TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, August 7, 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. 24CV07998, Soto v. FCA US LLC

APPEARANCES REQUIRED.

2. 24CV07952, Gonzalez v. Ford Motor Company

Plaintiff Maria Garcia Gonzalez ("Plaintiff") seek an award of attorney's fees pursuant to Civil Code Section 1794(d) and in connection with the parties' C.C.P. Section 998 Offer. Attorney's fees are **GRANTED** in the amount of $13,943.05. Costs are **GRANTED** in the amount of $2,631.70. The total award of attorney's fees and costs is $16,574.75 to Plaintiff pursuant to Civil Code Section 1794(d).

I. FACTUAL & PROCEDURAL HISTORY

On December 27, 2025, Plaintiff filed her Complaint against Defendants Ford Motor Company ("Defendant Ford Motor") and Hansel Ford, Inc. (dba Hansel Ford Lincoln) (together as "Defendants") alleging a violation of the Song-Beverly Act and negligent repair related to Plaintiff's 2022 Ford Bronco. On April 10, 2026, Plaintiff accepted a 998 Offer made by Defendant Ford Motor Co. on March 13, 2026, for a repurchase of Plaintiff's vehicle in the amount of $50,500.00. (Kirnos Decl., Exhibit C ["998 Offer"], ¶ 1.) The 998 Offer also provides for Plaintiff's attorney's fees and costs pursuant to Civil Code section 1794(d). (998 Offer, ¶ 2.) On April 24, 2026, Plaintiff filed a conditional notice of settlement of the entire case. Now Plaintiff seeks attorney's fees pursuant to Civil Code section 1794(d) as prescribed by the Section 998 Offer and its allocation of attorney's fees and costs. Defendant Ford Motor challenges the motion, arguing that counsel's rates, the number of hours, and costs claimed by Plaintiff's counsel are unreasonable.

II. DISCUSSION

A. Governing Law

California Civil Code section 1794(d) provides:

> If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

This statute "is consistent with California's approach to determining a reasonable attorney fee in various statutory and contractual contexts, which approach 'ordinarily begins with the "lodestar," *i.e.,* the number of hours *reasonably* expended multiplied by the *reasonable* hourly rate.'" (*Warren v. Kia Motors Am., Inc.* (2018) 30 Cal.App.5th 24, 36 quoting *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 [emphasis by the *Warren* court].) The statute also permits use of a multiplier of the lodestar figure. (*Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 822.)

B. Requested Fees and Costs

Plaintiff seeks a total of $27,335.95 for the following: attorney's fees for $24,704.25 ($8,234.75 [lodestar] plus $8,234.75 [multiplier of 1.5 or 50%]) and costs for $2,631.70.

a. Fees

i. The Reasonableness of the Hourly Rates

Plaintiffs' counsel requests fees for approximately 39.7 hours of time split between six attorneys/clerks, three paralegals, and one contract attorney/law clerk. (Kirnos Decl., Exhibit A.) Counsel requests the following rates: Morse at $500 per hour for 13 years of experience and a Partner of the firm; Meagle at $400 and $450 per hour for 7 years of experience; Mukai at $550 per hour for

16 years of experience and a Partner at the firm; Cutler at $550 per hour for 17 years of experience and a Partner at the firm; Leite at $350 for 2 years of experience and an Associate at the firm; Thomas at $525 per hour for 19 years of experience and an Associate at the firm; and Collazo at $295 per hour for 3 years of legal experience and as a licensed attorney in Puerto Rico, whose time is billed as a contracting law clerk in this case under the supervision of California licensed attorneys. (Kirnos Decl., ¶ 28.) The paralegals rates are as follows: Folia at $250 per hour for over 20 years of experience as a paralegal and a Senior Paralegal and Manager of Complex Litigation at an outside agency, Robinson Calcagnie, Inc.; Bustillo at $145 per hour for 3 years of experience as a paralegal; and Cortazar at $145 per hour for 11 years of experience as a paralegal. (Kirnos Decl., ¶ 28.) Counsel attached an itemized list of billable time to the Kirnos Declaration as Exhibit A.

