TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, May 1, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

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

CourtCall is not permitted for this calendar.

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

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

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

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

1. 24CV06362, Shumate v. Sonoma County Sheriff's Office

APPEARANCES ARE REQUIRED. Defendant Sonoma County Sheriff's Office (the "Defendant") demur to Plaintiff Benjamin Shumate's ("Plaintiff") First Amended Complaint ("FAC") on several bases pursuant to C.C.P. section 430.10. The demurrer is **SUSTAINED** with leave to amend. Plaintiff shall file an amended complaint no later than 60 calendar days from notice of entry of an order on this motion.

I. FACTUAL & PROCEDURAL HISTORY

Plaintiff was formerly incarcerated at the Sonoma County Main Adult Detention Facility ("MADF") from January 2024 to April 2025 and was transferred to the California Department of Corrections and Rehabilitation on May 8, 2025, after he was sentenced to a prison term of 13 years. (Demurrer, 8:3–8.) Plaintiff filed the Complaint in this case for an intentional tort challenging several conditions of his confinement. (See Complaint, filed October 25, 2024.) Defendant previously demurred to the Complaint, which this Court sustained with leave to amend and stayed the action until the three other actions filed by Plaintiff were resolved. (See Order on Demurrer, filed March 25, 2025.) All other actions have been resolved: writ of habeas in Sonoma County Superior Court (SCR-756294-1; PRL

202102-1) denied on February 18, 2025 and affirmed after reconsideration on April 8, 2025 and April 18, 2025; petition for writ of mandate against Sheriff Engram (24CV06294) dismissed on March 25, 2025; and a federal civil rights complaint in the Northern District Court of California (24-cv-06901-CRF) on September 24, 2025, was also dismissed. (Demurrer, 8:19–9:3; Bruggisser Decl., Exhibits E1–E-3, F, G1–G2.) Plaintiff filed his FAC on September 8, 2025, with eight allegations related to his confinement:

1. Plaintiff did not receive a minimum of ten hours per week for out-of-cell activity time, as required by 15 CCR 1065 (FAC, 2:7–13);
2. Defendant engaged in price gouging related to the jail's commissary and tablets (FAC, 2:14–20);
3. Defendant lost $250.00 of Plaintiff's property (FAC, 2:20–21);
4. Defendant opened, read, and tampered with Plaintiff's legal mail (FAC, 2:22–28);
5. Defendant housed Plaintiff in a module with mixed custody modules which made him fear for his safety (FAC, 3:1–8);
6. Defendant retaliated against Plaintiff (by taking the former actions) for filing grievances and complaints (FAC, 3:9–19);
7. Defendant knowingly exposed Plaintiff to infectious and communicable diseases in violation of Health and Safety Code 120290 (FAC, 3:20–4:5); and
8. Defendant prevented Plaintiff from practicing his religion (FAC, 4:6–12.)

On December 23, 2025, the Court granted Defendant's request to lift the stay and allow it to file a demurrer to Plaintiff's FAC. (See Notice of Entry of Judgment or Order, filed December 23, 2025.) On March 17, 2026, the Court granted Plaintiff's request to add Doe Defendants 1–18, who were named in the October 2024 Complaint. (See Order to Add Defendants, March 17, 2026.) The Court now considers Defendant's demurrer to the FAC.

II. DISCUSSION

A. Standard at Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) A party may demur to a pleading when there is another action pending between the same parties on the same cause of action. (C.C.P. § 430.10(c).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "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.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a

party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

B. Moving Papers

Defendant generally argues that this court lacks jurisdiction over the FAC, that the FAC fails to state facts sufficient to constitute a cause of action, and that it is ambiguous. Regarding jurisdiction, Defendant contends that this Court lacks jurisdiction because Plaintiff failed to properly serve the FAC which was prematurely filed on September 8, 2025, while this action was still stayed and that Plaintiff's claim for $250 in lost property falls within the jurisdiction of small claims court pursuant to C.C.P. section 116.220(a)(1). (Demurrer, 10:26–11:9.) Defendant further argues that the demurrer should be sustained for failure to show Plaintiff's exhaustion of remedies as required before an incarcerated person can resort to the courts. (*Id.* at 11:12–19.) Additionally, Defendant argues that the FAC is uncertain and fails to state facts sufficient to constitute claims upon which relief can be granted because there is no statutory basis to impose tort liability on Defendant as a public entity and Defendant is immune from liability pursuant to the Government Claims Act. (*Id*. at 11:22–13:15.)

