Tentative Rulings for May 2, 2024
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

20CECG00415 ***Zachary Costi v. William Hanks, M.D.*** **is continued to Wednesday, July 17, 2024, at 3:30 p.m. in Department 502**

22CECG02182 ***John Ingram, Jr. v. Rasna, LLC*** **is continued to Thursday, June 6, 2024, at 3:30 p.m. in Department 502**

23CECG03395 ***Terry Wilkin v. Evan Bazan*** **is continued to Tuesday, June 11, 2024, at 3:30 p.m. in Department 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(37)

Tentative Ruling

Re: ***Shirly Corcoran v. TJX Companies, Inc.***
Superior Court Case No. 21CECG03469

Hearing Date: May 2, 2024 (Dept. 502)

Motion: By Defendant TJX Companies, Inc. to Compel Responses to Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production of Documents (Set One); or, in the Alternative, for Terminating Sanctions

Tentative Ruling:

To grant defendant TJX Companies, Inc.'s motions to compel for Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production of Documents (Set One). Plaintiff Shirly Corcoran is ordered to serve verified responses, without objections, to defendant within 30 days of service of the minute order by the clerk.

To deny the alternative request for terminating sanctions as premature.

Explanation:

Here, plaintiff was properly served discovery on July 27, 2023. As of the filing of the motions on March 11, 2024, no responses had been received. Nothing has been filed indicating the responses were received and no opposition was filed.

Plaintiff has had sufficient time to respond to the discovery propounded by defendant and has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., § 2030.290, subd. (a) [interrogatories]; Code Civ. Proc., § 2031.300, subd. (a) [production demands]; see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.) Here, no responses have been received.

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. Code of Civil Procedure section 2023.010, subdivision (g), makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Here, the alternative request for terminating sanctions is premature. This motion is made with the first motion to compel initial discovery, prior to the court making any such orders. As such, this request is premature.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 04/29/24.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Patsy Mayberry v. JD Home Rental***
Superior Court Case No. 22CECG00985

Hearing Date: May 2, 2024 (Dept. 502)

Motion: By Cross-Defendant Patsy Mayberry for Reconsideration

Tentative Ruling:

To deny.

Explanation:

Cross-Defendant Patsy Mayberry ("Cross-Defendant") filed moving papers titled "Notice of Motion to Reconsider Motion for Setting As[]ide/Vacating of Prior Default Judgment Order" in the action filed by Cross-Complainant JDB Properties, Inc. ("Cross-Complainant"). The notice however appears to seek the relief of setting aside the default or default judgment entered on August 3, 2022, and August 28, 2023.[1] The notice indicates that the relief sought will be based on mistake, inadvertence, surprise or neglect by Cross-Defendant, and under Code of Civil Procedure section 473, subdivision (b).

The moving papers are, in effect, the same as was previously considered for hearing on February 27, 2024, on Cross-Defendant's motion to set aside the entry of default. To the extent that Cross-Defendant seeks to reassert those grounds, the court does not make any further findings. To the extent that Cross-Defendant seeks reconsideration, the court notes that Cross-Complainant in its opposition addresses the possibility of the argument as to reconsideration. Accordingly, the court finds sufficient notice to the opposing party as to a motion for reconsideration, and proceeds.

Motions for reconsideration fall under the purview of Code of Civil Procedure section 1008, which states in pertinent part:

> When an application for an order has been made to a judge, or to a court, and … granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based on new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. (Code Civ. Proc. § 1008, subd. (a), emphasis added.)

Section 1008 further states that "[t]he party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions

[1] On review of the docket, Cross-Defendant's default was entered on August 3, 2022. On August 28, 2023, Cross-Complainant filed an application for entry of court judgment. Nothing on August 28, 2023 is a court order.

were made, and what new or different facts, circumstances, or law are claimed to be shown." (*Ibid.*)

Cross-Defendant fails to demonstrate any basis for reconsideration. None of the evidence submitted in support of the motion demonstrates new or different facts, circumstances, or law, to reconsider the prior order. (*See generally* Mayberry Decl.)[2] At most, Cross-Defendant declares that she was medically ordered to use nitroglycerin. The consequences of that order, when the order was actively executed, and how that relates to the prior motion are not addressed.

