

1 430.10 subd. (e)). The Court should sustain the demurrer without leave to amend.

2 **1. Where the face of the Complaint shows that the action is barred by the**
3 **statute of limitations, the objection may be raised by demurrer.**

4 **A. A defendant may object to a complaint by demurrer on the**
5 **ground that the complaint does not state facts sufficient to**
6 **constitute a cause of action.**

6 Code of Civil Procedure section 430.10 provides in part:

7 The party against whom a complaint . . . has been
8 filed may object, by demurrer . . . to the pleading on any one
9 or more of the following grounds:

9

10 (e) The pleading does not state facts sufficient to
11 constitute a cause of action.

12 **B. An objection to a complaint may be taken by demurrer where any**
13 **ground therefor appears from a document of which the court may**
14 **take judicial notice.**

14 Code of Civil Procedure section 430.30, subdivision (a) states:

15 When any ground for objection to a complaint . . .
16 appears . . . from any matter of which the court . . . may
17 take judicial notice, the objection on that ground may be
18 taken by a demurrer to the pleading.

18 *Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) Cal.App.4th 1497 holds:

19 A demurrer tests the legal sufficiency of the complaint.
20 . . . If a complaint shows on its face (or from matters of
21 which the court must or may take judicial notice (Code Civ.
22 Proc., § 430.30)) that a cause of action is barred by the
23 statute of limitations, a general demurrer for failure to state
24 a cause of action will be sustained.

23 (*Id.* p. 1502).

24 **C. The Court may judicially notice the dates on which the parties**
25 **filed the Substitution of Attorney and the Complaint herein.**

26 Evidence Code section 452, subdivision (d), provides that judicial notice may be
27 taken of the records of any court of this state. By her Request for Judicial Notice
28 ("RJN") filed herewith, Loo asks the Court to take judicial notice that Loo filed a

1 Substitution of Attorney in the Action on February 26, 2004 and that the Complaint in
2 the present case was filed on June 6, 2008. (See RJN, Exs. "B" and "C").

3 **D. The Court may consider the Contract in ruling on the demurrer.**

4 At paragraph BC-1, the Complaint alleges the essential terms of the Contract
5 instead of attaching a copy. (See RJN Ex. "C,") Where a complaint does not quote
6 all of the terms of a contract *in haec verba*, and where the unquoted terms disclose
7 an affirmative defense, the Court may consider the entire contract in ruling on a
8 demurrer. (See *Amacorp Indus. Leasing Co. v. Robert C. Young Associates, Inc.*
9 (1965) 237 Cal.App.2d 724, 728, citing *Gilmore v. Lycoming Fire Ins. Co.*, 55 Cal.
10 123). "The purpose of the specific pleading of a written contract requirement is to
11 permit the defendant to demur . . . based upon the construction of the text of the
12 contract, a question of law unless extrinsic facts bearing upon meaning are alleged."
13 (*Perry v. Robertson* (1988) 201 Cal.App.3d 333, 341).

14 **2. The Substitution of Attorney terminated Stein's representation and**
15 **made the attorney fees immediately due and payable.**

16 The general rule is that an attorney's representation of a client ends when the
17 attorney completes the agreed tasks and the client consents to termination. (See
18 *Lockley v. Law Office of Cantrell, Green et al.* (2001) 91 Cal.App.4th 875, 887-888).
19 Here, by signing and filing a Substitution of Attorney, Loo acknowledged that Stein
20 had completed his tasks. Moreover, the Complaint itself alleges that Loo terminated
21 the Contract. And most important, the Complaint alleges that Lee's breach consisted
22 of "[f]ailing to pay the balance owed for the services rendered *after terminating*
23 *attorney's services. . . .*" (RJN Ex. A, ¶ BC-2 (emphasis added)).

24 Thus, the Complaint itself alleges that Lee's breach of contract occurred upon
25 termination of the Contract. These allegations are judicial admissions that are
26 binding on Stein. (*Valerio v. Andrew Youngquist Construction* (2002) 103
27 Cal.App.4th 1264, 1271).

28 "A cause of action for breach of contract accrues at the time of breach, which

1 then starts the limitations period running. [Citation.]” (*Cochran v. Cochran* (1997)
2 56 Cal.App.4th 1115, 1120A). Thus, Stein’s cause of action accrued on February 26,
3 2004 and the four-year limitation period expired on February 25, 2008. (Code Civ.
4 Proc., § 337). Stein filed the Complaint herein on June 6, 2008. (See RJN Ex. “C”).

