TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 11, 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. 24CV00905, JP Morgan Chase Bank NA v. Botsford

Plaintiff JP Morgan Chase Bank, N.A.("Plaintiff") filed the complaint in this action against defendant Amanda Botsford ("Defendant"), with causes of action related to a claim for common counts. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement filed August 5, 2024 (the "Agreement") to enter judgment in the case in the amount of $9,787.05, as Defendant has defaulted on the agreement. There is no opposition to the motion. The Motion is **GRANTED**.

I. Procedural and Evidentiary Issues

Pursuant to Plaintiff's request, the Court takes judicial notice of its own records within this case under Evid. Code § 452, particularly the notice of settlement filed August 5, 2025, and attachment of the settlement terms and execution thereto (the "Settlement"). Accordingly, Plaintiff's request for judicial notice is GRANTED.

II. 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. "Although a court may not add to or make a new stipulation without mutual consent of the parties (*Citation*), it may reject a stipulation that is contrary to public policy (*Citation*), or one that incorporates an erroneous rule of law (*Citation*)." *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664 (internal citations omitted). "(T)he court's authority under Code of Civil Procedure section 664.6 to either approve or disapprove a settlement agreement but not to modify its terms…" *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375. 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.

III. <u>Analysis</u>

Plaintiff moves the Court for a judgment pursuant to the Agreement. Plaintiff asks for $9,787.05 in principle, and $0 in costs. The Agreement states that Defendant owes $10,327.05, and costs of $0.00. The Agreement states that Defendant is to receive credit for any and all payments made. Defendant was to make monthly payments under the terms of the Agreement for amounts varying between $90 (Agreement ¶ 4) starting on June 28, 2024, followed by monthly payments of $386 starting on June 28, 2025, with a final payment of 369.05 on May 28, 2027. Defendant paid a total of $540.00, with the last payment made on November 28, 2024. See Counsel's declaration ¶ 5, 7. No costs are requested. The Agreement states that upon default of the terms of the agreement, the full balance will become due. See Agreement ¶ 4. Therefore, the amounts of $9,787.05 in principle, and $0.00 in costs are appropriate.

Plaintiff avers that Defendant has breached the agreement by failing to remit timely payment in accordance with its terms. Defendant has filed no opposition to the motion. Therefore, the Motion is **GRANTED**.

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).

2-4. <u>25CV01947, Saad v. Stephens</u>

The Discovery Referee in this matter has contacted the Court and informed that the instant motions are near resolution by stipulation. He has requested that the Court continue the matter to allow the parties to finalize their agreement and resolve the matter.

Therefore, the matter is continued to December 2, 2026, at 3:00 pm in Department 19.

5. <u>25CV04270, Diaz v. County of Sonoma</u>

Plaintiffs Esteban Diaz and Esteban Diaz Marble Tile and Stone LLC ("Plaintiffs") have filed the currently operative first amended complaint (the "FAC") against defendants County of Sonoma ("Defendant") and Does 1-10 with a cause of action to set aside the judgment in case SCV-265769 (the "Prior Action").

This matter is on calendar for demurrer to the FAC filed by Defendant for failure to state a cause of action.

I. <u>Governing Law</u>

A. <u>Demurrers Generally</u>

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.

B. <u>Fines and Administrative Orders</u>

"Failure to obtain judicial review of a discretionary administrative action by a petition for a writ of administrative mandate renders the administrative action immune from collateral attack, either by inverse condemnation action or by any other action." *Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th 592, 608. The 90-day limitation under section 1094.6 "is a procedural limitations provision and, consequently, jurisdictional." *Donnellan v. City of Novato* (2001) 86 Cal.App.4th 1097, 1103. Where an administrative hearing order is not timely appealed, a trial court lacks the power to modify the amount of the penalties. *County of Sonoma v. Gustely* (2019) 36 Cal.App.5th 704, 712.

