

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Accuire LLC v. Meredith CPAs P.C., et al.

No. 2:24-cv-02018-DAD-CKD (E.D. Cal. July 31, 2025) · No. No. 2:24-cv-02018-DAD-CKD · Decided August 1, 2025

SUMMARY

The United States District Court for the Eastern District of California granted defendants’ motions to dismiss Accuire LLC’s first amended complaint without leave to amend. The court held that Accuire’s fraud and conspiracy-to-commit-fraud claims were barred by California’s three-year statute of limitations, concluding that the allegations and related court filings established inquiry notice by November 2019 at the latest. The action concerned an allegedly inaccurate audit and an undisclosed conflict of interest involving defendants Vensure Employer Services Inc. and Meredith CPAs P.C.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dale A. Drozd
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 1, 2025
DOCKET	No. 2:24-cv-02018-DAD-CKD
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiff's first amended complaint asserting fraud and conspiracy to commit fraud. The action had been removed from California state court based on federal jurisdiction, and the court granted both motions without leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the complaint, accepts well-pleaded factual allegations as true, construes them in the plaintiff's favor, and disregards unsupported legal conclusions. Dismissal is proper when the complaint lacks a cognizable legal theory or sufficient facts to state a facially plausible claim.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

TOPICS

statute of limitations

motions to dismiss

fraud

commercial litigation

civil procedure

PRACTICE AREAS

civil procedure

statute of limitations

fraud

commercial litigation

QUESTIONS PRESENTED

1. Whether Accuire's fraud and conspiracy-to-commit-fraud claims were barred by California's three-year statute of limitations.
2. Whether the delayed discovery or fraudulent-concealment doctrines tolled or otherwise avoided the statute of limitations.
3. Whether the first amended complaint should be dismissed without further leave to amend because amendment would be futile.

HOLDINGS

1. Accuire's claims against Vensure and Meredith were barred by California's three-year statute of limitations because the alleged fraud occurred in 2018 and Accuire was on inquiry notice of its potential claims no later than November 14, 2019.
2. Neither delayed discovery nor fraudulent concealment saved Accuire's claims because Accuire's own allegations and filings established inquiry notice of a potential claim by November 14, 2019.
3. Further leave to amend was denied because Accuire had already been given an opportunity to amend and the judicially noticeable filings made clear that further amendment would be futile.

KEY QUOTATIONS

"The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint." (at 6)

"A defendant's fraud in concealing a cause of action against him will toll the statute of limitations, and that tolling will last as long as a plaintiff's reliance on the misrepresentation is reasonable." (at 8)

"Even if plaintiff has sufficiently alleged fraudulent concealment on the basis of the engagement letter from defendant Meredith and the existence of the AICPA Code of Professional Conduct—an issue the court does not decide—the 'fraudulent concealment doctrine' does not come into play, whatever the lengths to which a defendant has gone to conceal the wrongs, if a plaintiff is on notice of a potential claim." (at 10)

FACTUAL BACKGROUND

Accuire alleged that Meredith CPAs performed an audit in 2018 that mischaracterized a \$2.7 million obligation involving Amazing Insurance as goodwill, causing Sterling National Bank to find Accuire in default and seriously disrupting its business. Accuire alleged that Kara Childress, an officer of Vensure and a partner in Meredith, selected Meredith to perform the audit while managing Accuire's finances, creating a concealed conflict of interest. Accuire asserted that it did not learn of Childress's partnership in Meredith until her

deposition on April 27, 2021, although Accuire had previously alleged in related litigation that Childress was involved in draining its accounts and had filed deposition testimony indicating that Childress's CPA firm had made substantial changes to the audit that caused the loan default.

