TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 25, 2026 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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) 521-6602**, 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.

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

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

PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 23CV00189, Gold Hammer Construction, Inc. v. Lopez

Plaintiff Goldhammer Construction, Inc. ("Plaintiff"), filed the currently operative Second Amended Complaint (the "SAC") against defendants Miguel Lopez and Heidi Marks ("Defendants"), as well as Does 1-10, arising out of alleged breach of contract. Defendants have in turn filed a cross complaint against Plaintiff, and David Hunt ("Cross-Defendants") and Roes 1-20, relating to breach of contract, construction defects, and negligence as to the work performed under the construction contract (the "Cross-Complaint"). This matter was subsequently consolidated as the lead case with *Friedman's Home Improvement v. Marks-Lopez.*, 23CV01972 (the "Consolidated Complaint"). The Consolidated Complaint is filed by plaintiff Friedman's Home Improvement ("Consolidation Plaintiff") against Defendants for foreclosure of mechanic's lien.

As an initial matter, there is no proof of service in the file reflecting the Plaintiff has served the Motion to Enter Judgment on Defendants with the hearing date. Plaintiff has served the moving papers but failed to subsequently serve notice of the hearing date after it was assigned by the Court. See Code of Civil Procedure §§ 1005, 1010; Cal. Rule of Court, Rule 3.1300(a); Sonoma Court Local Rule 5.1 (B). The proof of service was required to be filed by March 18, 2026, and

no proof of service is on file. Cal. Rule of Court, Rule 3.1300(c). The motion having not been served in accordance with CCP § 1010, there is no cause to consider the merits. The motion is **DROPPED** from calendar.

2. 24CV06704, Goelz v. Trustees of the California State University System

Plaintiff John Goelz ("Plaintiff") filed a complaint against the Trustees of the California State University System ("CSU") and Nicole Annaloro ("Annaloro, together with CSU, "Defendants"), and Does 1-20, with causes arising out an alleged discrimination against Plaintiff due to age and whistleblowing during the course of employment (the "Complaint"). The Complaint contains two additional causes of action for emotional distress.

This matter is on calendar for the motion by Defendants for summary judgment, or in the alternative adjudication of the complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. The motion for **summary judgment is DENIED**. The motion for summary adjudication is **GRANTED in part and DENIED in part**.

I. Evidentiary and Pleading Issues

Plaintiff has filed four sets of objections to the declarations of Jones, Evans, Holte and Annaloro. Plaintiff's Objection ¶ 1 to the declaration of Gerald Jones is SUSTAINED. All of Plaintiff's other objections are OVERRULED.

The Court turns to some particularized legal issues that require addressing in Defendants' objections asserted on Reply. In objections 11 and 13, Defendant avers that Plaintiff cannot assert evidence which contradicts his deposition testimony. Defendants' citation to *Trovato v. Beckman Coulter, Inc.* (2011) 192 Cal.App.4th 319, 324 is not persuasive. Defendants contend that Plaintiff cannot introduce evidence to contradict his prior deposition testimony, but that is not an accurate recitation of the holding in *Trovato.* The principle of this rule, as articulated in *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21, relates to the raising of a *triable issue*, not admissibility. *Trovato* says nothing to the contrary. "The conclusory statements in Trovato's declaration are **not sufficient to raise a triable issue of material fact** on the statute of limitations issue, and she cannot defeat the grant of summary judgment by contradicting her sworn deposition testimony on material points in a later-filed declaration." *Trovato v. Beckman Coulter, Inc.* (2011) 192 Cal.App.4th 319, 325. As such, Defendants' objections based on this argument must be overruled.

Defendants' objection 14 is SUSTAINED in part and OVERRULED in part. Plaintiff's statement that he sent a letter to Lee on June 29 (the year is unclear) appears to be an admissible statement. However, Plaintiff fails to provide any *facts* related to the content of the letter, instead asserting the legal conclusion that it was a "whistleblower/retaliation complaint." As the Court addresses further below, these claims have different legal frameworks each of which requires facts. The statement here is a legal conclusion to the degree it asserts legal buzzwords without facts to support them, and that the conduct by Annaloro was "wrongdoing". The Court only considers that statement for the purpose of showing that Plaintiff sent a letter to Lee and its content *to the degree Plaintiff provides evidentiary facts rather than legal conclusions*.

Defendants' citation to *Low v. Woodward Oil Co.* (1955) 133 Cal.App.2d 116, 121 is inapposite, as the case analyzes significantly dated principles of evidence. The best evidence rule was confirmed to statute in 1965. See former Evid. Code § 1500. Since then, it was replaced by the secondary evidence rule under Evidence Code § 1521 in 1998. 26 Cal.L.Rev.Comm. Reports 369 (1996). A case from 1955 does not offer the current analysis applicable to such requests. The Court analyzes the sufficiency of the evidence for its stated purpose below.

For Defendants' objections 17, 18, and 19, Defendants raise contentions that Plaintiff fails to offer anything more than conclusions that the hiring process related to Annaloro's elevation to Athletic Director was improper on the basis of violation of laws or rules. To this effect, much like the above, Plaintiff offers nothing more than the conclusion that rules were not followed, without providing any factual, legal, or policy basis to underpin his belief. These are issues of pure opinion or legal conclusion. They are unsupported, and the objections thereon must be sustained.

Defendants' objections 4, 9, 17, 18, and 19 are SUSTAINED. Defendants' objection 14 is SUSTAINED in part and OVERRULED in part. The balance of Defendants' objections are OVERRULED.

