<u>TENTATIVE RULINGS: CIVIL LAW & MOTION</u>

Wednesday, October 22, 2025 at 3:00 p.m.
Courtroom 18 – Hon. Kenneth G. English
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6604**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via** Zoom, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

<u>TO JOIN ZOOM ONLINE:</u>

<u>Department 18:</u>
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. **<u>SCV-273534, Gibson v. Becker:</u>** Motion for Post-Appellate Attorney's Fees and Costs

Appearances required.

2. **<u>SCV-270527, Jane Doe #1 v. Foppoli:</u>** Motion for Judgment on the Pleadings

Defendant Dominic Foppoli's ("Defendant") motion for judgment on the pleadings ("JOTP") to Plaintiffs' Second Amended Complaint ("SAC") is **DENIED** pursuant to C.C.P. section 438 to Jane Does #1–3 for the First Cause of Action (sexual assault and battery) and Eighth Cause of Action (intentional infliction of emotional distress) as explained below.

The motion is **DENIED** as to all arguments applicable to Jane Does #4–7 pursuant to C.C.P. section 439(b).

Plaintiffs Jane Does #1–#7 commenced this action on April 4, 2022, against Defendants Dominic Foppoli, Two Kings, Santa Rosa Active 20-30 #50 Foundation, and Active 20-30 U.S. & Canada (collectively “Defendants”). The First Amended Complaint (“FAC”) alleges twelve causes of actions, including causes for sexual assault and battery and violation of the Ralph Act. (FAC, ¶¶ 88–227.) On March 5, 2025, this Court granted Defendant Foppoli’s JOTP with leave to amend to the FAC on the basis that Jane Doe #1–3’s claims were time barred. (See Minute Orders, dated March 5, 2025.) Plaintiffs filed their SAC on June 13, 2025, alleging the same twelve causes of action but adding facts to support Jane Doe #1–3’s allegations. Defendant now moves for a motion for JOTP to the SAC arguing that several claims made by various Plaintiffs are time barred. The Parties attempted to set a time to meet and confer but could not agree on a date and time that worked for counsel so Defendant filed the instant JOTP. (See Waters Declaration; Jaffee Declaration.)

Judicial notice of official acts is statutorily appropriate. (Evid. Code § 452(c).) 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. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Defendant’s RJN in Support of JOTP

In support of his motion for JOTP, Defendant requests judicial notice of Plaintiff’s First Amended Complaint filed December 17, 2024. The Court **GRANTS** Defendant’s RJN.

Plaintiff’s RJN in Support of Opposition to JOTP

In support of their Opposition, Plaintiffs request judicial notice of their SAC, Defendant’s MPA in Support of his Motion for Judgment on the Pleadings to the FAC, and California Bill Analysis for Assembly Bill 2777 dated May 3, 2022. The Court **GRANTS** Plaintiffs’ RJN.

Defendant’s Motion for JOTP

“A motion for judgment on the pleadings performs the same function as a general demurrer....” (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) “It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings.” (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429.) “The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.” (C.C.P. § 438(d).) “A trial court's determination of a motion for judgment on the pleadings *accepts as true* the factual allegations that the plaintiff makes.” (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal. 4th 468, 515, emphasis added.) “In addition, it gives them a liberal construction.” (*Ibid*.)

Defendant’s JOTP to the First Amended Complaint

In Defendant’s first JOTP (filed December 17, 2024) to the FAC, Defendant moved for judgment on the pleadings as to “the claims asserted by Jane Does 1-3” on the basis that their claims were time barred pursuant to C.C.P. section 340.16. Defendant’s motion specifically addressed statute of limitations and the application of delayed discovery for sexual assault of adults and emotional distress but in his Reply stated that it applied to "all" claims asserted by Jane Does #1–3. Defendant's motion did not argue the applicability of C.C.P. section 340.16 and requisite statute of limitations applicable to the causes of action for violation of the Bane Civil Rights Act, violation of the Ralph Civil Rights Act, gender violence, or domestic violence. The Court granted the JOTP with leave to amend regarding the claims asserted by Jane Does #1–3 for failure to plead facts that would allow application of the delayed discovery rule.

