

**Tentative Rulings for May 28, 2026**  
**Department 403**

**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)**

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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.*

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

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| 23CECG04312 | <i>Anna Perry-Lara v. Jagrup Bhandal</i> is continued to Thursday, June 18, 2026, at 3:30 p.m. in Department <u>502</u> .           |
| 25CECG00102 | <i>Nona Manning-Hegle v. Amazon Logistics, Inc.</i> is continued to Thursday, July 9, 2026, at 3:30 p.m. in Department <u>502</u> . |
| 25CECG04191 | <i>James Hayes v. GSF Properties, Inc.</i> is continued to Thursday, July 9, 2026, at 3:30 p.m. in Department <u>502</u> .          |

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 403**

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(03)

**Tentative Ruling**

Re: **Cruz v. Car Auto Center, LLC**  
Case No. 24CECG04412

Hearing Date: May 28, 2026 (Dept. 403)

Motion: Defendant's Motion to Dismiss Case

**Tentative Ruling:**

To grant defendant's motion to dismiss the case for lack of a personal representative of the deceased plaintiff's estate or successor in interest to prosecute the action. (Code Civ. Proc., § 385.)

**Explanation:**

The court intends to grant the motion to dismiss the action, as plaintiff died about eight months ago and no successor or representative has been substituted into the case to represent his estate's interests and prosecute the action.

"The personal representatives of a deceased, i. e., his executors or administrators, are the persons to be substituted in an action which is continued following the death of the party, by virtue of section 385 of the Code of Civil Procedure. Upon their appointment and even before their substitution, all rights and interest in litigation vest in them, and they become the real parties in interest, and save for a possible exception in the case of death pending an appeal, the rule seems to be that the personal representative of the deceased must be brought into the suit as a party before he can be affected by any judgment." (*Boyd v. Lancaster* (1939) 32 Cal.App.2d 574, 579, citations omitted.) Thus, "[a] court is without jurisdiction to proceed when one of the parties before it has died and there has been no substitution of any representative of the deceased." (*In re Cazaurang's Estate* (1939) 35 Cal.App.2d 556, 558, citations omitted.)

Here, plaintiff died on September 27, 2025. (See Notice of Death of Plaintiff filed by plaintiff's counsel on November 4, 2025.) Since that time, no personal representative or successor in interest has been appointed to represent the interests of plaintiff's estate in the action. Nor has plaintiff's counsel indicated that he intends to file a motion to appoint a successor to represent the estate's interests. In fact, defense counsel states that his client has not had any contact with anyone claiming to succeed to plaintiff's interests in the case. Plaintiff's counsel also has not indicated that he has been retained by anyone claiming to succeed to plaintiff's interests. Therefore, since no successor or representative has been substituted into the case to represent plaintiff's estate's interests in the action, and since the trial date is fast approaching, the court intends to dismiss the case for lack of anyone to prosecute the action.

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



(34)

**Tentative Ruling**

Re: **Coronado v. FCA US, LLC**  
Superior Court Case No. 22CECG00190

Hearing Date: May 28, 2026 (Dept. 403)

Motion: by Plaintiff for Attorney Fees

**Tentative Ruling:**

To deny as untimely.

**Explanation:**

Plaintiff Keri Coronado moves for an award of attorney fees as the prevailing buyer under Civil Code section 1794, subdivision (d). Plaintiff submits an executed Offer to Compromise pursuant to Code of Civil Procedure section 998 authorizing plaintiff to seek fees and costs from defendant FCA US, LLC by noticed motion in the event the parties are unable to resolve attorney's fees and costs. The Offer to Compromise was executed on October 3, 2023. (Baker Decl., Ex. 3.)

Defendant opposes the motion on the basis that it is not timely under California Rules of Court, rule 3.1702(b)(1). Rule 3.1702(b)(1) states in pertinent part, "[a] notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court ... must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case ... ." (Cal. Rules of Court, rule 3.1702(b)(1).) The time for filing a notice of appeal is the earlier of 60 days after service of notice of entry of judgment or 180 days after entry of judgment. (*Id.*, rule 8.104(a)(1).) A voluntary dismissal, although not appealable, is effectively a judgment and the time for filing a motion for attorney fees commences upon entry of judgment. (*Sanabria v. Embrey* (2001) 92 Cal.App.4th 422, 427.) Thus, the time to bring a motion for attorney fees commenced upon the entry of dismissal of the case at bench on July 9, 2024.