II. Underlying Facts

John Goelz (Plaintiff) served as Sonoma State's ("SSU") Head Baseball Coach from August 1985 until June 2024, pursuant to consecutive annual appointments. Defendants' Separate Statement of Undisputed Material Facts ("DUMF") ¶ 1. The appointment automatically expired at the end of each year. DUMF ¶ 2. Plaintiff was head baseball coach and reported to SSU's Senior Director of Athletics. DUMF ¶ 3. SSU appointed Annaloro as interim Senior Director of Athletics in May 2020. DUMF ¶ 4. Annaloro applied for and attained the permanent position effective June 1, 2021. DUMF ¶ 5. Annaloro's responsibilities as Senior Director of Athletics included supervision of intercollegiate sports, their coaches and assistant coaches; ensuring adherence to policies and procedures of the NCAA and the California Collegiate Athletic Association (CCAA); and conducting performance evaluations; taking corrective actions as needed; and recommending appropriate personnel actions for staff and coaches. DUMF ¶ 6. The Senior Director of Athletics makes recommendations to reappoint or not reappoint coaches. DUMF ¶ 7. The final decision on appointment of coaches is made by the Vice President of the division housing the Department of Athletics, in consultation with, and approval by, Sonoma State's President. DUMF ¶ 8. At the time of Annaloro's hire, the Athletics Department was in Sonoma State's division of Administration and Finance. DUMF ¶ 9. In or around July 2023, the Athletics Department was transferred to the division of Student Affairs. DUMF ¶ 10.

On November 28, 2022, Annaloro issued Plaintiff a Letter of Concern for failing to obtain prior authorization for maintenance work and vehicle access on university property. DUMF ¶ 11. On February 10, 2023, Annaloro issued Plaintiff a Letter of Reprimand for failing to comply with university policy regarding travel expenditures resulting in the revocation of Plaintiff's travel card. DUMF ¶ 12. On March 2, 2023, Annaloro issued Plaintiff a Letter of Reprimand for refusing to provide a budget recommendation after multiple requests. DUMF ¶ 13. On March 15, 2023, Annaloro issued Plaintiff a Counseling Letter regarding his failure to comply with baseball

roster issues. DUMF ¶ 14. On May 16, 2023, Sonoma State issued Plaintiff a Notice of Pending 3-Day Suspension, citing his failure or refusal to perform the normal and reasonable duties of his position under Cal. Educ. Code § 89535, for a CCAA roster violation. DUMF ¶ 15. President Mike Lee ("Lee") issued a 3-day suspension to Plaintiff for the conduct described in the May 16 Notice. DUMF ¶ 16. On June 6, 2023, Sonoma State issued Plaintiff a Notice of Pending 21-Day Suspension, citing his unprofessional conduct and failure or refusal to perform the normal and reasonable duties of his position under Cal. Educ. Code § 89535, for violating university policy regarding the renting of baseball facilities to an outside party and altering a check from the outside party to bypass proper protocol. DUMF ¶ 17. Lee issued a 10-day suspension to Plaintiff as a result of that conduct. DUMF ¶ 18.

In his 2022–23 Sport Supervisor Coach Evaluation, Plaintiff received a rating of either 1 or 2 ("not considered satisfactory performance") in 25 of the 52 categories he was evaluated on. DUMF ¶ 19. Prior to his final appointment in the 2023– 24 season, Annaloro recommended that Plaintiff not be reappointed to a one-year contract based on his repeated conduct issues and persistent insubordination. DUMF ¶ 20. When Vice President of Student Affairs Gerald Jones ("Jones") discussed Annaloro's recommendation of non-reappointment with Lee, President Lee suggested offering Plaintiff a non-coaching position (similar to an advancement officer role) for the 2023–24 baseball season and to rename the baseball field after Plaintiff. DUMF ¶ 21. When Jones presented Plaintiff with President Lees' suggested offer, Plaintiff countered by demanding a significant pay increase— which Lee did not agree to—and Plaintiff rejected Lee's proposal to transition to the proposed new position. DUMF ¶ 22. Near the end of June 2023, Annaloro was informed that SSU President Lee did not endorse non-reappointment for the 2023–24 season and Plaintiff was reappointed for another year. DUMF ¶ 23.

Plaintiff challenged his 3-day and 10-day suspensions in arbitrations in December 2023 and September 2023 respectively. DUMF ¶ 24-25. Prior to the September 2023 arbitration, Annaloro had not heard that Goelz believed or expressed that Annaloro was unqualified for the Senior Director of Athletics Position. DUMF ¶ 26. Plaintiff believed that Annaloro was not "a good fit" or qualified to be the Senior Director of Athletics. DUMF ¶ 40. Plaintiff did not tell Annaloro that he believed she was not qualified. DUMF ¶ 41. While Plaintiff did not oppose Annaloro's appointment as Senior Director of Athletics, he advocated for other candidates he believed were more qualified. DUMF ¶ 42; Defendants' Exhibit L, pg. 39:1-10.

With respect to the 10-day suspension, the arbitrator determined that SSU had just cause for discipline based on Plaintiff's altering the memo line of a check to bypass university protocol but reduced the suspension to 3 days after the first 3-day suspension was overturned. DUMF ¶ 27. With respect to the 3-day suspension, the arbitrator determined that SSU did not have just cause to discipline Plaintiff for violating CCAA rules. DUMF ¶ 28. During the 2023–24 term of Plaintiff's appointment, Annaloro raised issues about Plaintiff's performance with her supervisor, Jones. DUMF ¶ 29. In his 2023–24 Sport Supervisor Coach Evaluation, Plaintiff received a rating of either 1 or 2 ("not considered satisfactory performance") in 23 of the 51 categories he was evaluated on. DUMF ¶ 30. In or around June 2024, Annaloro renewed her recommendation to Jones not to reappoint Plaintiff for the same reasons she'd previously raised: Plaintiff's repeated refusal to follow campus policies, regulations, and her directives, and refusal to take accountability for his actions. DUMF ¶ 31. Interim President Nathan Evans ("Evans")

shared Annaloro's concerns about Plaintiff's misconduct and insubordination. DUMF ¶ 32. Jones, the Vice President for Student Affairs, shared Annaloro's concerns about Plaintiff's misconduct and insubordination. DUMF ¶ 33. Evans and Jones decided not to reappoint Plaintiff. DUMF ¶ 34. Jones and Annaloro met with Plaintiff to inform him that he would not be reappointed as Head Baseball Coach, but that the position would be publicly posted and that he may apply for the posted position. DUMF ¶ 35. Annaloro, Jones, and Evans verified that age was not a factor in Jones and Evans's decision not to reappoint Plaintiff. DUMF ¶ 36. Plaintiff's one-year appointment as SSU's baseball coach automatically expired on June 30, 2024. DUMF ¶ 37. SSU publicly posted the position of Head Baseball Coach for the 2024–25 season, but Plaintiff did not apply. DUMF ¶ 38. Plaintiff did not file a whistleblower retaliation administrative complaint with SSU under their defined policy. DUMF ¶ 39.

