. TOWN OF DANVILLE, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA
HEARING IN RE: ORDER REQUESTING HEARING ON THE MERITS (FILED 11/18/24)
FILED BY: ADLER, IDO
TENTATIVE RULING:

Continued by the Court to May 9, 2025.

15. 9:00 AM CASE NUMBER: N24-2284
CASE NAME: PETITION OF:QUALITY LOAN SERVICE CORP.
HEARING IN RE: DEPOSIT OF SURPLUS FUNDS
FILED BY: QUALITY LOAN SERVICE CORP.
TENTATIVE RULING:

The clerk's office shall remit the funds deposited in the above-entitled case to Daniel Fink as the administrator of the estate of Marina Gottschalk.

16. 9:00 AM CASE NUMBER: N25-0027
CASE NAME: PETITION OF: STONE STREET ORIGINATIONS, LLC
HEARING IN RE: PETITION FOR APPROVAL FOR TRANSFER OF PAYMENT RIGHTS FILED BY PETITIONER
FILED BY:
TENTATIVE RULING:

Approved.

17. 9:00 AM CASE NUMBER: RS23-0250
CASE NAME: SYLVESTER ADAMS VS. ROY ELLIS
***HEARING ON MOTION IN RE: ENTRY OF JUDGMENT**
FILED BY: ADAMS, SYLVESTER
TENTATIVE RULING:

The court does not have proof the motion including the date, time, and department was served upon the defendant. The motion is continued to May 9, 2025, at 9 am for plaintiff to effectuate service. The case management conference is re-calendared for August 5, 2025, at 8:30 am.