

California First District Court
of Appeal Opinion,
Case No. A172007
(Sept. 30, 2025)

Appendix

A

APPELLATE COURT OPINION A172007 093025

Plaintiffs appeal from a judgment of dismissal entered after the trial court sustained defendant's demurrer to plaintiffs' second amended complaint without leave to amend. We affirm the judgment.

BACKGROUND

Plaintiffs filed a complaint for breach of contract, common counts, and legal malpractice against defendant. The court sustained defendant's unopposed demurrer with leave to amend and granted its unopposed motion to strike.

Plaintiffs filed a first amended complaint (FAC), and defendant filed a demurrer and motion to strike the FAC. The hearing on these motions was taken off calendar because plaintiffs had refused to meet and confer, and the court ordered plaintiffs to meet and confer. Defendant refiled the motions after the meet and confer, plaintiffs opposed the motions, and the court sustained the demurrer with leave to amend and granted the motion to strike.

On April 26, 2024, plaintiffs filed a second amended complaint (SAC). In May 2024, the parties met and conferred regarding the alleged deficiencies in the SAC. On May 29, 2024, defendant demurred to and moved to strike the SAC, which plaintiffs opposed.

On July 19, 2024, the court adopted a tentative ruling taking the matter off calendar because the parties had failed to provide courtesy copies of their papers under the Superior Court of San Francisco County, Local Rules, rule 2.7B.¹ On the same day that the court's tentative ruling issued, defendant refiled the demurrer and motion to strike with a hearing date in August 2024. Plaintiffs filed oppositions, and the court held a hearing on defendant's motions in August 2024. The court denied defendant's motions in August 2024. The court sustained the demurrer to the SAC without leave to amend because plaintiffs' claims were time-barred, and the court denied the motion to strike as moot. Plaintiffs appealed from the subsequent judgment of dismissal.

DISCUSSION

Plaintiffs argue the judgment should be reversed because (1) defendant did not meet and confer before filing the July 2024 motions (Code Civ. Proc., §§ 430.41, subd. (a), 435.5, subd. (a)), and (2) those motions were untimely (id. at §§ 430.40, subd. (a), 435, subd. (b)(1)). These arguments fail for the reasons explained below.

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¹ All subsequent undesignated references to rules are to the Local Rules of the Superior Court of San Francisco County.

First, plaintiffs forfeited these contentions by failing to raise them in the trial court.² (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 226.)

Second, plaintiffs' claims fail substantively because it is undisputed that defendant met and conferred with plaintiffs regarding the alleged deficiencies in the SAC prior to timely filing the May 2024 motions, and defendant's July 2024 filings are not separate motions. The trial court took the hearing on defendant's May 2024 motions off calendar because the parties failed to provide courtesy copies, and defendant refiled the same motions with an August 2024 hearing date after receiving the court's tentative ruling. The hearing on the May 2024 motions was effectively postponed until August 2024, and the refiled July 2024 motions were not new motions. (See *Guardianship of Lyle* (1946) 77 Cal. App.2d 153, 155-156 [off calendar means a postponement]; Super. Ct. S.F. County, Local Rules, rule 8.2C(3) ["A motion which has been taken or ordered off calendar may be rescheduled for hearing only by written notice served in compliance with [Code of Civil Procedure] § 1005."].)

² Plaintiffs claim they raised the alleged failure to meet and confer at the August 2024 hearing on the motions. However, plaintiffs do not satisfy their burden of establishing that they raised this issue at the hearing because plaintiffs elected to proceed on appeal without a reporter's transcript, a settled statement, or an agreed statement. (See Cal. Rules of Court, rule 8.120(b) [appellant has burden to provide reporter's transcript, settled statement, or agreed statement if appellant intends to raise issues that require consideration of oral proceedings].) Concurrently with their reply brief on appeal, plaintiffs submitted declarations that purport to describe what transpired at the August 2024 hearing. These declarations are not permissible filings under the California Rules of Court, nor are they appropriate substitutes for a reporter's transcript. (Cal. Rules of Court, rules 8.200(a)(4), 8.137.) Accordingly, defendant's motion to strike plaintiffs' declarations and the reply briefs references to these declarations and facts not in the appellate record is granted. (*C.J.A. Corp. v. Trans-Action Fin. Corp.* (2001) 86 Cal.App.4th 664, 673 [granting motion to strike passages in appellate brief referring to evidence not in appellate record].)

