**TENTATIVE RULINGS**
**LAW & MOTION CALENDAR**
**Wednesday, August 26, 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

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**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. 24CV00349, Unifund CCR, LLC v. Hurtado**

Plaintiff Unifund CCR, LLC ("Plaintiff") filed the complaint in this action against defendant Gabriela Hurtado ("Defendant"), with a causes of action for account stated and open book. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement executed April 2, 2024 (the "Agreement", Counsel's Declaration, Ex. 1.) to enter judgment in the case in the amount of $2,085.74, as Defendant has defaulted on the agreement. There is no opposition to the motion.

The Motion is **GRANTED.**

I. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b) provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. A motion to enforce a settlement agreement under CCP § 664.6 must show there is an agreement signed by all the parties to the agreement, not just the parties against whom the agreement is sought to be enforced. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37.

Where the terms of a settlement are disputed in a CCP § 664.6 motion, the court has the authority to adjudicate those disputes based on declarations or other evidence. *Malouf Bros. v. Dixon* (1991) 230 Cal.App.3d 280, 284. However, the court does not have the authority to modify the terms of the agreement. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. Extrinsic evidence is admissible in ruling on a motion under CCP § 664.6. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 992.

II. Analysis

Plaintiff moves the Court for a judgment pursuant to the Agreement. Plaintiff asks for $1,727.42 in principle, and $358.32 in costs. The Agreement states that Defendant owes $1,843.42. Agreement, ¶ 1. Defendant is to receive credit for any and all payments made under the Agreement. Defendant was to make monthly payments under the terms of $116 per month starting on April 5, 2024. Plaintiff was entitled to a discount resulting in early payoff if she made all timely payments. Agreement ¶ 1. Plaintiff avers that Defendant made only one payment of $116. See Counsel's declaration ¶ 6.

The motion is unopposed. The Agreement states that upon Defendant's failure to make a timely payment, Plaintiff will be entitled to "immediately fluke a noticed motion … for entry of judgment" for amounts remaining owing, plus court costs, less any payments by Defendant. Agreement ¶ 5. This appears sufficient to place Defendant on notice that payments are due. The time for payment on all of Defendant's payments has passed before the filing of the motion. Therefore, the amounts of $1,727.42 in principle, and $358.32 in costs are appropriate.

Therefore, the Motion is **GRANTED. Judgment will be entered in the amount of $2,085.74.**

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

## 2. <u>24CV01725, Looney v. Venue Restaurant & Bar, LLC</u>

Plaintiff Gary Looney, DBA Collectronics ("Plaintiff" or "Judgment Creditor"), assignee of Young's Market Company, obtained a default judgment against defendants Venue Restaurant and Bar, LLC. ("Defendant"), Kuldip Singh ("Guarantor", together with Defendant, "Defendants"). Plaintiff requested Receiver Landon McPherson ("Receiver") be appointed to take control of Defendant's liquor license number 622399 and transfer it. This matter is on calendar for the Receiver's motion to approve his final account and report and for discharge.

The Motion is accompanied by a proof of service showing that service was made on Defendant and no opposition was filed. The unopposed Motion is **DENIED WITHOUT PREJUDICE**.

I. Governing Law

Cal. R. Ct. ("CRC") 3.1184(a) provides that a receiver must present by noticed motion or stipulation of all parties: 1) a final account and report; 2) a request for discharge; and 3) a request for exoneration of the receiver's surety. No memorandum of points and authorities is required unless ordered by the court, notice must be given to "every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it," and if any allowance of compensation for the receiver is claimed, "it must state in detail what services have been performed by the receiver or the attorney and whether previous allowances have been made to the receiver or attorney and the amounts." CRC 3.1184(b)-(d). "A receivership terminates upon completion of the duties for which the receiver was appointed; or at any other time upon court order." Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2020) ¶ 4:940. The Receiver is entitled to seek compensation for services rendered. CRC 3.1183, 3.1184. The amount of compensation awarded to a receiver is within the sound discretion of the trial court and will not be reversed on appeal in the absence of an abuse of discretion. *Melikian v. Aquila, Ltd*. (1998) 63 Cal.App.4th 1364, 1368.

II. Factual Application

The Court has reviewed the Receiver's motion and cannot locate an accounting of the Receiver's time or expenses. Accordingly, the Court lacks the necessary information to approve the Receiver's Final Report. The Court notes that Receiver's Ex Parte for Priority Payment (which is both within the record and attached to the motion) avers time expended of 24 hours but provides no billing statements thereon. The Receiver opines $4,247.23 in "hard costs", but the only costs articulated and supported by evidence are the payment for escrow ($2,955) and two attorney hours ($900), totaling $3,855. This falls short of what the Court would expect in final discharge of the Receiver.

The Motion for Final Approval is therefore **DENIED without prejudice** for failure to present an accounting.

The Receiver 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. 24CV03663, Migilozzi v. Mattson**

Counsel for Kenneth Mattson and Stacy Mattson ("Individual Defendants") seeks to be relieved on the basis of an irreparable breakdown in the attorney client relationship. The Court notes that the Declaration in Support states that Plaintiff was served via mail at his last known address by mail, return receipt requested. Individual Defendants' bankruptcy counsel was also served to ensure actual notice. Counsel has undergone reasonable steps attempting to confirm the validity of the address and ensuring actual notice to all parties in this action. Individual Defendants have also filed a Proof of Service, dated March 24, 2026, fully indicating that notice Motion to be Relieved as Counsel and the August 26, 2026, hearing date has also been provided to all parties. Therefore, Counsel's motion to be relieved as counsel for Plaintiff is **GRANTED.**

If no party requests oral argument, the Court will sign the proposed ordered order submitted with the motion.