C. Set Aside of Judgments

Duress is a basis for set aside of judgments under CCP § 473 (b). *In re Marriage of King* (2000) 80 Cal.App.4th 92, 108. This includes stipulated judgments. *Ibid*; *In re Marriage of Gonzalez* (1976) 57 Cal.App.3d 736, 739. Fraud, whether extrinsic or intrinsic, is also basis for set aside of a judgment under CCP § 473 (b). *Rice v. Rice* (1949) 93 Cal.App.2d 646, 651.

"(A) court, sitting in equity, can set aside or modify a valid final judgment. (Citations.) This power, however, can only be exercised when the circumstances of the case are sufficient to overcome the strong policy favoring the finality of judgments." *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 470. "After relief is no longer available under Code of Civil Procedure section 473 for mistake, inadvertence, surprise or excusable neglect, an otherwise valid and final judgment may only be set aside if it has been obtained through extrinsic, not intrinsic, fraud." *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1068. "A judgment could be attacked at any time either by motion or in an independent action in equity on the ground that it was secured by extrinsic fraud." *In re Estrem's Estate* (1940) 16 Cal.2d 563, 571.

Equitable set aside has three elements beyond extrinsic fraud or mistake: "First, the defaulted party must demonstrate that it has a meritorious case. Second[ ], the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Last[ ], the moving party must demonstrate diligence in seeking to set aside the default once ... discovered.'" *Politsch v. Metroplaza Partners, LLC* (2025) 109 Cal.App.5th 397, 405, quoting *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982.

"Extrinsic fraud only arises when one party has in some way fraudulently been prevented from presenting his or her claim or defense." *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300.

> Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant; or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding. (*Citation.*) Examples of extrinsic fraud are: concealment of the existence of a community property asset, failure to give notice of the action to the other party, and convincing the other party not to obtain counsel because the matter will not proceed (and then it does proceed). (*Citations*.) The essence of extrinsic fraud is one party's preventing the other from having his day in court.

City and County of San Francisco v. Cartagena (1995) 35 Cal.App.4th 1061, 1067 (Citations omitted).

II. **Evidentiary and Procedural Issues**

Defendant requests judicial notice of several documents from the Prior Action (RFJN, Ex. 1-7), as well as Plaintiff's action against his former attorneys from the Prior Action (RFJN, Ex. 8). Finally, Defendant requests judicial notice of the prior order on demurrer in this case (RFJN, Ex. 9). The Prior Action, being the basis for Plaintiff's claim here, is appropriately the subject of judicial notice. Inconsistent allegations across similar suits by Plaintiff are appropriate for judicial notice and consideration on demurrer. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. Other documents within this case are undoubtedly appropriate.

The requests for judicial notice are GRANTED.

Plaintiffs (by and through counsel) make various allegations in the FAC related to the conduct of the Defendant in an overarching scheme of vindictive enforcement actions. While questionable, the greater issue is the allegation that "it appears that the Court has become a team member of the County agenda report…". FAC ¶ 102. The FAC further alleges the Court's involvement in the increase in fines, and Constitutional violations thereon. FAC ¶¶ 122 and 128. Plaintiffs' counsel, Herman Franck, is cautioned against allegations of conspiracy and malfeasance by the Court that he cannot prove. The Court has *no* discretion to modify the rate attributed by the administrative hearing once that decision becomes final. *County of Sonoma v. Gustely* (2019) 36 Cal.App.5th 704, 713. The nature of these attacks may violate Counsel's ethical duties. Counsel is required to maintain due respect to the Court and its judicial officers. Bus. & Prof. Code § 6068(b). Attorneys may be subject to discipline by the state bar for "making unjustified and demeaning allegations against judicial officers." *Ramirez v. State Bar* (1980) 28 Cal.3d 402, 412. Counsel is advised to be discerning with his choice of language. "When made without evidentiary support, accusations that a judicial officer intentionally refused to follow and apply the law constitute reportable misconduct." *In re M.V.* (2025) 109 Cal.App.5th 486, 525. "Words are to lawyers, as scalpels are to surgeons. They are tools to be used with precision." *People v. Ramirez* (2024) 104 Cal.App.5th 315, 320. Counsel Herman Franck is cautioned to constrain himself to allegations with a basis in law and fact.