Defendant requests judicial notice of a recent decision from the Fourth District Court of Appeal, *Hatlevig v. General Motors, LLC* (2026) 118 Cal.App.5th 644 (*Hatlevig*). The request is granted. In *Hatlevig*, the parties to a Song Beverly action reached a settlement and advised the court of the same at a trial readiness conference. (*Id.*, at p. 646.) The court ordered a dismissal filed within 45 days. (*Ibid.*) Following the passage of 45 days the court generated a "Notice of Dismissal by Court" giving notice to the parties that the case would be deemed dismissed without prejudice on August 15, 2023 unless a judgment or dismissal was filed or a party appeared ex parte to show good cause why the case should not be dismissed. (*Id.*, at pp. 646-647.) Neither event occurred. (*Id.* at p. 647.) After the passage of the date to respond, plaintiff filed a motion for attorney fees and did not serve the motion until April 2, 2024. (*Ibid.*) General Motors, LLC opposed the motion as untimely as it had not been served within 180 days of the date of settlement pursuant to California Rules of Court, rule 3.1702(b)(1). (*Ibid.*) The court rejected plaintiff's argument that there had been no dismissal and the deadline to file the fee motion was

never triggered. (*Ibid.*) The Fourth District affirmed the order denying the motion for attorney fees as untimely based on the voluntary dismissal of the case entered on August 15, 2023. (*Id.* at p. 650.)


Here, the parties stipulated to dismiss the action and for the court to retain jurisdiction to enforce the settlement pursuant to Code of Civil Procedure section 664.6. The order on the stipulation and dismissal was entered on July 9, 2024. (Cronin Decl., ¶ 8, Ex. 6.) The parties' voluntary dismissal of the action "starts the clock running on the time to move for attorney fees when the dismissal concludes the litigation and triggers a right to fees." (*Hatlevig, supra*, 118 Cal.App.5th at p. 649.) The motion at bench was filed December 22, 2025, 531 days after the dismissal and well past the 180 day time for filing a motion for attorney fees. (Cal. Rule of Court, rule 3.1702 (b)(1).)

Plaintiff makes similar arguments as were raised in *Hatlevig*. The assertion that there has been no dismissal or judgment is contradicted by the parties' stipulated dismissal. Plaintiff's argument that the court's retention of jurisdiction to enforce the settlement renders the filing timely is without authority and unpersuasive. If this were the case, any settlement accompanied by a stipulation for the court to retain jurisdiction pursuant to Code of Civil Procedure section 664.6 would effectively extend a prevailing parties' time to file for attorney's fees indefinitely. The Rules of Court allow parties to stipulate to extend the time an additional 60 days but there is no evidence of such a stipulation and the motion would remain untimely.

Plaintiff's motion for attorney fees is untimely pursuant to Rule 3.1702(b)(1) of the California Rules of Court following the voluntary dismissal of the action on July 9, 2024. 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:**          **on**     5-26-26    .

(Judge's initials)

(Date)

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**Tentative Ruling**

Re: **Floccini v. Barkley Seed, Inc.**  
Superior Court Case No. 25CECG02629

Hearing Date: May 28, 2026 (Dept. 403)

Motion: By Defendant to Compel Arbitration

**Tentative Ruling:**

To grant the motion to compel arbitration of plaintiff Ryan Floccini's individual claims and to dismiss the class claims. To stay these proceedings pending arbitration of plaintiff's individual claims.

**Explanation:**

In moving to compel arbitration, defendants must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

There is a strong policy in favor of arbitration. (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.) Courts are to enforce arbitration agreements according to their terms. (*Ibid.*) In ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 540-543.)

Under the Federal Arbitration Act ("FAA"),

A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(9 U.S.C. § 2.)

