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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

LOUIS DILLON,  
Plaintiff and Appellant,  
v.  
CITY AND COUNTY OF SAN  
FRANCISCO,  
Defendant and Respondent.

A132758  
(San Francisco City & County  
Super. Ct. No. CGC-11-509751)

Plaintiff Louis Dillon filed an action in 2011 seeking to vacate a 2009 judgment in a personal injury case against the City and County of San Francisco (the City). The trial court sustained the City's demurrer without leave to amend on the ground plaintiff's 2011 action was a prohibited collateral attack on the prior judgment. We agree and affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

**A. 2007 Lawsuit**

Plaintiff filed a lawsuit against the City in San Francisco Superior Court on July 30, 2007 alleging he sustained personal injuries as a result of a motor vehicle accident on December 16, 2006 at the intersection of Haight Street and Cole Street in San Francisco. On June 17, 2009, the parties reached an agreement to settle the case and appeared before Judge Curtis Karnow to place the terms of the settlement on the record. As recited by the court, the terms of the settlement were (1) the City would pay plaintiff

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<sup>1</sup> On January 6, 2012, the City's motion to augment the record was granted. We take background information from the clerk's transcript and augmented record.

\$50,000; (2) the City would waive its existing lien of \$16,000; (3) the settlement was contingent upon approval by the San Francisco Municipal Transportation Agency Board of Directors; (4) there would be a waiver of all rights under Civil Code section 1542; (5) each party would bear its own fees and costs; and (6) there would be a signed release of all demands by plaintiff and a dismissal with prejudice of the entire action. Following the judge's recitation of the settlement terms, plaintiff specifically consented to the terms. Plaintiff, however, on July 27, 2009 dismissed his attorney, proceeded in pro. per., and declined to comply with the settlement.

On September 4, 2009, the City brought a motion to enter judgment pursuant to Code of Civil Procedure section 664.6.<sup>2</sup> The motion came on for hearing in front of Judge Karnow on October 9, 2009. Although the court struck plaintiff's opposition for failure to timely serve it on the city attorney, the court nevertheless allowed oral argument. Plaintiff conceded he had refused to sign the release, but contended his refusal to comply with the terms of the agreement gave him the "unilateral option" to "bow out" of it. The court rejected plaintiff's contention. It granted the City's motion, finding plaintiff had agreed to the terms of the settlement as recited, and was therefore obligated to sign the "dismissal and releases" in return for "receipt of the money that he was going to get." The court entered judgment on that same day.

On October 28, 2009, plaintiff filed a "Motion to Reconsider Courts [*sic*] Entry of Judgment" claiming under Code of Civil Procedure section 473, subdivision (b) he "mistakenly, and through inadvertence and excusable neglect whilst [*sic*] relying on the advice of his counsel at the time, orally consented to the settlement in court." He also claimed future medical expenses should have been included as part of the settlement since he was still undergoing treatment as a result of the City's negligence. The court denied plaintiff's motion on December 18, 2009. Plaintiff did not appeal the judgment.

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<sup>2</sup> Code of Civil Procedure section 664.6 provides in pertinent part: "If parties to pending litigation stipulate, in a writing signed by the parties outside 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."

## **B. 2011 Lawsuit**

On March 30, 2011, plaintiff filed the present lawsuit against the City in San Francisco Superior Court, alleging a cause of action “To Set Aside Judgment.” The judgment plaintiff seeks to set aside is the October 9, 2009 judgment entered after the court enforced the settlement agreement in the 2007 action.<sup>3</sup> He alleges he neither agreed to nor authorized the 2009 settlement, he continues to suffer from injuries requiring continuing medical treatment, and his attorney did not have his signature on a written agreement, but instead sent a letter to the court stating a settlement had been reached and then represented to the court and opposing counsel in court on June 16, 2009 that plaintiff had agreed to the terms of the settlement.

The City demurred to plaintiff’s complaint on a number of grounds, including that the 2011 complaint was “duplicative of an earlier unsuccessful motion” to vacate the judgment. On June 1, 2011, plaintiff failed to appear at the scheduled hearing on the City’s demurrer.<sup>4</sup> Judge Peter Busch granted the City’s demurrer without leave to amend on the grounds “[this case] is a collateral attack on an earlier judgment based on issues that not only could have been but were raised in that prior case, and I don’t think that a new lawsuit is a proper basis on which to challenge that. Were there a problem with the prior case, it needed to be addressed in the prior case. This in fact is simply a request that this Court reconsider or find error in what was done in the prior case.” Judgment was subsequently entered against plaintiff on June 16, 2011.

Plaintiff filed a motion for reconsideration on June 9, 2011, which was unopposed by the City. On June 28, 2011, the court granted the motion and heard further oral

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<sup>3</sup> Although plaintiff alleges in the complaint he is seeking to vacate the “October 14, 2009” judgment, we presume he is referring to the October 9, 2009 judgment.

<sup>4</sup> Evidently, the City misstated the correct department on its moving papers, department 302, and plaintiff went there instead of department 301. The court had, however, added the matter to department 302’s calendar with the indication on the tentative ruling it would be heard in 301. In addition, the matter was called at the beginning of the calendar in department 302, but plaintiff came in late.

argument on the City's demurrer. During the hearing, the court stated, "[T]his action is a collateral attack on the prior judgment in which these challenges to the settlement were raised, decided and rejected, and I don't think that a collateral attack on the prior judgment in this way is something that you're entitled to maintain." Plaintiff, in fact, acknowledged, "This case is a collateral attack on a judgment that should have never been entered." At the conclusion of the hearing, the court sustained the City's demurrer without leave to amend on the grounds set forth at the June 1 and June 28 hearings.