PROCEDURAL HISTORY

Accuire filed the action in Sacramento County Superior Court on April 29, 2024. Defendants removed it to the Eastern District of California on July 25, 2024. The court dismissed the original complaint as barred by the statute of limitations but granted leave to amend. After Accuire filed a first amended complaint, defendants renewed their motions to dismiss; the court dismissed the amended complaint without further leave to amend and directed the clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983)
- Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)
- U.S. ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986)
- Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983)
- Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001)
- G&G Prods. LLC v. Rusic, 902 F.3d 940, 946 (9th Cir. 2018)
- MSP Recovery Claims, Series LLC v. Avanir Pharms., Inc., No. 22-cv-01026-DOC-KES, 2022 WL 17220647, at *4 (C.D. Cal. Oct. 20, 2022)
- Platt Elec. Supply, Inc. v. EOFF Elec., Inc., 522 F.3d 1049, 1055, 1059-60 (9th Cir. 2008)
- Bernson v. Browning-Ferris Indus. of Cal., Inc., 7 Cal. 4th 926, 931 (1994)
- Grisham v. Philip Morris U.S.A., Inc., 40 Cal. 4th 623, 637 (2007)
- Baker v. Beech Aircraft Corp., 39 Cal. App. 3d 315, 321 (1974)
- Lukovsky v. City & Cnty. of S.F., 535 F.3d 1044, 1051 (9th Cir. 2008)
- Rand v. Midland Nat'l Life Ins., 857 F. App'x 343, 347-48 (9th Cir. 2021)
- New Amsterdam Project Mgmt. Humanitarian Found. v. Laughrin, 400 F. App'x 250, 251-52 (9th Cir. 2010)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Brave & Free Santa Cruz v. Aragon, No. 2:24-cv-02312-DAD-JDP, 2025 WL 306594, at *2 n.3 (E.D. Cal. Jan. 27, 2025)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ACCUIRE LLC, No. 2:24-cv-02018-DAD-CKD 12 Plaintiff, 13 v. ORDER
GRANTING DEFENDANTS' MOTIONS TO DISMISS WITHOUT LEAVE 14 MEREDITH
CPAS P.C., et al., TO AMEND 15 Defendants. (Doc. Nos. 29, 30) 16 17 18 This matter is before
the court on the motions to dismiss filed on April 17, 2025 on behalf 19 of defendant Vensure
Employer Services Inc. ("defendant Vensure") (Doc.

No. 29) and defendant 20 Meredith CPAs P.C. ("defendant Meredith") (Doc. No. 30). On April 29,
2025, the pending 21 motions were taken under submission on the papers. (Doc. No. 32.) For the
reasons explained 22 below, defendants' motions to dismiss plaintiff's complaint will be granted.
23 BACKGROUND 24 On April 29, 2024, plaintiff initiated this action by filing its complaint in
the Sacramento 25 County Superior Court.

(Doc. No. 1-1 at 2.) On July 25, 2024, defendants removed the action to 26 this federal court.
(Doc. No. 1.) 27 In its operative first amended complaint ("FAC"), plaintiff alleges as follows.
Plaintiff 28 and defendant Vensure are both professional employer organizations providing
services related to 1 workers' compensation insurance, payroll, employee benefits, and human
resources to their 2 staffing-company clients.

(Doc. No. 28 at ¶¶ 3, 5.) Defendant Vensure's chief operating officer 3 ("COO") was Kara
Childress, though defendant Vensure was fully owned by Alex Campos. (Id. 4 at ¶ 7.) Alex
Campos also owned Amazing Insurance, Inc. ("Amazing"). (Id.) Defendant 5 Meredith is a
corporation that provides accounting and auditing services. (Id. at ¶ 4.) 6 In another related action
previously pending before the undersigned (Case No. 2:19-cv- 7 01349, hereinafter "the Amazing
action"), plaintiff Accuire alleged that Amazing, Campos, 8 Childress, "and others" attempted "a
fraudulent take-over of plaintiff through various 9 misrepresentations, omissions, concealments
and unlawful acts."1 (Id. at ¶ 8.)

During the 10 attempted takeover described in the Amazing action, Childress allegedly took
control of plaintiff's 11 finances and, as COO of defendant Vensure, managed the debt between
plaintiff and defendant 12 Vensure. (Id. at ¶ 9.) 13 In 2018, plaintiff was required to provide
Sterling National Bank ("the Bank") with an 14 independently audited financial statement.

(Id. at ¶ 10.) Failure to do so would place plaintiff out 15 of compliance with the terms of its loan
from the Bank. (Id.) Childress and defendant Vensure 16 arranged for plaintiff's audit to be
performed by defendant Meredith, a firm with which plaintiff's 17 management had no prior
dealings. (Id. at ¶ 11.) Childress failed to disclose that she had been 18 made a partner in defendant
Meredith in 2017 after delivering defendant Vensure as a client to 19 defendant Meredith.

(Id. at ¶ 13.) A conflict of interest therefore existed, because Childress was 20 both a partner in
defendant Meredith, the auditing firm, and an officer in defendant Vensure with 21 direct

involvement in the financial affairs of plaintiff, the client. (Id. at ¶ 25.) Defendant 22 Meredith, at the urging of defendant Vensure, failed to maintain the required objectivity of an 23 independent auditor and failed to remain free of conflicts of interests.