Facts which the party seeking reconsideration was aware of at the time of the original ruling are not new, or different. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 689-690.) To otherwise seek reconsideration based on new facts, the moving party must provide a satisfactory explanation for the failure to produce that evidence at an earlier time. (*Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.) Some courts have summarized the above as a required showing of "changed circumstances" (*see Wilson v. Science Applications Int'l Corp.* (1997) 52 Cal.App.4th 1025, 1033), i.e., information that the moving party could not, with reasonable diligence, have discovered or previously produced (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213). Here, there is no explanation as to why the limited information presented in Cross-Defendant's declaration could not have been raised at or discovered prior to the original hearing.

Based on the above, Cross-Defendant fails her burden to demonstrate a basis for reconsideration. Accordingly, the motion is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/01/24.
(Judge's initials) (Date)

[2] Cross-Complainant's Evidentiary Objections are overruled in their entirety.

(37)

Tentative Ruling

Re: ***Shannon Bennett v. Pedro Sanchez***
Superior Court Case No. 22CECG01475

Hearing Date: May 2, 2024 (Dept. 502)

Motion: By Defendants for an Order Compelling Plaintiff to Appear for Deposition and Monetary Sanctions

Tentative Ruling:

To grant defendants Pedro Sanchez and Alfreda Venegas De Sanchez's motion to compel plaintiff Shannon Bennett to appear at a deposition by June 3, 2024. (Code Civ. Proc. §§ 2025.450(a), 2025.280(a).)

To impose monetary sanctions in favor of defendants, and against plaintiff Shannon Bennett. (Code Civ. Proc. §§ 2023.010(d), 2025.450(g).) Plaintiff is ordered to pay $316.79 in sanctions to Jeanette N. Little & Associates, within 30 days of the clerk's service of the minute order.

Explanation:

Proper service of a notice of deposition compels the opposing party to appear, to testify, and to produce documents if requested. (Code Civ. Proc. § 2025.280(a); see Code Civ. Proc. § 2025.410 [party served with deposition notice may serve objections on party that noticed the deposition].) Where a party deponent fails to appear at a properly noticed deposition, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc. § 2025.450(a).) Where a party fails to appear for a properly noticed deposition, the party noticing the deposition is entitled to sanctions. (Code Civ. Proc. § 2025.450(g).)

Here, defendants have properly noticed plaintiff's deposition twice. The depositions noticed for January 9, 2024 and February 20, 2024 did not draw an objection from plaintiff nor her appearance for the deposition. (Hitchcock Decl., ¶¶ 4-6, Exh. A, B.) Plaintiff has not filed an opposition to this motion.

Defendants are entitled to depose plaintiff. (Code Civ. Proc. §§ 2017.010, 2019.010, 2025.010.) Plaintiff's failure to appear for deposition is impeding defendants' ability to prepare for trial. Accordingly, defendants' motion to compel plaintiff to appear for deposition is granted.

Defendants' request for sanctions is granted. Plaintiff is ordered to pay the reasonable attorney fees and the $60 filing fee incurred in making this motion, a total of $316.79, to Jeanette N. Little & Associates, within 30 days of the clerk's service of the minute order.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/01/24.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***First Technology Federal Credit Union v. Pedro Ramos***
Superior Court Case No. 23CECG04866

Hearing Date: May 2, 2024 (Dept. 502)

Motion: By Plaintiff on Applications for Writ of Possession

Tentative Ruling:

The court intends to deny the applications as to each of defendants Pedro Vidrio Ramos and John Arthur Strange.

Explanation:

A writ of possession is issued only after a hearing on a noticed motion. (Code Civ. Proc. § 512.020, subd. (a).) The notice of application must inform the defendant of (1) the time and place of the hearing; (2) that a writ of possession will issue if the court finds that plaintiff's claims are probably valid and that other requirements for the issuance of the writ are met; (3) that the hearing is not for the purpose of determining whether the claim is valid; and (4) a notice that if the defendant believes the plaintiff is not entitled to possession, to seek advice of an attorney. (Code Civ. Proc. § 512.040.)