In their Opposition, Plaintiffs assert that Defendant's arguments as to Jane Doe #4–7 must be denied because they were not raised in Defendant's first motion for JOTP to the FAC pursuant to C.C.P. section 430.41(a)–(b). (Opposition, 5:1–8.) Plaintiffs further contend that Defendant is barred from raising statute of limitations arguments regarding causes of action other than sexual assault because Defendant did not raise these arguments in the first JOTP. (*Id.* at 8:9–17.)

In Reply, Defendant concedes to this argument regarding Jane Does #4–7. (Reply, 2:3–4.)

While Plaintiffs rely on the incorrect section of the Code, their assertion is correct. Pursuant to C.C.P. section 439(b), "[a] party moving for judgment on a pleading that has been amended after a motion for judgment on the pleadings on an earlier version of the pleading was granted *shall not move for judgment on any portion of the pleadings on grounds that could have been raised by a motion for judgment on the pleadings as to the earlier version of the pleading*." (Emphasis added.) Therefore, the Court cannot consider the arguments presented in the instant JOTP related to Jane Does #4–7 pursuant to C.C.P. section 439(b). Additionally, since Defendant did not argue the applicability of C.C.P. section 340.16 and/or the requisite statute of limitations applicable to the causes of action for violation of the Bane Civil Rights Act, violation of the Ralph Civil Rights Act, gender violence, or domestic violence, the Court will not consider the statute of limitations arguments as to these four causes of action pursuant to C.C.P. section 439(b) as Defendant fails to explain why he did not raise these arguments in his first JOTP.

First Cause of Action – Sexual Assault and Battery as to Jane Doe #1, Jane Doe #2, and Jane Doe #3

Defendant first argues that Jane Does #1–3 claims of sexual assault and battery fall outside of the 10-year applicable statute of limitations pursuant to C.C.P. section 340.16 further asserting that the revival window does apply to pre-2009 incidents of sexual assault. (MPA, 2:19–3:6.) Defendant states that Jane Does #1–3 allege incidents of sexual assault and battery between 2001 and 2006 and do not plead any incidents of sexual assault and battery occurring after January 1, 2009. (*Id.* at 3:8–4:4.) Defendant further argues that the delayed discovery rule does not apply to Jane Does #1–3's claims because they all had knowledge of the relevant facts to support a cause of action against Defendant for sexual assault and battery at the time the incidents occurred. (*Id.* at 4:7–9:24) Defendant asserts that these deficiencies render the applicability of the delayed discovery a question of law for the Court to determine at JOTP.

In Opposition, Plaintiffs argue that their only requirement to satisfy the delayed discovery rule is to allege the onset or psychological injury or illness and that they filed their lawsuit within three years of the time they discovered or reasonably should have discovered such psychological injury or illness was caused by the abuse. (Opposition, 5:20–6:1.) Plaintiffs claim that since they filed their lawsuit one year after discovering their injuries, their claims are timely filed pursuant to C.C.P. section 340.16(a)(2). (*Id.* at 7:25–8:1.) Lastly, Plaintiffs argue that whether it was reasonable for

Plaintiffs to have suspected a factual basis that they had been wronged is subject to expert opinion and is an issue of fact that cannot be determined by JOTP. (*Id.* at 8:2–6.)

In Reply, Defendant contends that the SAC alleges that Jane Does #2 and #3 suspected harm prior to 2021. (Reply, 2:12–3:12.) Defendant claims that Plaintiffs fail to show diligence because Jane Does #1–3 did not plead any investigation into the potential harm caused by Defendant or actively seek out the information about possible sexual abuse. (*Id.* at 3:27–4:24.) Defendant argues that since Jane Does #1–3 discovered their harm in ordinary, straightforward ways, the "only reasonable conclusion" is that each Plaintiff could have made the exact same discovery within the applicable statute of limitations. (*Id.* at 4:1–10.)

The delayed discovery rule "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Stella v. Asset Mgmt. Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191–192.) "Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights." (*Id.* at 192.) However, "[w]hen a plaintiff reasonably should have discovered facts for purposes of the accrual of a cause of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the evidence (or, in this case, the allegations in the complaint and facts properly subject to judicial notice) can support only one reasonable conclusion." (*Id.* at 193, citations omitted.)

