TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, January 14, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 23CV00274, Spaletta v. C.Hardy 92, LP

Defendants C. Hardy 92, LP, Carla J. Hardy, and Cory Hardy ("Defendants") move to dismiss Plaintiff Ralph Spaletta's Complaint due to Plaintiff's delay in diligently prosecuting the matter to trial. The motion is **DENIED**. Defendants' requests for judicial notice are **GRANTED**.

However, Plaintiff shall file and serve the SAC that was stipulated to by the parties within 10 days of this Court's order on this motion to prevent further delay in this action.

I. PROCEDURAL HISTORY

At the crux of this action is a dispute regarding the parties' partnership and ownership interests in C. Hardy 92, LP, formed to operate and own certain real property located in Petaluma, California. (First Amended Complaint ["FAC"], ¶ 1.) Plaintiff's FAC alleges causes of action for constructive fraud, breach of contract, reformation of contract, partition, accounting, dissolution of partnership and removal of general partners, and quiet title. (*Id*. at ¶¶ 30-97; Memorandum of Points and Authorities ["MPA"], 1:23-27.) Previously, Plaintiff had filed a Complaint in 2018 alleging similar, but not identical, causes of action based on the same facts and allegations in the FAC, but later dismissed this Complaint without prejudice. (Memorandum of Points and Authorities ["MPA"], 2:8-19.)

The parties' counsels met and conferred over Plaintiff's FAC to discuss their intent to file a demurrer based on certain issues. (MPA, 3:2-3.) Ultimately, the parties agreed to stipulate to the filing of a Second Amended Complaint ["SAC"] and Defendants' counsel sent the stipulated order to the Court on June 4, 2025. (*Id*. at 3:3-9.) The order granting Plaintiff leave to file the SAC stated that a copy of the verified SAC must be filed separately with the Court, but Plaintiff has yet failed to file one. (*Id*. at 3:9-13.)

Defendants now move to dismiss Plaintiff's Complaint due to Plaintiff's failure to diligently prosecute the action. (Notice of Motion, 1:22-28.) Defendants claim that, while Plaintiff did serve amended responses to Defendants' discovery motion as ordered by the Court, they remain deficient or unsatisfactory. (MPA, 4:7-23.) At the time the motion was filed, Plaintiff had not propounded any written discovery on Defendants or noticed any depositions, but Plaintiff did notice the deposition of Carla Hardy after the motion was filed. (*Id*. at 4:24-25.)

Due to Plaintiff's counsel's failure to appear at the Case Management Conference on August 7, 2025, the Court set an Order to Show Cause hearing on October 2, 2025. (*Id*. at 5:1-5.) Since the filing of the motion, the Court held this hearing which Plaintiff's counsel attended to explain that on July 22, 2025, a key support person took a sudden leave of absence from their firm so the firm's calendaring system took a few weeks to get realigned. (See Graves Declaration, dated October 1, 2025.) The Court then continued the Case Management Conference to February 26, 2026. (See Order to Show Cause re: Dismissal Minute Order, dated October 2, 2025.)

As Plaintiff did not file an opposition within 15 days of service of the notice of motion, Defendants filed a reply to non-opposition pursuant to California Rules of Court ["C.R.C."], Rule 3.1342(b). Regardless, Plaintiff later filed an opposition within the time period ultimately allowed under C.C.P. section 1005(b) and Defendants filed another reply. The Court considers these below.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.)

Per Evidence Code sections 452 and 453, Defendants' requests for judicial notice are **GRANTED**.

III. ANALYSIS

Legal Standard

Plaintiffs must proceed with reasonable diligence in prosecuting their claims in an action and all parties should cooperate in bringing the action to trial or other disposition; stipulations and dispositions of actions on their merits are favored by the courts. (C.C.P. § 583.130.) Courts for this reason retain discretion to dismiss an action for delay in prosecution on their own motion or on noticed motion of a defendant. (C.C.P. § 583.410(a).) Section 583.420 details the grounds upon which dismissal may be entered for delay in prosecution, which include but are not limited to, lack of service within two years after commencement of action or the action not being brought to trial within three years after commencement. (C.C.P. § 583.420.) C.R.C., Rule 3.1340 allows courts discretionary dismissal on its own motion or on defendant's noticed motion for delay in prosecution if the action has not been brought to trial or conditionally settled within two years after its commencement. For the purposes of such a motion,

"conditionally settled" means that: (1) a settlement agreement conditions dismissal on the satisfactory completion of specified terms that are not to be fully performed within two years after the filing of the case; and (2) a notice of the settlement is filed with the court as provided in rule 3.1385. (C.R.C., Rule 3.1340(c).)

A party seeking dismissal for delay in prosecution must file and serve a notice of motion at least 45 days before the hearing date set on the motion. (C.R.C., Rule 3.1342(a).) Within 15 days of service of this notice of motion, the opposing party may serve and file a written opposition. (C.R.C., Rule 3.1342(b).) Failure to serve and file an opposition may be construed by the court as an admission that the motion is meritorious, and the court may grant the motion without a hearing on the merits. (*Ibid*.) Within 15 days after the service of the written opposition, the moving party may serve and file a response. (C.R.C., Rule 3.1342(c).) The opposing party may reply to this response within 5 days after service of the response. (C.R.C., Rule 3.1342(d).)

In ruling on the motion to dismiss due to delay in prosecution, the court must consider the following:

The court's file in the case and the declarations and supporting data submitted by the parties and, where applicable, the availability of the moving party and other essential parties for service of process;

The diligence in seeking to effect service of process;

The extent to which the parties engaged in any settlement negotiations or discussions;

The diligence of the parties in pursuing discovery or other pretrial proceedings, including any extraordinary relief sought by either party;

The nature and complexity of the case;

The law applicable to the case, including the pendency of other litigation under a common set of facts or determinative of the legal or factual issues in the case;

The nature of any extensions of time or other delay attributable to either party;

The condition of the court's calendar and the availability of an earlier trial date if the matter was ready for trial;

Whether the interests of justice are best served by dismissal or trial of the case; and

Any other fact or circumstance relevant to a fair determination of the issue.