As best we can discern, plaintiffs' final argument on appeal is that the trial court erred by failing to consider their opposition to defendant's demurrer and motion to strike the FAC because plaintiffs failed to provide the court with courtesy copies of their opposition to these motions under rule 2.7B. Plaintiffs state that they were unaware of this local rule and the consequences of violating the rule prior to the court's July 2024 ruling taking defendant's motions regarding the SAC off calendar. We reject this claim on the merits.

Rule 2.7B requires parties to deliver courtesy copies of demurrer and motion papers to the court. The consequences for failure to comply with the rule are as follows: "Failure to lodge courtesy copies of moving papers as required by statute, rule or court order may, in the discretion of the judicial officer presiding over the hearing, result in denial of the motion, continuance of the hearing, or taking the motion off calendar. Failure to lodge courtesy copies of opposition papers as required by statute, rule or court order may, in the discretion of the judicial officer presiding over the hearing, result in the granting of the motion or continuance of the hearing. Failure to lodge courtesy copies of reply papers as required by statute, rule or court order may, in the discretion of the judicial officer presiding over the hearing, result in the reply papers not being considered." (Super. Ct. S.F. County, Local Rules, rule 2.7B(5).)

Here, plaintiffs' argument fails because the record establishes that the trial court considered plaintiffs' opposition papers. The court's orders on defendant's demurrers and motions to strike the FAC and the SAC affirmatively state that the

court "considered the parties' respective arguments at the hearing [and] all of the papers submitted." (Italics added.) And the court provided rulings on statute of limitations and mootness grounds, not orders granting defendant's motions because of plaintiffs' failure to file courtesy copies.

DISPOSITION

The judgment is affirmed.

California First District Court
of Appeal Order, Denial of Rehearing
Case No. A172007
(Oct. 24, 2025)

Appendix B

APPELLATE COURT ORDER A172007 102425

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 4

SARAH HOLMSTROM and ERIC HOLMSTROM,
and Appellants,
V.
ROUDA FEDER TIETJEN & McGUINN,
and Respondent.

Appeal No. A172007
San Francisco County Super. Ct. No. CGC23608578

BY THE COURT:

The petition for rehearing filed on October 15, 2025 is denied.

(Brown, P.J., Streeter, J. and Clay, J.* participated in the decision.)

Date: 10/24/2025 Brown, P.J.

* Judge of the Superior Court of California, County of Alameda, assigned by
the Chief Justice pursuant to article VI, section 6 of the California Constitution.

California Supreme Court Order
Denial of Petition for Review
Case No. S293909
(Dec. 30, 2025)

Appendix C

California Supreme Court Order, S293909, 123025

Court of Appeal, First Appellate District, Division Four - No. A172007

S293909

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SARAH HOLMSTROM et al., Plaintiffs and Appellants,
V.
ROUDA FEDER TIETJEN & McGUINN, Defendant and Respondent.

The petition for review is denied.

GUERRERO
Chief Justice

D1

San Francisco County Superior Court ("SFCSC"),
Trial Court Order
Case No. CGC-23-608578
(Aug. 16, 2024)

Appendix D

SFCSC ORDER, CGC-23-608578, 081624

Defendant Rouda Feder Tietjen & McGuinn's ("Defendant") Demurrer to Plaintiffs Sarah Holmstrom and Eric Holmstrom's (collectively, "Plaintiffs") Second Amended Complaint came on regularly for hearing on August 16, 2024, at 9:30 a.m. in Department 302 of the above-entitled Court. Plaintiffs contested the tentative ruling and appeared at the hearing to present oral argument. Quincy Pham appeared on behalf of Defendant. Having considered the parties' respective arguments at the hearing, all of the papers submitted and good cause appearing therefore, the Court adopts its tentative ruling sustaining Defendant's Demurrer to the Second Amended Complaint without leave to amend, as follows:

Demurrer to the Second Amended Complaint

Defendant Rouda Feder Tietjen & McGuinn's demurrer is sustained without leave to amend.