Here, Jane Doe #1 pled that in 2001, when she was 19 years old, Defendant forced her into nonconsensual sexual activity and sexually abused her but did not discover that Defendant's actions constituted nonconsensual sexual abuse until 2021 when she read an article in the local paper about an investigation in Defendant because Defendant gaslit and manipulated Jane Doe #1 into thinking that these actions were consensual sexual activity. (SAC, ¶¶ 13–20.) Jane Doe #2 pled that in 2003, Defendant had committed sexual acts that went beyond the scope of her consent, including December 31, 2002, when Defendant raped her after she became highly intoxicated and then became unconscious. (SAC, ¶¶ 21–28.) Jane Doe #2 further pled that when she woke up, she was sick mentally, emotionally, physically, and spiritually and understood that Defendant had done something she was not comfortable with but did not consider it rape because Defendant was her boyfriend but in 2021 by talking to a reporter, discovered that these actions constituted rape. (SAC, ¶¶ 30–35.) Jane Doe # 3 pled that in 2006, Defendant forced himself onto her by kissing her and trying to remove her pants after she said no. (SAC, ¶¶ 36–43.) Jane Doe #3 felt violated and anxious but thought that it was not assault until 2021 when she spoke with a reporter who contacted her which made her realize that Defendant had a pattern of abuse and that she was assaulted by Defendant. (SAC, ¶¶ 44–45.)

These allegations do not support only one reasonable conclusion as reasonable minds could differ as to when Jane Does #1–3 should have discovered if or when these actions were in fact sexual abuse and not consensual sexual activity. That is a question of fact that the Court shall not decide at this point in the pleadings. Therefore, Defendant's JOTP is **DENIED** as to the First Cause of Action.

Eighth Cause of Action – Intentional Infliction of Emotional Distress as to Jane Doe #1, Jane Doe #2, Jane Doe #3,

As explained above, the Court only addresses this argument as to Jane Does #1–3.

Defendant argues that Jane Does #1–3's claims for intentional infliction of emotional distress ("IIED") is time barred because the statute of limitations is two years and began to run when Plaintiffs suffered emotional distress as a result of Defendant's outrageous conduct, which was before 2021. (MPA, 9:27–10:22.)

In opposition, Plaintiffs argue that this cause of action is timely filed based on the same reasons regarding the sexual assault claims and also because in May 2021, Defendant threatened to distribute photographs or recordings of Plaintiffs that could cause embarrassment, which caused Plaintiffs to suffer emotional pain, mental anguish, humiliation, and loss of enjoyment of life. (Opposition, ¶ 8:20–9:2.)

Defendant does not address IIED in his Reply.

Here, Plaintiffs allege that they "suffered serious emotional distress following the sexual assaults and abuses they experienced, including suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. An ordinary, reasonable person would be unable to cope with such serious emotional distress." (SAC, ¶ 200.) Plaintiffs further allege that in or around May 2021, Defendant published statements threatening "to release embarrassing private information regarding all Plaintiffs who had publicly shared details of his sexual assaults against them, including video recordings of Plaintiffs which he described as 'sex tapes'… [that] caused significant emotional harm on top of the harm already suffered by the sexual assaults… [and] injured the Plaintiffs personally, emotionally, and mentally, hampered their businesses, and/or harmed their political and professional aspirations. (SAC, ¶¶ 92–94.)

Plaintiffs have alleged that Defendant's threats of revenge porn in or around May 2021 caused them significant emotional harm and injured them and/or their political and professional aspirations. The conduct alleged is clearly sufficient to claim IIED and is well within the two-year statute of limitations pursuant to C.C.P. section 335.1. Therefore, Plaintiffs' claim for IIED is timely and Defendant's JOTP to the Eighth Cause of Action is **DENIED**.

Accordingly, Defendant's motion is **DENIED**. Plaintiffs' counsel 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).

3. & 4. <u>25CV00793, Paul Alan Phillips v. Mc.Lear</u>: Motion to Seal Records and Motion to Compel Arbitration

<u>Motion to Seal</u>

Defendant's <u>unopposed</u> motion to seal unredacted supplemental declaration of Yvonne M. Pierrou is **GRANTED**.

Defendant shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with rule 3.1312 is excused.