To justify their rates and application of a multiplier, counsel attached evidence from numerous cases across various counties from the past several years where their requested rates have been awarded, including other Departments within this Court. (Kirnos Decl., Exhibits D–FF.) "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM*, *supra*, 22 Cal.4th at 1095.) "The experienced trial judge is the best judge of the value of professional services rendered in his court . . ." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) Further, "a Court is entitled to rely on its own practical experience in determining what is a proper rate within the community." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.) Therefore, the Court may reference the plethora of decisions attached to the Kirnos Declaration to determine whether the fees Plaintiff requests are reasonable but may also rely on its own experience.

Defendant Ford Motor challenges the rates of all attorneys—Kirnos, Cutler, Mukai, Morse, Thomas, Meagle, and Leite—as unreasonably excessive given the routine, non-complex nature of the case. Defendant Ford Motor cites various cases to support its argument that lower fees are more reasonable, including several unpublished federal cases. The Court first notes that while Kirnos' billing rate is $600 per hour, the limited billable time he had on this matter was ultimately not charged to the client and is not included in the 39.7 hours Plaintiff's counsel seeks. (Kirnos Decl., Exhibit A at p. 5 dated April 5, 2026.) The Court finds most of the attorney rates are reasonable for the Sonoma County locality, even considering the fact that this case did not pose any unusual or complex issues, especially for a firm that specializes in claims under the Song-Beverly Act. However, Plaintiff fails to explain why counsel Meagle billed at both rates of $400 and $450. For seven years of experience, the Court shall apply a rate of $400 per hour to all Meagle's billed time. Similarly, Morse billed at rates of both $500 and $525 without explanation. For 13 years of experience, the Court shall apply a rate of $500 per hour to all of Morse's billed time. Additionally, the Court finds $300 to be a more reasonable rate for Leite for two years of experience as an attorney.

Regarding the paralegals, Plaintiff fails to justify why a paralegal with 3 years of experience is billing at the same $145 per hour rate as a paralegal with 11 years of experience. The Court finds that the more appropriate rate for Bustillo for 3 years of experience as a paralegal is $100 per hour. Additionally, the Kirnos Declaration states Folia's hourly rate as $275 per hour but the itemized billing has her rate as $250 per hour. (Compare Kirnos Decl., ¶ 28(d) with Kirnos Decl., Exhibit A.) The

Court shall award $250 per hour for Folia given her 20 years of experience. The Court finds the rest of the requested rates to be reasonable given the various levels of experience.

ii. The Number of Hours Expended

Amongst the ten individuals that billed in this case, counsel requests 39.7 hours of time in total. The Complaint was filed on December 27, 2024, and Plaintiff accepted the 998 Offer on April 10, 2026 (about 15 months). Approximately 28.3 of the 39.7 hours billed occurred up until the 998 Offer being accepted. Until the 998 Offer, the time was spent drafting, analyzing, and responding to discovery as well as time spent on mediation efforts. Defendant Ford Motor challenges the number of hours requested arguing that Plaintiff's filings were based off templates prepared for and used in other Song-Beverly matters by Plaintiff's firm. In the Reply, Plaintiff argues that Ford Motor refuses to divulge how much time its own attorneys have spent on this case and without such comparison, the Court cannot determine the merits of Plaintiffs' arguments. Specifically, Defendant opposes the following billings:

- August 15, 2025 and August 18, 2025, for almost 5 hours for motions to compel further responses to RFPDs and Special Interrogatories (which Defendant argues is akin to Plaintiff's filings in *Arielle Suraci v. Ford Motor Company*, Sacramento County Superior Court Case No. 24CV026166, dated July 25, 2025); and
- December 29, 2025, for 2 hours for preparing a Reply in support of a motion to compel further responses to RFPDs (which Defendant argues is akin to Plaintiff's filings in *Jim Dietz v. Ford Motor Company*, Sonoma County Superior Court Case No. 24CV0685, dated May 30, 2025).