(C.R.C., Rule 3.1342(e).)

Defendants' Motion to Dismiss

Defendants argue that the Court ought to dismiss the matter because Plaintiff failed to prosecute the case timely in that the action has not been brought to trial within two years under C.C.P. section 583.420(a). (MPA, 7:17-28, 8:1-8.) Defendants also argue that several of the factors identified for consideration in dismissing for failure to prosecute weigh heavily in favor of dismissal here, including:

1. Plaintiff's counsel's lack of attention to this matter and failure to appear at multiple case management conferences. (MPA, 8:13-19.)

2. Plaintiff's failure to serve Defendants with the original Complaint at all and only serving the FAC, and also Plaintiff's failure to file the SAC despite being allowed leave to do so by the Court in June of 2025. (*Id*. at 8:20-25.)

3. Plaintiff's failure to conduct any discovery in the past two years since commencing this action and Plaintiff's obstruction in responding to discovery resulting in several discovery motions filed by Defendants. (*Id*. at 8:26-28, 9:1-9.)

4. The meaningful delays in this matter are attributable to Plaintiff due to Plaintiff's counsel's repeated absences at case management conferences, his refusal to comply with discovery orders, and his ongoing failure to file the SAC leaving the case in "procedural limbo." (*Id*. at 9:10-16.) Furthermore, even if a trial were to be set, trial could not proceed because the pleadings are not settled according to Defendants. (*Ibid*.)

5. Defendants argue it is in the interests of justice to dismiss this matter because of Plaintiff's litigation history of filing a similar action against Defendants on the same facts and voluntarily dismissing it, and of failing to prosecute this matter or conduct any discovery which indicates abandonment of the action. (*Id*. at 9:17-26.)

Plaintiff's Opposition

Plaintiff argues that the motion to dismiss is a disguised discovery motion because in it Defendants complain about insufficient discovery responses. (Opposition, 2:24-27.) Plaintiff contends that the discovery issues have already been resolved via other motions and that Plaintiff already served amended responses. (Opposition, 2:27, 3:1-2.) Plaintiff also argues that appropriate steps were taken in the management of the docket regarding the missed Case management Conferences and also stating that "no California Court has dismissed a cause of action for a party failing to attend a CMC." (*Id*. at 3:3-5.) Finally, Plaintiff argues that Defendants' claim that Plaintiff failed to propound any discovery is made in bad faith because Plaintiff requested a deposition date for Carla Hardy (after this motion had already been filed) and Plaintiff has obtained a lot of evidence from the public record with which Plaintiff has prepared over ninety-six exhibits to get ready for trial. (*Id*. at 3:5-20.) Overall, Plaintiff argues that the requirements of C.C.P. section 583.420 are not satisfied and Plaintiff did effectuate service within two years, so the motion should be denied. (*Id*. at 4:8-24.)

Reply

In Defendants' reply, they reaffirm the arguments made in the motion and point out that the opposition mischaracterizes the basis of the motion and misstates the requirements under C.C.P. section 583.420. (Reply, pp. 2-4.) Overall, Defendants argue that Plaintiff failed to dispute the facts that establish the delay in prosecution that is the basis for this motion.

Application

As a preliminary issue, though Plaintiff did not submit an opposition within 15 days of service of the notice of motion as allowed under C.R.C., Rule 3.1342(b), the Court finds that Plaintiff's ultimate deadline to submit an opposition per C.C.P. section 1005(b) was 9 court days prior to the hearing on the

motion. As Plaintiff did submit a timely opposition under this deadline, the Court will in its discretion choose not to construe the failure to file an opposition within 15 days as an admission that the motion is meritorious and will not grant the motion without a hearing on its merits.

While the Court is sympathetic to Defendants' frustration regarding the delays and ongoing discovery issues in this action, the Court is not persuaded that a dismissal for delay in prosecution, an extreme remedy, is appropriate at this time. The FAC was filed only a few months after the initial Complaint, and the FAC was served on all Defendants within two months after that. Contrary to Defendants' argument that Plaintiff has abandoned this action, Plaintiff has taken steps to engage in the litigation by appearing at hearings as ordered, noticing the deposition of a defendant, stipulating to resolve ongoing discovery issues, serving amended responses (despite Defendants finding them deficient), reviewing and preparing evidence for trial, and finally by opposing this motion. As far as delay or obstruction in the discovery process is concerned, the Court has already sanctioned Plaintiff per Defendants' noticed motion.

The Court finds that it would be in the interests of justice to have all of the parties' claims resolved regarding their property/ownership disputes in this action as quickly and efficiently as possible so that no further litigation need be commenced. As such, the Court will deny the motion.

IV. CONCLUSION

Based on the foregoing, Defendants motion is **DENIED**. However, to avoid further delay in this action Plaintiff shall file and serve the SAC that was stipulated to by the parties within 10 days of this Court's order on this motion.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2-3. 24CV04788, Otani v. Northfield

Defendants Christopher Walter ("Walter") and Scott Tweten ("Tweten")(together "Defendants") demur separately to Plaintiffs Shelly and Carole Otani's causes of action for medical malpractice for lack of informed consent and bystander negligent infliction of emotional distress ("NIED") in the Complaint. Both demurrers are **SUSTAINED with leave to amend**. Plaintiff shall file their First Amended Complaint within 10 days of receiving notice of entry of this Court's order on these demurrers.

