

PROPOSED TENTATIVE

On December 18, 2024, plaintiff Henry Eufracio (plaintiff) in propria persona filed a complaint against defendants Brooks & Ames, former attorney Cristina Brooks Montgomery as well as the Law Office of Cristina Brooks Montgomery, and attorney Sharon L. Martinez, (collectively, defendants), advancing four causes of action: the first three (3) are based on “professional negligence,” while the fourth involves “breach of fiduciary duty.” The four causes of action stem from defendants’ representation of plaintiff in *Marriage of Eufracio*, Santa Barbara County Superior Court Case No. 18FL02876, which is presently assigned to Judge James Rigali.¹ Plaintiff contends generically that defendants “failed to provide careful and competent legal representations and advice . . . regarding settlement discussions outside of Plaintiff’s presence and without full disclosure of the value of the marital assets, without Plaintiff’s knowledge or consent to settle, and by failing to inform Plaintiff of the settlement negotiated, without any type of written memorandum, court record, or otherwise reviewable and/or traceable record. But for the failure to seek Plaintiff’s consent to settle the property division, omission of Defendants’ to draft a written memorandum or judgment as ordered by the Court, and the subsequent refusal to release Plaintiff’s file promptly to new counsel, the community assets resulted in being inequitably and unfairly divided, thus resulting in Plaintiff’s losses and substantial monetary damages.” (¶ 1.)

The first two causes of action for “professional negligence” seem predicated on defendants’ failure to advise plaintiff of settlement negotiations “that led to the conclusion of the dissolution of trial on May 17, 2021” (¶ 35 [first cause of action]; ¶ 42 [second cause of action].) In the chain pleading portion of the complaint, plaintiff alleges that on May 17, 2021, defendants appeared in court on plaintiff’s behalf “to engage in settlement discussions with opposing counsel” concerning plaintiff’s “separate and marital property,” and after “these discussions, the Court granted a judgment of dissolution (pending the submission of the judgment packet) and ordered Defendants to prepare and submit a judgment packet.” (¶ 11.) Defendants failed to inform plaintiff “of the content of the pre-trial settlement discussions on May 17, 2021, and any proposal” and failed to submit a judgment. According to plaintiff, “between June 23, 2021” and “July 2022,” defendants failed to inform plaintiff about the settlement proposals. (¶¶ 12 -20.) In July 2022, plaintiff replaced defendants with new counsel, Mareike Schmidt, who substituted in on August 1, 2022. Ms. Schmidt requested from defendants “information and documents relating to the status of the judgment and division of marital properly” including and up to October 18, 2022, but defendants did not comply with these requests.² The court records from Case No. 18FL02876 indicate that on January 4, 2023, the court was told “the case still does not have a Judgment filed.” On April 19, 2023, at a Case Management Hearing at which plaintiff was present, “a court trial” was requested, with trial

¹ The case is currently active. No party has filed a notice-of-related case.

² The court on its own motion will take judicial notice of the court records in Case No. 18FL02876 in order to provide a more robust and detailed factual background of the case. (Evid. Code, § 452, subd. (d).)

scheduled for May 8, 2023. The matter was continued to July 17, 2023, in order to allow Xenia Eufacio, plaintiff's former spouse, to obtain counsel, which was accomplished on August 8, 2023. Dissolution of marriage was entered as a judgment on November 22, 2023, and an order involving division of community property was entered on June 13, 2024. The last document filed in Case No. 18FL02876 concerns a new hearing for modification of child custody, filed on July 2, 2025.

The third cause of action for "professional negligence" seems predicated on "Defendants fail[ure] to release Plaintiff's client file promptly upon request" (§ 49), which in turn (presumably) would be predicated on Ms. Schmidt's requests between August and October 18, 2022 (although plaintiff does incorporate the allegations noted above into this cause of action).

The fourth cause of action for "breach of fiduciary duty" is predicated on plaintiff's claims that defendants "effectively abandoned Plaintiff and failed to perform material services in the best interests of Plaintiff. Defendants made material misrepresentations to Plaintiff causing Plaintiff to believe that the division of the substantial marital property assets was still pending in the underlying matter. However, Defendants were dealing with personal issues such as Cristina Brooks Montgomery's DUI arrest and pending divorce and failed to perform any substantive work for Plaintiff in the underlying matter for many months. But for Defendant's' abandonment, failure to perform material services for Plaintiff, and misrepresentation, Plaintiff would have secured a better outcome."