California Rules of Court, Rule 2.550 provides "The Court may order that a record be filed under seal only if it expressly finds facts that establish:

> (1) There exists an overriding interest that overcomes the right of public access to the record;
> (2) The overriding interest supports sealing the record;
> (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
> (4) The proposed sealing is narrowly tailored; and
> (5) No less restrictive means exist to achieve the overriding interest.

Defendants seek to seal the unredacted supplemental declaration of Yvonne M. Pierrou submitted in support of Defendant's motion to compel arbitration. The redacted portions of this supplemental declaration contain Mrs. Kathleen Phillips' personal information such as her mailing address, Kaiser medical number, social security number, phone number, and email address. This is highly personal and sensitive information. Therefore, the motion to seal is granted. Defendants have filed a redacted version of the supplemental declaration that is in the public record.

Motion to Compel Arbitration

Defendants' motion to compel arbitration and stay action is **GRANTED**.

Defendants' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Plaintiffs are the surviving family of Kathleen Phillips ("Mrs. Phillips"). They allege in the Complaint several causes of action arising out of the alleged wrongful death of Mrs. Phillips while she was receiving medical care by Defendants. Defendants argue that Plaintiffs' claims must be arbitrated because an arbitration agreement existed with Mrs. Phillips that applies to the claims alleged herein. In opposition, Plaintiffs argue that Defendants have failed to show the existence of such agreement.

This matter previously came on for hearing on October 13, 2025, during which time the Court heard oral argument from the parties. Prior to the hearing, the Court issued a tentative ruling denying Defendants' motion because Defendants had not shown the existence of a valid arbitration agreement. The Court's reasoning primarily rested on the insufficiency of the evidence Defendants had submitted in support of their contention that a valid arbitration agreement existed. The Court also opined that the case cited by Defendants, *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.App. 699 was distinguishable. At the hearing, Defendants asked for an opportunity to submit further evidence supporting their position. The Court granted the request and allowed further briefing from the parties. As explained further below, Defendants have now submitted sufficient evidence to show the existence of an arbitration agreement between the parties. They have also submitted further argument regarding the applicability of the *Madden* case which the Court finds to be compelling.

Defendants Have Shown the Existence of a Valid Arbitration Agreement

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.)

Defendants have presented evidence that Mrs. Phillips enrolled as an individual Senior Advantage member with an effective date of May 1, 2014. The Senior Advantage plan that Mrs. Phillips signed up for is a plan offered by Kaiser Foundation Health Plan, Inc. ("KFHP") pursuant to a contract entered into between KFHP and Centers for Medicare & Medicaid Services ("CMS") relating to health care services to enrolled Medicare patients in exchange for monthly Medicare premiums.

Defendants have submitted evidence of Mrs. Phillips' enrollment form. They have submitted evidence that Mrs. Phillips enrolled either electronically or telephonically, which is why her signature on the enrollment form is comprised only of her electronically printed name. They have also submitted evidence that, at the time of her enrollment, Mrs. Phillips was mailed a physical copy of the Evidence of Coverage, which contained an arbitration provision.

Defendants submit that they employ an "opt out" procedure, wherein members are mailed an opt out notice upon their enrollment that informs them that they have 60 days from their enrollment to opt out of the arbitration agreement. Defendants submit that Mrs. Phillips was sent this opt out notice along with the Evidence of Coverage when she enrolled in 2014 and never returned it. Thus, she failed to opt out of the arbitration agreement.

Defendants argue that CMS had the authority, as the agent of Medicare beneficiaries, to agree to the terms of the Evidence of Coverage, including the arbitration agreement. Accordingly, Defendants argue that the arbitration agreement is binding on members of the Senior Advantage plan unless they opt out within 60 days of receiving the opt-out notice. Defendants point to *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699 in support of this argument. The Court agrees with Defendants that *Madden* is instructive on this point.

The *Madden* Court discussed whether the Board of Administration of the State Employees Retirement System (hereafter board) had the authority to agree to arbitration of malpractice claims of enrolled employees arising under the contract entered into between the board and KFHP related to health care benefits to state employees. The Supreme Court of California found that it did. The *Madden* Court stated, "an agent empowered to negotiate a group medical contract has the implied authority to agree to the inclusion of an arbitration provision." (*Madden*, *supra*, at 706.) "[A]n agent or other fiduciary who contracts for medical treatment on behalf of his beneficiary retains the authority to enter into an agreement providing for arbitration of claims for medical malpractice." (*Id*. at 709.)