I. PROCEDURAL HISTORY

Plaintiffs claim that all named Defendants, including demurring parties, failed to obtain their fully informed consents and that Plaintiff Shelley became severely overdosed on narcotics and opioids while her mother, Plaintiff Carole, was present to witness the harm to her daughter. (Complaint, p. 4, ¶ GN-1.) Defendants met and conferred with Plaintiffs regarding insufficiencies in the Complaint, but the parties did not resolve their issues. (Todd Decl., ¶¶ 3-10; Weston Decl., ¶¶ 3-10.)

Defendants now both demur to the claims alleged against them in Plaintiffs' Complaint on the grounds that the claims do not state sufficient facts to constitute either cause of action under Code of Civil Procedure ("C.C.P.") sections 430.10(e)-(f) and 430.50. (Walter's Amended Notice of Demurrer, 2:7-10; Tweten's Amended Notice of Demurrer, 2:4-15.) Plaintiffs oppose both demurrers and Defendants filed reply briefs to the oppositions.

II. ANALYSIS

Legal Standard

I. Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

II. Lack of Informed Consent for Medical Treatment

The right to consent to medical treatment is "basic and fundamental," "intensely individual," and "broadly based." (*Stewart v. Superior Court* (2017) 16 Cal.App.5th 87, 105.) Thus, there is a "necessity, and a resultant requirement, for divulgence by the physician to his patient of all information relevant to a meaningful decisional process. (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 242.) A cause of action for lack of informed consent—which sounds in negligence—arises when the doctor performs a procedure without first adequately disclosing the risks and alternatives. (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 324.)

A physician has a fiduciary duty to disclose all information material to the patient's decision when soliciting a patient's consent to a medical procedure, which creates a cause of action premised on a physician's breach of this fiduciary duty that may alternatively be referred to as a claim for lack of informed consent. (*Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1164.) "Material information" means that which the physician knows or should know would be regarded as significant by a reasonable person in the patient's position when deciding to accept or reject the recommended medical procedure and which fact is not commonly appreciated. (*Truman v. Thomas* (1980) 27 Cal.3d 285, 291.) Furthermore, if a physician knows or should know of a patient's unique concerns or lack of familiarity with medical procedures, the scope of disclosure required may be expanded. (*Ibid*.) Examples of required disclosures are "the potential of death, serious harm, and other complications associated with a proposed procedure" and "such additional information as a skilled practitioner of good standing would provide under similar circumstances." (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 232.) A physician is also required to disclose personal interests unrelated to the patient's health, such as research or economic interests, that may affect the physician's professional judgment. (*Moore v. Regents of Univ. of Cal.* (1990) 51 Cal.3d 120, 129.) There is no general duty of disclosure with respect to non-recommended procedures, but in an appropriate case they may be evidence supporting the conclusion that a doctor should have disclosed information

concerning a non-recommended procedure. (*Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1071.)

III. Negligent Infliction of Emotional Distress (NIED)

A cause of action for negligent infliction of emotional distress, or NIED, is not an independent tort but the tort of negligence, for which reason the traditional elements of duty, breach, causation, and damages also apply. (*Marlene F. v. Affiliated Psychiatric Medical Clinic Inc.* (1989) 48 Cal.3d 583, 588.) A "direct victim" NIED case is one in which the plaintiff's claim is not based upon witnessing an injury to someone else, but rather is based upon the violation of a duty owed directly to the plaintiff. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 205.) Where a plaintiff has not suffered any physical injury or impact, damages for NIED as a bystander should be recoverable only if the plaintiff: " (1) is closely related to the injury victim, (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim and, (3) as a result suffers emotional distress beyond that which would be anticipated in a disinterested witness." (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 647.) Absent exceptional circumstances, bystander recovery should be limited to "relatives residing in the same household, or parents, siblings, children, and grandparents of the victim." (*Thing*, supra, 48 Cal.3d at p. 668, fn. 10.) An unmarried cohabitant may not recover damages for NIED. (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 273.)

Walter's Demurrer

Plaintiffs' claim for lack of informed consent is that "Defendants failed to obtain plaintiffs' fully informed consents." Walter argues that the Complaint fails to set out any facts supporting a cause of action for lack of informed consent against any defendant, so Walter requests that the Court sustain the demurrer to this cause because it lacks sufficient facts and is uncertain. (Walter Demurrer, 4:7-12.) Walter also demurs to the bystander NIED claim arguing that Plaintiffs allege no facts stating that Plaintiff Carole was present for the injury causing event or that she was aware that Plaintiff Shelley had allegedly been "severely overdosed on narcotics and opioids" at the time of the incident. (Walter Demurrer, 6:21-28.) Walter requests that the demurrer be sustained to the bystander NIED claim for failure to state sufficient facts under C.C.P. § 430.10(e). (*Ibid*.)

Plaintiffs oppose the demurrer. As to the claim for lack of informed consent, they only argue that they filed a Judicial Council Form Complaint, which they request leave to amend to the extent the Court requires further specific factual support at the pleading stage. (Opposition to Walter Demurrer, 2:13-19.) Plaintiffs request that the Court overrule the demurrer as to the bystander NIED claim because, although Plaintiff Carole may not have been aware of the "double dose" overdose of narcotics ordered and given at the time, she found her daughter unresponsive and unmonitored in her hospital room and struggled to get the attention of nursing personnel and a "crash cart" was eventually brought in to resuscitate Plaintiff Shelley while Plaintiff Carole witnessed the events. (*Id*. at 1:27-28, 2:1-6.) Plaintiffs also argue that defendants gave Plaintiff Shelley too much Narcan, which deprived her of all pain relief causing her extreme pain and causing Plaintiff Carole further severe emotional distress. (*Ibid*.)

In the Reply, Walter argues that Plaintiffs' opposition failed to state a claim as a matter of law regarding bystander NIED and conceded the deficiencies of the lack of informed consent claim. (Reply, pp. 2-4.)

The Court finds that Plaintiffs failed to allege sufficient facts to support their claims in the Complaint against Walter, but that there remains a reasonable possibility that these defects may be cured by amendment. As such, Walter's demurrer is **SUSTAINED** with leave to amend.