Therefore, Counsel's motion to be relieved as counsel for Plaintiff is **DENIED without prejudice**.

**4-5. 25CV02085, Crigler v. McCutchan**

Plaintiff Henry Cringler ("Plaintiff") filed the currently operative first amended complaint (the "FAC") against defendants Edward B. McCutchan doing business as Sunderland McCutchan ("Defendant") and Does 1-50.

This matter is on calendar for Defendant's demurrer to each cause of action 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 **OVERRULED. The motion to strike is GRANTED in part without leave to amend.**

I. Evidentiary and Procedural Issues

Much like the prior motion, Defendant makes four requests for judicial notice, the first of which is a request to take notice of Defendant's prior request for judicial notice and documents attached thereto. They are not attached again here. Defendant still fails to show the propriety of such "requests within a request". It clouds the record and does not meet the standard required for judicial notice under the rules of court. See Cal. Rule of Court 3.1113 (l).

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). Yet 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. 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. Courts may take judicial notice of the existence and legal effect of legally operative documents. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754. 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. The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. It is not appropriate for the Court to take notice of additional information which is included in the documentation or contentions as to the truth of the contents. *Id.*

Defendant also requests judicial notice of a good faith settlement within the prior action (RFJN ¶ 2), and the dismissal of another action in which Defendant is in the same role and is mentioned in the FAC (RFJN ¶ 3). Both of these matters do not appear proper for consideration. While they are court records capable of judicial notice, neither has appropriate relevance at demurrer. The good faith settlement is offered to attempt to show that Defendant did earn his opined contingency. This is a misplaced attempt to argue the facts, and the existence of a good faith settlement is not "evidence" that Plaintiff received any actual funds from the settlement. Similarly, while Defendant opines that the request for judicial notice is dispositive as to Plaintiff's allegations attached to SCV-263456, whether the contract between the parties was found void appears to be an allegation that is unaffected by the disposition of SCV-263456. The dismissal of that action is accordingly irrelevant (to both the complaint and the demurrer) and therefore improper for this Court to notice.

Finally, Defendant asks that we take judicial notice of a case management statement and discovery within this case. Discovery responses are not properly the subject of judicial notice. *TSMC North America v. Semiconductor Manufacturing Internat. Corp.* (2008) 161 Cal.App.4th 581, 594, fn. 4.

Defendant's requests for judicial notice are DENIED.

Plaintiff also requests judicial notice of a judgment renewal in the *Liebling* matter, which is similarly irrelevant and also DENIED.

## II. <u>Governing Law</u>

### A. Standards on the 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. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. Complaints are read as a whole, in context and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also, *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also, *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Matters which may be judicially noticed are also considered. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. 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.

"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.

"The general rule . . . is that material factual allegations in a verified pleading that are omitted in a subsequent amended pleading without adequate explanation will be considered by the court in ruling on a demurrer to the later pleading." *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 12. "(T)he policy against sham pleading permits the court to take judicial notice of the prior pleadings and requires that the pleader explain the inconsistency. If he fails to do so the court may disregard the inconsistent allegations and read into the amended complaint the allegations of the superseded complaint." *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 384. "While inconsistent Theories of recovery are permitted (Citation), a pleader cannot blow hot and cold as to the Facts positively stated. (Citations)." *Manti v. Gunari* (1970) 5 Cal.App.3d 442, 449. Inconsistent statements are defined as those which are "contradictory or antagonistic." *Steiner v. Rowley* (1950) 35 Cal.2d 713, 719.

B. Motions to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself of judicially noticeable matters, not extraneous facts. *See* CCP § 437. A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g. Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). Punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Irrelevant matters subject to being struck are "(a)n allegation that is not essential to the statement of a claim or defense", "(a)n allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense", and "(a) demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint" CCP, § 431.10 (b-c); CCP § 436.

"While under section 436, a court at any time may, in its discretion, strike portions of a complaint that are irrelevant, improper, or not drawn in conformity with the law, matter that is essential to a cause of action should not be struck and it is error to do so." *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281. However, "(i)rrelevant matter, though pleaded, is still irrelevant." *Fisher v. Nash Bldg. Co.* (1952) 113 Cal.App.2d 397, 403.

> Nor did respondents' motion properly fall within subdivision (b) of Code of Civil Procedure section 436 (§ 436(b)), which authorizes a challenge to "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." While this language might be broadly construed to reach *any* deficiency in a pleading, including substantive ones, that is not its purpose or effect. Rather it authorizes the striking of a pleading due to improprieties in its *form* or in the *procedures* pursuant to which it was filed. This provision is commonly invoked to challenge pleadings filed in violation of a deadline, court order, or requirement of prior leave of court. (E.g., *Leader v. Health Industries of America, Inc., supra,* 89 Cal.App.4th 603, 613, 107 Cal.Rptr.2d 489 ["plaintiffs' failure to file an amended complaint within the time allowed by the court subjected any subsequently filed pleading to a motion to strike, either by defendants or on the court's own motion"].)

*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.

"Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order." *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023 ("*Harris*"). "(S)uch granting of leave to amend must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained." *People By and Through Dept. of Public Works v. Clausen* (1967) 248 Cal.App.2d 770, 785 ("*Clausen*"). "The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." *Harris, supra,* 185 Cal.App.4th at 1023. The only way a plaintiff is entitled to add causes of action after a demurrer is sustained is if "the new cause of action directly responds to the court's reason for sustaining the earlier demurrer." *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015. Where an amendment exceeds the leave granted by the court, a motion to strike is the proper vehicle to remedy the issue. *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329.

C. 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.

D. Financial Elder Abuse

Financial elder abuse is defined by Welfare and Institutions Code ("W&I") § 15610.30 as where a party "(t)akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both", or assists in such actions. See W&I § 15610.30 (a)(1-2). "A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult." W&I § 15610.30 (b). "(A) person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult." W&I § 15610.30 (c). Entering fraudulent escrow instructions that encumbered a property and thereby interfered with an elder adult's ability to transfer that property, was sufficient to constitute a "taking" under the financial elder abuse statute. *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 483. An attorney can be held liable for financial elder abuse where they take an undisclosed finder's fee derived from an elder client's property, and where they assist other parties in taking from an elder client in violation of W&I § 15610.30. *Wood v. Jamison* (2008) 167 Cal.App.4th 156, 165.

E. Confirmation or Correction of Arbitration Awards

Parties may petition to correct arbitration awards. CCP § 1285. Where a party objects to the non-binding arbitration award, their remedy is trial de novo, not confirmation or correction of a non-binding award. Bus. & Prof. Code, § 6204 (a); *Aguilar v. Lerner* (2004) 32 Cal.4th 974, 985.

## III. Motion to Strike

Defendant moves to strike several portions of the SAC which he contends are irrelevant or counterfactual. The Court continues to find issue with Defendant's "Designation of Matters to be Struck", which appears to be a method by which Defendant inflates his space for briefing. He provides no authority showing the propriety of such a filing. His citation to Rule of Court, Rule 3.1322 is erroneous, as nothing within that gives permission for this extraneous filing.

Generally, the Court finds Defendant's arguments to strike paragraphs 1, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 44, 45, 46, 48, 52, 53, and 77 unpersuasive. Defendant simply concludes that these are false and irrelevant, but his requests for judicial notice were rejected. As the Court addresses further below, evidentiary contentions and added facts which contextualize previous allegations are the purpose of leave to amend. The motion to strike these paragraphs is unprevailing as a result.

In contrast, the Court is compelled to address the issue of Plaintiff's addition of causes of action. Had Defendant not raised the issue, it would nonetheless be a complaint not drawn in conformity with the laws of the state and would have been subject to the Court's own motion to strike. Plaintiff's authorities on this issue relate entirely to motions for leave to amend, rendering them inapposite. The rules around leave to amend after a demurrer is intended to ensure that demurrers continue to narrow the scope of the issues within a case, as opposed to expanding them. Plaintiff was not allowed to add causes of action unless the change of theory addressed the *basis* for the Court sustaining the prior demurrer. The Second, Third and Fourth causes of action, despite Plaintiff's contentions to the contrary, are in no way responsive to the Court's demurrer, and they must be struck as outside the scope of the leave to amend as a result. *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.

The Fifth cause of action for financial elder abuse was previously alleged, and clearly survives as a result, despite Defendant's baseless contention to the contrary. As to Declaratory Relief, Plaintiff avers that this has been asserted in lieu of the unjust enrichment cause of action. Plaintiff appears to be attempting to parlay Declaratory Relief into restitution, arguing that the Court must find the fee agreement void, and therefore he is entitled to a refund. Based on that, he argues quantum meruit. First, Plaintiff's contention that the Court "ruled" that it was not a cause of action misstates the prior order. The Court *did* cite to *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793, which states precisely that. However, the Court's citations to propositions of law extended much further, and nothing within the Court's analysis addressed the theoretical issue of the label of "unjust enrichment". Plaintiff's subsequent amendment to declaratory relief appears unresponsive to the Court's reason for sustaining the demurrer, and despite Plaintiff's protestations, does not relate to the same form of relief. Declaratory relief entitles a party to a declaration, and Plaintiff attempts to translate this to a declaration of refund owed. This is a claim for restitution, and declaratory relief is not the vehicle by which such claims are made. The inclusion of declaratory relief exceeds the scope of the leave to amend.

The motion to strike is **GRANTED as to the First, Second, Third, and Fourth causes of action without leave to amend, and otherwise denied**.

## IV. Demurrer

### A. Statute of Limitations

As the Court previously addressed, legal malpractice claims accrue at the time that the malpractice is discovered by the client, whereafter clients have one year to file an action, *or* at the time of the wrongful act or omission, which must be acted upon within four years, *whichever occurs first*. CCP § 340.6 (a). The claims against Defendant, given their designation under CCP § 340.6, began to accrue under the allegations of the SAC on April 2, 2014.