The same is true here. CMS is empowered to negotiate group medical contracts on behalf of Medicare beneficiaries. As such, CMS has the authority to agree to the inclusion of an arbitration agreement. The Evidence of Coverage containing the arbitration agreement was sent to Mrs. Phillips in the mail upon her enrollment. The opt-out notice was also sent to her by mail with the Evidence of Coverage. Mrs. Phillips was given an opportunity to opt out within 60 days. Defendants have submitted sufficient evidence that these documents were in fact mailed to Mrs. Phillips at her correct address and that Mrs. Phillips did not send back an opt-out form.

Accordingly, Defendants have shown the existence of a binding arbitration agreement between the parties.

At the previous hearing on this matter, the Court asked the parties to brief the recently decided case of *Platt v. Sodexo* (9th Cir. 2025) 148 F.4th 709. After having read the parties' supplemental briefing, the Court agrees with Defendants that it is distinguishable. In *Platt*, the arbitration provision had been unilaterally inserted into the plaintiff's employer-sponsored health insurance plan after the plaintiff had joined the plan. The defendant in *Platt* argued that the plaintiff had agreed to the arbitration agreement by his continued participation therein. As the *Sodexo* court noted:

> Sodexo claims that it sent an email to all plan participants in 2021, notifying participants of changes to the Plan document and linking a 25-page summary of material modifications ("SMM"). It also claims that it mailed Platt a copy of the 2021 SMM. But Platt does not recall receiving the SMM. And Sodexo was unable to produce the 2021 email it sent to Platt, even after the district court adjourned the hearing on the motion to compel arbitration for several hours to let Sodexo look for it. By contrast, it is undisputed that Platt received a short email from Sodexo in 2022 with a hyperlink to the "new [Summary Plan Description ("SPD")]," which was 170 pages long. The email noted that all "previously issued versions of the SPD are obsolete." *Hidden within the 170 pages was the arbitration provision on page 153.*

Platt v. Sodexo, S.A. (9th Cir. 2025) 148 F.4th 709, 718 [Emphasis added.]

Based on the facts in front of it, the Ninth Circuit held that: "Assuming that [the plaintiff] never received the 2021 SMM. [Citations Omitted]. Assuming that Platt only received the 2022 email containing the new SPD, this email did not provide sufficient notice of the arbitration provision because the provision was buried on page 153 of the 170-page SPD. It is unreasonable to expect that [the plaintiff] would notice a new arbitration provision hidden in a lengthy document." Platt, 148 F.4th at 719.

Here, unlike in *Platt*, the arbitration provision existed at the time Mrs. Phillips enrolled. Further, the Defendants here have demonstrated that the Plaintiff was mailed a copy of it and given an opportunity to opt out.

Finally, Defendants have shown that the arbitration provision applies to Plaintiffs' claims. The provision applies to the following:

> Any dispute shall be submitted to binding arbitration if all of the following requirements are met:
>
> - The claim arises from or is related to an alleged violation of any duty incident to or arising out of or relating to this *Evidence of Coverage* or a member Party's relationship to Kaiser Foundation Health Plan, Inc. (Health Plan), including any claim for medical or hospital malpractice (a claim that medical services or items were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered), for premises liability, or relating to the coverage for, or delivery of, services or items, irrespective of the legal theories upon which the claim is asserted.

> • The claim is asserted by one or more member Parties against one or more Kaiser Permanente Parties or by one or more Kaiser Permanente Parties against one or more member Parties.
> • Governing law does not prevent the use of binding arbitration to resolve the claim.

Furthermore,

> As referred to in this “Binding Arbitration” provision, “member Parties” include:
> • A member.
> • A member's heir, relative, or personal representative.
> • Any person claiming that a duty to him or her arises from a member's relationship to one or more Kaiser Permanente Parties.

(Supp. Decl. Eric Carlile, Ex. U, p. 224-225.)