*Burden*

In ruling on a motion to compel arbitration, the court must first address whether there was an agreement to arbitrate and whether the agreement covers the dispute. (*Omar v. Ralphs Grocery Co.* (2004) 118 Cal.App.4th 955, 960.) The moving party must first allege existence of an agreement to arbitrate. (*Condee v. Longwood Management*

Corp. (2001) 88 Cal.App.4th 215, 218.) Where the moving party has alleged the existence of an arbitration agreement, the burden shifts to the opposing party to prove the falsity of the purported agreement. (*Id.* at p. 219.) The third step would be relevant where the opposing party has met its burden, then the burden shifts back to the moving party to "establish with admissible evidence a valid arbitration agreement between the parties." (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165-166.)

Here, defendant filed its moving papers, which did establish prima facie evidence of an agreement to arbitrate. Plaintiff has not challenged the authenticity of the agreement, but asserts that the agreement is unenforceable as unconscionable.

### *Judicial Estoppel*

Defendant asserts that plaintiff is prohibited from challenging the enforceability of the agreement based on judicial estoppel. Plaintiff has previously stipulated to arbitration in Fresno Superior Court Case Number 25CECG02538 pursuant to the same arbitration agreement at issue here. (Barefield Decl., Exh. C.) Judicial estoppel acts to prevent a party from asserting a different position in a legal proceeding than taken in a prior proceeding. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) The "gravamen of judicial estoppel is not privity, reliance, or prejudice ... it is the intentional assertion of an inconsistent position..." (*Id.* at p. 183.) It applies where "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Ibid.*)

Here, the same party has taken two positions because plaintiff is the *party* at issue. The position was in judicial proceedings in the related matter as described above. Plaintiff was successful in asserting the position as the court adopted the stipulation regarding the effect of the arbitration agreement there. The positions are inconsistent. There is no information regarding whether there was an issue of ignorance, fraud, or mistake. As plaintiff's assertions here are inconsistent with his position in the related case, the court finds that he is judicially estopped from asserting such.

### *Unconscionability*

However, even if the court were not to find that judicial estoppel prevents plaintiff from asserting that the arbitration agreement is unenforceable, plaintiff's assertions regarding unconscionability lack merit. The doctrine of unconscionability has " 'both a "procedural" and a "substantive" element,' the former focusing on ' "oppression" ' or ' "surprise" ' due to unequal bargaining power, the latter on ' "overly harsh" ' or ' "one-sided" ' results." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Id.* at p. 122; *Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1533; *Mercurio v. Superior Court* (2002) 96 Cal.App.4th 167, 174.)



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**Tentative Ruling**

Re: **Jane Doe v. Doug Wilkins**  
Superior Court Case No. 22CECG02432

Hearing Date: May 28, 2026 (Dept. 403)

Motions: (1) Motion for Summary Judgment or Summary Adjudication by Defendant Clovis Unified School District on First Amended Complaint Filed by Plaintiff Jane Doe

(2) Motion for Summary Judgment or Summary Adjudication by Cross-defendant Clovis Unified School District on Cross-complaint Filed by Cross-complainant Doug Wilkins

**Tentative Ruling:**

To deny the motion for summary judgment by Clovis Unified School District (CUSD) against Jane Doe (Plaintiff).

On CUSD's alternative motion for summary adjudication against Plaintiff, to grant the motion for summary adjudication of the third cause of action for sexual harassment under Civil Code sections 51.9 and 52; to deny the motion for summary adjudication of the following causes of action: (a) the fourth for negligent hiring, supervision and retention of an unfit employee; (b) the fifth for negligent failure to warn, train, or educate; (c) the sixth for negligent supervision of a minor; and (d) the seventh for breach of mandatory duty: failure to report suspected child abuse. (Code Civ. Proc., §437c.)

Plaintiff is directed to submit to this court, within five days of service of the minute order, a proposed order consistent with the court's ruling.

To deny CUSD's motion for summary judgment against cross-complainant Doug Wilkins, and the alternative motion for summary adjudication. (Code Civ. Proc., 437c.) Mr. Wilkins is directed to submit to this court, within five days of service of the minute order, a proposed order consistent with the court's ruling.