Before the hearing is held, plaintiff must serve defendant with a copy of the service of summons and complaint, a notice of the application and hearing, and a copy of the application for the writ of possession. (Code Civ. Proc. § 512.030, subd. (a).) Where a defendant has not yet appeared, service of the motion must be by the same means as serving the summons and complaint. (*Id.*, § 512.030, subd. (b).) The timing of service is the same as for general motions. (*Id.*, § 1005, subd. (a)(2)(b).)

Here, plaintiff First Technology Federal Credit Union ("Plaintiff") submits complete applications for writs of possession as to each of defendants Pedro Vidrio Ramos ("Ramos") and John Arthur Strange ("Strange"). However, no proofs of service were filed as to the instant applications for either of Ramos or Strange. Moreover, a proof of service of the summons and complaint exists only as to Ramos. No proof of service of summons was filed as to Strange. Without valid service of the application, a writ may not issue as to Ramos. Without valid service of summons and complaint, and the application for a writ of possession, a writ may not issue as to Strange.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/01/24.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***John "HJ" Doe v. Fresno Unified School District***
Superior Court Case No. 23CECG03206

Hearing Date: May 2, 2024 (Dept. 502)

Motion: Fresno Unified School District's Demurrer and Motion to Strike Portions of the Complaint

Tentative Ruling:

To sustain the demurrer to the fourth, fifth, sixth, seventh, ninth, tenth, and eleventh causes of action, with leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

To grant the motion to strike in part, with leave to amend, and to deny in part. (Code Civ. Proc., § 436.)

The request to strike the allegations pertaining to defendant Samuel Lofty Confectioner's acts done in the course and scope of his employment with defendant Fresno Unified School District ("FUSD") is granted. The request to strike the allegations pertaining to FUSD's duty to investigate is granted. The request to strike the prayer for attorney's fees pursuant to Civil Code 52 and 52.4 is granted.

The requests to strike the allegations relating to FUSD's duty of care to ensure student safety, FUSD's concealment of Mr. Confectioner's acts, and prayer for attorney's fees pursuant to Code of Civil Procedure section 1021.5 are denied.

Plaintiff is granted 20 days' leave to file the First Amended Complaint. The time in which the complaint can be amended will run from service by the clerk of the minute order. All new allegations in the First Amended Complaint are to be set in **boldface** type.

Explanation:

Demurrer

Fourth Cause of Action – Failure to Warn, Train, or Educate

FUSD demurs to the fourth cause of action on the grounds that it fails to state a cause of action. In particular, FUSD argues that no statute requires a public entity school district to warn, train, or educate its students on how to avoid the risk of childhood sexual harassment, molestation, and abuse.

"It is a well-settled rule that there is no common law governmental tort liability in California; and except as otherwise provided by statute, there is no liability on the part of a public entity for any act or omission of itself, a public employee, or any other person." (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 441-442.,

citation and internal quotations omitted.) "Since the duty of a governmental agency can only be created by statute or 'enactment,' the statute or 'enactment' claimed to establish the duty must at the very least be identified." (*Searcy v. Hemet Unified School District* (1986) 177 Cal.App.3d 792, 802.)

Indeed, plaintiff has not pled the existence of a statute requiring FUSD to warn, train, or educate its students on how to avoid the risk of childhood sexual harassment. However, in the opposition, plaintiff appears to argue that it is sufficient that he is making a claim based on FUSD's duty (and breach thereof) to supervise its students. This is insufficient to comply with the particularity requirement when asserting a governmental tort claim. (*Ibid*.) To the extent that plaintiff attempts to state a claim for negligent supervision of the student or negligent hiring, retention and supervision of Mr. Confectioner, such a cause of action would be duplicative of plaintiff's second and third causes of action. Accordingly, the demurrer is sustained to the fourth cause of action with leave to amend.

Fifth Cause of Action – Negligence Per Se

FUSD demurs to the fifth cause of action for negligence per se based on FUSD's alleged violation of the Child Abuse and Neglect Reporting Act ("CANRA") on the ground it does not state facts sufficient to constitute a cause of action. In particular, FUSD contends that negligence per se is not a stand-alone cause of action. Instead, FUSD indicates that negligence per se is an evidentiary doctrine which creates a rebuttable presumption of negligence upon showing a defendant's violation of a particular law caused the type of injury that law was designed to prevent to a person that law was designed to protect. (Evid. Code, § 669; *Johnson v. Honeywell Internat. Inc.* (2009) 179 Cal.App.4th 549, 555.) FUSD also points out that plaintiff has already pled a cause of action for negligence.