Defendant represented Plaintiff Sarah Holmstrom in connection with her personal injury claim against non-party individuals involved in an automobile accident and an underinsured motorist (UIM) arbitration claim against non-party CSAA Insurance Exchange. (Second Amended Complaint, 21.) Holmstrom and her father, co-plaintiff Eric Holmstrom, filed a complaint against Defendant for breach of contract, common counts and legal malpractice, amending the complaint to remove the malpractice cause of action. Plaintiffs alleged that Defendant mishandled the underlying claims by including the wrong party with the incorrect evidence of their injuries and accepting a settlement offer without authority. (First

his or her professional obligations while providing professional services, “regardless of how those claims were styled.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1235.) The question is whether the claim, in order to succeed, necessarily depends on proof that an attorney violated a professional obligation as opposed to some generally applicable nonprofessional obligation. (*Id.* at 1238; *Connelly v. Bornstein* (2019) 33 Cal.App.5th 783, 792.) In the SAC, Plaintiffs do not bring a cause of action for actual fraud, and all of their claims necessarily depend on proof that Defendant violated a professional obligation. CCP 340.6(a) applies to the action.

Plaintiffs allege that Defendant breached the retainer agreement by (1) accepting a settlement offer from CSAA without authority, (2) failing to prepare for arbitration, (3) providing conflicting legal advice, (4) coercing Plaintiffs to follow Defendant’s legal advice, (5) failing to inform Plaintiffs that Defendant lacked knowledge to pursue a UIM claim, and (6) refusing to pursue the UIM claim. (SAC, 1.) As stated in the Court’s order sustaining Defendant’s demurrer to the FAC, Plaintiffs cannot bring a cause of action against Defendant for accepting the settlement offer from CSAA, as it is time-barred. (Defendant’s RIN, Exhibit 3, 3:14-16.) Plaintiffs further allege that they discovered evidence of fraud and deceit in October 2020, July 2021, October 2022, and July 2023, that prevented them from discovering the above-described breach. (SAC, 23-34.) But CCP 340.6’s one-year statute of limitations is not tolled by fraud or deceit. Instead the statute only tolls the four-year limitation when “[t]he attorney willfully conceals the facts constituting

the wrongful act or omission when those facts are known to the attorney.” (CCP 340.6(a)(3).

Plaintiffs’ remaining allegations appear to be new. The Court analyzes them in turn. Plaintiffs allegedly discovered on July 26, 2021 that Defendant ceased functioning as Plaintiffs’ attorney during the arbitration process and provided conflicting legal counsel to Plaintiffs. (SAC, 26-27.) Any claims relying on this allegation alone would be barred by CCP 340.6(a), as Plaintiffs’ discovery occurred beyond the one-year statute of limitations. Plaintiffs allegedly discovered in October 2022 that the UIM arbitration was canceled, not postponed. (SAC, 28.) If Plaintiffs mean to allege that Defendant misrepresented this fact to them, this is contradicted by the FAC. (FAC, Ex. 18.) Regardless, Plaintiffs could and should have exercised reasonable diligence to discover the status of their arbitration in July 2021, so any claims relying on this allegation alone would be barred by CCP 340.6(a). Plaintiffs allegedly discovered a conflict of interest between Defendant and the UIM arbitrator in 2022. (SAC, 29.) This allegation is an opinion, and is ambiguous and uncertain. Plaintiffs do not repeat this allegation elsewhere in the SAC, but any claims relying on this allegation alone would be improper and subject to Defendant’s demurrer. Plaintiffs allegedly discovered on July 24, 2023 that Defendant deceived them by failing to disclose a signed release from CSAA and providing them with contradictory information. (SAC, 30-32.) But this allegation concerns Defendant’s acceptance of CSAA’s settlement offer, which Plaintiffs had prior knowledge of in February or March of 2020. Any claims relying on this allegation alone would be