(Id.) 24 “As a result of this conflict of interest,” defendant Meredith prepared an inaccurate audit 25 report that mischaracterized a debt owed by Amazing to plaintiff as instead being “goodwill” 26 (“the Audit”). (Id. at ¶ 17.)

In truth, Amazing had agreed to pay \$2.7 million to plaintiff’s 27 1 On January 27, 2025, the court dismissed the Amazing action pursuant to the parties’ stipulation 28 and Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (See Amazing, Doc. No. 139.) 1 owners, but the Audit prepared by defendant Meredith stated that plaintiff—not Amazing—was 2 responsible for paying the \$2.7 million.

(Id. at ¶ 18.) The Audit omitted Amazing’s obligation to 3 reimburse plaintiff for the \$2.7 million. (Id. at ¶ 20.) Defendant Meredith knowingly 4 mischaracterized the debt at the request of defendant Vensure in order to further the fraudulent 5 scheme to strip plaintiff of its assets and revenues. (Id. at ¶ 26.) 6 Due to the Audit stating that plaintiff, not Amazing, was obligated to pay the \$2.7 million 7 debt, the Bank found plaintiff to be out of compliance with its loan.

(Id. at ¶ 21.) At the time of 8 the Audit, plaintiff was drawing down millions of dollars on a line of credit with the Bank. (Id.) 9 The false Audit damaged plaintiff’s relationship with the Bank, seriously disrupting plaintiff’s 10 business. (Id.) 11 On September 11, 2019, plaintiff filed a counterclaim in the Amazing action and joined 12 Childress as a counter-defendant in that action.2 (Id. at ¶ 12.)

Plaintiff did not refer to the Audit 13 or defendant Meredith in its counterclaim in Amazing because, at that time, plaintiff was unaware 14 of the conflict of interest between plaintiff and the supposedly independent Meredith. (Id.) 15 Defendant Meredith concealed the conflict of interest at the time it was retained by plaintiff. (Id.) 16 The engagement letter sent by defendant Meredith to plaintiff stated the following: “[T]o ensure 17 that MeredithCPA’s independence is not impaired under the AICPA Code of Professional 18 Conduct, you agree to inform the engagement partner before entering into any substantive 19 employment discussions with any of our personnel.” (Id.)

The AICPA Code of Professional 20 Conduct referenced in the letter further provides: “A member should maintain objectivity and be 21 free of conflicts of interest in discharging professional responsibilities. A member in public 22 practice should be independent in fact and appearance when providing auditing and other 23 attestation services.” (Id.) It was therefore reasonable for plaintiff to believe at the time it filed 24 the counterclaim, “without further inquiry,” that the Audit was performed by Meredith in a 25 // 26 2 The docket in the Amazing action reflects that

Childress was not initially named as a defendant 27 in that action and that plaintiff in fact joined Childress as a third-party defendant, not as a counter-defendant.

Regardless, this distinction is not material to the resolution of the pending 28 motions. 1 professional and independent manner free from undue influences resulting from a conflict of 2 interest. (Id.) 3 Furthermore, “[a]s alleged in Accuire’s Counterclaim in the Amazing litigation,” Childress 4 was deeply involved in and had authority to control plaintiff’s financial affairs.

(Id. at ¶ 15.) 5 Childress could withdraw funds from plaintiff’s accounts and arrange loan commitments between 6 plaintiff and defendant Vensure. (Id.) Given that Childress was managing plaintiff’s finances, it 7 was “unthinkable” that she was also a partner in the audit firm brought in to conduct an 8 independent analysis of plaintiff’s financial affairs. (Id.)

Instead, it was reasonable for plaintiff 9 to believe that it was receiving professional, objective, and independent advice from defendant 10 Meredith concerning the classification of plaintiff’s debt and assets in the Audit. (Id. at ¶ 16.) It 11 was also reasonable for plaintiff to believe that defendant Meredith was acting in plaintiff’s best 12 interests.

(Id.) Defendant Meredith allowed plaintiff to believe that it could rely on its 13 professional opinion that the classification of debt as “goodwill” met accounting standards and 14 was appropriate under the circumstances, and plaintiff, unaware of Childress’s conflict of interest, 15 did so. (Id. at ¶ 17.) 16 Plaintiff did not learn of Childress’s partnership in defendant Meredith until Childress was 17 deposed in the Amazing action on April 27, 2021.