In Opposition, Plaintiff argues that while the FAC was improperly served using a federal proof of service form, Defendant accepted service and acknowledged its receipt of the FAC, so this Court has jurisdiction. (Opposition, 1:23–2:9.) Plaintiff next argues that while the physical damages for lost property amounts to around $250, plaintiff pleads for other damages that amount to well over $35,000 giving this Court jurisdiction. (*Id*. at 2:11–26.) Regarding the failure to show exhaustion of administrative remedies, Plaintiff directs the Court to his habeas corpus petition as proof of exhaustion of remedies. (*Id.* at 2:28–3:4.) Plaintiff references Exhibits B and C attached to the Opposition in which he states that he can provide ample documentation to validate all of his claims and will provide Defendant with a copy during discovery. (*Id.* at 3:6–4:2.) Plaintiff argues that property damage, emotional trauma, and violations of law causing harm are all valid causes of tort liability for private persons and therefore valid causes of tort liability for public entities and their employees citing to various cases. (*Id.* at 4:5–26.)

In Reply, Defendant argues that the FAC is completely devoid of facts to show if and to what extent plaintiff complied with the procedural prerequisite of exhausting administrative remedies through the inmate grievance process. (Reply, 2:13–3:19.) Defendant maintains that Plaintiffs' use of his prior "Reply to Informal Response" is improper and does not provide a sufficient factual basis to support the FAC. (*Id*. at 4:4–5:4.) Defendant contends that plaintiff still failed to cite any statutory basis to impose liability as a public entity and the addition of Does 1–18 does not excuse plaintiff from alleging facts sufficient to raise a viable cause of action against Doe Defendants. (*Id.* at 6:18–7:2.) Defendant states that the three cases cited by Plaintiff regarding government immunity do not apply. (*Id*. at 7:4–22.)

C. Requests for Judicial Notice

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 judicial notice of the *existenc*e of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*People v. Harbolt* (1997) 61 Cal.App.4th 123, 126–127 [citations omitted]; Evid. Code §§ 452, 453.)

a. Defendant's Request for Judicial Notice

In support of its demurrer, Defendant requests judicial notice of 10 Exhibits attached to Bruggisser's Declaration (Exhibits A–G2), which are various court records from state and federal court dockets related to Plaintiff's other actions. The request is **GRANTED** but the Court does not take judicial notice of the truth of hearsay statements in these files.

b. Plaintiff's Requests for Judicial Notice

In support of his Opposition to the demurrer, Plaintiff requests judicial notice of "Plaintiff's Habeas Corpus Petition, and all of its responses, filed in the Criminal Division of this Court under Case No. SCR-756294-1" as proof of his exhaustion of administrative remedies. However, Plaintiff is required to specify the part of the court file sought to be judicially noticed. (Cal. Rule of Court, 3.1306(c).) The request is **DENIED** as Plaintiff has not adequately identified the files he wishes the Court to judicially notice within the criminal case. Furthermore, the Court would only take judicial notice of the existence of the documents because the Court may not take judicial notice of the truth of hearsay statements in decisions or court files, including statements made in Plaintiff's petition for writ of habeas corpus. (*People v. Harbolt, supra,* 61 Cal.App.4th at 126–127.)

D. Jurisdictional Issues

a. Service of the FAC

The Court notes the service issues of the FAC. However, filing a demurrer to the FAC is a general appearance and "[a] defendant who makes a general appearance forfeits any objection to defective service." (See C.C.P. § 1014; *Fireman's Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1146.) Furthermore, Defendant already appeared in the action by filing a demurrer to the original Complaint in this action. (*Fireman's Fund Ins. Co., supra,* 114 Cal.App.4th at 1148 ["A defendant who has actual knowledge of the action and who has submitted to the authority of the court should not be able to assert a violation of rules which exist only to bring about such knowledge and submission."].) Therefore, the demurrer is **OVERRULED** on the service issue.

However, the Court notes that while it understands that Plaintiff has chosen to represent himself in *propria persona*, he is held to the same standards as attorneys and must follow correct rules of

procedure and is afforded the same, but no greater consideration than other litigants and attorneys. (*Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 31.)

b. Small Claims

The Court is not persuaded by Defendant's small claims argument. Plaintiff seeks monetary damages of $8,000,000.00 in the FAC, which is proper for the Court's unlimited jurisdiction. The demurrer is **OVERRULED** on this basis.

c. Exhaustion of Administrative Remedies

Under both state and federal law, an inmate must exhaust available administrative remedies. (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 664.) Under state law, inmates are required to exhaust administrative remedies, even when seeking monetary damages unavailable in the administrative process. (*Id.* at 668.) The exhaustion requirement is jurisdictional, and a Court may not hear a case before a litigant exhausts administrative remedies. (*Id.* at 664–665.) The purpose of the exhaustion requirement is to ensure orderly administration of the judicial system, prevent the chaos of a multiplicity of actions, prevent potentially conflicting decisions, and preserve the resources of the courts. (*Id.* at 670.)