While Plaintiff has omitted several allegations previously in the FAC that would have indicated that his causes of action began to accrue on April 2, 2014, the Court reads those allegations into the SAC under the sham pleading doctrine. *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 12. However, Defendant's contention that this constitutes a sham pleading is not fully prevailing. The FAC alleged facts which delineated harm beginning in 2014. The FAC did not contain allegations of facts which fell under the statutory bases for tolling under CCP § 340.6. In the SAC, Plaintiff has many new facts intending to address the deficiencies found in the Court's prior ruling on the FAC. This is not sham pleading, but rather the very purpose of leave to amend after demurrer. Sham pleading only acts to address artful omissions and unexplained contradictions. It does not act as a universal preclusion after a demurrer is sustained. The Court examines whether the new allegations cure the identified defects.

Plaintiff now argues several bases to toll the terms of CCP § 340.6. Plaintiff argues that all the bases for tolling apply to this case and pleads facts thereon. Each basis is examined to determine whether it constitutes adequately pled tolling to make the Complaint timely.

Plaintiff's contention of lack of appreciable harm is not a contention supported by current jurisprudence. Matters are pending on appeal do not toll the accrual of the injury in malpractice cases. *Laird v. Blacker* (1992) 2 Cal.4th 606, 618. Plaintiff pleads (or rather pled in the prior complaint) that the injury was the payment of additional fees after their April 2, 2014, failure to correct the pleadings in the *Liebling* action. FAC ¶ 20. He now asserts in the SAC that his harm was not truly accrued until the appeals for the Bankruptcy Case had expired. That is no longer true under California law. *Laird v. Blacker* (1992) 2 Cal.4th 606, 618, disapproving *Robinson v. McGinn* (1987) 195 Cal.App.3d 66, 74.

Plaintiff pleads facts related to physical disabilities lasting a year in 2022 and 2023. Absent ignoring the prior pleading, Plaintiff's claims expire long before that time. Accordingly, disability alone does not provide tolling sufficient to make his claims viable.

Plaintiff also argues that Defendant concealed Judge Chouteau's ruling from SCV-263456. Plaintiff continues to fail to show what that ruling actually was, why it is relevant, or how it affects the timeliness of the instant claims. Whether the fee agreement was void or not, does not affect the nature of Plaintiff's contentions, that Defendant did not recover the amount he should have on behalf of Plaintiff, allegedly due to his want of care in pleading occurring April 2014.

Plaintiff has not pled sufficient facts to show concealment, nor lack of knowledge of the error sufficient to toll the statute of limitations under this theory.

Plaintiff also contends that Defendant continued representing him to "present". Plaintiff alleges multiple specific facts related to Defendant's actions on his behalf and that they constitute continued representation. This is generally persuasive to at least plead with the underlying facts. Nor does Defendant's contention that this pleading is untrue affect this determination. Defendant insists that Plaintiff began representing himself pro se in the Bankruptcy Case on April 28, 2018, citing matters of which the Court has denied judicial notice. Even if the Court were to consider the argued inclusion of a substitution of attorney, that does not dispositively show that representation was ended "regarding the specific subject matter in which the alleged wrongful act or omission occurred." CCP, § 340.6. Defendant asks that the Court take a restrictive view of the allegations in the SAC while considering matters outside the pleading. Both principles are not the appropriate standard of review at demurrer. "(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. Defendant's contentions may have an appropriate time and place, but at demurrer they are not enough to show that the SAC is insufficiently pled.

The Court is not persuaded that Defendant's filing of documents on behalf of all plaintiffs in the *Liebling* action is at all indicative of his *current* representation of Plaintiff. Plaintiff concedes that he *must* file it on behalf of all plaintiffs, and attorneys often are ordered to prepare court documents for the Court's file on behalf of all parties. Plaintiff provides insufficient authority to find that this is indicative of "current representation".

Current representation tolls the statute of limitations for CCP § 340.6 indefinitely, and applicable to the one year from discovery standard. The SAC alleges sufficient facts to show current representation until April 1, 2023, where Defendant negotiated with the judgment debtor in the *Liebling* action on behalf of all the plaintiffs therein, including Plaintiff. SAC ¶ 21. The request for arbitration was filed on March 14, 2024. SAC ¶ 27. The statute of limitations for Plaintiff's claims was tolled until 30 days after delivery of the arbitration award. Bus. & Prof. Code § 6206. The arbitration decision was served on March 13, 2025. SAC ¶ 31. Plaintiff filed this action on April 11, 2025, along with his objection under Bus. & Prof. Code § 6204.

Based on the averment of statute of limitations precluding Plaintiff's claims, as to the fifth cause of action, Defendant's demurrer is OVERRULED.

Defendant's contention that Plaintiff has not pled the elements of financial elder abuse is unpersuasive. As a cause of action, Plaintiff alleges that Defendant has billed for and kept unearned fees through stringing along Plaintiff with an uncollectable judgment. This appears to be sufficient at the pleading stage, and Defendant's threadbare argument provides no authority to the contrary.

## IV. Conclusion

Based on the foregoing, the Demurrer is **OVERRULED**.

The motion to strike is **GRANTED as to the First, Second, Third, and Fourth causes of action without leave to amend**.

Defendant 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).

**6. 25CV08070, Burns v. Pacific Gas & Electric Company**

Plaintiff, Hakim Burns ("Plaintiff"), has filed the complaint (the "Complaint") against defendants Pacific Gas & Electric Company (since dismissed), Pullman Lofts First Phase, LLC, doing business as Pullman Modern Urban Apartments ("Pullman"), Doe Manufacturer ("Manufacturer"), Doe Contractor ("Contractor"), Doe Supplier ("Supplier", together with all other defendants, "Defendants"), and Does 1-50 with causes of action related to alleged negligent installation of a kitchen island, resulting in Plaintiff's injury.