(Id. at ¶ 13.) 18 Based on the above allegations, plaintiff asserts the following two claims against both 19 defendants: (1) fraud; and (2) conspiracy to commit fraud. (Id. at 8, 10.) 20 In its original complaint, plaintiff asserted the same two claims against both defendants. 21 (See Doc. No. 1-1.) Both defendants moved to dismiss plaintiff’s original complaint on the 22 grounds that those claims were barred by the applicable statute of limitations and that the delayed 23 discovery rule was inapplicable.

(See Doc. Nos. 5, 7.) On March 13, 2025, the court issued an 24 order concluding that plaintiff’s claims were time-barred and that the delayed discovery rule was 25 inapplicable because plaintiff had failed to allege both when it had discovered the alleged fraud 26 and any facts regarding its inability to discover the alleged fraud despite the exercise of 27 reasonable diligence.

(Doc. No. 27 at 6.) The court granted defendants’ motions to dismiss with 28 //// 1 leave to amend despite noting its skepticism that plaintiff would be able to adequately amend its 2 complaint. (Id. at 7–8.) 3 Plaintiff filed its FAC on April 3, 2025. (Doc. No. 28.)

On April 17, 2025, defendants 4 filed their motions to dismiss plaintiff’s FAC. (Doc. Nos. 29, 30.) Plaintiff filed its combined 5 opposition to both pending motions on May 8, 2025. (Doc. No. 36.)

Defendants Meredith and 6 Vensure filed their replies thereto on May 14, 2025 and May 16, 2025, respectively. (Doc. 7 Nos. 37, 38.) 8 LEGAL STANDARD 9 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal 10 sufficiency of the complaint.

N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 11 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of 12 sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 13 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to 14 relief that is plausible on its face." Bell Atl.

Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A 15 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 16 the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. 17 Iqbal, 556 U.S. 662, 678 (2009). 18 In determining whether a complaint states a claim on which relief may be granted, the 19 court accepts as true the allegations in the complaint and construes the allegations in the light 20 most favorable to the plaintiff.

Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). However, 21 the court need not assume the truth of legal conclusions cast in the form of factual allegations. 22 U.S. ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not 23 require detailed factual allegations, "it demands more than an unadorned, the-defendant- 24 unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678.

A pleading is insufficient if it offers 25 mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." 26 Twombly, 550 U.S. at 555; see also Iqbal, 556 U.S. at 678 ("Threadbare recitals of the elements 27 of a cause of action, supported by mere conclusory statements, do not suffice."). It is 28 inappropriate to assume that the plaintiff "can prove facts that it has not alleged or that the 1 defendants have violated the... laws in ways that have not been alleged." Associated Gen.

2 Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983). 3 In ruling on a motion to dismiss brought under Rule 12(b)(6), the court is permitted to 4 consider material that is properly submitted as part of the complaint, documents that are not 5 physically attached to the complaint if their authenticity is not contested and the plaintiffs' 6 complaint necessarily relies on them, and matters of public record.

Lee v. City of Los Angeles, 7 250 F.3d. 668, 688–89 (9th Cir. 2001). 8 ANALYSIS 9 A. Defendant Vensure's Motion to Dismiss 10 In its motion to dismiss, defendant Vensure again argues that plaintiff's claims are barred 11 by California's three-year statute of limitations applicable to actions grounded in fraud. (Doc. 12 No. 29 at 12.) 13 1. Request for Judicial Notice 14 In

connection with its pending motion, defendant Vensure requests that the court take 15 judicial notice of various documents filed in the Amazing action.

(Doc. No. 29-2 at 2.) 16 Defendant Vensure emphasizes the purported importance of the court's consideration of two 17 documents in particular. First, defendant Vensure highlights various allegations in plaintiff's 18 counterclaim filed in the Amazing action on September 11, 2019. (Doc. No. 29 at 16.)

In that 19 counterclaim, plaintiff alleged the following regarding the characterization of the \$2.7 million 20 discussed above: 21 In sum, Accuire would buy out the Bean Team, and Amazing Insurance would only put [d]own \$300,000 cash out of a total 22 purchase price of \$2.7 million. Amazing Insurance would pay the rest, over time, to Accuire, which would cover Accuire's note 23 payments to the Bean Team....

24 [However, n]otably absent from [the final deal] is Amazing Insurance's or Campos's obligation to make any payments beyond 25 the initial \$300,000 in exchange for receiving all of the Membership Units at closing. 26 27 (Amazing, Doc. No. 16 at ¶¶ 22, 28.) Plaintiff further alleged the following regarding Childress's 28 role in the alleged scheme: 1 Campos also relied on Kara Childress, Vensure Employer Service's ("Vensure's") COO, to enact his tortious activities against DiManno 2 and Accuire....