Tweten's Demurrer

For similar reasons as described above for the Walter demurrer, Tweten argues that Plaintiffs' Complaint fails to allege facts sufficient to state a cause of action for lack of informed consent. (Tweten Demurrer, 3:5-28, 4:1-6.) Defendant Tweten also argues that Plaintiffs fail to allege the requisite elements of the bystander NIED claim. (*Id*. at pp. 4-7.) Defendant Tweten requests that the demurrer be sustained without leave to amend as to these causes.

Plaintiffs' opposition fails to address the arguments against their claim for lack of informed consent, but presents the same arguments described above regarding the Walter Demurrer to request the Court to overrule the demurrer as to the bystander NIED claim. (Opposition, pp. 1-2.)

In the Reply, Tweten notes that Plaintiffs conceded the arguments made against their lack of informed consent claim so the demurrer should be sustained as to that. (Reply, 2:6-16.) The Reply further argues that the additional facts offered in the opposition to support the NIED claim will not be sufficient to state facts required for a bystander NIED claim. (Reply, pp. 2-4.)
As stated above, the Court finds that Plaintiffs failed to allege sufficient facts to support their claims in the Complaint, but that there remains a reasonable possibility that these defects may be cured by amendment. Thus, Tweten's demurrer is **SUSTAINED** with leave to amend.

IV. CONCLUSION

As mentioned, both demurrers are **SUSTAINED with leave to amend**. Plaintiffs shall file the First Amended Complaint within 10 days of receiving notice of entry of this Court's order on the demurrers. Defendants shall submit written orders regarding their demurrers consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV05603, Sugarman v. Reynaud

Defendant Simone A. Reynaud ("Reynaud"), as Trustee of the Leon and Gertrude Reynaud Trust Agreement dated February 26, 1998, and as Trustee of the Exemption Trust of the Leon and Gertrude Reynaud Trust Agreement dated February 26, 1998, ("Reynaud Trusts") moves to expunge the Notice of Pendency of Action (lis pendens) recorded on August 14, 2025. Pursuant to Code of Civil Procedure ("C.C.P.") sections 405.30, 405.31, and 405.32, the motion is **DENIED**. The parties' requests for judicial notice are **GRANTED**. The parties' objections to evidence are addressed below.

Per C.C.P. section 405.38, sanctions are **DENIED.**

I. PROCEDURAL HISTORY

Plaintiff Randy Sugarman ("Receiver"), as court-appointed receiver for the Fischers Enterprises, LLC (doing business as Fischers Auto Body), filed this action alleging that Craig Fischer orchestrated a fraudulent scheme to divert and usurp the property rights of Fischers Enterprises, LLC, a company he co-owned with his former spouse Cindy Fischer. (Opposition, 1:5-12.) Through CJ Fischer, LLC, which Craig Fischer co-owned with his wife Janice Chaney Fischer, Receiver alleges that Craig Fischer transferred CJ Fischer Enterprises' valuable lease, option, and purchase agreement in 2021 for the real property located at 2475 and 2487 Bluebell Drive, Santa Rosa, California (the "Property"), without the knowledge or consent of Cindy Fischer. (Opposition, 1:5-18.) By way of this action, Receiver seeks to

avoid the fraudulent transfer and enforce the previous Lease, Option, and Purchase Agreement from 2019. (*Id*. at 1:19-27.) Reynaud claims that Trustee had no knowledge that Craig Fischer did not have the authority to make the transfer. (Motion, 3:14-17.)

Reynaud states that Receiver wrongfully recorded a lis pendens, which clouds the title on the trust for which Reynaud acts as trustee and makes its properties unmarketable. (Motion, 2:5-6.) A copy of the lis pendens was not attached for consideration. Reynaud moves to expunge the lis pendens and seeks attorney's fees incurred in bringing the motion. (*Id*. at 2:7-9.) Receiver filed an Opposition to the motion, to which Reynaud filed a Reply and objected to evidence submitted in support of the Opposition.

Reynaud presented new evidence for the first time in the Reply, so the Court allowed the Receiver to submit a Supplemental Brief for the purpose of responding to that evidence. The Receiver submitted the Supplemental Brief on December 31, 2025. Reynaud filed objections to evidence submitted in support of the Supplemental Brief on January 5, 2026. The Court considers these below.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to these limitations, all of the parties' requests for judicial notice are **GRANTED**.

III. EVIDENTIARY OBJECTIONS

The Court rules as follows on Reynaud's objections to evidence submitted in support of Receiver's Opposition:

1. The objection to Volume II transcript of Cindy Fischer's deposition taken on June 6, 2023, attached to the Declaration of Stephen D. Finestone as Exhibit A, on the basis of hearsay is **SUSTAINED**.

2. The objection to the transcript of Gertrude Reynaud's deposition taken on July 13, 2023, attached to the Declaration of Stephen D. Finestone as Exhibit B, on the basis of hearsay is **SUSTAINED**.

3. The objection to the "affirmation dated November 15, 2022, allegedly written by Gertrude Reynaud" attached to the Declaration of Stephen D. Finestone as Exhibit C, as hearsay and lacking personal knowledge is **OVERRULED**.

4. The objection to Receiver's Request for Judicial Notice, Exhibit A, as irrelevant is **OVERRULED**.

5. The objection to Paragraph 4 of the Declaration of Randy Sugarman as hearsay and lacking of personal knowledge is **OVERRULED**.

6. The two objections to Paragraph 5 of the Declaration of Randy Sugarman as hearsay and lacking of personal knowledge is **OVERRULED**.

7. The objection to Paragraph 6 of the Declaration of Randy Sugarman as hearsay, lacking of personal knowledge, second-hand knowledge, improper opinion testimony, and legal conclusion is **OVERRULED**.