III. <u>Demurrer</u>

The Complaint alleges that Plaintiffs were subject to significant and undue pressure by Defendant in the Prior Action, which resulted in substantial health issues. Plaintiffs allege that these pressures, based in part on the fabrication of evidence, resulted in his assent to a stipulated judgment under duress. He therefore seeks to set aside that judgment.

Defendant brings the instant demurrer, arguing that the Plaintiff has failed to state a claim for set aside of the judgment. Plaintiffs allege that the alleged conduct by Defendant's counsel in the prior case caused him to sign the stipulated judgment under duress, and that forms sufficient basis for set aside of the stipulated judgment.

This matter was previously before the Court on demurrer addressing the sufficiency of Plaintiffs' allegations that duress and extrinsic fraud give cause for the Court to set aside the stipulated judgment. The Demurrer was sustained with leave to amend. Plaintiffs have now added additional theories for set aside, along with additional allegations that they claim bolster their theory of extrinsic fraud.

A. Extrinsic Fraud

Defendant again argues that the facts present here do not constitute extrinsic fraud. Plaintiffs aver that their settlement resulting from fear of foreclosure constituted exclusion from trial, and therefore amount to extrinsic fraud. The Court's prior order on demurrer addresses the current contentions almost entirely.

> Defendant contends that Plaintiff's represented status in the Prior Action almost entirely forecloses the possibility of extrinsic fraud. The Court is not entirely persuaded that the mere fact that Defendant was represented is sufficient to transmute *any* extrinsic fraud to intrinsic fraud. Defendant cites to *Westinghouse Credit Corp. v. Wolfer* (1970) 10 Cal.App.3d 63, 69, which held that receipt of erroneous legal advice regarding whether a defendant had a meritorious defense is intrinsic fraud, not extrinsic. This contention addresses *some* of Plaintiff's allegations but fails to relate to the allegations of duress. To the degree that Plaintiff alleges that his former counsel strongly urged him to take the settlement agreement, this **is** clearly controlled by *Westinghouse*. Plaintiff had the benefit of counsel and received a stipulated judgment significantly below the amount sought in the Defendant's complaint. While Plaintiff contends that his counsel made error, he fails to display that an error occurred. As the Court addresses further below, Plaintiff does not proffer a valid defense to the underlying action, and no other error appears contended. Again, even if the advice was erroneous, it was not *passive*. Plaintiff actively stipulated to the judgment thereafter. If it is fraud at all, this is intrinsic. *Westinghouse Credit Corp. v. Wolfer* (1970) 10 Cal.App.3d 63, 70; *contra Politsch v. Metroplaza Partners, LLC* (2025) 109 Cal.App.5th 397, 405 (erroneous legal advice not to participate in the lawsuit at all might constitute extrinsic factors).

Nothing Plaintiffs allege here amounts to extrinsic fraud. Plaintiffs continue to argue that their fear resulting in settlement, and therefore lack of opportunity to present their "defenses", makes the statements by County Counsel extrinsic fraud. Plaintiffs argue that because the homestead exemption exists, the statement was false, and he relied upon the statement in deciding to settle the Prior Action. Plaintiffs' arguments regarding the homestead exemption improperly frames the nature of a judgment in the Prior Action. Plaintiffs *may* have been able to protect the interest in his home through use of the homestead exemption. But Plaintiffs conflate protection of the home with some form of exemption from the judgment itself, and nothing alleged or argued would support that proposition. Moreover, the mistaken urging by their counsel is a purely legal error. "The mistake involved would be one of law rather than one of fact. It would appear to be intrinsic rather than extrinsic." *Westinghouse Credit Corp. v. Wolfer* (1970) 10 Cal.App.3d 63, 69. Plaintiffs make no factual allegations that meet the legal standard for extrinsic fraud. As Defendants argue, no facts in the FAC support a contention that Plaintiffs would not be liable for a judgment (the amount in the underlying administrative decision) had the matter not been settled. The "scope" of the misrepresentation is the *effect* of the judgment, not the judgment itself. Whether foreclosure was a remedy available under the judgment is an issue of *law*, not of fact. It is therefore intrinsic.