Childress, a Campos insider, would become an important actor at Accuire to assist Campos in sweeping the Accuire 3 operating account.... 4 Campos—with the assistance of Jain and Childress—had started "sweeping" Accuire's accounts, emptying them when as soon as 5 money was deposited [sic].... 6 Childress [was] draining and abusing Accuire.... 7 Childress had access to Accuire's bank accounts and made use of those positions to siphon money to Campos, Amazing Insurance, and 8 Campos-owned entities....

9 Childress then negotiated agreements on Campos's and Vensure's behalf so that Vensure would loan Accuire money. Those funds 10 would then be funneled to Campos, while leaving Accuire on the hook to repay them to Vensure.... 11 Childress, following Campos's directions, wired out at least 12 \$400,000 from Accuire's California account, to Campos directly....

13 Campos, relying on Childress, repeatedly "cleaned out" Accuire's 14 accounts.... 15 Defendants... did cooperate to engage in fraud, misleading, and the financially draining of Accuire [sic]. 16 17 (Id. at ¶¶ 24, 53, 54, 58–61, 116.)

On the basis of these allegations, plaintiff asserted claims 18 against Childress for conversion and civil conspiracy in its counterclaim filed in the Amazing 19 action. (Id. at 29.) 20 Second, defendant Vensure directs the court's attention to certain passages in the 21 deposition testimony of Michael DiManno, a member of plaintiff's management, filed by plaintiff 22 as an attachment

in support of its opposition to the motion for preliminary injunction in the 23 Amazing action on November 14, 2019.

(Doc. No. 29 at 18.) Excerpts of that deposition 24 testimony include the following: 25 There were some things done during this financing with Sterling that were specifically the result of [Campos's] actions that I can't speak 26 to as to what his liability will end up. 27 Q. What actions were those? 28 1 A. They had to do with the audits and the submitting of financial information....

2 I'll give you an example. The audit was always late, and the 2017 3 audit was done by Kara Childress's CPA firm. When they did the audit, they made substantial changes to the balance sheet, which 4 threw the loan in default, and those were changes that I refused to sign, my CFO refused to sign.... 5 6 (Amazing, Doc. No. 26-2 at 33–34.) 7 In its opposition, plaintiff does not address—nor could it reasonably oppose—defendant 8 Vensure's request for judicial notice.

The court therefore takes judicial notice of the existence of 9 the documents filed on the docket in the Amazing action. See, e.g., *Brave & Free Santa Cruz v. 10 Aragon*, No. 2:24-cv-02312-DAD-JDP, 2025 WL 306594, at *2 n.3 (E.D. Cal. Jan. 27, 2025) 11 (“Plaintiffs have requested judicial notice of... an affidavit filed in another case (Ex. 19).... 12 The court [] takes judicial notice of the existence of exhibit 19 as a court filing.”).

13 2. Whether Plaintiff's Claims Against Defendant Vensure are Time-Barred 14 When a federal court's “jurisdiction rests on the parties' diversity of citizenship, [the 15 federal court must] apply substantive state law, including state law regarding statutes of 16 limitations and tolling.” *G&G Prods. LLC v. Rusic*, 902 F.3d 940, 946 (9th Cir. 2018). “In 17 California, the statute of limitations for fraud and conspiracy to commit fraud claims is three 18 years....” *MSP Recovery Claims, Series LLC v. Avanir Pharms., Inc.*, No. 22-cv-01026-DOC- 19 KES, 2022 WL 17220647, at *4 (C.D.

Cal. Oct. 20, 2022); see also Cal. Civ. Proc. Code § 338(d) 20 (establishing a three-year statute of limitations for an “action for relief on the ground of fraud”). 21 Here, the alleged fraud occurred in 2018. (Doc. No. 28 at ¶¶ 10–11.) Plaintiff did not file its 22 complaint initiating this action until 2024. (Doc. No. 1-1 at 1.) Plaintiff's claims are time-barred 23 unless some exception to the applicable statute of limitations, such as the discovery rule or 24 fraudulent concealment, acts to save plaintiff's claims.

25 Defendant Vensure argues that the delayed discovery rule is inapplicable here because 26 plaintiff has failed to allege facts establishing that it lacked inquiry notice, i.e., establishing its 27 inability to have discovered the alleged fraud earlier despite the exercise of reasonable diligence, 28 as required by the delayed discovery rule. (Doc. No. 29 at 12–22.)