This matter is on calendar for Defendant Pullman's motion to strike punitive damages from the Complaint. The motion is **GRANTED** with leave to amend.

**I. Governing Law**

A. Motions to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632.). A motion to strike is properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g., Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). Punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. "In addition to the requirement that the operative complaint set forth the elements as stated in section 3294, it must include specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages." *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193.

A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

"There are, however, few situations in which claims for punitive damages are predicated on ... conscious disregard of the rights or safety of others and in which no intentional torts are alleged." *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 191. "'(M)alice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found." *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725. Despicable conduct is conduct "so vile, base, miserable, wretched or loathsome that it would be looked down on by ordinary decent people." *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715 (internal quotations omitted). Despicable conduct has been described as eliciting the same type of outrage frequently associated with the commission of crimes. *Ibid*.

> The definition of malice has not always included the requirement of willful and despicable conduct. Prior to 1980, section 3294 did not define malice. It was construed to mean malice in fact, which could be proven directly or by implication (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894, 157 Cal.Rptr. 693, 598 P.2d 854 (*Taylor* ); 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1335, p. 793) and could be established by conduct that was done only with "a conscious disregard of the safety of others...." (*Taylor, supra,* at p. 895, 157 Cal.Rptr. 693, 598 P.2d 854.) Relying on the reasoning in *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 122 Cal.Rptr. 218, the *Taylor* court recognized that recklessness alone is insufficient to sustain an award of punitive damages because " '[t]he central spirit of the exemplary damage statute, the demand for evil motive, is

> violated by an award founded upon recklessness alone.' " (24 Cal.3d at p. 895, 157 Cal.Rptr. 693, 598 P.2d 854.) The court concluded that "[i]n order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (*Id.* at pp. 895–896, 157 Cal.Rptr. 693, 598 P.2d 854.) Applying that test, the Supreme Court directed the trial court to reinstate a claim for punitive damages where it was alleged the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences.[14]
>
> In 1980, the Legislature amended section 3294 by adding the definition of malice stated in *Taylor, supra,* 24 Cal.3d 890, 157 Cal.Rptr. 693, 598 P.2d 854. (Stats.1980, ch. 1242, § 1, pp. 4217–4218; *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 713, 34 Cal.Rptr.2d 898, 882 P.2d 894.) That definition was amended in 1987. As amended, malice, based upon a conscious disregard of the plaintiff's rights, requires proof that the defendant's conduct is "despicable" and "willful." (Stats.1987, ch. 1498, § 5.) The statute's reference to "despicable conduct" represents "a new substantive limitation on punitive damage awards." (*College Hospital, Inc. v. Superior Court, supra,* 8 Cal.4th at p. 725, 34 Cal.Rptr.2d 898, 882 P.2d 894.)

*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210–1211.

Even before the amendment of Civil Code § 3294, courts have elucidated that "(t)he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 32. "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895–896.

## II. Motion to Strike

Pullman contends that Plaintiff has not pled facts sufficient to constitute a basis for punitive damages. Plaintiff argues that they have pled that the underlying conduct was willful and conscious, and the scope of the injuries shows the danger raised by Defendants' conduct.

Neither party addresses cases particularly similar to the facts at bar, instead relying on generic cases related to punitive damages. While the cases related to landlords and punitive damages are multitudinous, even the general cases cited by the parties lead to a clear result.

Plaintiff argues matters of intent widely, and such allegations are subject to liberal construal. *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds). While Plaintiff's allegations of intent may be general, they still must be supported by underlying factual contentions. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 7. On matters of willful disregard, the Complaint is questionable, but further examination makes a greater deficiency apparent.

Plaintiff's citation to *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725-726 is illustrative as to why the Complaint fails to state punitive damages. Most of Plaintiff's authorities precede the amendment of Civ. Code § 3294. Therefore, they fail to account for the substantive addition the Legislature included to the definition of malice. "[T]he statute's reference to 'despicable' conduct seems to represent a new substantive limitation on punitive damage awards. Used in its ordinary sense, the adjective 'despicable' is a powerful term that refers to circumstances that are 'base,' 'vile,' or 'contemptible.' (4 Oxford English Dict. (2d ed. 1989) p. 529.) As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found." *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.

The Complaint uses the term "despicable" in a manner that acts merely as an acknowledgement of the requirement. There is no allegation of facts sufficient to draw the words "vile" or "contemptible" into application. Plaintiff offers no argument to address the lack of despicable conduct in the Complaint. While Plaintiff avers in a conclusory manner that there was willful disregard for human life, nothing within the Complaint appears to elicit the same outrage as the commission of crimes. *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715. Instead, it is posed in "failure to verify, and falling short of "industry standards". Complaint ¶¶ 29-30. The causes of action within the Complaint are purely in the vein of negligence. Plaintiff's inapplicable hypotheticals of who might have been harmed are pure supposition and conjecture, entitled to no weight.

The motion to strike is GRANTED with leave to amend.

III. <u>Conclusion</u>

Based on the foregoing, the motion to strike is **GRANTED with leave to amend**.

Pullman 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).