Plaintiffs cite *In re Marriage of Park* (1980) 27 Cal.3d 337, 342-343, arguing that the Court should attribute "broad meaning" to the principle. This fails to appreciate the remainder of that court's holding, opining that these "tend to encompass almost any set of **extrinsic** circumstances which deprive a party of a fair adversary hearing" *Id*. at 342 (emphasis added). The issue here is simply not shown to be extrinsic in any manner. Plaintiffs were present at court. They were represented by counsel. They signed the settlement agreement before it was presented to the Court. The facts alleged by Plaintiffs, including the court hallway "threats" Plaintiffs overheard, go to intrinsic conduct inherent to the proceeding. Plaintiffs' allegations of extrinsic fraud are purely a legal conclusion and not entitled to consideration at demurrer. There are no facts to support the theory, the facts alleged constituted only intrinsic fraud, and therefore there is no basis to apply equitable relief for extrinsic fraud. "[M]istaken legal advice from one's own counsel has been held not to be an extrinsic mistake justifying the setting aside in equity of a final judgment." *Westinghouse Credit Corp. v. Wolfer* (1970) 10 Cal.App.3d 63, 70. Even on the allegedly erroneous advice of his own counsel and threats of the opposing party, Plaintiffs' strategic decision to settle the matter to avoid a specified risk is inherent to the proceeding itself. It is not extrinsic in nature. Accordingly, the cause of action for extrinsic fraud fails.

B. Duress

The Court's prior determination is not addressed by Plaintiffs in their opposition. As the order on the prior demurrer noted, there is no case cited by Plaintiffs showing that duress is a basis for collateral attack on a judgment. Plaintiffs' arguments appear to reiterate their prior theories, and so recitation of the prior order appears appropriate. The prior order found:

> Plaintiff further contends that the Complaint states a cause of action related to equitable set aside because Defendant placed him under duress when he signed the stipulated judgment. Plaintiff primarily relies on *In re Marriage of Gonzalez* (1976) 57 Cal.App.3d 736 ("*Gonzalez*"). In that case, wife entered into a property settlement agreement before trial with husband which was significantly disadvantageous to her. *Id*. at 739-740. Wife attributed her willingness to sign the agreement to duress, averring that husband had told her she had to sign the agreement, or he would take their mutual children. *Id*. at 745-746. Wife filed a recission of the settlement agreement, and the trial court found recission of the agreement justified based on duress. *Ibid*. The Court of appeal affirmed, finding that there were facts sufficient to support the trial court's finding of duress. *Ibid*.
>
> Defendant argues that *Gonzalez* bears no similarity to the instant case. A point the Defendant fails to directly raise, but appears dispositive to Plaintiff's line of reasoning, is that there is no case applying principles of duress to separate equitable lawsuits to set aside judgments. However, this is precisely why Defendant's argument that *Gonzalez* is distinguishable is accurate. Defendant appears incorrect that *Gonzalez* bears *no* similarity to the instant case. Both cases

involve settlement agreements undertaken by represented parties, and subsequent efforts to set those agreements aside. Where the cases diverge is in two important respects. First, wife in *Gonzalez* received her relief in the underlying case, and not in external proceedings, filing the recission just three months after entering the agreement. *Id* at 739-740. Here, Plaintiff has filed this in a separate case, and petitions for equitable relief more than two years after signing the agreement.