1 In its opposition, plaintiff acknowledges that a three-year statute of limitations applies to 2 its claims but argues that defendant Vensure's fraudulent concealment tolled the statute of 3

limitations. (Doc. No. 36 at 1–2.) Plaintiff argues that it was “unthinkable” that Childress would 4 be a partner in the audit firm brought in to conduct an independent audit of Accuire’s financial 5 affairs when she was also managing Accuire’s finances.

(Id. at 2.) Plaintiff also argues that at the 6 time it filed its claims in the Amazing action, it was reasonable for it to believe without further 7 inquiry that the Audit was properly conducted because plaintiff was unaware of defendant 8 Meredith’s alleged conflict of interest, because the AICPA Code of Conduct directs members to 9 be free of conflicts of interest, and because defendant Meredith’s engagement letter to Accuire 10 made no reference to a conflict of interest concerning Childress.

(Doc. No. 36 at 3.) According 11 to plaintiff, it therefore had no reason to suspect that defendant Meredith’s independence was 12 compromised until Childress disclosed her partnership in defendant Meredith on April 27, 2021.³ 13 (Id.) Plaintiff also contends that Childress’s partnership was actively concealed, though plaintiff 14 concedes that “no inquiry was made as to whether Childress was a partner in Meredith during the 15 2017 Audit, or later.” (Id. at 4.)

Indeed, plaintiff’s FAC does not contain any allegations 16 describing any investigation into the circumstances of the selection of defendant Meredith or the 17 conduct of the Audit.⁴ 18 Plaintiff additionally argues that “in the face of active concealment... an analysis of 19 whether Accuire was placed on inquiry notice is of little significance.” (Doc. No. 36 at 7.)

20 Plaintiff is incorrect in this regard. “A close cousin of the discovery rule is the well accepted 21 principle of fraudulent concealment.” *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 22 1049, 1055 (9th Cir. 2008) (citing *Bernson v. Browning-Ferris Indus. of Cal., Inc.*, 7 Cal. 4th 926, 23 24 3 Because plaintiff’s claims must in any event be dismissed as time-barred for the reasons set forth below, the court assumes for the purposes of the pending motions that because April 27, 25 2024, was a Saturday, Federal Rule of Civil Procedure 6(a) extended the statute of limitations until the following weekday, Monday, April 29, 2024.

26 27 4 Plaintiff also argues that no publicly available records identify Childress as ever being a partner in Meredith, and that defendant Meredith’s website does not list her as a partner in the firm. (Id. 28 at 4.)

However, plaintiff has not included any allegations to this effect in its FAC. 1 931 (1994)). “A defendant’s fraud in concealing a cause of action against him will toll the statute 2 of limitations, and that tolling will last as long as a plaintiff’s reliance on the misrepresentation is 3 reasonable.” *Grisham v. Philip Morris U.S.A., Inc.*, 40 Cal. 4th 623, 637 (2007). “In order to 4 establish fraudulent concealment, the complaint must show... that the plaintiff was not at fault 5 for failing to discover it or had no actual or presumptive knowledge of facts sufficient to put him 6 on inquiry.” *Platt Elec.*, 522 F.3d at 1055 (quoting *Baker v. Beech Aircraft Corp.*, 39 Cal. App.

7 3d 315, 321 (1974)) (emphasis added). “[I]t must be shown that in the exercise of reasonable 8 diligence the facts could not have been discovered at an earlier date.” Id. (quoting Baker, 39 Cal. 9 App. 3d at 321).

The doctrine of fraudulent concealment is “sometimes referred to” as “equitable 10 estoppel.” Lukovsky v. City & Cnty. of S.F., 535 F.3d 1044, 1051 (9th Cir. 2008); see also 11 Bernson, 7 Cal. 4th at 931 (“Like the discovery rule, the rule of fraudulent concealment is an 12 equitable principle designed to effect substantial justice between the parties; its rationale ‘is that 13 the culpable defendant should be estopped from profiting by his own wrong to the extent that it 14 hindered an “otherwise diligent” plaintiff in discovering his cause of action.’”).

15 In its FAC, plaintiff has alleged that it was required to submit an audit to the Bank in 16 2018, Childress chose defendant Meredith to conduct that audit, Childress managed Accuire’s 17 debt, the Audit by Meredith mischaracterized Accuire’s \$2.7 million debt, the Bank found 18 plaintiff to be out of compliance with its loan on that basis, plaintiff’s business was seriously 19 disrupted, and plaintiff nevertheless never inquired into the circumstances of the Audit.