While Plaintiff identifies six other athletic coaches and directors that he avers were terminated due to age, Defendants have evidence that those coaches were not fired, and those coaches left during earlier configurations of leadership of which Evans, Jones and Annaloro were not members. DUMF ¶ 44-49.

In turn, Plaintiff presents evidence that there were multiple instances where Annaloro made commentary about his age during meetings. Plaintiff's Response to Separate Statement of Disputed and Undisputed Material Facts ("PRDMF") ¶ 36. He also avers that Annaloro mentioned that he was the "oldest" coach at SSU during a fundraiser. *Ibid*. Prior to Annaloro's tenure as Senior Director of Athletics, Plaintiff's contract had been renewed for over thirty years without issue. PRDMF ¶ 2. Plaintiff argues that much of the alleged misconduct was baseless, relating to the actions of third parties, or Annaloro's own failings. PRDMF ¶ 11-14. Plaintiff points out that his 3-day suspension of May 16, 2023, was completely overturned by the arbitrator. PRDMF ¶ 15. Plaintiff also argues that Annaloro's use of evaluations was baseless and not reflective of his job performance. PRDMF ¶ 6. Plaintiff received positive ratings from his players for the 2022-2023 and 2023-2024 seasons. PRDMF ¶ 19 & 30. The team made the CCAA post league season in 2023-2024. PRDMF ¶ 20. He also avers that he was never approached by Lee regarding a non-coaching position. PRDMF ¶ 21. Plaintiff denies that Jones approached him regarding a non-coaching position. PRDMF ¶ 22. When Jones came to baseball practice in 2023, he commented to Plaintiff about how well Plaintiff interacted with his players. PRDMF ¶ 31. Plaintiff was not approached regarding the alleged performance issues by either Evans or Jones, or regarding Plaintiff's reappointment. PRDMF ¶ 32-34. On June 29, 2023, Plaintiff wrote a letter to President Lee stating that "Annaloro was continuing the wrongdoing against" Plaintiff. PRDMF ¶ 39.

During the September 2023 arbitration, Plaintiff said during the arbitration with Annaloro present remotely that Annaloro did not meet the minimum qualifications for hiring. PRDMF ¶ 41. Plaintiff avers that the "hiring rules were not followed" in Annaloro's hiring. PRDMF ¶ 42-43. As to the firmer coaches, Plaintiff produces declarations from four of the six that they were fired. PRDMF ¶ 44-47.

III. The Burdens on Summary Judgment and Adjudication

A. *Generally*

Summary judgment or adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.

If a plaintiff meets its initial burden, the burden shifts to the defendant to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(1). An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"[W]hen discovery has produced an admission or concession on the part of the party opposing summary judgment which demonstrates that there is no factual issue to be tried, certain of those stern requirements applicable in a normal case are relaxed or altered in their operation." *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21. However, the *D'Amico* rule "does not apply where there is a reasonable explanation for the discrepancy or countenance ignoring other credible evidence that contradicts or explains that party's answers or otherwise demonstrates there are genuine issues of factual dispute." *Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 658 (internal quotations omitted). "A party may not raise a *triable* issue of fact at summary judgment by relying on evidence that will not be admissible at trial." *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 543.

In employment cases, summary judgment is rarely appropriate when dealing with issues as to intent and motive. *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286. "Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes." *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354.

Special rules apply to retaliation claims. *Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 930 ("When a plaintiff alleges retaliatory employment termination ... as a claim for wrongful employment termination in violation of public policy, and the defendant seeks summary judgment, California follows the burden shifting analysis of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 to determine whether there are triable issues of fact for resolution by a jury.") The purpose of these special rules is address the factual question of intentional discrimination; although the summary judgment procedure "provides a particularly suitable means to test the sufficiency of … the defendant's nondiscriminatory motives for the employment decision" (*Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 203), many employment cases "present issues of intent, and motive, and hostile working environment, issues not determinable on paper," and such cases

are "rarely appropriate for disposition on summary judgment." *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286.

Under these special rules, when an employer seeks summary judgment, the employer has the initial burden to show that no unlawful discrimination or retaliation occurred. *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 354-55. Thus, to satisfy its initial burden the employer must show that the action has no merit by negating an essential element of the employee's claim or showing some legitimate, nondiscriminatory/non-retaliatory reason for the action taken against the employee. *Caldwell*, 41 Cal.App.4th at 202-03.

If the employer meets this burden, the employee must produce "substantial responsive evidence that the employer's showing was untrue or pretextual," thereby raising at least an inference of discrimination or retaliation. *Hersant v. Calif. Dept. of Social Services* (1997) 57 Cal.App.4th 997, 1004-05 ("*Hersant*"). Evidence showing facts inconsistent with the employer's claimed reasons tends to prove the employer's wrongful intent. *See, e.g. Reeves v. MV Transp., Inc.* (2010) 186 Cal.App.4th 666, 675 (substantial disparity in candidates' qualification may support inference of discrimination). When there are mixed motives for the employer's action, it is enough that discrimination or retaliation was a substantial motivating factor in the employer's decision. *See, e.g. Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 590. An employee may also avoid summary judgment by attacking the credibility of the employer's declarations, *i.e.* by demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them unworthy of credence" and hence infer discriminatory or wrongful intent. *Hersant*, 57 Cal.App.4th 997, 1005 (emphasis in original). However, "disbelief of an Employer's stated reason for a termination gives rise to a compelling inference that the Employer had a different, unstated motivation, but it does not, without more, reasonably give rise to an inference that the motivation was a prohibited one." *McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1531-32 (also stating that "there must be more than inconsistent justifications for an employee's termination to support an inference that the employer's true motive was discriminatory"). Thus, it is *not* enough for the employee to raise triable issues of fact concerning whether the employer's reasons for taking the adverse action were sound. "The employee cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent." *Hersant*, 57 Cal.App.4th at 1005, *quoting Fuentes v. Perskie* (3d Cir. 1994) 32 F.3d 759, 765.