Plaintiff nonetheless contends that the facts here are sufficient for equitable relief. However, Plaintiff's leap in logic is that duress is entitled to the exact same remedies as extrinsic fraud. *Simply put, no authority equates duress to fraud, or extends equitable relief to duress.* While both extrinsic fraud and duress may cause parties to fail to act within a proceeding, they are distinguishable principles. In the case of *extrinsic* fraud, a party (typically defendant) is denied the opportunity to present their case due to fraudulent conduct by the other party or a mistake. The policy logic for allowing a party to bring a separate suit for set aside of a judgment based on extrinsic fraud is that the party may not be aware of the facts sufficient to participate in the proceedings, and discovery of those facts would otherwise give rise to reason to set aside the prior judgment. Also possible is that obstacles have rendered the party incapable of participating despite knowledge of the proceeding. See, *In re Marriage of Park* (1980) 27 Cal.3d 337, 342. Duress may also cause a party to be denied an opportunity to present their case, but duress is nonetheless distinguished from extrinsic fraud because a party cannot profess ignorance of duress. Either the party was so perturbed by the conduct that they acted as they otherwise might not have, and the need to move under CCP § 473 is obvious, or the party was not under duress. No authority extends the right to set aside under duress beyond the confines of a motion under CCP § 473(b). See, e.g., *In re Marriage of King* (2000) 80 Cal.App.4th 92, 109 (motion for set aside under duress was untimely.). Extrinsic fraud's particular subversive nature is the justification for the equitable cause of action to set aside judgment.

This is further supported by the elements required to show set aside due to extrinsic fraud or mistake. Each case dealing with equitable set asides either cited by the parties or located by the Court deal with set aside *of a default or proceedings in absentia*. See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982 ("the moving party must demonstrate diligence in seeking **to set aside the default once ... discovered.**" [Emphasis added]); *In re Marriage of Park* (1980) 27 Cal.3d 337, 342 (wife was deported and left unaware of proceedings and unable to participate). What occurred here was not a default. Plaintiff participated in the underlying case, and the averred duress occurred at the courthouse directly before trial. Plaintiff, whether due to fear or not, entered into an agreement and resultant judgment. He was aware of the effect of the agreement, and there is no basis to extend those equitable remedies available to parties left in a deficit of information.

Nothing now averred to constitute duress addresses the inherent issue. Duress has not been held to be a basis for collateral attack on a judgment. *Gonzalez*, on which Plaintiffs again rely, continues to be inapposite because it is not a collateral attack, but relief in the underlying case. Timely set aside of the judgment in the prior case *may* have been available under the facts alleged, but the procedural posture presented here is not a viable basis under which to set aside for duress. The Court need not reach the sufficiency of duress allegations as a result.

C. Recission

Plaintiffs, for the first time in the FAC, attempt to separately state a cause of action for recission of the stipulated judgment. Plaintiffs appear to utilize the title of recission to bring life to the claim of duress. Plaintiffs again cite to *Gonzalez*, but again fails to appreciate or address that it is inapposite for all the reasons already addressed on the prior demurrer and again above. Recission in *Gonzalez* is the remedy for the allegation of duress and is not a separate suit subject collaterally attacking the stipulated judgment. No case holds that recission for duress is a basis for collateral attack. Indeed, cases related to stipulated judgments are clear that they are *not* simply contracts. A stipulated judgment "which does not conform to a stipulation may be reformed or contested on direct appeal but may not be collaterally attacked on the ground it fails to conform to the stipulation of the parties." *Ellena v. State of California* (1977) 69 Cal.App.3d 245, 259. It stands to reason that other failures in the formation of the stipulated judgment are equally incapable of collateral attack. "A stipulated judgment or other order in excess of the court's jurisdiction may not be collaterally attacked absent unusual circumstances or compelling policy considerations." *In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 988–989. The legally supported policy considerations are already addressed above in the form of the analysis on extrinsic fraud.

There is simply no authority cited by Plaintiffs showing that a stipulated judgment is subject to attack through a recission cause of action. "A judgment by stipulation is as conclusive a bar as a judgment rendered after trial." *Ellena v. State of California* (1977) 69 Cal.App.3d 245, 259. Recission fails because Plaintiffs seek not just to unwind a contract, but a judgment. Plaintiffs have no power to "rescind" a judgment. The cases are clear that Plaintiffs must address this under theories applicable to judgments as a result. No cause of action for recission is stated.