**7. <u>25CV08351, Capri Mobile Villa v. Stubbs</u>**

Petitioner Capri Mobile Villa, LLC ("Petitioner") filed the petition (the "Petition") in this action against respondents Gregory Stubbs ("Hearing Officer"), City of Petaluma ("City", together with Hearing Officer, "Defendants"), and Does 1-500, for multiple alleged causes of action arising out a controversy related to an arbitration hearing for rent adjustment of Petitioner's mobilehome park. Also named are the residents, Augustina Hernandez, John Seminoff, Brenda Seminoff, Donald Worden, Brian Worden, Esther Borbon, Larry Allen, Virgilio Vasques, Mauricio Castellanos, Valente Mendez, Rosa Altamirano, Gloria Garcia, Mauricio Aguirre, Rufino Cortes, Elizabeth Ramirez, Jesus Arango, Abigail Arango, Adrian Magana, Mayra Magana, Marcus

Carreno, Melissa Amandor, Joel Hernandez, Patricia Cortez, Maricio Gobar Soriano, Ned Scott, Jr., and Lee Mallory (the "Real Parties in Interest").

This matter is on calendar for Hearing Officer's demurrer to causes of action one through three within the Petition 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). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

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. 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.

"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.

### B. Writ of Mandate

Writ proceedings of administrative bodies are governed by CCP § 1094.5. In such proceedings, the trial court's review "shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." CCP § 1094.5(b). An abuse of discretion can occur three different ways: (1) "the respondent has not proceeded in the manner required by law," (2) the "decision is not supported by the findings," or (3) "the findings are not supported by the evidence." *Ibid*; *Martis Camp Community Association v. County of Placer* (2020) 53 Cal.App.5th 569, 593 (findings not supported by evidence must not be supported by "substantial evidence in light of the whole record").

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." Code Civ. Proc., § 1085. "There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty." *California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704. "'A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists.'" *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 495. "Section 1085 is the proper vehicle for challenging a ministerial act of an agency, such as a mandatory duty to issue regulations." *Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1481. "Mandate will not issue to compel action unless it is shown the duty to do the thing asked for is plain and *unmixed with discretionary power or the exercise of judgment.*" *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 596. "When there is no ministerial duty and review is for abuse of discretion, such limited review is grounded in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives from the view that '[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible....' (*Citation.*) It also recognizes that a challenged administrative agency action comes before the court with a strong presumption that the agency's official duty has been regularly performed and the burden is on appellants to show the agency's action is invalid. (*Citation.*)" *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.

A party may move for writ of mandate under both CCP § 1085 and CCP § 1094.5 if both are applicable to the facts. *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751. Declaratory relief is not the proper vehicle for reviewing an administrative decision. *State v. Superior Court* (1974) 12 Cal.3d 237, 249. In contrast, declaratory relief is an appropriate remedy if the petitioner seeks a determination that a statute controlling a particular function is unconstitutional. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263.

"The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, quasi-judicial' or 'adjudicative acts,' that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More specifically, a petition for administrative mandamus under Code of Civil Procedure section 1094.5 is appropriate when the party seeks review of a final 'determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency . . . .' " *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482 (*California Water*).

Where a public entity's enactment of a rule "constitutes a [legislative or] 'quasi-legislative' act and is reviewed by ordinary [or traditional] mandate [under Code of Civil Procedure section 1085]. [Citations.] A petition for traditional mandamus is appropriate in . . . actions brought to attack, review, set aside, or void a quasi-legislative . . . or ministerial determination, or decision of a public agency. [Citations.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." *California Water, supra*, 161 Cal.App.4th at 1483 (fn. omitted). "Whether [a statute] impose[s] a ministerial duty, for which mandamus will lie, or a mere obligation to perform a discretionary function is a question of statutory interpretation." *Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 233, quoting *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 701.

"The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter but instead turns on the nature of the challenged action." *California Water*, *supra*, 161 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541 ["[T]raditional mandamus under section 1085 applies to '[q]uasi-legislative' decisions, defined as those involving ' "the formulation of a rule to be applied to all future cases," ' while administrative mandamus under section 1094.5 applies to 'quasi-judicial' decisions, which involve ' "the actual application of such a rule to a specific set of existing facts." ' "].

Traditional mandamus under Code of Civil Procedure section 1085 "may be employed to compel the performance of a duty which is purely ministerial in character; it cannot be applied to control discretion as to a matter lawfully entrusted to [a public entity]" *State v. Superior Court* (1974) 12 Cal.3d 237, 247. "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700–701.

"A proceeding in mandamus is generally subject to the general rules of pleading applicable to civil actions." *Chapman v. Superior Court* (2005) 130 Cal.App.4th 261, 271. "Therefore, it is necessary for the petition to allege specific facts showing entitlement to relief upon one of the grounds just mentioned. If such facts are not alleged, the petition is subject to general demurrer..." *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573.

C. Quasi-judicial Immunity

"Common law judicial immunity has been extended to private and public arbitrators." *La Serena Properties, LLC v. Weisbach* (2010) 186 Cal.App.4th 893, 900. "A first class of persons entitled to quasi-judicial immunity includes persons who perform functions normally performed by a judge, or who act in a judicial or quasi-judicial capacity. (*Citation*.) Such persons include court commissioners acting as temporary judges or performing subordinate judicial duties ordered by the court, administrative hearing officers, arbitrators, organizations sponsoring an arbitrator, referees, prosecutors, and officials of the State Bar and the Committee of Bar Examiners." *Holt v. Brock* (2022) 85 Cal.App.5th 611, 621; see also *McClintock v. West* (2013) 219 Cal.App.4th 540, 550.