Here, Plaintiff provides the Court with evidence in Opposition to the demurrer that he exhausted his administrative remedies. (See Plaintiff's Request for Judicial Notice.) However, a petition for a writ of habeas corpus is not an administrative remedy, but rather, is a judicial remedy and the Court may not take notice of the hearsay statements contained in such filings. Plaintiff does not plead exhaustion of administrative remedies anywhere within the FAC. This is a necessary element of claims by prisoners under both state and federal law, and such failure divests this Court of jurisdiction. (See *Wright, supra,* 122 Cal.App.4th at 665–666.) On this basis, the Court cannot interfere in the interactions between Plaintiff and an administrative agency.

Thus, the demurrer is **SUSTAINED with leave to amend** on this basis as to all claims as there is some reasonable possibility Plaintiff can cure this defect. (*The Swahn Group, Inc., supra,* 183 Cal.App.4th at 852.)

E. Government Claims Act

Even though the Court does not have jurisdiction over the Complaint for Plaintiff's failure to plead exhaustion of administrative remedies, the Court notes that Defendant fails to address the inapplicability of the Government Claims Act to non-tort claims, such as constitutional violations. (*Young v. County of Marin* (1987) 195 Cal.App.3d 863, 869.)

III. CONCLUSION

Defendant's demurrer to the FAC is **SUSTAINED** with leave to amend. Plaintiff shall file an amended complaint no later than 60 calendar days from notice of entry of an order on this motion.

Defendant's 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).

2. 24CV05839, Harris v. Sonoma Specialty Hospital, LLC

Counsel Dawn Smith of Smith Clinesmith LLP requests to be relieved as counsel for Plaintiff John Harris by and through his power of attorney, Heather Harris. The unopposed motion is **GRANTED** pursuant to Code of Civil Procedure section 284(2).

Counsel Smith declares that she must terminate her representation of Plaintiff due to a breakdown in the attorney-client relationship. Counsel served all parties with notice of the hearing on March 3, 2026. Thus, the Court shall sign the proposed order lodged with the motion on January 29, 2026.

The Court notes that Heather Harris is not an attorney at law but has a power of attorney for Plaintiff John Harris. Thus, Heather Harris is an agent of Plaintiff, by virtue of the power of attorney, and she may not represent Plaintiff in Court in any capacity, including filing pleadings on his behalf. (*People By and Through Dept. of Public Works v. Malone* (1965) 232 Cal.App.2d 531, 536–537 ["A power of attorney does not permit an agent to act as an attorney at law. If the rule were otherwise, the State Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation"]; see also *Russell v. Dopp* (1995) 36 Cal.App.4th 765, 775 ["The general American rule is that an unlicensed person cannot appear in court for another person…"].) Plaintiff may represent himself in this action in *propria persona* but any other representation of Plaintiff in Court must be done by a licensed attorney at law.

3. 24CV03151, Zabala v. Task Mortgage and Investment LLC

Defendants Carey Crone, Deon Jones, Anthony James Marinelli, and Task Mortgage and Investment, Inc. (together as "Defendants") move to compel Plaintiff Anidia Zabala's ("Plaintiff") initial responses to Form Interrogatories– Set Two, Special Interrogatories– Set One, Requests for Production of Documents– Set Two ("RFPDs"), and Requests for Admission– Set One ("RFAs"). The motion is **DENIED as MOOT** regarding Special Interrogatories– Set One. The motion is **GRANTED** as to Form Interrogatories– Set Two, RFPDs– Set Two, and RFAs–Set One. Plaintiff shall serve verified, objection-free responses to Form Interrogatories– Set Two and RFPDs– Set Two no later than 20 calendar days from notice of entry of an order on this motion. Defendants' RFAs–Set One are deemed admitted.

Sanctions in the reduced amount of $1,995.00 are **GRANTED** pursuant to C.C.P. sections 2030.290(c), 2031.300(c), and 2033.280(c). Sanctions are ORDERED in favor of Defendants against Plaintiff and her counsel, jointly and severally, payable no later than 30 calendar days from notice of entry of an order on this motion.