Upon review of Defendant's evidence, the Court acknowledges that the language across the motions in these cases appears to be verbatim except for the factual details of each case. (Wang Decl., Exhibits A–D.) Therefore, the Court reduces the hours requested from 4.7 hours to 2 hours across August 15, 2025, and August 18, 2025. The Court also reduces the hours requested from 1.4 hours to 1 hour on December 29, 2025. Lastly, counsel has included 3.5 hours of anticipated time reviewing and responding to an Opposition and attending the hearing. The Swanson Declaration in support of the Reply affirms that counsel Swanson (not counsel Cutler, as billed in the itemized list filed with the moving papers) has spent 2 hours reviewing Defendant Ford Motor's Opposition and drafting the Reply. (Swanson Decl., ¶ 4.) However, a hearing has not occurred, and the Court generally does not award attorney's fees for the preparation of an attorney's fees motion. The Court **GRANTS** the total reasonable fees in the amount of <u>$12,675.50</u> as follows:

Staff	Role	Adjusted Rate	Adjusted Time	Total Amount
Morse	Attorney, Partner	$500	0.8	$400.00
Meagle	Attorney, Associate	$400	5.4 (reduced by 3.1)	$2,160.00
Mukai	Attorney, Partner	$550	0.9	$495.00

Cutler	Attorney, Partner	$550	6 (reduced by 3.5)	$3,300.00
Leite	Attorney, Associate	$300	3.5	$1,050.00
Thomas	Attorney, Associate	$525	6.8	$3,570.00
Collazo	Law Clerk	$295	1.3	$383.50
Folia	Paralegal	$250	2.7	$675.00
Bustillo	Paralegal	$100	4.1	$410.00
Cortazar	Paralegal	$145	1.6	$232.00
Swanson	Attorney, Partner	--	0 (requested for Reply)	$0
			33.1	$12,675.50

iii. The Application of a Multiplier

Plaintiff seeks an enhancement of $8,234.75, which is a multiplier of 1.5 or 50% of the total attorney's fees requested. In considering whether to apply a multiplier, the Court should not consider factors which are already included in the lodestar amount, such as extraordinary skill and the difficulty of the question involved. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139.) While Counsel took this case on a contingency basis, their firm specializes in lemon law litigation and had 11 different staff members (including 7 attorneys) working on this case throughout its pendency. The instant case did not present a complex question and mirrored a standard Song-Beverly Act dispute. Several discovery matters were litigated in this Court and the case ultimately concluded with a 998 Offer resulting in a repurchase of the vehicle by the manufacturer made approximately 15 months after filing the Complaint. Based on these considerations, the Court will apply a multiplier of 1.1 or 10% of $12,675.50. Thus, the enhancement amount is $1,267.55. The adjusted fees total $13,943.05.

b. Costs

Plaintiffs also filed a memorandum of costs, totaling $2,631.70 consisting of: $705.00 for filing and motion fees, $150.00 jury fees, $933.20 for deposition costs, $101.00 for service of process, and $742.50 for "other". Defendant Ford Motor challenges the requested costs for failing to include the requisite invoices or documentation: $933.20 for deposition of Ford Motor's PMK and the $742.50 in "other" costs, including $505.00 for attorney services and messenger/court filing services, $75.00 for court appearance professionals, and $162.50 associated with mediation. In Reply, Plaintiff provided all invoices. (Swanson Decl., Exhibit A.) Based on these invoices and the memorandum of costs, the Court finds all costs to be reasonable. Therefore, costs are **GRANTED** in the amount of $2,631.70.

III. CONCLUSION

The motion is **GRANTED** pursuant to Civil Code section 1794(d). Attorney's fees are **GRANTED** in the amount of $13,943.05. Costs are **GRANTED** in the amount of $2,631.70. The total fees and costs awarded is $16,547.75 to Plaintiff.

Plaintiff'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).

3. 24CV07285, Holtzclaw v. Estate of Logan Michael Scroggins

Cross-Defendant Darrin Martin moves for summary judgment or summary adjudication in the alternative of the Third, Fourth, and Fifth Causes of Action asserted against him in the Cross-Complaint filed on May 1, 2025, by Julie Harris (as Personal Representative and Successor in Interest of the Estates of Logan Scroggins and Elisa Scroggins) and Emiliano Fernandez. The motion is **DROPPED as MOOT** as Cross-Complainants' counsel filed a request for dismissal of Mr. Martin on June 23, 2026. The Minute Order shall constitute the order of the Court.

4. 25CV02545, County of Sonoma v. Shapiro

Defendants Stephen Shapiro and Kerry Barnes (together as "Defendants") move the Court to grant them reasonable accommodation and stay the abatement order and for alternative relief under the Fair Housing Act and Americans with Disabilities Act, among other statutes. Defendants' requests for relief are **DENIED**. The August 26, 2026, hearing is **DROPPED** from calendar.