While it is true that the doctrine of negligence per se is not a separate cause of action, a plaintiff must allege that the doctrine of negligence per se is applicable to the facts of the case in order for the presumption of negligence to apply. (*Millard v. Biosources, Inc.* (2007) 156 Cal.App.4th 1338, 1353.) "Under subdivision (a) of [Evidence Code section 669], the doctrine creates a presumption of negligence if four elements are established: (1) the defendant violated a statute, ordinance, or regulation of a public entity; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence the nature of which the statute, ordinance, or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1285.) "Thus, the doctrine of negligence per se does not establish tort liability. Rather, it merely codifies the rule that a presumption of negligence arises from the violation of a statute which was enacted to protect a class of persons of which the plaintiff is a member against the type of harm that the plaintiff suffered as a result of the violation. [Citation.] Even if the four requirements of Evidence Code section 669, subdivision (a), are satisfied, this alone does not entitle a plaintiff to a presumption of negligence in the absence of an underlying negligence action." (*Ibid*., citations omitted.) "Accordingly, to apply negligence per se is not to state an independent cause of action. The doctrine does not provide a private right of action for violation of a statute.

[Citation.] Instead, it operates to establish a presumption of negligence for which the statute serves the subsidiary function of providing evidence of an element of a preexisting common law cause of action." (*Ibid*., at pp. 1285-1286, citations omitted.)

Accordingly, the demurrer to the fifth cause of action is sustained, and leave to amend is granted so that plaintiff may allege the requirements of the doctrine of negligence per se in support of his negligence cause(s) of action.

Sixth and Tenth Causes of Action – Constructive Fraud and Breach of Fiduciary Duty

FUSD demurs to the sixth and tenth causes of action on the ground that plaintiff fails to allege facts sufficient to support either claim. FUSD contends that plaintiff has failed to allege: (1) a statutory basis for either cause of action; (2) a mandatory duty subjecting FUSD to liability; and (3) facts to support the existence of a fiduciary relationship. Plaintiff's opposition is limited only to an argument in support of the contention that FUSD is a fiduciary to plaintiff.

Indeed, the complaint does not allege a statutory basis for either cause of action, which as previously explained, is required by the Government Tort Claims Act. Moreover, the statutory language in Civil Code section 1573 merely defines constructive fraud, and does not expressly authorize the assertion of a claim of constructive fraud against a public entity, as required to find a mandatory duty under Government Code section 815.6. "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." (Gov. Code, § 815.6.)

Next, to establish a prima facie case for constructive fraud, plaintiff must allege "(1) a fiduciary relationship, (2) nondisclosure, (3) intent to deceive, and (4) reliance and resulting injury." (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1249–1250.) At issue, is whether plaintiff has pled sufficient facts to establish the existence of a fiduciary relationship between him and FUSD. FUSD contends that no authority provides that a fiduciary relationship exists between a school district and an individual student. (*C.A. v. William S. Hart Union High School Dist.* (2010) 189 Cal.App.4th 1166, 1176, overruled on other grounds by *C.A. v. William S. Hart Union High School* (2012) 53 Cal.4th 861.)

"Generally, the existence of a confidential relationship is a question of fact for the jury or the trial court." (*Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 383, citations omitted.) "Where a legally recognized fiduciary relationship exists, however, the law infers a confidential relationship, i.e., it becomes a question of law for the court." (*Ibid*., citations omitted.)

Since neither party has provided authority to show that a legally recognized fiduciary relationship exists between FUSD and plaintiff, a school district and a student, the issue of whether such a relationship exists is factual in nature and should not be determined on demurrer.

Nonetheless, the demurrer is sustained, with leave to amend, for failing to plead a statutory basis and/or mandatory duty to support these causes of action.

Seventh Cause of Action – Intentional Infliction of Emotional Distress

FUSD contends again, that plaintiff fails to provide a statutory basis to support this cause of action in support of direct liability against it. Alternatively, FUSD argues that a school district is not vicariously liable for an employee's sexual assault of a student as a matter of law. Plaintiff does not challenge the former argument, but argues that public entities are routinely held vicariously liable for its employees' intentional inflictions of emotional distress.