**Explanation:**

Plaintiff, now an adult, filed a complaint for personal injuries and damages arising from childhood sexual abuse. In the operative pleading, Plaintiff's October 10, 2022, first amended complaint (FAC), Plaintiff alleges seven causes of action. Plaintiff alleges her first cause of action for sexual abuse of a minor and her second cause of action for intentional infliction of emotional distress against codefendant Doug Wilkins, a former employee of codefendant CUSD, a public school district.

Plaintiff asserts her third cause of action for sexual harassment under Civil Code sections 51.9 and 52 against both codefendants. In addition to the Doe defendants, Plaintiff alleges the following causes of action against only CUSD: (fourth) negligent hiring,

supervision and retention of an unfit employee; (fifth) negligent failure to warn, train, or educate; (sixth) negligent supervision of a minor; and (seventh) breach of mandatory duty: failure to report suspected child abuse.

On March 5, 2024, Mr. Wilkins filed a cross-complaint against cross-defendant CUSD (Cross-complaint) with the following three causes of action: (1) indemnification; (2) apportionment of fault; and (3) declaratory relief. In separate motions, CUSD now contends it is entitled to summary judgment or summary adjudication against Plaintiff and Mr. Wilkins.

### Summary Judgment and Summary Adjudication Standards

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the *initial burden* of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*.) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

The trial court must "carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion." (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.) The court must view the evidence in a light most favorable to the opposing party, liberally construing the opposing party's evidentiary submission, while strictly scrutinizing the moving party's showing, and must resolve any evidentiary doubts or ambiguities in the opposing party's favor. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839 [reversing summary judgment where evidence suggested strong possibility trier of fact would resolve issues in favor of moving defendant, but not necessarily so].) "A triable issue of fact is created when the evidence reasonably permits the trier of fact, under the applicable standard of proof, to find the purportedly contested fact in favor of the party opposing the motion." (*Loomis v. Amazon.com LLC* (2021) 63 Cal.App.5th 466, 475 [reversing summary judgment where genuine issues of material fact existed on consumer's strict products liability claim].)

A defendant moving for summary judgment must "identify and respond to all theories of liability reflected in the complaint, 'even if not separately pleaded.' [Citation.]" (*Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 714.)

Thus, while a plaintiff who has pleaded several causes of action based on the same set of facts need sustain its burden of proof only on one of the theories in order to prevail at trial, a defendant who seeks a summary judgment must define all of the theories alleged in the complaint and challenge each factually.

(*Ibid.*, internal quotation marks and citation omitted.)

"A motion for summary adjudication shall be granted *only if it completely disposes of a cause of action*, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1), italics added; *McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered".].)

The moving party must include a separate statement concisely stating the material undisputed facts:

The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

(Code Civ. Proc., § 437c, subd. (b)(1).) As discussed in more detail below, Plaintiff correctly contends many of CUSD's proposed material facts contain improper argument, explanations of evidence, and multiple facts combined into a single numbered "material fact." Thus, the court may, in its discretion, determine whether CUSD's failure to comply with the requirements for a separate statement constitutes a sufficient ground for denying its motion.

Plaintiff also notes CUSD's 10-page notice of motion improperly includes citations to authorities and argument. Basically, a "notice of motion must state the grounds for the order being sought [citations], and courts generally may consider only the grounds stated in the notice of motion." (*Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277.) "The purpose of the notice requirements is to cause the moving party to sufficiently define the issues for the information and attention of the adverse party and the court." (*Ibid.*, internal quotation marks and citations omitted.) A defective notice is not fatal if the omitted ground for relief was included in the supporting papers or the ground for relief was raised without objection at the hearing on the motion. (*Ibid.*) Although CUSD's defective notice makes consideration of its motions harder for the opposing parties and the court, the court has considered the merits of CUSD's motion, to the extent the grounds for relief are included in the moving papers.