barred by CCP 340.6(a), as Plaintiffs' discovery of the facts of Defendants acceptance of the settlement offer occurred beyond the one-year statute of limitations. Finally, Plaintiffs allegedly discovered on August 24, 2022 and September 30, 2022 that Defendant pursued the wrong vehicle in the UIM claim. (SAC, 33-34.) But the FAC shows that Plaintiffs knew or should have known that Defendant had the wrong vehicle information in August 2019. (FAC, Ex. 14.) Any claims relying on this allegation alone would be barred by CCP 340.6(a). Because Plaintiffs' new allegations cannot support any of their causes of action, Defendant's demurrer is sustained.

The burden is on Plaintiffs to show in what manner they can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal. App.5th 1125, 1145.) Plaintiffs have not attempted to show how an amendment would change the SAC, and it is not clear to the Court what new claims or allegations could demonstrate Defendant's liability. Leave to amend is denied.

IT IS SO ORDERED.

San Francisco County Superior Court ("SFCSC"),
Trial Court Order
Case No. CGC-23-608578
(July 19, 2024)

Appendix E

SFCSC ORDER, CGC-23-608578, 071924

LAW & MOTION, DEPT. 302, AS TO THE JUL-19-2024 HEARING RE:
DEFENDANT ROUDA FEDER TIETJEN & McGUINN'S DEMURRER TO
AMENDED COMPLAINT, THE COURT ADOPTS ITS TENTATIVE RULING.
MATTER IS OFF CALENDAR. NO PARTY PROVIDED COURTESY COPIES IN
COMPLIANCE WITH SF LOCAL RULE 2.7B. JUDGE: ROCHELLE C. EAST;
CLERK: S. KANE; NOT REPORTED. (302/RCE)

San Francisco County Superior Court ("SFCSC"),
Trial Court Order
Case No. CGC-23-608578
(Apr. 12, 2024)

Appendix F

SFCSC ORDER, CGC-23-608578, 041224

Defendant Rouda Feder Tietjen & McGuinn's ("Defendant") Demurrer to Plaintiffs Sarah Holmstrom and Eric Holmstrom's (collectively, "Plaintiffs") First Amended Complaint came on regularly for hearing on April 12, 2024, at 9:30 a.m. in Department 302 of the above-entitled Court. Plaintiffs contested the tentative ruling and appeared at the hearing to present oral argument. Quincy Pham appeared on behalf of Defendant. Having considered the parties' respective arguments at the hearing, all of the papers submitted and good cause appearing therefor, the Court adopts its tentative ruling as follows:

Demurrer to First Amended Complaint

Defendant Rouda Feder Tietjen & McGuinn's demurrer is sustained with leave to amend.

Defendant represented Plaintiff Sarah Holmstrom in connection with her personal injury claim against non-party individuals involved in an automobile accident and an underinsured motorist arbitration claim against non-party CSAA Insurance Exchange. (FAC, 4.) Holmstrom received the limits of the individual's insurance policy and subsequently, her father's insurance policy with CSAA. (FAC 26; 32-38.) Holmstrom and her father, co-plaintiff Eric Holmstrom, filed a complaint for breach of contract, common counts and legal malpractice, amending the complaint to remove the malpractice cause of action. Plaintiffs allege that defendant mishandled the underlying claims by including the wrong party with the incorrect evidence of their injuries and accepting a settlement offer without

authority. (*Id.*) Defendant now files this demurrer and an accompanying motion to strike.

A demurrer tests the legal sufficiency of the complaint. (CCP 430.10(e); *Rakestraw v. California Physicians' Serv.* (2000) 81 Cal.App.4th 39, 42-43.) To withstand a demurrer, a plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. (*Id.* at p. 43.) In assessing whether the complaint states a cause of action, the court accepts all properly pleaded material facts, but not contentions, deductions, or conclusions of fact or law. (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155, 1161.)