8. The objection to Paragraph 8 of the Declaration of Randy Sugarman as hearsay, lacking of personal knowledge, second-hand knowledge, improper opinion testimony, and legal conclusion is **OVERRULED**.

9. The objection to Paragraph 15 of the Declaration of Randy Sugarman as making argument improperly rather than presenting evidence is **OVERRULED**.

The Court rules as follows on Reynaud's objections to evidence submitted in support of Receiver's Supplemental Brief:

1. The objection to Receiver's Request for Judicial Notice, Exhibit A, as irrelevant is **OVERRULED**.

2. The objection to Receiver's Request for Judicial Notice, Exhibit B, as irrelevant is **OVERRULED**.

3. The objection to the Declaration of Cindy Fischer in its entirety as irrelevant is **OVERRULED**.

IV. ANALYSIS

Legal Standard

I. Lis Pendens

A lis pendens or "Notice of Pendency of Action" means a notice of the pendency of an action in which a real property claim is alleged. (C.C.P. § 405.2.) A lis pendens "claimant" is a party to an action who asserts a real property claim and records the list pendens. (C.C.P. § 405.1.) A "real property claim" is a cause or causes of action in a pleading which would, if meritorious, affect "(a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility." (C.C.P. § 405.4.)

A claimant can record a lis pendens with the office of the recorder for each county in which all or part of the real property is situated. (C.C.P. § 405.20.) The purpose of a lis pendens is to give constructive notice of an action affecting real property to persons who subsequently acquire an interest in that property, so that the judgment in the action will be binding even if they acquire the interest before the judgment is actually rendered. (*Bishop Creek Lodge v. Scira* (1996) 46 Cal.App.4th 1721, 1733.)

II. Expungement of Lis Pendens

After a lis pendens has been recorded, any party or nonparty with an interest in the real property can apply to the court in which the action is pending to expunge the notice and submit evidence or declarations as support. (C.C.P. § 405.30.) A nonparty must obtain leave to intervene from the court prior to bringing a motion to expunge the notice. (*Ibid*.) Per C.C.P. section 405.31, if the court determines that

the pleading on which the lis pendens is based does not contain a real property claim, the court shall order the notice expunged. The burden of proof is on the claimant to establish by a preponderance of evidence the probable validity of the real property claim upon a motion to expunge the lis pendens. (C.C.P. § 405.32.)

Reynaud's Motion

Reynaud argues that four of the five claims, specifically the Second, Third, Fourth, and Fifth causes of action related to fraud and breach of contract for damages, are not real property claims, so the lis pendens should be expunged as to these claims. (Motion, 6:15-26, 7:1-14.) Reynaud also argues that Receiver cannot establish the probable validity of the claim as to the First Cause of Action for specific performance because Receiver had no right to exercise the option as exercised because Fischer Enterprises LLC itself had no right to exercise the option. (*Id*. at pp. 7-9.) Reynaud seeks attorney's fees of $9,071.50, which counsel Lyons declares is for 19.10 hours of work drafting the motion and preparing supporting documents at a rate of $475.00 per hour. (Lyons Decl, ¶ 2.)

Opposition

The Opposition argues that the First and Third Causes of Action seek to restore Fischer Enterprises, LLC's rights to purchase the Property under the terms of the 2019 Option and to compel specific performance of the sale and conveyance of Property, so it affects title to, and possession of, real property within the meaning of C.C.P. section 405.4. (Opposition, 5:14-20.) Receiver argues that the Third Cause of Action seeks to void the 2021 Option as an unauthorized conveyance of the 2019 Option, which was an instrument that conferred a contractual right to acquire title to the Property, so a ruling on this cause will clearly affect title to, and possession of, the Property and supports the recorded lis pendens. (*Id*. at pp. 5-7.) Receiver also argues that the First Cause of Action for specific performance is a "Real Property Claim" having probable validity and the law presumes that there is no other adequate remedy for a breach of a contract involving the purchase of real property. (*Id*. at pp. 7-9.) Furthermore, Receiver contends that Reynaud must have known Mr. Fischer did not have authority to act alone because of Leon and Gertrude Reynaud's relationship with Craig and Cindy Fischer for over thirty years and because Cindy was always the one who paid the rent by mail or in person from 2002-2005 and 2009-2021. (Fischer Decl. ¶¶ 6, 11.)

Reynaud's Reply

In the Reply, Reynaud emphasizes again that the avoidance claim is not a real property claim and also argues that new evidence from the Fischers Enterprises' Operating Agreement, acquired after the motion was filed, shows that Craig Fischer had actual authority to bind both enterprises. (Reply, 2:1-23.) Reynaud points to the portion of the Operating Agreement, which states, "the Managers, or either of them, had the authority to execute documents and instruments for the acquisition, mortgage or disposal of property on behalf of the Company." (*Id*. at 2:20-23; Fischer Decl., ¶ 2, Exhibit A.) Finally, Reynaud reaffirms the arguments made in the motion that the objective of this litigation is money rather than property, that the specific performance claim lacks validity, and that attorney's fees are proper here. (Reply, pp. 3-8.)

Receiver's Supplemental Brief

Receiver notes in the Supplemental Brief that, while Reynaud's motion initially relied primarily on Craig Fischer's apparent authority and alleged good faith in binding Enterprises in the 2021 Option, the Reply advances a different theory that Fischer had "actual authority" to do so based on the Operating

Agreement. (Suppl. Brief, 2:6-22.) Receiver argues that the Reply recycles the same arguments that the Hon. Patrick Broderick already considered and rejected as unpersuasive after trial in the related case, *Fischer v. Fischer* (Case No. SCV-270409.)