## CUSD's Motions on FAC

### Third Cause of Action for Sexual Harassment

In her third cause of action, Plaintiff asserts a claim for sexual harassment under Civil Code sections 51.9 and 52. Civil Code section 51.9 "applies to a 'person' in a professional relationship with the plaintiff." (*K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717, 751, citing Civ. Code, § 51.9, subd. (a)(1) (*Grossmont*).) In *Grossmont*, the appellate court determined a public school district is not a "person" under Civil Code section 51.9. (*Ibid.*)

In its notice of motion, CUSD improperly includes citations to *Grossmont* and other cases to challenge the third cause of action. Nevertheless, CUSD specifically challenges the third cause of action on the ground that Plaintiff cannot recover damages against CUSD because CUSD, as a public entity, is not subject to the cited Civil Code sections. CUSD's Fact No. 1 includes the statement that CUSD is a public entity. CUSD properly supports this fact with a reference to this allegation in Plaintiff's FAC.<sup>1</sup> Thus, CUSD meets its initial burden on the third cause of action, thereby shifting the burden to Plaintiff to show the existence of a triable issue of material fact.

In her response to CUSD's separate statement, Plaintiff admits Fact No. 1 is undisputed. At footnote one on page one of her opposing memorandum, Plaintiff states she "dismisses her claim for violation of Civil Code section 51.9 and 52(b)." The court is unable to locate a dismissal in its docket and is unsure if Plaintiff intends to dismiss her third cause of action against Mr. Wilkins as well. Ruling on CUSD's alternative motion for summary adjudication, the court grants CUSD's unopposed motion for summary adjudication of Plaintiff's third cause of action against CUSD.

#### CUSD Fails to Satisfy Its Initial Burden on Plaintiff's Remaining Causes of Action

The court agrees with Plaintiff's contention that CUSD fails to meet its initial burden of persuasion and production on the remaining causes of action. Therefore, the burden does not shift to Plaintiff to raise a triable issue of material fact.

In its notice of motion, CUSD prematurely shifts its initial burden of proof by relying on a theory that Plaintiff has no evidence to prove any of her claims, or Plaintiff has failed to substantiate any negligent conduct attributable to CUSD. (See, e.g., Not., p. 6:5-6 ["Plaintiff has presented no evidence that CUSD should have known of Mr. Wilkins allegedly sexually abusing Plaintiff".]) To prevail on summary judgment, a defendant must show not only that a plaintiff has no evidence on an essential element, but "the defendant must also show that the plaintiff *cannot reasonably obtain* needed evidence[.]" (*Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 889, italics original [trial court erred in granting summary judgment in defendant's favor where defendant failed to present evidence to show plaintiff could not reasonably obtain the needed evidence].)

In *Ganoë v. Metalclad Insulation Corp.* (2014) 227 Cal.App.4th 1577, the court summarized a defendant's burden to prevail on summary judgment based on factually-devoid discovery responses as follows:

"[A] defendant moving for summary judgment [must] present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." ([*Aguilar, supra*, 25 Cal. 5th] at p. 854, fn. omitted.) Circumstantial evidence supporting a defendant's summary judgment motion "can consist of 'factually devoid' discovery responses from

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<sup>1</sup> A defendant moving for summary judgment may rely on the factual allegations in the plaintiff's complaint. The plaintiff's factual allegations are judicial admissions and conclusive concessions of the truth of a matter, thereby effectively removing the matter from the issues. (*Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1127.)

which an absence of evidence can be inferred," but "the burden should not shift without stringent review of the direct, circumstantial and inferential evidence." [Citation.] Once the defendant has met that burden, the burden shifts to the plaintiff to make a prima facie showing that a triable issue of material fact exists. ([Aguilar], *supra*, 25 Cal.4th at p. 850.)

(*Ganoe v. Metalclad Insulation Corp.*, *supra*, 227 Cal.App.4th at p. 1582.)