As a preliminary matter, defendant argues that all of plaintiffs' causes of action are time-barred by CCP 340.6(a). (Defendant's Demurrer, 4.) Under that section, a civil action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services must be commenced within: (1) one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or (2) four years from the date of the wrongful act or omission, whichever occurs first. (CCP 340.6(a).) CCP 340.6(a) governs more than legal malpractice actions; it broadly includes any claim alleging an attorney's violation of his or her professional obligations while providing professional services, "regardless of how those claims were styled." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1235.) Plaintiffs' removal of the legal malpractice cause of action via amendment does not avoid application of CCP 340.6(a). The question is whether the claim, in order to succeed, necessarily depends

on proof that an attorney violated a professional obligation as opposed to some generally applicable nonprofessional obligation. (*Id.* at 1238; *Connelly v. Bornstein* (2019) 33 Cal.App.5th 783, 792.) Plaintiffs admit in the FAC that their breach of contract claim is a claim for legal malpractice. (FAC, 19, 36, 43.) For plaintiffs to succeed on their claim for breach of contract would then necessarily depend on whether defendant breached their professional obligations. CCP 340.6(a) governs the action. Because the FAC indicates that plaintiffs knew about the wrongful act or omission in March 2020, the statute of limitations expired in March 2021, well before plaintiffs filed this action. (FAC, Exhibit 8.) The action is time-barred.

Plaintiffs' argument that CCP 340.6(a) does not apply because they have evidence of fraud is of no moment. The statute of limitations for fraud is three years from the discovery by the aggrieved party of the facts constituting the fraud. (CCP 338(d).) Even assuming *arguendo* that plaintiffs had sufficiently pled a claim for actual fraud, the FAC indicates that plaintiffs had discovered the facts constituting the fraud more than three years before they filed their action.

Leave to amend should be granted where there is a reasonable possibility that a plaintiff can amend the complaint to state a cause of action. (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1165.) Because the action is time-barred under any theory that plaintiffs offer, they cannot amend the complaint to state a cause of action. The Demurrer is sustained with leave to amend. Second Amended Complaint to be filed by April 26, 2024.

G1

San Francisco County Superior Court ("SFCSC"),
Trial Court Order
Case No. CGC-23-608578
(Jan. 30, 2024)

Appendix G

SFCSC ORDER, CGC-23-608578, 013024

LAW & MOTION, DEPT. 302, AS TO THE JAN-30-2024 HEARING RE:
DEFENDANT ROUDA FEDER TIETJEN & McGUINN'S DEMURRER TO 1ST
AMENDED COMPLAINT, THE COURT ADOPTS ITS TENTATIVE RULING. OFF
CALENDAR. THE PHAM DECLARATION PROVIDES PLAINTIFFS "REFUSED
TO ADDRESS THE ISSUES RAISED." PLAINTIFFS ARE ORDERED TO MEET
AND CONFER IN ACCORDANCE WITH CCP 430.41. RESPONSIVE PLEADINGS
ARE NOW DUE BY FEBRUARY 29, 2024. JUDGE: RICHARD B. ULMER JR.;
CLERK: V. DA FONSECA; NOT REPORTED. (302/RBU)

H1

San Francisco County Superior Court ("SFCSC"),
Trial Court Order
Case No. CGC-23-608578
(Nov. 20, 2023)

Appendix H

SFCSC ORDER, CGC-23-608578, 112223

Defendant Rouda Feder Tietjen & McGuinn's ("Defendant") Demurrer to Plaintiffs Sarah Holmstrom and Eric Holmstrom's (collectively, "Plaintiffs") Complaint came on for regular hearing on November 20, 2023, at 9:30 am in Department 302 of the above-entitled court. Plaintiffs provided notice of their intent to appear at the hearing but were not present at the time of the hearing. Defendant's appearance was noted on the record. Having considered all the papers submitted and good cause appearing therefor, the Court adopts its tentative as follows:

Demurrer to Plaintiffs' Complaint

DEFENDANT ROUDA FEDER TIETJEN & MCGUINN DEMURRER to COMPLAINT Defendant's demurrer to the complaint is sustained with leave to amend; no opposition filed.

IT IS SO ORDERED.