I. FACTUAL & PROCEDURAL HISTORY

This action arises out of an abatement action between the County and Defendants for various building and zoning code violations on Defendants' property located at 0 Brack Road, Healdsburg, California (the "Property"). (See Complaint, filed April 11, 2025.). On June 16, 2026, Defendants filed a motion for reasonable accommodation, a stay of the abatement order, and alternative relief under the Fair Housing Act and the Americans with Disabilities Act. Defendants also filed a motion to stay the proceedings on June 17, 2026, based on Defendant Shapiro's status as a disabled individual pursuant to 42 U.S.C. section 3617. This Court held a one-day court trial on June 23, 2026, and issued a Proposed Statement of Decision after Court trial on June 30, 2026, at Defendants' request. The Court ultimately ruled in favor of the County and against Defendants in the amount of $64,174.00. While the motions were made separately, the Opposition and Reply address arguments made in both the motion for reasonable accommodation and the motion for stay. Therefore, the Court now considers both motions filed June 16, 2026, and June 17, 2026, respectively. Defendants have cited a plethora of statutes between the two motions.

II. DISCUSSION

a. Procedural Defects in the Reply

There are several procedural defects with Defendants' Reply. First, it was untimely filed on Monday, August 3, 2026, when it was due Friday, July 31, 2026. Second, the Reply is 35 pages, well exceeding the 10-page maximum for reply memorandums. (See California Rules of Court, Rule 3.1113(d).) Third, the Court notes that most of the Reply consists of verbatim block quotes from various communications between the parties. Defendants do not include a copy of any of these communications with the Reply but instead rely on the quoted language in the Reply and do not explain the relevancy of the inclusion of these communications. In the interest of deciding motions on their merits, the Court shall consider Defendants' untimely Reply and all 35 pages.

b. Reasonable Accommodation

Defendants ask the Court to dismiss the instant action on the grounds that the County failed to comply with its obligations under the Fair Housing Act ("FHA") and the Americans with Disabilities Act ("ADA") prior to initiating enforcement proceedings against Defendant Shapiro who is disabled. In the alternative, Defendants request a stay of the abatement order to allow the parties to engage in a reasonable accommodation process or give Defendants an extended compliance timeline not less than 12 months to find a solution to legalize their current housing arrangement. Defendants cite to the FHA and the ADA with their central argument being that the County's enforcement of the abatement order without first engaging in an interactive reasonable accommodation process constitutes a violation of 42 U.S.C. Section 3604(f)(3)(B) [FHA] and 42 U.S.C. Section 12132 [ADA].

i. ADA and FHA

As the Court noted in its Proposed Statement of Decision, accommodations needed for Defendant Shapiro's disability was not raised in these proceedings until Defendants' June 16th and June 17th filings which were made after the time originally set for trial (May 15, 2026) and about three years after the County commenced action against Defendants and their Property. Outside the statutory language, Defendants offer no legal authority that would allow them to assert violations of the ADA and FHA as affirmative defenses rather than causes of action. The Court is unaware of any authority that would allow these claims to be raised as affirmative defenses in a motion made four court days before trial rather than being raised as independent causes of action pled in a complaint or cross-complaint. As previously expressed by the Court, even if Defendants now assert these violations as affirmative defenses, Defendants may not do so because affirmative defenses must be raised in the answer or else they may be deemed waived. (*Atkins v. St. Cecilia Catholic School* (2023) 90 Cal.App.5th 1328, 1341.) Defendants' Third Amended Answer filed on July 27, 2025, does not raise any defense based on a violation of the ADA or FHA or anything related to Defendant Shapiro's disability. California policy generally allows a party to introduce a new defense up until summary judgment so long as the opposing party has adequate notice and opportunity to respond. (*Atkins, supra,* 90 Cal.App.5th at 1341, quoting *Cruey v. Gannett Co.* (1998) 64 Cal.App.4th 356, 367.) However, four court days before trial is not adequate opportunity or notice to the County and failure to bring such arguments sooner unduly prejudices the County.