## II. Procedural and Evidentiary Issues

The Court notes that every one of Petitioner's Counsel's pleadings includes an invalid bar number. Counsel is advised to correct their pleadings to conform to the requirements of the Rules of Court accurately listing their Bar Number.

## III. Demurrer

Hearing Officer demurs entirely under the theory that he is immune from suit under the doctrine of quasi-judicial immunity. Petitioners aver that Hearing Officer is not entitled to quasi-judicial immunity, and even if it were to apply to him, they do not request monetary damages, and so quasi-judicial immunity does not preclude their suit.

### A. Whether Quasi-Judicial Immunity Applies to Hearing Officer

While Petitioner avers that Hearing Officer is not entitled to either judicial immunity, immunity under CCP § 1297.119, or quasi-judicial immunity, that is unprevailing. Quasi-judicial immunity extends to "public arbitrators". *La Serena Properties, LLC v. Weisbach* (2010) 186 Cal.App.4th 893, 900. "In determining whether absolute immunity applies to the conduct of a public or private arbitrator, "the courts look at 'the nature of the duty performed [to determine] whether it is a judicial act—not the name or classification of the officer who performs it, and many who are properly classified as executive officers are invested with limited judicial powers.' [Citation.]" (Id. at 901, citing to *Howard v. Drapkin, supra,* 222 Cal.App.3d at p. 853, 271 Cal.Rptr. 893.) In their supplemental opposition, Petitioner concedes that Hearing Officer's "adjudicative acts may fall within quasi-judicial immunity." Supplemental Opposition, pg. 6:25-26. Petitioner's concession understates the scope of common law quasi-judicial immunity. Quasi-judicial immunity extends far past the "first" class of those protected, but in that grouping is "administrative hearing officers, [and] arbitrators…" *Holt v. Brock* (2022) 85 Cal.App.5th 611, 621. Nothing alleged in the Petition against the Hearing Officer deviates from his performance of quasi-judicial duties, even assuming Petitioner's contention that they were performed capriciously. Contentions to the contrary are without merit.

### B. Whether Writ of Mandate and Declaratory Relief are Precluded

In elucidating his position, part of Hearing Officer's argument is that he is not appropriately included in this case, because adequate relief is available through naming the City as

Respondent. He also states that quasi-judicial immunity precludes the claims against him. Petitioners argue in turn that the extent of quasi-judicial immunity does not encompass mandamus relief requested.

Hearing Officer argues that he is not a required party to the proceeding, and he persuasively cites *TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1365. He is correct that his inclusion is not necessary, and he is not indispensable as a matter of law. However, Petitioner accurately opines that there is a distinction between a "necessary party" and a "proper party". Petitioner is otherwise correct that Hearing Officer is related to the facts here. However, this is not the full scope of Hearing Officer's argument. The question remaining is whether the Petition states a claim for relief against Hearing Officer given his quasi-judicial immunities. He may be an improper party because he is not "indispensable", and because no relief may be obtained from him based on the facts alleged.[1] As Petitioner admits, Petitioner is required to allege sufficient facts against Hearing Officer to state a right to relief.

While the cases cited by Petitioner make clear that declaratory relief is not wholly barred, it is illuminative in that Petitioner's position is nonetheless misguided. Petitioner seeks relief opining that the Court should do two things, first to direct the Hearing officer to hear the case on its merits, overturning the Hearing Officer's finding that the meet and confer efforts by Petitioner did not satisfy the ordinance, and second to direct the hearing officer how to rule on two issues on which he did not issue rulings. Both appear beyond the bounds of what this Court *can* do in light of the doctrine of quasi-judicial immunity, and the rules around forms of mandamus. In *Mahler v. Judicial Council of California* (2021) 67 Cal.App.5th 82, 111, the Court determined that the principle of judicial immunity did not extend to prospective declaratory relief related to applications of policies. "[I]t is generally recognized by the federal courts that judicial immunity, unlike legislative immunity, does not foreclose suit for *prospective* declaratory relief and in limited circumstances does not foreclose injunctive relief." *Mahler,* at 109. In short, declaratory relief overcomes judicial immunities where it is forward looking. Petitioner's request that we find error is backward looking and is properly tendered to the administrative agency and not the Hearing Officer himself.

To the degree that the Court could engage in such declaratory relief *at all*, it would fall under mandamus to perform a ministerial duty under CCP § 1085, and *not* CCP § 1094.5. The lack of ruling is a function not performed but tendered to the hearing officer's discretion. Accordingly, the Court has no ability to compel a particular exercise of discretion, only that the Hearing Officer be compelled to perform the ministerial duty. *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700–701. Declaratory relief as a cause of action is *not* appropriately applied to compel particular governmental actions, beyond finding a statute unconstitutional. *State v. Superior Court* (1974) 12 Cal.3d 237, 249; *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263.

[1] Petitioner ominously opines the possibility of "a later action" (Supplemental Oppo., pg. 74:27-8:3), citing *Holder v. California Paralyzed Veterans Assn.* (1980) 114 Cal.App.3d 155, 162, but nothing in that decision opines that the hearing officer must be a party to the preceding mandamus action.