Plaintiffs causes of action consists of general negligence and elder and dependent adult abuse arising from the medical care received by Mrs. Phillips for her colitis. They are brought by the personal representatives of Mrs. Phillips’s estate and her heirs. Accordingly, the arbitration provision applies to the claims raised by Plaintiffs.

Plaintiffs’ Defenses to Arbitration

1. *Electronic Signature*

Plaintiff first argues that Defendants have not met their burden to prove that a binding arbitration agreement existed because they have not shown evidence that Mrs. Phillips signed anything indicating her consent to arbitration.

First, as discussed above, the Court has found that CMS had the authority to agree to a contract containing an arbitration provision on behalf of Medicare recipients. Accordingly, there is no need to show that Mrs. Phillip herself signed the contract containing the arbitration provision.

Plaintiff argues that Mrs. Phillips’s signature on her enrollment form is no signature at all, but merely her electronically typed name. If Plaintiff is arguing that this indicates that Mrs. Phillips did not consent to enrollment, this argument would be unavailing. Mrs. Phillips received healthcare benefits through Kaiser for years. The fact that her signature on the enrollment form was electronically entered and consisted of her full name spelled out does not show that she did not consent to enrollment. The arguments raised by Plaintiffs regarding the form of Plaintiffs’ signature or the lack of proof of her signature on an arbitration agreement are unpersuasive and unsupported by controlling legal authority.

2. *Health and Safety Code § 1363.1*

Plaintiffs next argue that the arbitration agreement in this matter is unenforceable because it violates the disclosure requirements of Health and Safety Code § 1363.1. Health and Safety Code § 1363.1 requires, in part, that health care service plans which require binding arbitration include a disclosure regarding the arbitration agreement that is prominently displayed on the enrollment form signed by an enrollee. Plaintiffs cite *Medeiros v. Superior Court* (2007) 146 Cal.App.4th 1008, which clarifies that a health plan does not satisfy the requirements of the statute by simply making the required disclosures to the employer who contracts on behalf of its employees. It must also make the required disclosures to each employee who enrolls. The *Medeiros* Court explained that *Madden v. Superior Court*, *supra*, which was decided 15 years prior to Health and Safety Code § 1363.1 being enacted, does not hold otherwise. However, *Medeiros* is distinguishable because it does not discuss the effect of the Medicare Act on the statute. Defendants argue in response that Health and Safety Code § 1363.1 is expressly preempted by the Medicare Act.

42 U.S.C. § 1395w-26(b)(3) "Relation to State Laws" provides: "The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part." The Court finds *Clay v. The Perm. Med. Group* (N.D. Cal. 2007) 540 F.Supp.2d 1101 to be persuasive. It involves an enrollee in a Medicare Risk Contract entered into between the plaintiff's employer and KFHP to provide services for enrolled Medicare beneficiaries. As here, the arbitration provision in that matter was contained in the Evidence of Coverage. The *Clay* Court stated,

> By federal regulation, the EOC is considered "marketing material" and must be approved by the CMS. The CMS has a set of standards it uses in evaluating marketing materials, including the adequacy of the formatting and font size and the adequacy of the description of any grievance procedures. Pursuant to 42 U.S.C. § 1395w–26(b)(3), these regulations supersede any state law or regulation with respect to Medicare Advantage plans such as the Health Plan Senior Advantage plan in which Mr. Clay was enrolled. ***To the extent California Health & Safety Code section 1363.1 purports to regulate the adequacy of any disclosures in the EOC, it is superseded by federal law, and its application here is preempted.*** Congressional intent confirms this result.

(*Clay*, *supra*, at 1106 [Emphasis added]. See also *Drissi v. Kaiser Foundation Hospitals, Inc.* (2008) 543 F.Supp.2d 1076, 1079-1080 for persuasive value.)

The Court notes that Plaintiffs have cited several lower court cases in their supplemental brief discussing whether state medical malpractice claims are preempted by federal law, one of which is a Massachusetts Superior Court case. However, that is not the issue before this Court. The question before this Court is not whether Plaintiffs' *claims* are preempted by the Medicare Act. It is whether the disclosure requirements found in Health and Safety Code § 1363.1 are preempted. The Court finds that they are.