Here, Plaintiff points out that several of CUSD's purported undisputed facts begin with the phrase, "other than her own testimony, Plaintiff has not produced evidence of . . . ." (See, e.g., Fact Nos. 30-33.) CUSD fails to recognize that Plaintiff's testimony is evidence. (*Chodos v. Insurance Co. of North America* (1981) 126 Cal.App.3d 86, 97 ["the testimony of a single witness, even the party himself may be sufficient" to constitute substantial evidence]; see also Plaintiff's Opp., pp. 6:22-7:2 for additional authorities.) CUSD makes the task of the parties and the court harder by repeating and renumbering the same facts for its challenges to each of the remaining causes of action, rather than incorporating relevant facts by reference or restating the relevant facts without changing the number.

CUSD's notice of motion improperly includes 11 numbered paragraphs of authorities and argument under a heading to challenge Plaintiff's fourth cause of action for negligent hiring, supervision and retention of an unfit employee, but it ends with a challenge to Plaintiff's fifth cause of action for failure to warn, train or educate. Although difficult to discern, CUSD appears to challenge Plaintiff's ability to prove the necessary elements of breach of duty or prior knowledge that CUSD should have known that Mr. Wilkins may abuse Plaintiff for both the fourth and fifth causes of action.

The court has examined CUSD's 57-page separate statement, and finds not only does CUSD fail to follow the format required by California Rules of Court, rule 3.1350 by improperly including argument and failing to state concisely each material fact, but CUSD also fails to present evidence to support the facts CUSD itself concedes are material.<sup>2</sup> For example, under the heading for Plaintiff's fourth cause of action, CUSD includes the following "fact," labeled as Fact No. 9, and supporting evidence:

Plaintiff testified there was a second coach at forensics competitions named James Bushman, but Mr. Bushman was not in the class during the forensics class that Mr. Wilkins taught. Mr. Bushman would have been there during some of the coaching through the first three years of Plaintiff's high school years. For instance, he was there on some of the Wednesday nights, and he would sometimes drop in after school, unofficially just to stay and chat for 30 minutes. He was at some of the competitions, and he would only

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<sup>2</sup> In *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, the court offered this practice pointer: "Include only those facts which are *truly material* to the claims or defenses involved because the separate statement effectively concedes the materiality of whatever facts are included. Thus, if a triable issue is raised as to any of the facts in your separate statement, the motion must be denied!" [Citation.]" (*Id.* at pp. 251-252, italics original [noting moving party's separate statement included many immaterial, repetitive and renumbered facts, which resulted "in countless pages of utterly unnecessary—and necessarily unavailing—material"].)

go to the big competitions. Plaintiff never told Mr. Bushman about the misconduct with Mr. Wilkins.

### **Supporting Evidence**

Dec. VRB Ex. A Plaintiff's Deposition Transcript – pp. 58: 13-14.

(CUSD sep. stmt., Fact No. 9, p. 8:13-22.)

The two lines of deposition testimony CUSD cites to support this compound fact state: "A[nsWER] Sophomore to junior year was the – the two-year period with the most intense sexual abuse." Clearly CUSD fails to meet its burden to support Fact No. 9 with the cited evidence.

CUSD then repeats verbatim the same compound fact, renumbered as Fact No. 50, under the heading for Plaintiff's fifth cause of action, but this time CUSD changes the supporting evidence as follows: " Dec. VRB Ex. A Plaintiff's Deposition Transcript – pp. 62:17-25, 63:4-8, 63:22-24." (CUSD sep. stmt., Fact No. 50, pp. 21:21-22:2.) The different cited evidence includes Plaintiff's testimony that she never told Mr. Bushman about "the abuse with Mr. Wilkins," but CUSD provides no evidence to support CUSD's alleged material fact that Mr. Bushman "was there on some of the Wednesday nights, and he would sometimes drop in after school, unofficially just to stay and chat for 30 minutes."

CUSD repeats the same compound fact, renumbered as Fact No. 91, under the heading for Plaintiff's sixth cause of action, and again renumbered as Fact No. 132, under the heading for Plaintiff's seventh cause of action, with the same insufficient supporting evidence as cited for Fact No. 50. In no event does CUSD provide evidence to support CUSD's alleged material fact that Mr. Bushman "was there on some of the Wednesday nights, and he would sometimes drop in after school, unofficially just to stay and chat for 30 minutes." CUSD contends Fact No. 9 (also restated as Fact Nos. 50, 91, and 132) is material to each of the remaining challenged causes of action, but it fails to meet its initial burden to provide the necessary evidence to support every concise fact it has included within this compound fact.