I. FACTUAL & PROCEDURAL HISTORY

This action arises from Plaintiff's $200,000 investment loan to Defendants where Plaintiff seeks damages for breach of fiduciary duty and negligent misrepresentation. (See First Amended Complaint, filed January 2, 2025.) On December 9, 2025, Defendants propounded Form Interrogatories– Set Two, Special Interrogatories– Set One, RFPDs– Set Two, and RFAs–Set One. (Makdisi Decl., ¶ 7, Exhibits A–D.) Defendants contends that January 12, 2026, was the last day for Plaintiff to provide timely responses and they failed to serve any responses to the December 9th discovery. (Makdisi Decl., ¶ 8.) Defendants now move to compel Plaintiff's initial responses to the four various sets of discovery.

II. DISCUSSION

A. Governing Law

A party's failure to timely respond to discovery allows the propounding party to move for an order compelling responses and monetary sanctions. (See C.C.P. § 2030.290(b) [compelling response to interrogatories]; C.C.P. § 2030.090(c) [monetary sanctions for unsuccessfully making or opposing a motion to compel a response to interrogatories]; C.C.P. § 2031.300(b) [compelling response to demand for inspection]; C.C.P. § 2031.300(c) [monetary sanctions for unsuccessfully making or opposing a motion to compel a response to demand for inspection]; and C.C.P. §§ 2033.280(b)–(c) [requesting an order that the truth of any matters specified in the requests be deemed admitted and monetary sanctions].)

B. Compel Initial

Defendants move to compel initial responses to Form Interrogatories– Set Two, Special Interrogatories– Set One, RFPDs– Set Two, and RFAs–Set One. However, on April 13, 2026, Defendants filed a motion to compel further responses, which is set for a hearing on June 17, 2026. In the supporting declaration to the April 13th motion to compel further, counsel Makdisi stated that Plaintiff served Defendant with late responses to Special Interrogatories, Set One on February 9, 2026. (Makdisi Decl. in Support of Motion to Compel Further, filed April 13, 2026.) Therefore, the instant motion to compel initial responses to Special Interrogatories– Set One is **DENIED as MOOT**. Any argument about the sufficiency of the responses will be addressed at the June 17th hearing on the motion to compel further responses.

Regarding Form Interrogatories– Set Two, RFPDs– Set Two, and RFAs–Set One, there has been no response served by Plaintiff and Plaintiff has not opposed the motion. Notice of the hearing date on this motion was served on Plaintiff by Defendants on February 9, 2026. (See Proof of Service of Filed Document, filed February 9, 2026.) Therefore, the Court **GRANTS** Defendants' motion pursuant to C.C.P. sections 2030.290(b), 2031.300(b), and 2033.280(b). Accordingly, Plaintiff has waived all objections. (C.C.P. §§ 2030.290(a), 2031.300(a), and 2033.280(a).) Plaintiff shall serve verified, objection-free responses to Form Interrogatories– Set Two and RFPDs– Set Two no later than 20 calendar days from notice of entry of an order on this motion. Defendants' RFAs–Set One are deemed admitted pursuant to C.C.P. 2033.280(b).

C. Sanctions

Defendants request monetary sanctions against Plaintiff for $2,670.00 ($2,610 in legal fees [5.8 hours of work at $450 per hour] and the $60 filing fee.)

The Court finds that sanctions are warranted pursuant to C.C.P. sections 2030.290(c), 2031.300(c), and 2033.280(c) for Plaintiff's lack of response. However, since the Court is denying the motion regarding Special Interrogatories and counsel Makdisi's declaration does not state how many hours he worked on each part of the motion, the Court proportionally reduces counsel's hours by one-fourth, or approximately 1.5 hours, totaling 4.3 hours. Therefore, the Court **GRANTS** counsel's fees for 4.3 hours of work at $450 per hour plus the $60 filing fee, totaling $1,995.00. Sanctions are ORDERED in favor of Defendants against Plaintiff and her counsel, jointly and severally, payable no later than 30 calendar days from notice of entry of an order on this motion.

III. CONCLUSION

The motion is **DENIED as MOOT** regarding Special Interrogatories– Set One. The motion is **GRANTED** as to Form Interrogatories– Set Two, RFPDs– Set Two, and RFAs–Set One. Plaintiff shall serve verified, objection-free responses to Form Interrogatories– Set Two and RFPDs– Set Two no later than 20 calendar days from notice of entry of an order on this motion. Defendants' RFAs–Set One are deemed admitted.

Sanctions in the reduced amount of $1,995.00 are **GRANTED** pursuant to C.C.P. sections 2030.290(c), 2031.300(c), and 2033.280(c). Sanctions are ORDERED in favor of Defendants against Plaintiff and her counsel, jointly and severally, payable no later than 30 calendar days from notice of entry of an order on this motion.

Defendants' 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).