Receiver argues that the Operating Agreement did not authorize the transfer of the enterprises' lease and option rights without consideration or execution by Enterprises because nothing in the Operating Agreement authorized Craig Fischer to transfer a core company asset to another one of his companies without consideration. (Suppl. Brief, 3:22-27, 4:1-15.) Craig Fischer owed a fiduciary duty under the Operating Agreement not to obtain an advantage in the Company affairs by the slightest misconduct, misrepresentation, concealment, threat or adverse pressure of any kind. (*Id*. at 4:16-24.) Receiver argues that the Operating Agreement does not give Craig Fischer actual authority to enter into the 2021 Option, but rather demonstrates that he engaged in self-dealing on lease-option rights determined to be worth $500,000.00 without any consideration given. (*Id*. at 4:25-28, 5:1-10.)

Furthermore, Receiver argues against Reynaud's position that Enterprises received consideration in the form of a mutual release of obligations or a novation in which Enterprises was substituted with CJ Fischer on the contractual documents because there were no signature by Enterprises (via Craig or Cindy Fischer) on the 2021 Option. (Suppl. Brief, 6:3-13.)

Application

Based on the parties' arguments and evidence provided, the Court ultimately finds that Receiver's Amended Complaint does contain real property claims and it will not be appropriate to order that the Lis Pendens be expunged. The Court will deny the motion and also deny Reynaud's request for sanctions in connection with the motion.

III. CONCLUSION

The motion is **DENIED**. Receiver shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. 24CV07595, Cruz v. Greenwald

Plaintiff Marisol Cruz's ("Plaintiff") motion to continue deadline to respond to discovery is **DENIED as moot.**

Plaintiff filed this motion on August 26, 2025, requesting that the Court allow a brief 15-day extension for Plaintiff's deadline to respond to discovery from August 25, 2025, to September 4, 2025. (Motion, 2:5-7.) In Plaintiff's motion, she states that "counsel for Plaintiff will give notice of this **ex parte application** to counsel for Defendants on TBD by electronic mail, in compliance with California Rules of Court, rule 3.1203." (*Id*. at 2:11-13, emphasis added.) However, the motion was not filed as an ex parte application, but rather as a regular noticed motion. No opposition was filed, but Plaintiff provided no further update to the Court whether the motion is still needed or if the parties already resolved the issue. The Court, hearing this motion on January 14, 2026, finds that the motion is neither valid nor timely as the discovery already came due on August 25, 2025. For these reasons, the Court denies the motion as moot.

6. 25CV00313, Gonzales v. F. Korbel & Bros Inc.

Pursuant to its authority under C.C.P. sections 128.5 and 128.7, the Court sets an Order to Show Cause: re Sanctions against both Plaintiff Edward Gonzales and Defendant F. Korbel & Bros Inc., on **Thursday, February 5, 2026, at 3:30 P.M.** in Department 17 and also continues Plaintiff's motion for leave to file a Second Amended Complaint to be heard on the same date.

On its own motion, a court may enter an order describing the specific conduct that appears to violate subdivision C.C.P. 128.7(b) and direct an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected. (C.C.P. § 128.7(c)(2).)

On review of Plaintiff's moving papers, Defendant's opposition, and Plaintiff's reply, the Court determined that the below citations were inaccurate and potentially AI-generated:

1. Plaintiff's Memorandum of Points and Authorities, p. 1, lines 13-17: "Leave to amend should only be denied in the rare instance in which it causes prejudice, defined as extreme delay to a defendant, where in which the amendment delays the trial, results in loss of critical evidence or increases the burden of discovery right before trial. *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345."

   The case cited exists, but language on page 1345 of the ruling does not state what is said in this sentence.

2. Plaintiff's Memorandum of Points and Authorities, p. 1, lines 6-12 and Reply, p. 3, lines 9-12: "The policy favoring amendment is so strong that it is a rare case in which a court will be justified in refusing a party leave to amend. *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596. In fact, the policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified. 'If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion.' *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596."

   The case cited exists, but quoted language does not exist and the language on page 596 of the ruling does not state what is said in this paragraph.

3. Plaintiff's Memorandum of Points and Authorities, p. 6, lines 7-8: "This policy is 'especially applicable where the amendment is requested before trial." *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530."

   The case cited exists, but quoted language does not exist.

4. Plaintiff's Memorandum of Points and Authorities, p. 7, lines 1-7 and Reply, p. 4, lines 3-8: "Prejudice exists when the amendment delays the trial, results in loss of critical evidence or increases the burden of discovery right before trial. *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; see also *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945 (prejudice sufficient to justify denial of leave to amend must be substantial.) Furthermore,

mere delay in bringing a proposed amendment is not sufficient grounds for denial of leave to amend. *Morgan v. Superior Court*, 172 Cal.App.2d at p. 530."

Although the three cited cases exist, the pages cited do not state the language quoted above.

5. Defendant's Opposition, p. 11, lines 15-18: "Where amendment would result in the loss of critical evidence, added costs of preparation or increased burden of discovery, a court may deny leave to amend. See *P&D Consultants, Inc. v. City of Carlsbad*, 190 Cal. App. 4th 1332, 1345 (2010) (denying leave to amend where amendment causes increased discovery burden and loss of critical evidence);…"

Although the case cited exists, the pages cited above do not state the language as found in the brief.

Within 21 days from service of the Order to Show Cause, the parties shall either provide accurate authority for the above propositions, or withdraw the moving papers and opposition entirely. The Plaintiff shall not re-write his motion for leave to amend. Thus, the Court will issue an Order to Show Cause re: sanctions as to Plaintiff and Defendant for the use of the above citations that do not appear accurate to the Court. The sanctions shall be payable to the Court in an amount to be determined to deter the conduct in the future.

7. 25CV01872, Pappas v. Santa Rosa City School District

Respondents Santa Rosa City School District and Santa Rosa City Schools Board of Education ("Respondents") demur separately to Petitioner Mary T. Pappas' entire First Amended Petition for Writ of Mandate ("Petition") pursuant to Code of Civil Procedure ("C.C.P.") section 430.10 et. seq. The demurrer is **SUSTAINED in part** and **OVERRULED in part** with leave to amend. Petitioner shall file and serve the Second Amended Petition for Writ of Mandate within 20 days of this Court's order.