The California Supreme Court in *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438 held that a school district cannot be held vicariously liable for a sexual assault committed by an employee on another person, particularly, on a student under that teacher's supervision. (*Id*., at pp. 451-453.)

Accordingly, the demurrer to the seventh cause of action is sustained. Leave to amend is granted only to allow plaintiff an opportunity to allege facts to support a claim based on FUSD's direct liability.

Ninth and Eleventh Causes of Action – Sexual Harassment and Abuse in Educational Setting and Public Entity Liability for Failure to Perform Mandatory Duty

FUSD demurs to the ninth and eleventh causes of action on the ground that the complaint fails to state such claims. FUSD contends that the complaint does not allege that it violated Education Code section 220, and it is not vicariously liable for Mr. Confectioner's sexual assault as a matter of law. FUSD further argues that Education Code section 200 and 201, and portions of Title IX, 20 USC section 1681 quoted in the complaint do not establish a mandatory duty on FUSD; and Civil Code section 51.9 does not apply to public school districts. Plaintiff concedes that Civil Code section 51.9 is inapplicable but disputes all of the other arguments.

Education Code section 220 provides: "No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid." (Ed. Code, § 220.)

Plaintiff argues that it has alleged that FUSD violated Education Code section 220, and cites to page 41, lines 5-8 in the complaint. This citation contains no such allegation, and thus, as FUSD indicates, the complaint does not allege that FUSD violated Education Code section 220.

Also, as previously provided, a school district cannot be held vicariously liable for the sexual assault committed by one of its employees as a matter of law. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 451-453.)

Next, while Education Code section 200 sets forth the state's antidiscrimination policy, and section 201 contains legislative declarations in support of that policy, when interpreted in consideration of various other provisions in the Education Code, including sections 220, 262.3, 262.4 and Title IX, these authorities indicate that a school district has a broad duty to, at least, prohibit discrimination.[3] Title IX provides in part that: "No person ... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance ..." (20 U.S.C. § 1681, subd. (a).) The court will not limit its interpretation to the statutes cited in the complaint. A statute is not to be read in isolation, but rather it must be construed with related statutes and considered in the context of the statutory framework as a whole." (*Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 505, internal quotations and citations omitted.) Thus, the demurrer is not sustained on this basis.

Nonetheless, the demurrer is sustained for failing to allege that Education Code section 220 was violated and plaintiff's claims cannot be based on FUSD's vicarious liability for the assault committed by Mr. Confectioner. Leave to amend is granted to allow plaintiff the opportunity to cure these defects.

Motion to Strike

FUSD moves to strike portions of the complaint pertaining to (1) Mr. Confectioner's acts within the course and scope of his employment with FUSD; (2) FUSD's duty owed to its students; FUSD's duty to investigate Mr. Confectioner; (3) the confidential or fiduciary relationship between FUSD and plaintiff; (4) FUSD's alleged "cover up" of Mr. Confectioner's acts; (5) and the requests for attorneys' fees.

Scope of Employment

FUSD contends that the allegations indicating that Mr. Confectioner was acting within the course and scope of his employment when he sexually abused plaintiff are improper, since it has been determined that school districts are not vicariously liable for an employee's sexual assault of a student, and such assault is outside the course and scope of employment. Indeed, such acts are outside the course and scope of Mr. Confectioner's employment. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 451-453.) Accordingly, the requests to strike the allegations pertaining to Mr. Confectioner's acts being committed during the course and scope of his employment are stricken.

FUSD's Duty of Care

FUSD also contends that the standard of care imposed upon school districts and their employees is one of reasonable care, and thus, the heightened duty alleged in the complaint are improper.

[3] Notably, however, it has been acknowledged that the federal statute was "designed primarily to prevent recipients of federal financial assistance from using the funds in a discriminatory manner." (*Gebser v. Lago Vista Independent School Dist.* (1998) 524 U.S. 274, 292.)

"While school districts and their employees have never been considered insurers of the physical safety or students, California law has long imposed on school authorities a duty to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection." (*Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747, internal quotations and citations omitted.) "The standard of care imposed upon school personnel in carrying out this duty to supervise is identical to that required in the performance of their other duties. This uniform standard to which they are held is that degree of care which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances." (*Ibid*., internal quotations and citations omitted.)