Lastly, Defendants fail to present any authority that 42 U.S.C. Section 3604(f)(3)(B) [FHA] and 42 U.S.C. Section 12132 [ADA] are applicable to the instant action. Section 3604 sets forth prohibitions against discrimination in the sale or rental of housing, which is not at issue in this case. (See also 42 U.S.C. § 3603(a).) Defendants own the Property and thus this Section prohibits Defendants as the owners of the Property from engaging in discrimination in the sale or renting of the

Property, which is not at issue. Furthermore, Section 12132 applies to public accommodations and does not apply to private residential dwellings. (*Nicholls v. Holiday Panay Marina, L.P.* (2009) 173 Cal.App.4th 966, 969, citing *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1552–1553.) Defendants provide no authority to the contrary.

ii. California Government Code

Again, Defendants fail to offer any authority showing how various Health and Safety Code sections and Government Code sections are applicable to their claims. California Government Code Section 65008 prohibits a local governmental entity from pursuing a planning or zoning action if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in California due to race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age. Defendants have failed to show how the County's action against them for enforcing building and zoning codes constitutes disability discrimination under Section 65008 when their request for reasonable accommodation was not brought to the County's attention until four court days before trial. Furthermore, Section 65852.3 prohibits the exclusion of certified manufactured and mobile homes on permanent foundation in single-family residential zones. Section 65852.4 prohibits local governments from subjecting certified manufactured homes on single-family lots to any planning, administrative, or development rules different from the rules applied to site-built single-family homes. Both of these sections are inapplicable as the instant action does not involve a certified manufactured or mobile home, but a travel trailer, cargo container, and other boats and vehicles on the Property. Furthermore, Defendants do not cite how such violations may be raised in a motion as a defense to enforcement rather than an independent action.

iii. Due Process Concerns

Defendants further argue that the County's failure to provide any reasonable accommodation process and its denial of permits violates their due process rights. Defendants fail to show how they have been deprived of due process. Defendants have been on notice of the violations since 2023 and received a full court trial on the issues raised by the County. Defendants chose to represent themselves throughout this action, even at trial. Their failure to raise authority that would allow the Court to consider their reasonable accommodation request does not render the County's prosecution of its abatement action as a violation of their due process rights.

c. Stay of Proceedings

Plaintiff moves to stay the proceedings based on 42 U.S.C. section 3617 and the Court's inherent power to stay proceedings in the interest of justice.

i. The Fair Housing Act

Plaintiffs assert a violation of 42 U.S.C. section 3617 under the FHA arguing that the County's inspection warrant immediately following Defendants' disability filing evidences prima facie retaliatory interference. The County contends that the federal housing statute has no bearing on this matter and Defendants have not shown that is applicable to their case nor have Defendants corroborated the alleged disability claim. However, any violation of 42 U.S.C. section 3617 is an independent claim under the FHA and is not properly brought as a defense to stay an action.

ii. California Code of Regulations

In Opposition, the County argues that no reasonable accommodation is required under California Code of Regulations, Title 2, Section 12176 because providing the requested accommodation would constitute undue financial and administrative burden, a fundamental alteration of its program and/or a direct threat to the health and safety of others. The County cites to the most recent inspection of the Property which is summarized as follows:

> The most recent inspection of the Property revealed it is in a fire prone area and continues to contain the lack of permitted septic disposal with sewage going into the ground, substandard and unpermitted occupancies of a travel trailer and boat, hazardous unpermitted and unsafe electrical with exposed wiring, multiple gas-powered generators on the property, an unpermitted water heater and hot tub, junk debris and storage of vehicles, and illegal water diversion.

(Opposition, 10:7–11.) Section 12176 generally prohibits housing providers from denying reasonable accommodations. The County is not a housing provider in this action because Defendants own their Property and Defendants provide no authority supporting the application of Section 12176 to the facts of this case. The Court agrees with the County that Defendants fail to provide a nexus between Defendant Shapiro's disability and their requested accommodation of dismissing the action in its entirety or allowing an "alternative compliance pathway". There is also no evidence that Defendants ever made a reasonable accommodation request with the County before they filed their motions in June 2026.