CUSD also fails to provide evidentiary support for its Fact No. 19, "Plaintiff admitted that there was not any sexual misconduct that occurred in the classroom." (CUSD sep. stmt. p. 11:16-17.) Its cited supporting evidence for this "fact" includes the following excerpt from Plaintiff's deposition testimony, found on pages 83:23 – 84:7, which expressly contradicts the alleged fact that no sexual misconduct occurred in the classroom:

Q [By Mr. DeMaria] Okay. Before we have you walk me through everything, can you tell me which ones those are and who was present?

A [By Plaintiff] Yes, I can. [¶] Once after school, during the spring of sophomore year, he [Mr. Wilkins] took me in his arms and started kissing me. *And no one else was in the classroom.* And the janitor opened the door and saw us, and he pushed me away.

CUSD repeats the same fact, renumbered as Fact No. 60, under the heading for Plaintiff's fifth cause of action, renumbered as Fact No. 101, under the heading for

Plaintiff's sixth cause of action, and again renumbered as Fact No. 142, under the heading for Plaintiff's seventh cause of action, with the same supporting evidence as cited for Fact No. 19.<sup>3</sup> Therefore, CUSD fails to make the necessary showing to support this repeated fact, which CUSD has conceded is material to each remaining challenged cause of action.

When the moving party fails to make the initial showing, it is unnecessary to review the opposing party's evidence and the court must deny the motion. (*Aguilar, supra*, 25 Cal.4th at p. 849-850; *Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 940 [defendant's motion for summary judgment should have been denied without looking at opposing evidence because defendant failed to refute tenable pleaded theories].) Here, the burden here does not shift to Plaintiff to raise a triable issue of fact and the court may stop its analysis of CUSD's motion on the FAC here. Therefore, the court denies CUSD's motion for summary judgment and its alternative motion for summary adjudication of Plaintiff's fourth, fifth, sixth, and seventh causes of action against CUSD.

Furthermore, the court exercises its discretion and finds CUSD's failure to comply with the requirements for a separate statement constitutes an additional ground to deny CUSD's motion for summary adjudication of Plaintiff's fourth, fifth, sixth, and seventh causes of action. The court also grants Plaintiff's motion to strike CUSD's reply separate statement. (Code Civ. Proc., § 437c, subd. (b)(4) ["The reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers"].)

#### CUSD's Motions on Cross-complaint

In support of its alternative motions for summary judgment or summary adjudication on the Cross-complaint, CUSD follows the same improper format for its notice of motion and its separate statement. CUSD argues that it has no liability to Plaintiff, therefore, it has no liability to Mr. Wilkins for indemnity or apportionment of fault. Although CUSD may be able to prove this premise at trial, as explained above, it fails to establish that it has no liability to Plaintiff as a matter of law.

Following the same format it used in its motion against Plaintiff, CUSD needlessly repeats and renumbers most of the same facts. For example, Fact Nos. 19, 60, 101, and 142 ("Plaintiff admitted that there was not any sexual misconduct that occurred in the classroom") in CUSD's separate statement to support its motion against Plaintiff, are restated verbatim as Fact Nos. 22, 71, and 120, in CUSD's separate statement to support its motion against Mr. Wilkins. CUSD also cites the same supporting evidence for this "fact," which includes the following excerpt from Plaintiff's deposition testimony, found on pages 83:23 – 84:7, which expressly contradicts the alleged fact that no sexual misconduct occurred in the classroom:

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<sup>3</sup> The court anticipates CUSD might argue it intended Fact No. 19 to refer to sexual misconduct that occurred in the classroom during school hours, although it did not so state. When the court views the evidence in a light most favorable to Plaintiff, liberally construing her evidentiary submissions while strictly scrutinizing CUSD's showing, and resolving any evidentiary doubts or ambiguities in Plaintiff's favor, the court finds Fact Nos. 19, 60, 101, and 142 are not only unsupported by CUSD's evidence, but also disputed.