D. Other Equitable Set Aside Requirements

Among the bases raised by Defendant in the prior demurrer, and found persuasive by the Court, was that Plaintiffs failed to meet the additional requirements for equitable set aside. Plaintiffs argue, in repetition of the prior version of the complaint, that he was denied the opportunity to present a meritorious defense. Again, Plaintiffs make this argument without making any showing that any such defense is viable.

Plaintiffs' new allegations of the homestead exemption is both misleading and irrelevant. This appears to attempt to weave the alleged basis of the fraud and duress claim into a substantive defense to the Prior Action. Additionally, it does not state a substantive defense to the judgment, and as such does not actually present a meritorious defense as required. As the Court has already addressed, the County's hearing decision was final and unappealable at the time that the Prior

Action was initiated. While Plaintiff continues to allege that he had a factual defense to the abatement action, the procedural posture of the Prior Action means that defense was not available to him. The administrative decision was final, and outside the Court's jurisdiction to review. *Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th 592, 608. Absent pleading a meritorious defense to the prior action, equitable set aside is not an available remedy.

E. Leave to Amend

The defects here are not with the sufficiency of the facts, but the very nature of what they claim. The prior demurrer was sustained on the same legal bases. None of Plaintiffs' new allegations impact the result. It does not appear likely that Plaintiffs can amend to state the causes of action. They have offered no articulable method by which the FAC could be remedied.

The Demurrer to the First cause of action for Equitable Set Aside and Second cause of action for Recission is SUSTAINED without leave to amend.

IV. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED 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. 25CV05670, Waugh School District v. Axia Architects

Plaintiff Waugh School District ("Plaintiff") filed the currently operative first amended complaint (the "FAC") against defendants Axia Architects ("Defendant") and Does 1-10.

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.**

I. Governing Law

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.

B. Statute of Limitations

Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321. Where the demurrer based on statute of limitations is argued from judicially noticed documents, the truth of dates within those documents is inadmissible hearsay, and is not appropriate for judicial notice. *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660-661. To sustain demurrer on such judicially noticed material is error. *Id*. Where the allegations are that the incident occurred "on or about" a particular date, the demurrer should be overruled, as it is sufficient for the purposes of pleading that the claim may be timely. *Childs v. State of California* (1983) 144 Cal.App.3d 155, 160.

"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.

"A defendant will be estopped to invoke the statute of limitations where there has been "some conduct by the defendant, relied on by the plaintiff, which induces the belated filing of the action." (3 Witkin, Cal.Procedure (3d ed. 1985) Actions, § 523, p. 550.)". *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43. "Tolling during a period of repairs rests upon the same basis as does an estoppel to assert the statute of limitations, i.e., reliance by the plaintiff upon the words or actions of the defendant that repairs will be made." *A & B Painting & Drywall, Inc. v. Superior Court* (1994) 25 Cal.App.4th 349, 355. "Where a potential defendant has promised to remedy a portion of the damages suffered by the plaintiff, it would be unreasonable to expect the plaintiff to jeopardize the possibility of repair by filing a lawsuit as to items of damage not covered by the defendant's promise." *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43.

C. Breach of Contract

"The statute of limitations for a breach of contract claim begins to run at the time of breach (that is, when one party fails to perform as contractually required)." *Piedmont Capital Management, LLC v. McElfish* (2023) 94 Cal.App.5th 961, 964. "In such a contract, where the parties did not mutually abandon or rescind it upon a breach or successive breaches, the injured party could wait until the time arrived for a complete performance by the other party and then bring an action for damages for such breaches." *Union Sugar Co. v. Hollister Estate Co.* (1935) 3 Cal.2d 740, 745–746.

II. <u>Demurrer</u>

A. Statute of Limitations

While Defendant demurs separately to both the cause of action for breach of written contract and the cause of action for professional negligence, both contentions rest on the same query. Installation of the system was completed in August 2019. SAC ¶ 22. Documentation of the fire alarm issues was assembled "On or about August 18, 2020, and thereafter". SAC ¶ 25. Defendant argues that the SAC cannot be interpreted as having the actions accrue any later than the August 18, 2020, date. They therefore assert that the statutes of limitations for both breach of contract (four years) and professional negligence (two years) had lapsed at the time this action was filed. Plaintiff opposes, arguing delayed discovery and estoppel prevented accrual of the action, and that therefore the action was timely.