In Reply, Defendants cite to Section 14327 of California Code of Regulations for the first time and is not argued by the County. Generally, the Court does not address arguments that are brought for the first instance in a reply since it does not give the opposing party an opportunity to respond. However, in an effort to assist the parties, the Court shall briefly address this Section. Section 14327 prohibits a "covered entity" from refusing to provide a reasonable accommodation as needed to afford an individual with a disability a full and equal opportunity to use or enjoy programs or activities and requires covered entities to engage in a good faith interactive process once a request is made. A "covered entity" includes the state or a state agency or a local agency and any entity or individual involved in carrying out any program or activity of a local agency if any part of the local agency receives state support. (Cal. Code Regs., tit. 2, § 14020, subd. (m).) These Sections fall under the Nondiscrimination in State-Supported Programs and Activities, which is intended to prevent discrimination under "any program or activity that is conducted, operated or administered by the state or any state agency, is funded directly by the state, or receives any financial assistance from the state."

(Cal. Code Regs., tit. 2, § 14000, subd. (a).) Defendants have failed to show that the County is a "covered entity" that carries out any program or activity that receives state financial assistance included in this Section.

iii. The Court's Inherent Power

Even though Defendants do not cite any legal authority to support their request for a stay under the Court's inherent power, the "court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice." (*People v. Bell* (1984) 159 Cal.App.3d 323, 329.) "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." (*Landis v. North American Co.* (1936) 299 U.S. 248, 254–255.)

Here, Defendants argue that allowing the County to add new violations upon a disabled individual while a federal disability claim is pending is rewarding retaliatory conduct. As discussed above, none of the numerous statutes raised by Defendants in their papers authorize this Court to grant Defendants' requested relief. Therefore, the Court does not find a stay of this case to be procedurally effective or in the interest of judicial economy.

The Court understands the gravity of the instant action to Defendants and the resulting housing instability that may arise. However, Defendants chose to represent themselves in this action, including at trial, and have cited no legal authority that authorizes the Court to grant the relief they request at this time.

III. CONCLUSION

Both of Defendants' motions for relief are **DENIED**. Accordingly, the August 26, 2026, hearing is **DROPPED** from calendar.

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

5. 24CV06362, Shumate v. Sonoma County Sheriff's Office

APPEARANCES REQUIRED FOR PLAINTIFF'S APPEARANCE.

Defendant's demurrer to Plaintiff's First Amended Complaint was originally calendared to be heard on May 1, 2026. The Court notes that Plaintiff is incarcerated which can produce logistical challenges for appearances in this Court. Plaintiff made a request to be present at oral argument on

May 1st, but he was unable to appear. The Court wanted to ensure that Plaintiff's arguments on the motion were heard, so the Court continued the matter to July 10, 2026, for Plaintiff's appearance. (See Amended Minute Orders, dated May 1, 2026, and served May 4, 2026.) In the meantime, this Court signed an order requiring prison staff as High Desert State Prison to provide access to Zoom equipment as appropriate for Plaintiff to appear remotely for hearings in this case. (See Order Regarding Remote Appearance, filed May 8, 2026.) Plaintiff was unable to appear on July 10, 2026. The Court continued the matter to August 7, 2026, to ensure Plaintiff is heard on the matter. (See Minute Orders, dated July 10, 2026, and served July 13, 2026.)

However, amid these continuances, Plaintiff filed a Second Amended Complaint on June 16, 2026. Therefore, it appears to the Court that Plaintiff received a copy of the original tentative ruling on this matter posted on the Court's website on April 30, 2026. The Court now **ADOPTS** its prior tentative ruling as the ruling of the Court sustaining Defendant's demurrer to the First Amended Complaint with leave to amend. The Court further accepts the timely filing of Plaintiff's Second Amended Complaint on June 16, 2026, as the response to Defendant's demurrer to the First Amended Complaint. The next hearing in this case is on **Thursday, August 27, 2026, at 3:30 p.m.** in Department 17 for an Order to Show Cause as to the California Department of Corrections and Rehabilitation as to why they are not making Plaintiff available.

The Minute Order shall serve as the order of the Court.

The Court's previously published tentative ruling is **ADOPTED**:

Defendant Sonoma County Sheriff's Office ("Defendant") demurs 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. In other words, Plaintiff needs to fully exhaust the administrative complaint and associated appeal process before applying to this Court for relief. 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.