Alternatively, the defendant employer may proceed directly to provide evidence that its action was taken for a legitimate, nondiscriminatory purpose. The burden is then on the plaintiff employee to rebut with evidence raising an inference that intentional discrimination occurred. Summary judgment for the employer should be granted where, "given the strength of the employer's showing of innocent reasons, any countervailing circumstantial evidence of discriminatory motive, even if it may technically constitute a prima facie case, is too weak to raise a rational inference that discrimination occurred." *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 362. "The stronger the employer's showing of a legitimate, nondiscriminatory reason, the stronger the plaintiff's evidence must be in order to create a reasonable inference of a discriminatory motive. *Featherstone v. Southern California Permanente Medical Group* (2017)

10 Cal.App.5th 1150, 1159. An employee's showing is entitled to liberal construal in opposing summary judgment, but the evidence provided remains subject to careful scrutiny. *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433 ("*King*"). The court may "find a triable issue of material fact 'if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.'" *Ibid, quoting Aguilar* 25 Cal.4th at 850. An employee's subjective beliefs and uncorroborated, self-serving declarations do not create a genuine issue of fact. *King, supra*, 152 Cal.App.4th at 433. The evidence presented must relate to the employer's prohibited motivation and the adverse employment action to which the employee was subjected. *Id*. at 433-434.

B. *FEHA Claims*

"FEHA prohibits an employer from subjecting an employee to an adverse employment action based on the employee's protected status. (Gov. Code, § 12940, subd. (a).) In evaluating claims of discrimination under FEHA, California courts apply the burden-shifting approach set forth in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668." *Martin v. Board of Trustees of California State University* (2023) 97 Cal.App.5th 149, 161

1. Age Discrimination

"In order to make out a prima facie case of age discrimination under FEHA, a plaintiff must present evidence that the plaintiff (1) is over the age of 40; (2) suffered an adverse employment action; (3) was performing satisfactorily at the time of the adverse action; and (4) suffered the adverse action under circumstances that give rise to an inference of unlawful discrimination, i.e., evidence that the plaintiff was replaced by someone significantly younger than the plaintiff." *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 321; see also California Civil Jury Instruction 2570. "While we agree that a plaintiff must demonstrate some basic level of competence at his or her job in order to meet the requirements of a prima facie showing, the burden-shifting framework established in *McDonnell Douglas* compels the conclusion that any measurement of such competency should, to the extent possible, be based on objective, rather than subjective, criteria." *Id*. at 322.

2. Retaliation under FEHA

"For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part." Gov. Code, § 12940 (h). " In retaliation claims brought under the California Fair Employment and Housing Act ("FEHA"), the elements of a prima facia showing for the cause of action are: 1) plaintiff engaged in protected activity; 2) the employer subjected plaintiff to an adverse employment action; and 3) a causal link exists between the protected activity and the employer's action. *Yanowitz v. L'Oreal USA*, *Inc*. (2005) 36 Cal.4th 1028, 1042. "If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation drops out of the picture, and the burden shifts back to the employee to prove intentional retaliation." *Id.* at 1042 (quotations omitted). "Although an employee need not

formally file a charge in order to qualify as being engaged in protected opposing activity,[7] such activity must oppose activity the employee reasonably believes constitutes unlawful discrimination, and complaints about personal grievances or vague or conclusory remarks that fail to put an employer on notice as to what conduct it should investigate will not suffice to establish protected conduct." *Ibid.*

C. *Gov. Code § 8547.12*

> A California State University employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the trustees, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

Gov. Code, § 8547.12 (a)

"'Protected disclosure' means a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence … (a)n improper governmental activity." Gov. Code, § 8547.2. "Complaints made in the context of internal administrative or personnel actions, rather than in the context of legal violations do not constitute protected whistleblowing." *Levi v. Regents of University of California* (2017) 15 Cal.App.5th 892, 904.

IV. Analysis

Defendants contend that each of Plaintiff's causes of action fails because he cannot prove elements of each cause of action. Through lack of opposition on the issue, Plaintiff concedes that the Fourth and Fifth causes of action are not viable. As to the First, Second and Third causes of action, Defendants argue that Plaintiff cannot establish satisfactory performance in his position, and accordingly his causes of action related to discrimination and retaliation. Defendants also argue that Plaintiff did not undertake whistleblowing or protected activity to qualify for protections under his first and second causes of action. Plaintiff in turn argues that there is a triable issue of fact as to his performance, and Defendants' intent in not renewing his contract.

A. *Retaliation and Reprisal*

1. *Defendant Shifts the Burden on the Accommodation Based Causes of Action*

Both claims for retaliation under FEHA and reprisal under Gov. Code § 8547.12 are predicated on the Plaintiff having performed some sort of whistleblowing activity. Defendants offer evidence showing that there is no record of Plaintiff having submitted a complaint, and that such records would exist if Plaintiff had undertaken the complaint process as established by Defendants' rules. Given that there is evidence that Plaintiff undertook no protected activity

(either a complaint or protected disclosure under the relevant statutes), Defendants shift their burden that Plaintiff cannot establish an element of these causes of action. Accordingly, the burden shifts to Plaintiff to show a triable issue of fact.

2. Plaintiff Fails to Meet the Shifted Burden

Plaintiff offers no substantive argument regarding the sufficiency of his showing as related to the retaliatory cause of action. Nonetheless, he does dispute Defendants' averred facts thereon, and therefore the Court must determine whether there remains evidence of a triable issue of fact.