5. <u>24CV07852, Hagemann v. Miller:</u> Demurrer

Defendant Catherine Greeson's <u>unopposed</u> demurrer to Plaintiff's complaint is **SUSTAINED with leave to amend.** Any amendment shall be filed no later than 10 days after service of notice of entry of an order on this motion. Defendant's request for judicial notice is **GRANTED**.

Defendant shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Plaintiff filed a Complaint against his sister, Catherine Greeson ("Cathy"), sued as Catherine Anne

Miller, Cathy's alleged former attorney, Rob Disharoon, and her alleged current attorney, Karin Beam, claiming that he is one of the beneficiaries to a trust agreement and should have received $2,875,000 more than the distributions he has received under the Stanley G. Hagemann and Phyllis J. Hagemann Trust Agreement. He alleges that the estate was subject to fraudulent and inequitable distribution. He also alleges that his siblings conspired against him to exclude him from the administration of the estate and from his fair share of distributions. He alleges that the Superior Court Judge who heard the probate action, The Honorable Nancy Shaffer, the court reporter, and the current and former attorneys representing Cathy are "compromised" and involved in altering the official record of the sole court hearing held on November 5, 2014.

The instant demurrer is made by Defendant Cathy Greeson. She argues that the complaint is barred by the statute of limitations, that Plaintiff's claims are barred by res judicata/collateral estoppel, and Plaintiff has failed to state sufficient facts supporting the causes of action of the complaint. The demurrer is unopposed.

The Court notes that the complaint violates California Rules of Court, Rule 2.112, because it fails to identify which party to whom each cause of action is directed. Assuming Plaintiff is alleging each cause of action against all defendants, Plaintiff has failed to state facts sufficient to raise a claim against the moving defendant.

<u>Statute of Limitations</u>

Defendant Greeson's first argument is that the complaint is barred by the statute of limitations. However, in order for the Court to sustain a demurrer on the basis that the claims are barred by the statute of limitations, it must appear affirmatively on the face of the complaint that such is true.

A demurrer on the ground of the bar of the statute of limitations will not lie where the action *may be*, but is not necessarily, barred. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 161.) "It must appear *affirmatively* that, upon the facts stated, the *right of action is necessarily barred*. (*Ibid.*, citing *Valvo v. University of Southern Cal.* (1977) 67 Cal.App.3d 887, 895. Italics in original.) Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. (*Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780.)

Such is not the case here. There are some dates alleged in the complaint that suggest that Plaintiff's causes of action may be time-barred. Moving defendant's reliance on judicially noticeable documents notwithstanding, the facts of the complaint do not show *affirmatively* that Plaintiff's claims are *necessarily* barred.

<u>Res Judicata/Collateral Estoppel</u>

Defendant Greeson next argues that Plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel because the issued raised in the complaint were litigated and decided in the prior trust action.

"'Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings."'" (*Gabriel v. Wells*

Fargo Bank, N.A. (2010) 188 Cal.App.4th 547, 556.) " 'Collateral estoppel precludes the relitigation of an issue only if (1) the issue is identical to an issue decided in a prior proceeding; (2) the issue was actually litigated; (3) the issue was necessarily decided; (4) the decision in the prior proceeding is final and on the merits; and (5) the party against whom collateral estoppel is asserted was a party to the prior proceeding or in privity with a party to the prior proceeding.'" (*Ibid*.)

First, Defendant Greeson has not shown that Plaintiff raised the same causes of action in the trust action as he has raised here. Therefore, the doctrine of res judicata is not applicable. Moreover, Defendant has failed to establish that all of the elements of collateral estoppel are met. Defendant argues in her memorandum that "Ken made nearly identical claims in the Trust Action…" The test is not whether nearly identical claims were raised in the prior action, nor whether they "should have been raised" in the prior action, as Defendant argues. The test is whether the identical issues were litigated and finally and necessarily decided on the merits. Defendant has not made such a showing.

Sufficiency of the Pleaded Facts

1. *First Cause of Action: Breach of Fiduciary Duty*

"The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach." (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395.)