5 **3. The Contract shows that Lee’s obligation to pay attorney fees**
6 **commenced, at the latest, upon termination of Stein’s representation.**

7 The relevant terms of the Contract are as follows:

8 1. SCOPE OF AGREEMENT. Client hires Attorney to
9 provide legal services to Client *in connection with the*
10 *following matter:*

11 *[A]ction against HG for improper foreclosure of Client’s*
12 *property and/or to set aside the foreclosure sale . . . ; also to*
13 *consult with (but not be attorney of record for) client in*
14 *unlawful detainer case by ET.*

15 2. DUTIES OF ATTORNEY AND CLIENT. Attorney will
16 provide *those legal services reasonably required to represent*
17 *Client in the matter described above.*

18 3. FEES. . . . If Attorney is terminated prior to
19 recovery in this matter, then Client shall compensate
20 Attorney for the time expended on the matter. . . .

21 10. DISCHARGE AND WITHDRAWAL. Client may
22 discharge Attorney at any time upon reasonable notice, but
23 agrees to pay Attorney the full fees earned. . . .

24 12. TERMINATION OR CONCLUSION. *Upon the*
25 *termination or conclusion of Attorney’s services, all unpaid*
26 *charges for services rendered and costs incurred or advanced*
27 *through the termination or conclusion date shall become*
28 *immediately due and payable.*

(RJN Ex. “A” (emphasis added)).

The two terms of the Contract relevant to this demurrer are: First, Stein’s contractual duties were expressly limited to the Action (“the action against HG,” RJN Ex. A, ¶¶ 1, 2). Second, Lee’s final obligation to pay fees arose immediately upon her discharge of Stein. (*Id.* ¶¶ 3, 10, 12).

1 **4. The Court must sustain the demurrer as to the Second Cause of Action.**

2 The Second Cause of Action consists of common counts for account stated.
3 (RJN Ex. C, ¶ CC-1.a) and services rendered at Lee’s request. (*Id.* ¶ CC-1.b). “When
4 a common count is used as an alternative way of seeking the same recovery
5 demanded in a specific cause of action, and is based on the same facts, the common
6 count is demurrable if the cause of action is demurrable. [Citations.]” (*McBride v.*
7 *Boughton* (2004) 123 Cal.App.4th 379, 394-395).

8 Here, the common counts seek the same recovery demanded in the First Cause
9 of Action for breach of contract. Therefore, the Court must sustain the demurrer to
10 the second count as well as to the first.

11 **5. The Court should sustain the demurrer without leave to amend.**

12 Where the defects in a pleading are matters of law, it is proper to sustain a
13 demurrer without leave to amend. (*Estes v. Monroe* (2004) 120 Cal.App.4th 1347,
14 1365). Here, there simply are no different or additional facts that Stein could allege
15 to save his pleading from the bar of the statute of limitations. Therefore, there is no
16 point in granting leave to amend.

17 **6. The Court should award attorney fees to Loo as the prevailing party on**
18 **the Contract.**

19 The Contract provides at paragraph 8:

20 Should Attorney initiate collection proceedings or file suit to
21 recover outstanding fees or costs, Client agrees to pay in
22 addition to fees and costs then due, all costs and expenses
23 incurred in such collection effort, including reasonable
24 Attorney’s fees.

25 (See RJN Ex. “A”).

26 Even though by the terms of the Contract only Loo is liable for attorney fees, “the
27 party who is determined to be the party prevailing on the contract, whether he or she
28 is the party specified in the contract or not, shall be entitled to reasonable attorney’s
29 fees in addition to other costs.” (Civ. Code, § 1717, subd. (a)). “[C]ontractual
30 attorney's fee clauses are mutual. . . . ‘Under Civil Code section 1717, what is sauce

1 for the goose is sauce for the gander. . . .” (*Passanis v. Merit-Mcbride Realtors, Inc.*
2 (1987) 190 Cal.App.3d 1496, 1509 fn. 9, quoting in part *Valley Bible Center v.*
3 *Western Title Ins. Co.* (1983) 138 Cal.App.3d 931, 933).

4 **CONCLUSION**

5 The statute of limitations is an absolute bar to Plaintiff’s claims. Based on the
6 foregoing authorities, Defendant asks the court to enter an order sustaining her
7 demurrer to the Complaint without leave to amend, dismissing the action, and
8 awarding her attorney fees in a reasonable amount to be fixed by later motion.

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10 By _____
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13 MAGGIE LOO
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