Plaintiff avers that a letter was sent to Lee on June 29, 2023. While Plaintiff's underlying evidence reflects a different date (June 29, 2024), the Court examines Plaintiff's showing in the manner most likely to raise a triable issue of fact, as even so, Plaintiff fails to meet the burden. The Court has already sustained Defendants' objection thereon in part. What Plaintiff communicates, having excised the legal conclusions inserted, is that he sent a letter to Lee expressing that he was feeling targeted by Annaloro. The expression here, tendered to the Court with the full advantage of legal counsel, falls far short of expressing **factual** bases to determine that Plaintiff's letter rose to protected activity. As related to FEHA, the expression of protected activity needs to adequately inform the employer of the conduct it should investigate and cannot be mere "personal grievances or vague or conclusory remarks". *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1047.

Similarly, protected disclosures under § 8547.12 do not apply to "(c)omplaints made in the context of internal administrative or personnel actions, rather than in the context of legal violations". *Levi v. Regents of University of California* (2017) 15 Cal.App.5th 892, 904. Plaintiff's expression that he felt Annaloro had undertaken "wrongdoing" falls far short of providing evidence of a triable issue. Plaintiff's submitted deposition testimony does nothing to cure this deficiency. Plaintiff merely states that he did not raise a complaint about Annaloro's hiring but does not express any factual pattern related to protected activities. Plaintiff's Compendium of Evidence, Ex. 11, pg. 122.

Plaintiff has not tendered evidence of protected activity, and as such has failed to raise a triable issue as to his claims of retaliation and reprisal. Summary adjudication of the First and Second causes of action is GRANTED.

B. <u>*Third Cause of Action – Age Discrimination*</u>

1. Defendants' Initial Burden

As to Annaloro, Defendants contend that these FEHA claims are improper against individuals, as they apply only to the employer and not individual supervisors. Defendants, as to Plaintiff's ability to prove his case, argue that Plaintiff cannot show he was adequately performing his job at the time of his contract non-renewal.

As to Annaloro, Defendants offer propositions of law to show that individuals are not liable for FEHA claims. *Reno v. Baird* (1998) 18 Cal.4th 640, 645. Accordingly, Defendants have shifted their burden on this issue.

Defendants offer significant evidence of Plaintiff's performance at the time of his contract non-renewal. Defendants show that Plaintiff had significant numbers of categories on his review where he was performing below satisfactory standards. This is sufficient to shift Defendants' burden as to the required element of the age discrimination claim.

2. Plaintiff Raises Triable Issues

Defendants' attack is truly mounted at Plaintiff's performance. Plaintiff responds to this by presenting evidence of his performance related to the performance of the team he coached. Plaintiff offers evidence that while numerous subjective measures contained in the review fell into unsatisfactory performance of his duties, he produced the desired result in coaching a competitive baseball team. For the purposes of meeting the burden on summary judgment, Plaintiff's evidence of performance appears to be something weighed by a finder of fact and not summarily determined by the Court.

Plaintiff also offers evidence related to showing discriminatory intent. Plaintiff offers evidence of multiple instances where Annaloro made comments regarding his age. While Defendants aver that this portion of Plaintiff's declaration is contradictory to his deposition testimony, that is not even an accurate reflection of that evidence which Defendants submitted. Plaintiff's deposition as submitted by Defendants includes testimony about Annaloro making comments regarding Plaintiff's age during leadership meetings.

These issues together are sufficient to raise triable issues of fact when dealing with employment claims. Plaintiff offers sufficient evidence to tender such issues of intent, which are themselves rarely appropriate for summary judgment, to a finder of fact.

Plaintiff makes no argument as to Annaloro's authority, showing she is not a proper defendant for such causes of action.

Summary judgment is therefore DENIED. As to Annaloro, summary adjudication of the Third Cause of action is GRANTED. As to CSU, summary adjudication of the Third cause of action is DENIED.

C. *Fourth and Fifth Causes of Action*

Plaintiff fails to submit either facts in his separate statement or briefing on Defendants' requests to summarily adjudicate these causes of action. Emotional distress claims, both intentional and negligent, are subject to the workers' compensation exclusivity rule. *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 903; *Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 756. Defendants shift their burden, and Plaintiff does not meet it. Summary adjudication is proper. Summary adjudication of the Fourth and Fifth causes of action is GRANTED.

IV. Conclusion

Based on the foregoing, the motion for summary judgment is **DENIED**. However, summary adjudication is **GRANTED** as to all Defendants as to the First, Second, Fourth, and Fifth causes of action. Summary adjudication is also **GRANTED** as to the Third cause of action against Annaloro. Summary adjudication is **DENIED** as to the Third cause of action as to CSU. Defendants 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).

3. 25CV00351, Tamayo-Zamora v. Bank of America

Plaintiffs Madlene Tamayo-Zamora (together "Plaintiff") filed the currently operative second amended complaint (the "SAC") in this action against defendants Bank of America, Federal Mortgage National Mortgage Association, Mortgage Electronic Registration Systems, Inc., and Recontrust Company N.A. (together "Defendants"), for multiple alleged causes of action arising out of a foreclosure sale of the property commonly known as 330 Bluebird Drive, Windsor, California (the "Property").

This matter is on calendar for the Defendants' demurrer to all causes of action within the SAC pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action. The Demurrer is **SUSTAINED without leave to amend.**

I. Legal Standards

A. General Demurrers

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. CCP § 430.30(a). Furthermore, 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. CCP § 430.30(a).

> "On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show."

Fremont Indem. Co. v. Fremont Gen. Corp. (2007) 148 Cal.App.4th 97, 115.

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. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. 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. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. If a demurrer is sustained, 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 Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

B. Statute of Limitations

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. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321. Where the demurrer based on statute of limitations is argued from judicially noticed documents, the truth of dates within those documents is inadmissible hearsay, and is not appropriate for judicial notice. *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660-661. To sustain demurrer on such judicially noticed material is error. *Id*.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' (*Citation*.) An important exception to the general rule of accrual is the "discovery rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 (internal citations omitted). "In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.' (*Citation*.) In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.'" *Id*. at 808. "Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused

by wrongdoing, that someone has done something wrong to her." *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110.

C. Res Judicata

The prerequisite elements for applying res judicata to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgement on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.