Here, Plaintiff alleges "Plaintiffs sister, Cathy, and her attorneys, Rob Disharoon and Karin Beam, assumed fiduciary roles in the management and distribution of the trust estate. Their obligations were to act in the best interests of all beneficiaries, including Plaintiff, without self-interest, conflict of interest, or favoritism." (Complaint, ⁋ 28.) However, Plaintiff has failed to allege the "fiduciary role" that Cathy assumed. He does not allege anywhere in the complaint that Cathy was the trustee of the trust. He only alleges that John Jones was appointed trustee. (Complaint ⁋ 10.) Accordingly, Plaintiff has failed to assert sufficient fact supporting this cause of action against Cathy.

2. *Second Cause of Action: Fraud*

The general elements of fraud are "misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages." (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) "To withstand demurrer, facts constituting every element of fraud must be alleged with particularity." (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)\

Plaintiff has not alleged the elements of his fraud cause of action with particularity. Plaintiff makes general allegations regarding misrepresentations made by Cathy regarding the status of the distribution of estate assets. Plaintiff also makes general allegations of her knowledge of their falsity. Furthermore, Plaintiff generally alleges that he justifiably relied on Cathy's representations. However, Plaintiff fails to allege that Cathy was the trustee of the trust. Therefore, he has failed to allege facts supporting his justifiable reliance on her representations regarding the estate distribution. Finally, while Plaintiff has alleged damages in the amount of $2,875,000 he has failed to allege facts showing that these damages resulted from Cathy's alleged misrepresentations.

3. *Third Cause of Action: Conversion*

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages." (*Oakdale Vill. Grp. v. Fong* (1996) 43 Cal.App.4th 539, 543–44.)

Here, Plaintiff has failed to allege facts supporting his assertion of ownership or the right of possession of the trust assets he claims he is owed. Rather, Plaintiff alleges that the $2,875,000 he claims he is entitled was merely "designated" for him. Plaintiff describes the funds as "estate assets." The property was still owned by the trust. The trust had the right to possess it. Plaintiff has not alleged facts showing an immediate ownership right or immediate right of possession.

4. *Fourth Cause of Action: Unjust Enrichment*

"[T]here is no cause of action in California for unjust enrichment. 'The phrase "Unjust Enrichment" does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so.' Unjust enrichment is 'a general principle, underlying various legal doctrines and remedies,' rather than a remedy itself. (*Melchior v. New Line Prods., Inc.* (2003) 106 Cal.App.4th 779, 793.) "It is synonymous with restitution." (*Ibid*.)

Since there is no cause of action for unjust enrichment in California, the demurrer to this cause of action is sustained. Furthermore, since Plaintiff has failed to sufficiently allege any of his causes of action, Plaintiff has failed to allege the theory upon which he is entitled to restitution.

Leave to Amend

It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Ibid*.)

Here, though Plaintiff has failed to oppose this motion and, thus, has failed to meet his burden to show how the defects of the pleading can be cured by amendment, the Court will grant leave to amend since it is not entirely apparent that the complaint cannot be amended to state a good cause of action.

6. 24CV07192, Jauregui v. Satellite Affordable Housing Associates: Motion for Leave to File Cross-Complaint

Defendants' unopposed motion for leave to file cross-complaint is **GRANTED**. The proposed cross-complaint, attached as Exhibit A to the declaration of Kyle G. King may be filed within 10 days of notice of entry of this order.

The Court will sign the proposed order lodged with the moving papers.

On November 27, 2024, Plaintiff filed a complaint against Defendants alleging a single cause of action for premises liability. Plaintiff alleges that while she was descending a staircase to exit Defendants' property, she slipped on a puddle of clear liquid that had accumulated on the floor causing her injury.

Defendants answered the complaint on March 25, 2025. On April 29, 2025, this matter was set for trial on April 17, 2026. Defendants represent that upon investigation they have discovered that the fall may have occurred as a result of potentially negligent construction performed at the property by proposed cross-complainant, Midstate Construction Corporation. The contract between Defendants and Midstate contains an express indemnification provision. As such, Defendants seek to file a cross-complaint against Midstate for indemnity and contribution.

Defendants have shown that their action against Midstate arises out of the same transaction, occurrence, or series of transactions or occurrences as Plaintiff's claims. (CCP § 428.10(b).) They have also shown that allowing the cross-complaint to be filed would be in the interest of justice. (CCP § 428.50(c).) Accordingly, the motion is granted.

*****This is the end of the Tentative Rulings*****