Proofs of service indicate that plaintiff has served all named defendants. No answers have been filed.

On July 28, 2025, defendants filed a joint demurrer to all four causes of action, raising a statute of limitations bar (among other claims). No opposition has been filed as of this writing.

Pursuant to Code of Civil Procedure section 340.6, subdivision (a) (all further statutory references to this Code), an action against an attorney for wrongful acts or omissions, "other than for actual fraud, arising in the performance of professional services shall be commenced within 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 four years from the date of the wrongful act or omission, whichever occurs first" As our high court has made clear, this section "applies to a claim when the merits of the claim will necessarily depend on proof that an attorney violated a professional obligation – that is, an obligation the attorney has by virtue of being an attorney – in the course of providing professional services. Such claims brought more than one year after plaintiff discovers or through reasonable diligence should have discovered the facts underlying the claim are time-barred by section 340.6 unless plaintiff alleges actual fraud." (*Lee v. Haney* (2015) 61 Cal.5th 1225, 1236.) This provision applies to all four causes of action alleged by plaintiff under the authority of *Lee* – as all causes of action involve an obligation the

defendants had as attorneys by virtue of being an attorney.³ Courts should sustain demurrers when it appears from the face of the pleading and/or through judicially noticed documents the claim is time barred. (*Croucher v. Cross* (2012) 207 Cal.App.4th 1138, 1145.)

It is settled that the “earliest the statute of limitations could be deemed running with regard to claims” against an attorney is the date defendants were removed as counsel and substituted by another. (*Croucher, supra*, at p. 1146 [the statute of limitations period is tolled until defendants ceased to represent plaintiff].) The pleadings indicate that on August 1, 2022, defendants were substituted out by new attorney Ms. Schmidt.

Second, it is clear that the one-year limitations period is triggered by the client’s discovery of the facts constituting the wrongful act or omission, not by the discovery that such facts constitute a cause of action (i.e., that a particular legal theory is applicable based on the known facts). (*Ibid.*) Plaintiffs have constructive notice of a cause of action where they have “ ‘reason to at least suspect that a type of wrongdoing has injured them.’ ” (*Genisman v. Carley* (2018) 29 Cal.App.5th 45, 50; see *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 818 [the plaintiff has constructive notice when she “ ‘suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her’ ”].) “ ‘A plaintiff need not be aware of the specific ‘facts’ necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.’ ” ” (*Genisman*, at p. 51; see *Bergstein*, at p. 818; *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 685.) Put another way: “It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action.” ” ” ” (*Croucher, supra*, 207 Cal.App.4th at p. 1146; see *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton, supra*, 133 Cal.App.4th at p. 685; *Village Nurseries v. Greenbaum* (2002) 101 Cal.App.4th 26, 42-43 [“ ‘the one-year period is triggered by the client’s discovery of “the facts constituting the wrongful act or omission,” not by his discovery that such facts constitute professional negligence].

“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

³ As *Lee* noted, section 340.6(a) eliminated the “former limitations scheme’s dependance on the way a plaintiff styled his or her complaint.” Further, “the statute applies not only to actions for professional negligence but to any action alleging wrongful conduct, other than actual fraud, arising in the performance of professional services.” (*Lee, supra*, at p. 1236.) This includes a “professional obligation” that an attorney has by virtue of being an attorney, “such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which an attorney has entered, and the obligations embodied in the State Bar Rules of Professional Conduct.” (*Id.* at p. 1237.)

the plaintiff to ‘show diligence’; ‘conclusory allegations will not withstand demurrer.’ ” (*Fox, supra*, 35 Cal.4th at p. 808.)

Finally, whether the statute of limitations can be tolled will depend on whether plaintiffs had suffered any “actual injury” under section 340.6, subdivision (a)(1). “The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm – not yet realized – does not suffice to create a cause of action” (*Coucher, supra*, at p. 1147.) The test for “actual injury” under section 340.6 is whether the plaintiff sustained any damages compensable in an action against an attorney for a wrongful act or omission arising in the performance of professional services. There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney’s error and the asserted injury. The inquiry is more qualitative than quantitative because the fact of damage, rather than the amount, is the critical factor. (*Coucher, supra*, 1147.) Section 340.6 subdivision (a)(1) thus will not toll the limitations period once the client can plead damages that could establish a cause of action for legal malpractice, even if the actual amount is not known. (*Id.* at p. 1148.) Courts have made it clear that there is distinction between whether actual injury was suffered, on one hand, and whether there was sufficient evidence to prove the amount of damages on the other. (*Croucher, supra*, at p. 1148, citing *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 753 [litigation’s resolution is relevant to the attorney’s alleged negligence only insofar as it potentially affected the amount of damages the client might recover from the attorney, not whether actual damages were actually suffered].) Ordinarily, courts have determined that the client has already suffered damage when it discovers the attorney’s error. (*Id.* at p. 743.) While issues associated with a statute of limitations bar generally involve issues of fact, if the undisputed facts or clear allegations do not leave room for reasonable differences of opinion, the question of delayed discovery can be decided by demurrer. (*Czajkowski v. Hasket & White, LLP* (2012) 208 Cal.App.4th 166, 175.)