The doctrine of res judicata prohibits a second suit between the same parties on the same cause of action. *Id*. at 788. In this context, the term "cause of action" is defined in terms of a primary right and a breach of the corresponding duty; the primary right and the breach together constitute the cause of action. *Ibid*. When two actions involving the same parties address the same harm, they generally involve the same primary right. *Id.* at 798. If two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery. *Eichman v. Fotomat Corp.* (1983) 147 Cal.App.3d 1170, 1174. If the same primary right is involved in two actions, judgment in the first bars consideration not only of all matters actually raised in the first suit but also all matters which could have been raised. *Ibid*. In other words, "The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced." *See Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 860. "If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it **could** have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202 (original emphasis).

II. Procedural and Evidentiary Issues

Defendants request judicial notice of a wide variety of court filings, public records and documents. 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. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Ibid.* Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148. Since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Judicial notice is GRANTED as to the existence of the documents and their legal function as to RFJN Exhibits 1-8. No conclusion as to the truth of their contents is taken. Plaintiff's prior allegations within her 2013 complaint are the appropriate subject of judicial notice. *Del E. Webb*

Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604. The Court also takes permissive judicial notice under Evidence Code § 452 of Plaintiff's original complaint filed January 22, 2025, in this matter (the "Complaint") for the same purpose.

Plaintiff has filed no opposition.

III. Analysis

Defendants make three arguments regarding the insufficiency of the SAC. The Court addresses them in an order which simplifies the analysis. First, they aver that the matter is res judicata due to the dismissal of Plaintiff's prior action. Second, they argue that the statute of limitations has clearly passed on Plaintiff's claims based on the matters submitted for judicial notice. Third, they argue that Plaintiff has not made allegations sufficiently to fulfill her causes of action.

The Court generally finds the assertion of res judicata unpersuasive. Defendants were not parties to the prior action. Defendants' averment that they stand in privity with the other parties within the prior action is not supported by any citation to a case that supports the proposition argued. Defendants particularly assert that because the prior action involved the same grant deed that they stand in privity with the prior defendants. No case could be located which supplied this provision. This renders the matters substantially distinguishable from Defendants' case related to dismissal, *Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1327. Defendants fail to show how Plaintiff's allegations related to other conduct alleged against other lenders are a concession of the same facts or issues related to those alleged in the SAC.

However, in taking judicial notice of the prior complaint, Defendants' assertion of statute of limitations becomes insurmountable. All that is required for the statute of limitations to begin to accrue is that Plaintiff had facts sufficient to be *on notice*. The SAC itself contains sufficient concessions of fact that indicates that the clock on Plaintiff's claims clearly began to run in 2011 at the latest, which is when the SAC states the foreclosure sale took place. SAC ¶ 95. Plaintiff's Complaint in this action strengthens this conclusion. Attached to that pleading are exhibits which Plaintiff claims are evidence of the fraud she alleges occurred. Given that Plaintiff had been foreclosed upon in 2011, she had notice of the existence of these documents, and they are incorporated by reference as allegations to the Complaint. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. Admissions in prior versions of the complaint are capable of consideration at demurrer. *Ibid*. Plaintiff has pled no facts which would show the required diligence in pursuing her claims once she was put on notice. "Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her." *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110.

Finally, judicial notice of the pleading in Plaintiff's 2013 case is ultimately fatal to any possibility that she could cure the statute of limitations issue. In that case, Plaintiff pled various claims against other defendants related to the foreclosure sale that occurred in 2011. See Request for Judicial Notice, Ex. 7. This is a concession of knowledge that Plaintiff believed her harm had been the result of wrongdoing by another party. Plaintiff may not plead around this issue without

a particularized fact-based pleading which displays why the statute of limitations should not have run.

The statute of limitations for fraud and slander of title are three years. *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 607; *Stalberg v. Western Title Ins. Co.* (1994) 27 Cal.App.4th 925, 929. Civil conspiracy is not a separate tort, but a theory of joint liability for other torts. *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 574. The Rosenthal Act has a statute of limitations of just one year. *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 343. Given that Plaintiff's claims began to accrue no later than eleven years before the filing of this action, the action is untimely on the face of the complaint and matters judicially noticeable. The demurrer must be sustained.

Given the complete and obvious preclusive effect of the statute of limitations, the Court does not reach the assertions that the SAC fails to state facts sufficient to support its causes of action relating to the elements of those claims. The SAC has an incurable defect and Plaintiff has filed no opposition displaying how the statute of limitations issue may be cured. The demurrer is SUSTAINED without leave to amend as to each cause of action.

IV. Conclusion

Based on the foregoing, **the Demurrer is SUSTAINED without leave to amend as to each cause of action due to the expiration of the various applicable statutes of limitation and for failure to state a claim.**

Defendants 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).

4. 25CV04778, Katzman v. Gerrans

This matter is on calendar for the motion of Plaintiff and Respondent Chrisopher Gerrans ("Plaintiff" or "Respondent") to dismiss the appeal filed by defendants and appellants Jerry Katzman ("Katzman"), Retinalgenix Technologies, Inc. ("Retinal") and Sanovas, Inc. ("Sanovas") (all together "Defendants" or "Appellants") of the Labor Commissioner's Order, Decision, or Award (the "ODA") against them. The request for dismissal is for Appellants' failure to timely post an undertaking under Labor Code sections 98.2(a) and (b). **The motion is GRANTED in part and DENIED in part.**

I. Procedural History

The Labor Commissioner issued an ODA against Appellants on June 19, 2025, that was served via mail. Retinal was served to an in-state address through its agent for service of process. Sanovas and Katzman were both served to out-of-state addresses. Appellants filed an appeal to the ODA on July 7, 2025. The Court processed and filed the appeal on July 28, 2025. Appellants filed their civil undertaking on July 28, 2025.

Respondent now motions the Court to dismiss the appeal of the Labor Commissioner's ODA arguing that the Appellants failed to timely post the undertaking as required by Labor Code Section 98.2. Respondent avers that because the appeal was not preceded by deposit of the undertaking with the Court, the entire matter is defective under *Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 129.