Generally, a determination of whether reasonable care was used is largely factual in nature. Consequently, it does not appear appropriate to strike these allegations at the pleading stage on this basis, and the request is denied.

Duty to Investigate

FUSD contends that plaintiff improperly alleges that FUSD had a duty to investigate Mr. Confectioner within the context of the Child Abuse and Neglect Reporting Act ("CANRA"), and seeks to strike these allegations. "CANRA requires a 'mandated reporter,' which includes teachers and certain other school employees, 'to make a report to a law enforcement agency or a county welfare department "whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect." ' " (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 138.)

On the other hand, plaintiff contends that school districts have a duty to supervise students and to take other reasonable measures, such as investigating for abuse. "If one was to agree with FUSD's interpretation of CANRA, school districts would benefit from not complying with their mandatory requirements by simply burying their head in the sand and simply stating we have 'no duty to investigate.'" (Opp. to the Mot. To Strike, at 7:7-10.)

"CANRA differentiates between mandated reporters like teachers, who report suspected abuse, and government agencies, who investigate the reports of abuse. The statutory framework 'requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation.'" (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 140, citations omitted.) "But once a report is made, responsibilities shift and governmental authorities take over." (*Id*., at p. 140-141, citations omitted.) "In this way, the statutory scheme sets up 'a dichotomy between reporter and reportee.' " (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 141.)

"Doe's proposed interpretation of Penal Code section 11166, subdivision (a), would require mandated reporters to conduct an investigation—i.e., an investigation that a reasonable person in a like position would conduct (in the case of teachers, based on their duty to protect students from harm caused by third parties). This conflation of the

duties of reporter and reportee, however, is inconsistent with the statutory scheme, which treats the two duties differently." (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 141.)

Moreover, since Penal Code section 11166 is a criminal statute, "Doe's interpretation would criminalize not only a mandated reporter's failure to make a required report when he or she obtains information indicating child abuse, but also the reporter's failure to take reasonable steps to discover information that could have caused the reporter to suspect such abuse." (*Id.*, at p. 142.) "In the criminal context, 'ordinary negligence sufficient for recovery in a civil action will not suffice; to constitute a criminal act the defendant's conduct must go beyond that required for civil liability and must amount to a 'gross' or 'culpable' departure from the required standard of care…" (*Id.*, citing *Williams v. Garcetti* (1993) 5 Cal.4th 561, 573.)

Accordingly, it does not appear that CANRA imposes a duty to investigate on mandated reporters, such as school personnel, and the motion to strike these allegations is granted.

Confidential or Fiduciary Duty

FUSD moves to strike language pertaining to the fiduciary and confidential relationship between plaintiff and FUSD, because no authority recognizes a school district's fiduciary duty to a student. For reasons discussed in the demurrer above, the request to strike these allegations is granted.

Allegations Pertaining to FUSD's Concealment of Mr. Confectioner's Abuse

FUSD argues that any allegations pertaining to the concealment or "cover up" of Mr. Confectioner's abuse are irrelevant, because FUSD is not subject to the treble damages provision in Code of Civil Procedure section 340.1. However, this may not be the only reason these allegations are pled and FUSD does not sufficiently establish that these allegations are *only* relevant to a request for treble damages. Thus, the request to strike these allegations is denied.

Attorney's Fees Request

FUSD moves to strike attorney's fees pursuant to Code of Civil Procedure section 1021.4, and Civil Code sections 52 and 52.4.

First, the complaint indicates that the attorney's fees pursuant to Code of Civil Procedure section 1021.4 are sought only against Mr. Confectioner and not FUSD. (Comp., at p. 50:14-16.) Thus, this request is disregarded.

Next, the California Supreme Court has described Civil Code section 52 as " 'enforcement mechanism for [Civil Code] section 51 and other provisions of law,' " and courts have interpreted these provisions consistently." (*K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717, 758.) Since plaintiff has conceded in its opposition to the demurrer that Civil Code section 51 is inapplicable here, the prayer for attorney's

fees against FUSD under Civil Code section 52 is improper. The request to strike these attorney's fees against FUSD is granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/01/24.
(Judge's initials) (Date)