However, if there is no basis to include the Hearing Officer on Petitioner's first theory, we cannot reach the second. Petitioner's second contention, that the Court should mandate *what* the decision of the arbitrator should be on an issue where he has not made a ruling, appears to be an end run around the administrative process. For prospective declaratory relief to avoid judicial immunity, the controversy must be ripe and justiciable. *Mahler v. Judicial Council of California* (2021) 67 Cal.App.5th 82, 111. Petitioner provides no authority to show that the courts' intervention into matters not reached by the Hearing Officer are properly addressed here. Petitioners will likely argue that it is a declaration of future rights, but that overstates the scope of declaratory relief. It is a statutorily created creature with particular application, and petitioners provide no authority showing some common law application reaching to hypothetical administrative quasi-judicial determinations. The matter before the court lies in mandamus. The scope of the Court's review is the actions of the administrative agency, not its hypothetical future application. Petitioner asks for an advisory opinion, which the Court cannot give. This is not de novo review, the Court does not examine the entire record and make its determination fresh. Instead, the Court must review the record and conduct of the administrative agency and determine whether all ministerial duties were performed and quasi-judicial determinations fell within the Hearing Officer's discretion.

The Court notes, in the great many cases cited by the parties, that no case includes a hearing officer as a respondent to a mandamus petition. Simply put, neither administrative mandamus nor traditional mandamus are targeted to administrative hearing officers, but to the respondent agency. See, e.g., *Temple of 1001 Buddhas v. City of Fremont* (2024) 100 Cal.App.5th 456, 469; *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, 754. The lone case Petitioner cites for the proposition of including "board members" is nearly a century old and appears to have only been applied to name individual defendants in the context of writs of mandamus of medical boards. *Moran v. State Bd. of Medical Examiners of Dept. of Professional and Vocational Standards of Cal.* (1948) 32 Cal.2d 301, 315. That court did not analyze whether the particular remedies sought from the board members were foreclosed by any applicable quasi-judicial immunities. As such, it does not control the analysis here. The appropriate respondent is the City, who remains named in the action. Hearing Officer is not properly named due to the nature of mandamus and the immunity derived from his quasi-judicial role.

The demurrer by Hearing Officer to each cause of action is SUSTAINED.

C. Leave to Amend

The Court is mindful that this is the first iteration of the Petition. Were the dispute to revolve around a deficiency of facts, leave to amend would be clearly appropriate. However, here the demurrer by Hearing Officer revolves around *admitted* facts that concede an applicable immunity. Petitioners contend that the Petition is capable of being remedied but offers no elucidation of *how* it may be remedied. Despite the liberal allowance of amendment of the pleadings, Petitioner has offered no reasonable possibility that the defect may be cured by amendment. *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145. Accordingly, no leave to amend is proper.

IV. <u>Conclusion</u>

Based on the foregoing, the Hearing Officer's Demurrer is **SUSTAINED without leave to amend as to all causes of action**.

Hearing Officer's counsel 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).

**8. <u>25CV08739, Kuhlman v. Moore Services Holdings LLC</u>**

Plaintiff Zoanne Kuhlman, ("Plaintiff") filed a complaint on December 18, 2025, alleging causes of action for (1) breach of written agreement, (2) breach of implied covenant of good faith and fair dealing, (3) general negligence, and (4) tortious personal injury, against Defendants Moore Services Holding, LLC, dba, Moore Home Services ("Moore"), and Does 1-20, inclusive. Moore filed an answer on February 20, 2026.

Plaintiff now moves the Court on a Motion for Leave to File First Amended Complaint. Plaintiff's motion is **GRANTED**.

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

I. <u>Analysis:</u>

Plaintiff now seeks leave to file a First Amended Complaint to add a cause of action for Fraudulent Concealment.

Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit, and courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761.) "'Generally, leave to amend must be liberally granted…provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation.'" (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.) As long as the motion is timely and will not prejudice a party, it is normally an abuse of discretion to refuse to allow amendment if the denial will deprive a party of a meritorious claim or defense. (*Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.)

Plaintiff's motion is timely and the Court finds minimal prejudice to Defendant considering this motion is brought only 5 months after this action commenced. Defendant challenges the sufficiency of the new allegations. However,

> "Ordinarily, the judge will not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. Grounds for demurrer or motion to strike are premature. After leave to amend is granted, the opposing party will have the opportunity to attack the validity of the amended pleading…"

(Weil & Brown, Civil Procedure Before Trial (2025) § 6:644, citing *Kittredge Sports Co. v. Sup.Ct. (Marker, U.S.A.)* (1989) 213 Cal.App.3d 1045, 1048.) Accordingly, these arguments are premature and do not persuade the Court against granting leave to amend.

Finally, Defendant argues that the motion fails to comply with Rule 3.1324. The Court does not agree. Plaintiff's counsel stated that the need for adding a cause of action for fraudulent concealment became apparent upon reasonable diligence during the process of preparing documents from Plaintiff to Defendant in response to Defendant's first request for production of documents served on April 27, 2026. There is no requirement that Plaintiff identify the specific document that led to this discovery. Any procedural deficiencies that may exist do not warrant denial of the motion.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Plaintiff shall file the proposed first amended complaint within 10 days of this order.

**9. <u>SCV-272597, Truist Bank, in Successor by Merger to Sun Trust Bank v. Kidd</u>**

Plaintiff has filed a dismissal. Accordingly, THE MOTION HAS BEEN RENDERED MOOT.

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