Appellants oppose the motion on several bases. Appellants contend that there was no proper or timely service of the ODA as to Katzman and Retinal and therefore the 10-day deadline for posting an undertaking never began. They also contend that the ODA was predicated on a proceeding that was so defective on issues of due process that the entire matter is void, and that therefore Lab. Code § 98.2 cannot preclude the action. Finally, Appellants argue that they attempted to tender the undertaking to the Labor Commission after consulting with a court clerk. After the Labor Commission sent them back to the Court, on July 9, 2025, the Court rejected their tendered undertaking, as the Court had not yet processed the appeal or assigned a case number under which to catalogue the receipt of funds.

In Respondent's reply, he urges the Court to reject each of Appellants' arguments. Respondent points out that Appellants do not address *Palagin*, and that *Dobarro v. Kim* (2025) 116 Cal.App.5th 158, mandates that even if the Court did reject the undertaking wrongly, that is irrelevant for jurisdictional purposes. They also argue that Appellants fail to present adequate evidence of the defect in service sufficient to overcome the presumption applied to proofs of service. Therefore, they argue, the court should conclude there was proper service, and Appellants failed to timely post an undertaking or bond making their appeal untimely.

II. Governing Law

A. Undertaking of an Appeal of the Labor Commissioner's ODA

Labor Code Sections 98.2(a) and (b) govern the appeal of an order, decision, or award of the Labor Commissioner. "As a condition to filing an appeal, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award." Lab. Code § 98.2 (b). The undertaking requirement of Section 98.2(b) is mandatory and jurisdictional. *Tabarrejo v. Superior Ct*. (2014) 232 Cal.App.4th 849, 860. The employer must post the undertaking before it files its notice of appeal, and no later than 10 days after service of the Commissioner's order. *Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 131.

III. Analysis

A. Undertaking of an Appeal of the Labor Commissioner's ODA

The basis for Respondent's motion is apparent from the face of the record and decisional authority. The undertaking was filed significantly after the time for appeal had expired based on the date of service. Analysis turns to Appellants' arguments to the contrary.

1. Service of the ODA

Addressing Appellants' raised issues in an economical order, service of the ODA to Retinal and Katzman appears to be the first hurdle. Katzman and Retinal contend that while they were served with the full substantive decision of the Labor Commissioner, the copies served to them only contained the cover sheet for Sanovas, and accordingly the notice was so deficient that the time to appeal never began. This suffers two deficiencies.

First, that appears immaterial for whether or not Appellants had notice of their liability under the ODA, and therefore they had actual notice. Appellants do not contend that the substance of the order served was deficient in any respect. The ODA clearly states the liability of each party individually (with Sanovas and Retinal jointly and severally liable for the full amount, and Katzman jointly and severally liable for only a portion of the full amount). Appellants offer no authority showing such a myopic interpretation of notice of an order.

Further supporting the principal of actual notice is that Appellants *all* join in this appeal timely filed. All Appellants clearly were aware of their liability under the decision. Appellants provide no authority relating to their ability to permanently delay time running on their appeal while being fully appraised of the ODA's decision and reasoning.

Even if the Court were inclined to find that failure to include the cover sheet rendered the ODA insufficient to provide Appellants with notice, legal or actual. No authority is provided opining that the cover sheet is required. The substance of the ODA was properly served on all Appellants. Appellants provide no authority showing that this is insufficient to constitute notice of the order under Labor Code § 98.1.

2. Hearing was not Void, Merely Voidable

Appellants also contend that the timing of the undertaking is irrelevant because they argue that the hearing violated Appellants' due process rights so severely that the ODA is void. They argue that Katzman both asked for a continuance and for the opportunity to retain counsel, each of which were denied before the hearing proceeded. Katzman's contentions therein are that he was disconnected from the hearing due to technical issues, and as a result Appellants' interests were not represented. He argues that this is a due process violation so foundational that the entire ODA is void. This argument fails. Appellants rely on *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 291, which is a case averring that judgments rendered without personal jurisdiction are void. It does not provide any authority that irregularities in an administrative hearing amount to such a fundamental violation of due process that the subsequent decision is void. Appellants provide no authority to this effect. Appellants' burden is to show that the judgment is void and not merely voidable. Where a court has jurisdiction over the parties, erroneous rulings are voidable rather than void. *Lee v. An* (2008) 168 Cal.App.4th 558, 565. Appellants own case citation cuts against their point. "[W]hen a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction. […] When a court has fundamental jurisdiction, but acts in excess of its jurisdiction, its act or judgment is merely voidable." *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 661 (internal citations and quotations omitted)(summary judgment entered early was merely voidable). Appellants attack on the ODA does not go to the fundamental jurisdiction of that hearing, but to the conduct during the proceedings.

On that issue, the averments of Appellants, even if taken as true for the purposes of what occurred at the hearing, render the matter potentially voidable rather than void. Katzman appeared telephonically, made objections to lack of counsel and denial of a continuance, was placed on mute, and at some point was disconnected from the telephonic hearing. Even if Appellants bare speculation that Katzman's disconnection from the hearing was intentional (a matter to which he alludes but provides no actual evidence), these are at most actions in excess of jurisdiction. Voidable orders are not capable of being set aside at any time but instead must be addressed directly. "Errors which are merely in excess of jurisdiction should be challenged directly, for example by motion to vacate the judgment, or on appeal, and are generally not subject to collateral attack once the judgment is final unless 'unusual circumstances were present which prevented an earlier and more appropriate attack.'" *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 661.

The orders at issue here are merely voidable, and as such the Appellants must have adequately complied with Labor Code § 98.2 in order to confer jurisdiction to this Court to perform direct review. Absent such jurisdiction, voidable orders would otherwise be final.

3. Tender of the Undertaking

Finally, Appellants aver that the undertaking was tendered to the clerk of the Court on July 9, 2025, at the latest, and accordingly that the rejection of the clerk does not serve to somehow allow the Court to avoid asserting jurisdiction.

This case has brought a perturbing clerical practice to the attention of the Court. As the statute is abundantly clear, Labor Code § 98.2 requires that the undertaking be tendered to the court, and entered before the appeal may be filed. Appellants aver that the clerk of the Court rejected the undertaking tendered in the form of a cashier's check, as the appeal had not yet been processed, and accordingly there was no case number under which to account for the payment received. This appears to frustrate the language of the statute.