I. PROCEDURAL HISTORY

Petitioner worked for Respondents for approximately 39 years between 1985 and 2024. (Petitioner, ¶¶ 2, 5.) Petitioner claims that Respondents made serial promises to her from 2014 to 2024 that Respondents would adjust her inaccurate hourly-employee status to the proper salaried-employee status, while maintaining her aggregate compensation at an equivalent level. (*Id*. at ¶¶ 1, 5-11.) Petitioner alleges that she served diligently in her critical management position relying on those promises for the time she was employed with Respondents, who abruptly terminated her employment in 2024 without ever having made good on those promises. (*Id*. at ¶¶ 1, 5.) As a result, Petitioner's retirement income was materially reduced. (*Id*. at ¶¶ 1, 5, 12-13.) Petitioner seeks a writ of mandamus commanding Respondents to conform its reporting to the California Public Employees Retirement System ("CalPERS") in respect of Petitioner's compensation such that it is reported as having been earned on a salaried and not hourly basis, and at an amount equal to all aggregate compensation, including overtime pay, that she has earned during her employment with Respondents, and that Respondents amend any previous reporting to CalPERS so as to bring it into compliance with such an order. (Petition, Prayer for Relief, ¶ 1.) Alternatively, Petitioner prays for the Court to issue other such peremptory writs to report all overtime compensation earned by Petitioner or to otherwise show cause as to why Respondents should not do so. (*Id*. at Prayer for Relief, ¶¶ 2-4.)

Respondents met and conferred via telephone and email with Petition regarding an intent to demur to this Petition and outlined multiple grounds upon which the demurrer would be raised. (Mishook Decl., ¶¶ 2-3.) Ultimately, the issue was not resolved so Respondents now demur to the Petition.

The demurrer is based on the grounds that mandamus cannot lie for a contract action such as promissory estoppel, that overtime is not reportable to CalPERS, that Petitioner's claimed contract was not approved by Respondents, and to the extent that there was a contract, the statute of limitations bars Petitioner from bringing this claim. (Demurrer, 3:6-11.) Petitioner filed an opposition to the demurrer, to which Respondents replied.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.)

Subject to the above, the Court **GRANTS** Respondents' request for judicial notice of the following:

1. SRCS Administrative Regulation 4212, an official regulation enacted pursuant to Respondents' obligation set under Education Code section 35010;

2. Board Policy No. 4312.1, an official policy enacted pursuant to Respondents' obligation set under Education Code section 35010; and

3. CalPERS' published Public Agency & Schools Reference Guide, dated August 2025.

III. ANALYSIS

Legal Standard

Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

Writ of Mandate

C.C.P. section 1085 provides that a writ of mandate may issue to "compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station; or to compel the

admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such... person." An inquiry under this section is limited to considering whether the underlying administrative decision was "arbitrary, capricious, or entirely lacking in evidentiary support." (*Stone v. Regents of Univ. of California* (1999) 77 Cal.App.4th 736, 745.)

C.C.P. section 1086 governs the standard situation where a writ may be issued. If there is not a plain, speedy, and adequate remedy in the ordinary course of the law, then a writ must be issued upon the verified petition of the party beneficially interested after they have exhausted all of their administrative and contractual remedies that apply. (*Coffey v. Los Angeles Fireman's Relief Ass'n* (1937) 22 Cal.App.2d 510, 511.) A party does not need to exhaust administrative remedies if the effort would clearly be futile. (*Jonathan Neil & Assocs, Inc. v. Jones* (2004) 33 Cal.4th 917.)

Respondents' Demurrer

Contract Claim Cannot Be Raised Through Writ of Mandate

Respondents argue that a writ of mandate is not an appropriate remedy for enforcing a contractual obligation against a public entity because: (1) contracts are ordinarily enforceable by civil actions and a writ of mandate is not available unless the remedy by a civil action is inadequate; and (2) the duty which a writ of mandate enforces is not a contractual duty, but rather an official duty of a respondent officer or board. (Demurrer 11:1-24.) As Petitioner seeks the Court to determine that she has an enforceable contractual right to a salary versus hourly pay existed and to direct Respondents to report Petitioner's pay for purposes of retirement based on that finding, Respondents argue that this dispute is properly brought in a civil action rather than a writ of mandate. (*Ibid*.)

Unenforceable Contract

Respondents argue that the proper way for the district to enter into a contract is for the board to delegate authority to the superintendent or another designee to enter into a contract on behalf of the district per a majority vote. (Demurrer, 13:15-27.) Under SRCS Administrative Regulation 4212 and SRCS Board Policy No. 4312.1, the board must ratify and approve contracts for them to be valid and enforceable. (*Ibid*.) Here, as the Petition does not allege that the board delegated its power to approve hiring her as a classified employee for a senior manager position, Respondents argue that Petitioner has not shown the existence of an enforceable contract. (Demurrer, 13:28, 14:1-6.)

Overtime Exclusion

Respondent notes that Petitioner's request for a peremptory writ ordering Petitioner's status be changed from hourly to salaried based on promissory estoppel, or in the alternative, that her overtime be considered "special compensation" to count towards CalPERS retirement, is a misunderstanding of the Government Code. (Demurrer, 14:8-11.) Per Government Code section 20635.1, overtime is to be specifically excluded from any computation of compensation for a school member under CalPERS and furthermore, overtime rates shall not be reported to CalPERS for non-certified school employees. Respondents argue that Petitioner directly ignores these statutory requirements and instead seeks to construe provisions of the Government Code related to special compensation as requiring overtime to be counted towards CalPERS retirement calculations. As this is prohibited by law, Respondents argue the Court cannot issue an order compelling Respondents to amend its CalPERS reporting to include overtime compensation. (*Id*. at 14:24-28, 15:1-8.)