First, Defendant's contention that the cause of action began to accrue no later than August 18, 2020, fails. "On or about" allegations are not susceptible to demurrer for statute of limitations.

Childs v. State of California (1983) 144 Cal.App.3d 155, 160. As the Court addresses below, the discovery rule and other principles of tolling apply to the date of "Completion". Given that, the remainder of the date based allegations are not sufficient to show the untimeliness of the complaint. Defendant's repeated averment that the SAC should be read to find the claims untimely based on vague language is undoubtedly improper for demurrer. See, e.g. Demurrer, pg. 10:6-12. The SAC is entitled to liberal interpretation, and must be construed to state a timely cause of action if possible. "It is not enough that a complaint shows that the action may be barred." *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. The SAC cannot be read in such a manner at demurrer.

Second, Defendant's demurrer takes the analysis into the query of whether Plaintiff's conduct was reasonably diligent, based on Plaintiff's assertion of the discovery rule. At demurrer, Plaintiff's reasonable diligence cannot be weighed. *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 321. It is enough that the cause of action *may* be timely. *Id*. The allegations of the SAC are sufficiently stated that the cause of action may have been delayed by the discovery rule.

Third, various similar legal principles make clear that some form of tolling may apply. Plaintiff argues that Defendant is estopped from asserting statute of limitations because they made repair attempts while hiding their own error. Fraud can toll the statute of limitations. Moreover, repair attempts do toll the statute of limitations. These are generally understood to fall under the more general argument of estoppel. "Where a potential defendant has promised to remedy a portion of the damages suffered by the plaintiff, it would be unreasonable to expect the plaintiff to jeopardize the possibility of repair by filing a lawsuit as to items of damage not covered by the defendant's promise." *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43. Here, it is alleged Defendant engaged in post-completion conduct to remedy the ongoing issues with the system, performing these under the "basic services" portion of the contract. SAC ¶ 26. Defendant allegedly prepared the repair plans at no cost to Plaintiff in June 2023. SAC ¶ 34-35. That repair work was completed in December 2023. SAC ¶ 35. This appears more than sufficient to plead estoppel based on Defendant's repair attempts. Again, this is a determination of fact, not of law, and therefore does not appear appropriate basis to sustain a demurrer. *In re Pieper's Estate* (1964) 224 Cal.App.2d 670, 691.

Similarly, breach of contract does not accrue until the time of the breach. *Dacey v. Taraday* (2011) 196 Cal.App.4th 962, 983. Here, Defendant continued providing repairs under the "basic services" of the contract after the date of completion. It stands to reason that so long as the continued support was provided, Defendant was not yet in breach. *Union Sugar Co. v. Hollister Estate Co.* (1935) 3 Cal.2d 740, 745–746. Once it became apparent that the support was no remedy for the system, breach was actualized. *When* it became apparent is an issue of fact.

Accordingly, the SAC does not concede facts which would cause the allegations to accrue any earlier than December 2023, when the repair work designed by Defendant was completed. The filing of the initial complaint on August 15, 2025 was therefore timely under the statutes of limitations for both breach of contract and professional negligence.

Based on the averment of statute of limitations precluding Plaintiff's claims, as to the First and Second causes of action, Defendant's demurrer is OVERRULED.

B. Issues not Addressed by the Parties

Though both parties address *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363 ("*Lantzy*"), neither addresses the thrust of that case. *Lantzy* is primarily a holding regarding the application of repair tolling (or lack thereof) to construction defect claims under CCP § 337.15. It is notable that CCP § 337.15 applies to latent construction defects, and sets a ten year statute of limitations running from the date of substantial completion. The statute of limitations for patent defects is four years, but is also subject to estoppel for repair. See CCP § 337.1. Defendant is an architect performing professional design services. SAC ¶ 10. While the system was wireless (SAC ¶ 23), this was attempted in lieu of a hardwired installation, which had to be effectuated as the eventual solution to the alleged issues (SAC ¶ 35). On the face of the SAC, there are sufficient allegations to raise significant issues as to the appropriate primary right, and therefore the appropriate statute of limitations. *Austin v. Medicis* (2018) 21 Cal.App.5th 577, 584. This too would form sufficient basis to overrule the demurrer.