(Doc. 20 No. 28.) Notably, however, on September 11, 2019, plaintiff alleged in its claims in the Amazing 21 action that Childress had aided in Campos’s alleged tortious activities, had emptied Accuire’s 22 accounts, was “draining and abusing Accuire,” and had “funneled” money from Accuire to 23 Campos. (Amazing, Doc. No. 16 at ¶¶ 24, 53, 54, 58–61.) Plaintiff’s allegations in these actions 24 show that as of September 11, 2019 it was certainly aware of information that would put a 25 reasonable person on inquiry notice that Childress, who plaintiff was suing at that time for fraud 26 and civil conspiracy, had not been entirely neutral in selecting the auditing company that had 27 produced an audit report seriously disrupting plaintiff’s business—specifically, one that did so by 28 mischaracterizing Accuire’s debt, an area overseen by Childress.

The court could easily find 1 from these allegations, advanced by plaintiff in September of 2019, that the statute of limitations 2 expired in September 2022 and grant defendant Vensure’s motion to dismiss on this basis alone. 3 Plaintiff argues that a “reasonable businessperson would not suspect that Meredith, a well- 4 established CPA firm, was in violation of its professional ethics simply because it prepared a 5 supposedly independent audit that he or she disagreed with in terms of asset characterization.” 6 (Doc.

No. 36 at 5.) However, the court further notes that on November 14, 2019, plaintiff filed an 7 opposition to a motion for preliminary injunction in Amazing and attached thereto a copy of 8 DiManno’s October 30, 2019 deposition testimony. (Amazing, Doc. No. 26-2.) DiManno had 9 testified that “Kara Childress’s CPA firm” made “substantial changes to the balance sheet” which 10 DiManno “refused to sign,” that those changes “threw the loan in default,” and that Campos 11 might face liability for “this financing with Sterling” and the related “audits and the submitting of 12 financial information.” (Id. at 33–34.)

Plaintiff therefore was in possession of information that 13 would put a reasonable person on notice that Childress's selection of defendant Meredith was not 14 impartial:5 Plaintiff had filed deposition testimony given in October 2019 that its management, 15 Michael DiManno, actually suspected that the firm chosen by Childress had tampered with the 16 Audit and that Campos, to whom Childress allegedly reported, could face liability on that basis.6 17 See *Rand v. Midland Nat'l Life Ins.*, 857 F. App'x 343, 347 (9th Cir.

2021)7 ("[T]he 18 5 Plaintiff argues that by "Kara Childress's CPA firm," DiManno was merely referring to the fact 19 that Childress had selected Meredith and not suggesting that Childress was a partner in Meredith. (Doc. No. 36 at 7.) Plaintiff argues that DiManno's testimony therefore does not show that 20 DiManno was aware of the alleged conflict of interest in 2019.

However, as discussed above, the fraudulent concealment doctrine concerns inquiry notice, not actual notice. Even drawing all 21 reasonable inferences in plaintiff's favor, assuming that DiManno was referring only to the fact that Childress had selected defendant Meredith, and assuming that DiManno lacked actual notice, 22 plaintiff was still clearly on inquiry notice at that time as to whether Childress had been neutral in 23 selecting the auditing company.

24 6 The court emphasizes that it is not treating the contents of DiManno's deposition testimony as being true. Rather, the court merely takes judicial notice of the fact of the existence of the filing. 25 The fact that plaintiff filed that deposition testimony with the court in October of 2019 is itself sufficient evidence that a reasonable person would have been put on inquiry notice that the Audit 26 was fraudulent due to Childress's involvement.

27 7 Citation to the unpublished Ninth Circuit opinions cited throughout this order is appropriate 28 pursuant to Ninth Circuit Rule 36-3(b). 1 communications between Midland and Mr. Rand, on which the complaint necessarily relies and 2 whose authenticity Plaintiffs-Appellants do not dispute, clearly establish that Mr. Rand suspected 3 that Midland was overcharging premiums in 2012.

As such, it is apparent that... in 2012 Mr. 4 Rand possessed 'information of circumstances to put a reasonable person on inquiry' that he had 5 been injured by Midland."); see also *id.* at 348 ("In other words, the first amended complaint does 6 not contain any allegations from which it can plausibly be concluded that Midland's actions 7 resulted in Mr. Rand waiting over seven years to file suit....