Statute of Limitations on Breach of Contract

Finally, even if any contract did exist between the parties during Petitioner's employment, Respondents argue that Petitioner's breach of contract claim is barred by the applicable statute of limitations because such a claim must be brought within four years for written contracts under Code of Civil Procedure ("C.C.P.") section 337, or within two years for oral contracts under C.C.P. section 339. (Demurrer, 15:10-16.) Respondents argue that because the only potential promise Petitioner can point to occurred in August 2014, Petitioner's breach of contract claim is time-barred. (*Ibid*.)

Opposition

Petition Claims Promissory Estoppel, Not a Contract Claim

Petitioner claims that the Petitioner sufficiently alleges promises and assurances made to her over the years when she worked with Respondents beginning in 2014, but continuing through 2023. (Petition, ¶¶ 8, 9.) Petitioner re-emphasizes that she reasonably relied on these promises and assurances and it was ultimately to her detriment because she was abruptly terminated and her retirement benefits were negatively impacted. (Opposition, 2:1-22; Petition, ¶¶ 10-11, 13.) Thus, the claim that the Petition asserts is promissory estoppel, rather than a contract claim, which Petitioner argues is not subject to the limiting principles Respondents raise in the demurrer. (Opposition, 3:6-14.) Petitioner argues that the case law relied on in the demurrer for the proposition that a writ of mandate is not an appropriate remedy for enforcing a contractual obligation does not address whether that principle encompasses promissory estoppel claims. (*Id*. at 3:6-23.) Petitioner instead claims that promissory estoppel claims are distinct from breach of contract claims because in promissory estoppel claims, the promise is regarded as a substitute for the consideration element that is required for an enforceable contract and because mutual assent is immaterial to the resolution of a promissory estoppel claim. (*Id*. at 4:11-24, 5:1-2.)

Special Compensation

First, Petitioner argues that the alternative request for Petitioner's "overtime" to be considered "special compensation" would be moot if the Court were to issue a peremptory writ adjusting her status from hourly to salaried. (Opposition, 6:16-26, 7:1-4.) Second, while Govt. Code. Section 20635.1 requires CalPERS to exclude "overtime" from their computation for retirement benefits, section 20636.1 pertaining specifically to school members provides that a member's "special compensation" be reported as well, which includes "payment received for special workdays or hours." (*Id*. at 7:5-25.) Under this section, Petitioner requests that "overtime" be reportable as "special compensation." (*Id*. at 9:1-2.)

Statute of Limitations

As a promissory estoppel claim is still based on an oral promise, the statute of limitations on a claim would be two years under C.C.P. section 339. As mentioned above, Petitioner argues that the promissory estoppel claim did not accrue until 2024, so it is not time-barred and the allegations in the Petition citing an email exchange in paragraph 7 supports this. (Opposition, 9:3-28.) Petitioner also argues that claims for compensation due from a public employer for retirement do not accrue until retirement. (*Id*. at 10:1-16.)

Reply

In the Reply, Respondents reject the Opposition's arguments and legal authority relied on to distinguish Petitioner's promissory estoppel claim from a contract claim and argues that Petitioner makes

arguments for both promissory and equitable estoppel despite the Petition labelling the claim as promissory estoppel. (Reply, 2:22-28, 3:1-3.) Respondents argue that even if Petitioner's claim were to be considered a promissory estoppel claim rather than a contract claim, a writ of mandate is still improper as relief because Petitioner failed to demonstrate a ministerial duty on behalf Respondents because changing an employee's status from hourly to salaried requires discretion and judgement. (*Id*. at 6:6-19.) Respondents reaffirm the arguments made regarding overtime and statute of limitations in the demurrer. (*Id*. at 6:20-28, 7:1-26.)

Application

The Court finds that, at the pleading stage, Petitioner's claim for promissory estoppel sufficiently alleges promises made to her over a span of 10 years between 2014 and 2024 which she relied on while employed with Respondents and which Respondents allegedly did not follow through with to Petitioner's detriment. As such, the Court will overrule the demurrer in so far as it categorizes Petitioner's claim as a contract claim and asserts that it is time-barred due to the statute of limitations.

However, the Court finds that Petitioner did not adequately explain how the Court has the legal authority to order Respondents to change Petitioner's overtime earnings to "special compensation" when the language in the Government Code is very clear that overtime earnings shall not be considered in computations regarding retirement benefits by CalPERS and shall not be reported regarding non-certified school employees. So, the Court will sustain the demurrer regarding its arguments made as to Petitioner's prayers for relief regarding overtime with leave to amend.

IV. CONCLUSION

Based on the foregoing, the demurrer is **SUSTAINED in part with leave to amend** and **OVERRULED in part**, as described above. Petitioner shall file and serve the Second Amended Petition for Writ of Mandate within 20 days of this Court's order. Respondents shall submit written orders regarding their demurrers consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. SCV-272136, Smith v. The Zones

Counsels Khaldoun A. Baghdadi, Valerie N. Rose, and Kelly L. Ganci's unopposed motion to be relieved as counsel for Plaintiff Joseph R. Smith is **GRANTED**, per Code of Civil Procedure section 284(2).

Counsels declare that there has been a deterioration in communications with Plaintiff Joseph R. Smith making it impossible for moving party to provide representation. (Counsels Decl., ¶ 2) Plaintiff Smith was personally served with a copy of the moving papers on September 8, 2025. (Proof of Service dated September 16, 2025.) Defendants filed a notice of non-opposition and no other party filed an opposition or objection. As such, the Court will grant the motion. The next hearing set in this matter is a Case Management Conference set to be heard January 15, 2026. Counsel shall submit a proposed order consistent with this tentative ruling and which indicates the correct next scheduled hearing in this action.