IV. Conclusion

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

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).

7. 25CV06935, JP Morgan Chase Bank N.A. v. Harvey

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff"), filed the complaint in this action against Myles L. Harvey ("Defendant") with causes arising out of an alleged breach of contract (the "Complaint").

This matter is on calendar for the motion by Plaintiff seeking to deem admissions admitted under CCP § 2033.280, and sanctions thereon. The Motion is **GRANTED**.

I. Governing Law

A. Deem Admissions Admitted

Code of Civil Procedure section 2033.280(a) provides in relevant part that if a party to whom requests for admission are directed "fails to serve a timely response," the party to whom the requests are directed waives any objection. CCP § 2033.280(b) provides that "[t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction." CCP § 2033.280(c) provides that the court "shall make this order" unless it finds that the party to whom the requests have been directed has served a proposed response in substantial compliance with section 2033.220 before the hearing on the motion.

II. Analysis

The Motion is accompanied by proofs of service showing that service of the moving papers was timely made on Defendant. The Motion is unopposed. Plaintiff served the request for admission on December 12, 2025, and Defendant served no response. This motion followed on June 2, 2026. The hearing date was served on July 7, 2026. No opposition was filed. The Motion is therefore **GRANTED**. The truth of the matters set forth in Plaintiff's First Set of Requests for Admission (Declaration of Smita Suman, Ex. 1) are deemed admitted. CCP § 2033.280(b).

III. Conclusion

Plaintiff's motion to deem admissions is **GRANTED**. The truth of the matters set forth in Plaintiff's First Set of Requests for Admission (Declaration of Smita Suman, Ex. 1) are deemed admitted. Plaintiff will attach the admissions as an exhibit to the proposed order submitted.

Plaintiff'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. SCV-265714, County of Sonoma v. Castagnola

Plaintiff County of Sonoma (the "County"), filed the complaint in this action against the property owner in this case, defendant Michael L. Castagnola, as trustee of the Michael L. Castagnola revocable trust ("Defendant") alleging zoning violations and public nuisance under California Health and Safety Code §§ 17980 *et seq.* present at the property commonly known as 12778 Dupont Road, Sebastopol, California (the "Property"). The matter is currently set for final approval and discharge of the receiver, Mark Adams ("Receiver"). The matter is CONTINUED.

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. Analysis

The Receiver has filed a report stating that due to circumstances beyond the control of both the Receiver and the Court, Receiver has been named as a defendant in another suit derived from his duties as receiver. The Court previously continued this motion to allow the other case to reach a conclusion. Receiver avers that case 25CV08769 relates to his conduct in the scope of the receivership, and as such he cannot request final approval until that matter is finally determined. The demurrer in that matter was sustained without leave to amend, meaning the case has reached its terminus. However, Receiver states that he intends to file a motion for attorney's fees related to an Anti-SLAPP motion rendered moot by the demurrer. Courts have previously held that fees for such a motion are recoverable, even where the Anti-SLAPP motion is rendered moot. *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1055. Any recovered fees would *reduce* the costs attributable to the receivership estate. Therefore, continuing this matter one final time for Receiver to pursue all available fees appears to be in the interest of everyone in this case.

However, it appears appropriate to set necessary limitations on the time granted to Receiver to conclude that proceeding. Receiver is ordered to file the motion for fees in the other case no later than September 30, 2026.

The hearing on final approval and discharge is continued to January 22, 2027, at 3:00 pm in Department 19. Receiver is to file a declaration regarding the status of the other case, and if proper the other information applicable to final approval by January 8, 2027. Any opposition to final approval, assuming the other case has resolved, is to be filed by January 13, 2027.

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