> "As a condition to filing an appeal pursuant to this section, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award."

Lab. Code, § 98.2.

This court exclusively uses e-filing processes for all filings with a short list of exceptions *including* Labor Commissioner deposits of cash or check. See Sonoma Local Rule 17.23 (2). The clerk appears to be *obligated* to take receipt of a civil undertaking when tendered in accordance with the local rule, regardless of logistical limitations.

On reply, Respondent cites to *Dobarro v. Kim* (2025) 116 Cal.App.5th 158, 161, averring that the clerk's rejection *cannot* serve to anchor the appeal. This appears to stem from an overreading

of the case and ignoring Appellants' cited authority. In *Dobarro*, an appeal under Labor Code § 98.2 was dismissed for failure to file timely, after the clerk rejected the filing submitted on the last day of the deadline. *Id*. at 161. The appellant blamed the third party filing service that they relied upon to file the appeal. *Ibid*. The trial court found the filing untimely and the court of appeal affirmed. Importantly, there is no finding within *Dobarro* related to either the sufficiency of the original filing that was rejected, nor any statement that the clerk was erroneous in doing so. As Appellants' cited authority explains, error by the court appears materially different.

Appellants cite to *Rapp v. Golden Eagle Ins. Co.* (1994) 24 Cal.App.4th 1167, 1169, averring that the clerk's erroneous rejection of the undertaking could not serve to divest the Court of jurisdiction, and that the undertaking should be deemed timely because it was tendered July 9, 2025. That case is both on point and persuasive. In *Rapp*, also dealing with jurisdictional timelines, the clerk rejected the check which was required to be submitted simultaneously with the appeal. *Id*. at 1169. The check was only for one of the two fees required to be submitted with the appeal. *Ibid*. The court found that nonetheless, it had jurisdiction in spite of the clerk's error. *Id*. at

> The notice of appeal was presented to the deputy clerk within the applicable time period required by rule 2(a). The act of delivering the document to the deputy clerk at the court during office hours constituted the act of filing. (Citation) Further, the absence of a proper filing fee was not a lawful basis for refusing to file the notice of appeal.

Rapp v. Golden Eagle Ins. Co. (1994) 24 Cal.App.4th 1167, 1172.

Here, Appellants submitted the undertaking to the clerk on July 9, 2025. It was delivered to the Court in person in accordance with the Local Rules on that day. The check was for the proper amount. Lack of a case number is not a lawful basis for rejecting a filing which is required to precede the filing of the appeal.

In contrast, Appellants make no persuasive argument for why July 7, 2025, should be treated as the date of tender. While there is evidence that a paralegal from Appellants' former counsel spoke to a court employee, both the local rules and the express language of the statute are **unambiguous** that the payment needed to be tendered to the Court and not the Labor Commission. This was an error resting largely on the acts of Appellants' representation. *Rapp* does not apply to rescue Retinal, whose undertaking was due July 7, 2025. Tender to the Labor Commission in error does not cure the failure to comply with the plain language of the statute. Retinal failed to timely submit an undertaking under Labor Code § 98.2 (b). In that regard, *Palagin* is unequivocally applicable. Untimely tender of the undertaking is jurisdictional. *Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 139. Appellants' argument to the contrary ignores binding decisional authority.

Accordingly, this Court has *no jurisdiction* over the ODA's finding as to Retinal. The ODA's award of $128,991.78 against Retinal is outside the jurisdiction of the Court and accordingly cannot be changed or addressed.

Since Retinal failed to timely post an undertaking pursuant to Labor Code Section 98.2(b), Plaintiff's motion to dismiss the Retinal's appeal of the Labor Commissioner's ODA is GRANTED. Plaintiff's motion to dismiss the appeal of Sanovas and Katzman is DENIED.

B. Retention of the Undertaking

Appellants contend the undertaking should be returned. This request is DENIED. The undertaking funds must be retained by the Court during the pendency of the Appeal and trial de novo. Labor Code § 98.2 (b). Defendants' erroneous contention that the judgment is void has already been addressed, and even the averred basis to void requires evidence and testimony where the credibility of Appellants' assertions can be tested. Appellants provide no authority showing that such evidentiary matters may appropriately be raised or determined through opposition to a motion.

Moreover, the undertaking submitted to the Court was on behalf of all the Appellants, including Retinal. Given the dismissal of Retinal's appeal, and the ODA's finding that Retinal was jointly and severally liable for the entire amount owing, no return of any portion of the undertaking is proper.

C. Attorney's Fees and Costs

Plaintiff asserts that he is entitled to attorney's fees and costs pursuant to Labor Code Section 98.2(c). Retinal's appeal has been dismissed. The Court finds that the Plaintiff is entitled to attorney's fees from Retinal pursuant to Section 98.2(c). However, Plaintiff has not supported the request for fees with any requested rate or amount.

Retinal remains jointly and severally liable for the award within the ODA with Sanovas and Katzman, who presumably may cause Respondent to incur additional fees as they litigate the appeal. Sanovas and Katzman's appeal remains, and as such there does not appear to be significant exigency in determining the fees attributable to Retinal. Respondent has leave to file the request for attorneys' fees and costs against Retinal any time, until up to 30 days after entry of judgment.

IV. Conclusion

Plaintiff's motion to dismiss is **GRANTED** as to Retinal. The motion as to Sanovas and Katzman is **DENIED**.

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

5. 26CV00735, Magro v. Anderson

Plaintiff Donata Magro ("Plaintiff") filed the presently operative complaint ("Complaint") for unlawful detainer of the property commonly known as 4550 Primrose Avenue, Santa Rosa, California (the "Property") against defendants Mark Anderson ("Mark"), Lea Anderson ("Lea")

and James Dofelmire ("James", and all collectively, "Defendants"). as well as and Does 1-10.

This matter is on calendar for demurrer by Defendants to the Complaint.

Pursuant to Local Rule 2.2D, tentative rulings are not issued in unlawful detainer cases. Therefore, no substantive tentative ruling is being issued. Therefore, APPEARANCES ARE REQUIRED for all Parties.

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