Q [By Mr. DeMaria] Okay. Before we have you walk me through everything, can you tell me which ones those are and who was present?

A [By Plaintiff] Yes, I can. [¶] Once after school, during the spring of sophomore year, he [Mr. Wilkins] took me in his arms and started kissing me. *And no one else was in the classroom.* And the janitor opened the door and saw us, and he pushed me away.

The court finds CUSD fails to provide evidence to support the facts CUSD itself concedes are material to each cause of action asserted against it by Mr. Wilkins. Furthermore, CUSD fails to meet its initial burden of persuasion and production to prove that Mr. Wilkins cannot establish, as a matter of law, an essential element of each alleged cause of action, including whether CUSD is liable to Plaintiff for its own negligence. (See *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879 ["a public school district may be vicariously liable under [Government Code] section 815.2 for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student".]) CUSD also fails to meet its initial burden to show Mr. Wilkins does not possess and cannot reasonably obtain needed evidence. Accordingly, the burden does not shift to Mr. Wilkins to raise a triable issue of material fact.


Therefore, the court denies CUSD's motion for summary judgment and its alternative motion for summary adjudication on the Cross-complaint. Furthermore, the court exercises its discretion and finds CUSD's failure to comply with the requirements for a separate statement constitutes an additional ground to deny CUSD's motion against Mr. Wilkins.

#### Evidentiary Objections

The court declines to rule on the parties' evidentiary objections because none are directed to evidence that is material to the disposition of CUSD's alternative motions against Plaintiff. (Code Civ. Proc., § 437c, subd. (q) [court need rule only on objections court deems material to its disposition].)

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:**          **on**     5-26-26    .

(Judge's initials)

(20)

**Tentative Ruling**

Re: **Arredondo v. Saint Agnes Medical Center**  
Superior Court Case No. 25CECG04529

Hearing Date: May 28, 2026 (Dept. 403)

Motion: Demurrer to First Amended Complaint

**Tentative Ruling:**

To overrule, without prejudice to the filing of a motion for judgment on the pleadings. (Code Civ. Proc., § 430.10, subd. (e), (f).)

**Explanation:**

Defendant Saint Agnes Medical Center ("SAMC") demurs to the First Amended Complaint ("FAC") filed by plaintiff Kathy Arredondo in this action on October 3, 2025. SAMC contends that FAC's claims are barred by claim and issue preclusion, as the same causes of action and issues were litigated in a prior action, *Arredondo v. Saint Agnes Medical Center*, Case No. 21CECG02006 (*Arredondo I*).

Claim preclusion bars a party from pursuing a subsequent action based on the same cause of action after a final judgment on the merits, while issue preclusion prevents relitigation of issues that were actually litigated and necessarily decided in a prior proceeding. (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 227.)

A demurrer must be overruled if the complaint states any valid claim entitling plaintiff to relief. If the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer. (*Quelimane Co., Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39; *New Livable Calif. v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714-715; *Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 359; see *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998 [general demurrer may be upheld "only if the complaint fails to state a cause of action under any possible legal theory"].) A general demurrer does not lie to only part of a cause of action. If there are sufficient allegations to entitle plaintiff to relief, other allegations cannot be challenged by general demurrer. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167, disapproved on other grounds by *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 C5th 905, 948, fn. 12.)

The demurrer is overruled because the moving papers contain nearly no discussion of the substance of the FAC's allegations. SAMC's memorandum of points and authorities contends that "[t]he majority of the factual allegations in the FAC are duplicative of those alleged in *Arredondo I*, including allegations concerning Plaintiffs employment with SAMC, her disability, and the "Do Not Use" notation in her employment file. (RJN ¶ 6, Ex. F.)" It is true that the FAC includes substantial allegations duplicative of those in *Arredondo I*, but the FAC "expressly disclaims any intent to relitigate claims" and asserts that the "instant claims arise from post-judgment conduct not previously