Plaintiff filed a notice of appeal on July 20, 2011, indicating he was appealing from the June 28, 2011 judgment of dismissal after an order sustaining a demurrer.

## **II. DISCUSSION**

We review an order sustaining a demurrer de novo, exercising our independent judgment about whether the complaint states a cause of action as a matter of law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

In the present action, plaintiff seeks to set aside the October 9, 2009 judgment on the grounds the settlement agreement entered into by the parties in court on the record was unenforceable because he neither authorized nor wanted "the case to settle under the terms of the settlement," and his attorney failed to have him sign a written agreement.

Plaintiff’s contentions lack merit because his 2011 complaint is a prohibited collateral attack on the prior judgment.

“A litigant may collaterally attack a final judgment for lack of personal or subject matter jurisdiction, or for granting relief that the court had no power to grant, but may not collaterally attack a final judgment for nonjurisdictional errors.” (*Estate of Buck* (1994) 29 Cal.App.4th 1846, 1854.) “ ‘If a judgment, no matter how erroneous, is within the jurisdiction of the court, it can only be reviewed and corrected by one of the established methods of direct attack.’ ” (*People v. \$6,500 U.S. Currency* (1989) 215 Cal.App.3d 1542, 1548.) Hence, “[t]he key question in the case at bench is whether the [alleged] error, appearing on the face of the judgment, [would render] the judgment void . . . as being beyond the jurisdiction of the court, and subject to collateral attack, or [would simply render] the judgment erroneous—not void—but within the jurisdiction of the court, and free from collateral attack.” (*Jones v. World Life Research Institute* (1976) 60 Cal.App.3d 836, 844.)

For the purpose of making a collateral attack on a final judgment, the term “jurisdiction” has been interpreted narrowly to include: “(1) jurisdiction of the subject matter . . . , (2) personal jurisdiction over the parties, and (3) adequate notice.” (*Estate of Buck, supra*, 29 Cal.App.4th at pp. 1854 & fn. 7, 1855–1856.) In the *Buck* case, the appellate court characterized these three elements as “ ‘fundamental jurisdiction.’ ” (*Id.* at p. 1854, fn. 7.) According to *Buck*, the reported cases where courts have permitted a collateral attack based on factors other than a lack of fundamental jurisdiction have been limited to those where the amount awarded in a default judgment exceeded the amount requested in the complaint (e.g., *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 492–493), and where a court granted prejudgment interest in a stipulated judgment that was contrary to statute and to a stipulation that supported the judgment (e.g., *Jones v. World Life Research Institute, supra*, 60 Cal.App.3d at pp. 842–844, 847–848).

Here, plaintiff’s claim fails because he has not provided any authority to establish the particular type of error allegedly committed by the trial court—ordering enforcement of the settlement agreement—falls within any of the recognized grounds for allowing

collateral attack on the October 9, 2009 judgment due to a lack of jurisdiction. When, as here, a plaintiff fails to support a point with pertinent citations of authority, we treat the point as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

Plaintiff’s suit is also barred because he seeks to relitigate the 2007 action by alleging a single cause of action to vacate the judgment entered in 2009. This is a classic case of res judicata.

The doctrine of res judicata holds that a valid, final judgment on the merits precludes parties or their privies from relitigating the same “cause of action” in any subsequent lawsuit. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 (*Mycogen*); *Le Parc Community Assn. v. Workers’ Comp. Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1169.) “Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action.” (*Mycogen*, at pp. 896–897.) The doctrine has two aspects: merger and bar and collateral estoppel. (*Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 401.) Merger and bar, or claim preclusion, prohibits the relitigation in a subsequent proceeding of legal claims which actually were raised or could have been raised in the preclusive proceeding. (*Id.* at p. 402.) Collateral estoppel, or issue preclusion, prevents relitigation of legal or factual issues actually argued and decided in a prior proceeding. (*Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481.) A judgment entered in accordance with a settlement agreement is as conclusive a bar as a judgment rendered after trial for res judicata purposes. (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1065–1066 [settlement agreement incorporated into judgments was final judgment on the merits for res judicata purposes].)

Plaintiff’s 2011 complaint is barred under the doctrine of res judicata because it seeks to relitigate the 2007 action by alleging a single cause of action to “Set Aside Judgment,” defined as the 2009 judgment entered following enforcement of the settlement agreement resolving the 2007 lawsuit. Plaintiff already had the opportunity to

litigate his personal injury action, and settled his case in 2009. His basis for seeking to set aside the judgment in this action is the same as in 2009 when he filed a motion to vacate the judgment in the 2007 action—that he never intended to agree to the terms of the proposed settlement, but mistakenly did so after his counsel recited the terms on the record. In short, plaintiff previously had the opportunity to challenge the enforceability of the settlement and to vacate the judgment entered based on that settlement, exactly what he is seeking to do here. Plaintiff is not entitled to another bite at the apple.

### **III. DISPOSITION**

The judgment of dismissal is affirmed.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Banke, J.