Accordingly, the doctrine of 8 equitable estoppel does not apply and Mr. Rand's claims are barred by the applicable statute of 9 limitations."). Moreover, the existence of DiManno's deposition testimony, in which he 10 expressly stated that Campos could face liability for the mischaracterization of the debt in the 11 Audit, severely undercuts plaintiff's current argument that a "reasonable businessperson would 12 not suspect that Meredith... was in violation of its

professional ethics simply because it prepared 13 a supposedly independent audit that he or she disagreed with in terms of asset characterization” 14 (Doc.

No. 36 at 5). 15 Even if plaintiff has sufficiently alleged fraudulent concealment on the basis of the 16 engagement letter from defendant Meredith and the existence of the AICPA Code of Professional 17 Conduct—an issue the court does not decide—the “fraudulent concealment doctrine ‘does not 18 come into play, whatever the lengths to which a defendant has gone to conceal the wrongs, if a 19 plaintiff is on notice of a potential claim.” New Amsterdam Project Mgmt.

Humanitarian Found. 20 v. Laughrin, 400 F. App’x 250, 251 (9th Cir. 2010) (quoting Snapp & Assocs. Ins. Servs., Inc. v. 21 Malcolm Bruce Burlingame Robertson, 96 Cal. App. 4th 884, 890–91 (2002)). Here, plaintiff’s 22 allegations, in combination with other documents of which the court has taken judicial notice, 23 show that plaintiff was indisputably on notice of its claim in this action as of November 14, 2019 24 at the latest.

Plaintiff’s claims against defendant Vensure are therefore barred by the 3-year 25 statute of limitations. 26 Accordingly, defendant Vensure’s motion to dismiss plaintiff’s claims asserted against it 27 will be granted. Cf. *id.* at 251–52 (affirming the district court’s grant of summary judgment 28 where “even if there was fraudulent concealment, NAF was on inquiry notice of its claims against 1 the appellees by 2003 at the latest, when it knew of the underlying conversion and knew that the 2 appellee law firm received some portion of the converted funds,” and noting that “[t]he fact that 3 NAF was not aware of the full extent of the appellees’ participation is not dispositive”); *Platt 4 Elec.*, 522 F.3d at 1059–60 (“After becoming aware in 1999 of its economic injury stemming 5 from the defective heaters and UL’s representations concerning their safety, Platt had a basis to 6 question UL’s representations concerning the heaters’ safety.

Platt’s fraudulent concealment 7 claim, filed in 2003, was therefore barred by the three-year statute of limitations.... The district 8 court properly dismissed Platt’s... claims as barred by the statutes of limitations, and did not 9 abuse its discretion in dismissing Platt’s claims without leave to amend.”). 10 B. Defendant Meredith’s Motion to Dismiss 11 Defendant Meredith argues that plaintiff’s claims brought against it are time-barred for the 12 same reasons argued by defendant Vensure.

(See Doc. No. 30 at 12–22.) As noted, plaintiff filed 13 a combined opposition to both pending motions. (See Doc. No. 36.) Consequently, for the same 14 reasons discussed above in addressing the motion to dismiss filed on behalf of defendant Vensure, 15 the motion to dismiss filed on behalf of defendant Meredith will also be granted. 16 C. Leave to Amend 17 Plaintiff was previously granted leave to amend despite the court’s skepticism that it could 18 do so.

(See Doc. No. 27 at 7–8.) Plaintiff has again failed to supply sufficient factual allegations 19 to support denial of defendants’ motions to dismiss. Moreover, it is clear in light of the 20 documents filed by plaintiff on the docket in the Amazing action, of which the court has taken 21 judicial notice, that the granting of further leave to amend would be futile.

Plaintiff will therefore 22 not be granted further leave to amend its pleadings. See *Foman v. Davis*, 371 U.S. 178, 182 23 (1962) (“noting that “repeated failure to cure deficiencies by amendments previously allowed” 24 and “futility of amendment” may support denial of leave to amend). 25 CONCLUSION 26 For the reasons explained above: 27 1.

The motion to dismiss plaintiff’s first amended complaint filed on behalf of defendant 28 Vensure Employer Services Inc. (Doc. No. 29) is GRANTED; 1 2. The motion to dismiss plaintiffs first amended complaint filed on behalf of defendant 2 Meredith CPAs P.C. (Doc. No. 30) is GRANTED; 3 3. Plaintiffs first amended complaint (Doc. No. 28) is DISMISSED without further 4 leave to amend; and 5 4.

The Clerk of the Court is directed to close this case. 6 IT IS SO ORDERED. "| Dated: _ July 31, 2025 Dal A. 2, sxe 8 DALE A. DROZD 9 UNITED STATES DISTRICT JUDGE 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 14