With this background, the court sustains defendants’ demurrer for three reasons. First, plaintiff has failed to comply with California Rules of Court, rule 2.1120(4), as he has failed to identify to whom the cause of action is directed. Plaintiff must indicate the name of the defendants in the cause of action’s hearing. On this pleading, defendants are left to guess.

Second, although demurrers for uncertainty are disfavored, there is a fatal uncertainty here. It is not at all clear what the differences are between the first and second causes of action for professional negligence (as both are based on the same failure associated with the May 17, 2021 settlement agreement). Are they duplicative of one another? Are they different? We are left to guess. Further, the court sustains the general demurrer as to the third cause of action for “professional negligence” and the fourth cause of action for “breach of fiduciary duty” as it is not clear what factual basis is offered for each. Are the factual bases for either different than the first two causes of action? Are they the same? More clarity is required.

Third, each of the four causes of action, based on facial allegations in the complaint and through judicially noticed documents, appears barred by the one-year statute of limitations per section 340.6, subdivision (a). Defendants' representation of plaintiff stopped as of August 1, 2022, when new counsel was substituted in, meaning the causes of actions could no longer be tolled. Plaintiff waited until December 18, 2024 to file the present complaint. Whether the claims in the operative pleading are based on defendants' failure to communicate the May 17, 2021 dissolution settlement; the failure of defendants to reply to Ms. Schmidt's requests to release case files promptly; the failure to perform competently during their representation; and/or claims defendants "made material misrepresentations to plaintiff,"⁴ plaintiff was aware or should have been aware of these problems at least by January 4, 2023, or at least April 14, 2023, when there was no record of the dissolution negotiations reached, and the trial court (Judge Rigali) set the matter for trial. Plaintiff let more than one-year elapse before filing the present complaint.

Further, plaintiff cannot claim the causes of action are tolled because he did not suffer actual injury until the court made a final determination of the division of marital assets. Plaintiff's right to a settlement dissolution did not arise for the first time at the time the court divided the assets, but at the time plaintiff became aware there was an earlier agreed-upon disposition. The injuries were not speculative or contingent at this earlier time —plaintiff's injuries occurred at least by January 4, 2023. (*Jordache, supra*, 18 Cal.4th at p. 754.) As the court in *Jordache* made clear, there is no requirement that an adjudication or settlement must first confirm the causal nexus between the attorney's error and the asserted injury. (*Id.* at p. 752.) In the end, the four causes of action are barred by the one-year statute of limitations based on facial allegations in the complaint and from facts judicially noticed, as plaintiff knew or should have known sufficient facts to suspect a type of wrongdoing had injured him. (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, fn. 10.) Given this, plaintiff had to plead specific facts showing why he did not -- and could have not -- discovered the facts to support the causes of action within one year of filing the complaint, all with factual specificity. That has not been done.

The court recognizes that plaintiff has not filed opposition. It nevertheless sustains the demurrer with leave to amend, and will afford plaintiff 30 days from today's hearing to file an amended pleading in order to cure these deficiencies. If plaintiff does not appear at the hearing, defendant is directed to submit a proposed order for signature commensurate with this order, and then send notice to plaintiff. Plaintiff will then have 30 days *from the date of service of the court's order* to file a first amended pleading.

⁴ Actual fraud is an exception to the one-year statute of limitations period under section 340.6. (*Escamilla v. Vannucci* (2025) 17 Cal.5th 571, 579.) However, in California, fraud must be pleaded with factual specificity, necessitating facts which show how, when, where, to whom, and by what means the representations were tendered. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) Plaintiff simply claims in the fourth cause of action that defendants made "material misrepresentations" – that is not fraud, and certainly not fraud supported with any factual specificity.

