SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 02-06-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 02-06-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV407932 Hearing: Demurrer	J.C. vs DOE 1, a New York corporation et al	See Tentative Ruling. Court will prepare the final order.
LINE 2	22CV407932 Motion: Strike	J.C. vs DOE 1, a New York corporation et al	See Tentative Ruling. Court will prepare the final order.
LINE 3	18CV333834 Hearing: Motion Summary Judgment	Charles Scrivner vs City of Palo Alto	Off Calendar
LINE 4	22CV396209 Motion: Compel	Matthew Wesley vs Marc Poirier et al	See Tentative Ruling. Defendants shall submit the final order. Parties shall advise whether the 4/11/24 hearing on MTC can be vacated.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 02-06-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 5	22CV406086 Motion: Compel	ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, an Iowa corporation vs MARICEL AQUISAP	No amended notice was filed. If moving party appears, matter will be continued to allow for proper notice. Plaintiff's failure to appear will result in the matter being taken off calendar. Plaintiff is advised that a party has been able to call the clerk's office at 408 882 2430 since October 2023 to obtain a motion's date. Moreover, even under the old system, the moving party was required to watch the docket to obtain the hearing date and then filed an amended notice alerting the nonmoving party, not wait for notice from the clerk's office.
LINE 6	22CV406086 Hearing: OSC Dismissal Failure to Appear	ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, an Iowa corporation vs MARICEL AQUISAP	Plaintiff is required to appear and must appear in person or by video. Plaintiff is advised that it never takes the court 1.5 hours, or anything close to that, to admit a party and that it should have been obvious she had the wrong information for entering the hearing. Plaintiff should go on the court's website and click on remote hearing links to obtain the link to D16 for the proper day.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 02-06-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 7	18CV326266 Motion: Atty Fees	PEOPLE OF THE STATE OF CALIFORNIA vs JUAN FLORES	Notice appearing proper and good cause appearing, the unopposed motion for attorney's fees is GRANTED in full. The amount of fees shall be added to the judgment as requested. The failure to file a written opposition "'creates an inference that the motion or demurrer is meritorious.'" *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. Moving party shall submit the final order.
LINE 8	22CV404490 Motion: Order awarding Atty fees	QIAN YANG vs ROBERT LEE	See Tentative Ruling. Plaintiff shall submit final order.
LINE 9	23CV419416 Motion: Withdraw as attorney	George Leanos vs City of Mountain View et al	Notice appearing proper and good cause appearing, the unopposed motion to withdraw is GRANTED. The court will sign the proposed order.
LINE 10	23CV423751 Motion: Order allowing FAC	Spring Oaks Capital Spv Llc vs Ronald Washington	No amended notice seems to have been filed. If moving party appears, matter will be continued to allow for proper notice. Plaintiff's failure to appear will result in the matter being taken off calendar.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 02-06-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 11	2006-1-CV-077438 Motion: Vacate Default/Default Judgment	Unifund CCP Partners, A New York Partnership vs C. Yetter	Defendant moves to set aside the default and default judgment, claiming that despite the proof of service showing that he was personally served by a registered process server, he was never served with the complaint. Now, 16 years after the initial judgment and almost one year after he admits he received notice of the second renewed judgment, he moves to vacate. The motion is untimely on numerous bases, as laid out in Plaintiff's opposition. Nor are the equities in Defendant's favor. The address at which the renewal notice was served in December 2022 (see Ex. 5 to Opp.), which Defendant admits receiving, is the same address as on the original proof of service from 2007 (see Ex. 1 to Opp.), as well as the same address as on numerous other notices during the intervening years. The motion is DENIED.
LINE 12			

- oo0oo -

Calendar Lines 1 and 2
Case Name: *J.C. v. Doe 1, et al.*
Case No.: 22CV407932

This action for damages arises out of a sexual assault purportedly suffered by J.C. ("Plaintiff") when she was seven years old. Defendant Doe 1, a New York Corporation[1] ("Defendant,") demurs to the First Amended Complaint ("FAC") filed by Plaintiff, and moves to strike portions contained in the FAC, which is opposed by Plaintiff.

I. Background

A. Factual[2]

According to the allegations of the FAC, Plaintiff, who is currently over the age of 40, was both a member of Defendant's "religious group" and San Jose Congregation ("Congregation") in Santa Clara County in 1989. (FAC, ¶¶ 23-24.)

Defendant Doe 1, which is a religious non-profit New York corporation, had its primary place of business in San Jose, California, and along with Doe 2, a non-profit California Corporation, with a principal place of business in Santa Clara County, California, "owned, managed, operated, supervised, and staffed" the Congregation in San Jose. (FAC, ¶¶ 6, 11, 12-13.) In 1987, Defendant and Doe 2, "expressly" required "Elders, Overseers, employees, and staff" at the Congregation, to inform Defendants, not the police, about any suspected child sexual abuse within the facility. (FAC, ¶¶ 24-35.) Defendant's "mandatory policies," included, among other things, that staff remain silent in the face of pending litigation arising from suspected child sexual assault within the Congregation, unless Defendant said otherwise. (*Ibid.*) Plaintiff further asserts Defendant required that "any internal investigation documents" be destroyed including, but not limited to, any notes, witness statements, transcripts, and photographs. (*Ibid.*) However, "a summary of evidence" was preserved, and directly delivered to Defendant in a sealed envelope, by Congregation staff members. (*Ibid.*)

During the period of sexual abuse to Plaintiff, Defendant "supervised and exercised control" over Plaintiff's alleged abuser, Defendant Doe 3. (FAC, ¶ 8.) Defendant was responsible for approving and consenting to the appointments of "Elders" and "Ministerial Servants" at the San Jose Congregation. (FAC, ¶¶ 15-16.) Defendant appointed Doe 3 to the position of "Elder," and in turn, was Defendant's agent/employee when he purportedly sexually assaulted Plaintiff. (*Ibid.*)

---

[1]As noted in the Court's prior order filed on July 25, 2023, it is unclear why Plaintiff continues to list Defendant as Doe 1, a fictitious name for the New York corporation. This court specifically ordered Plaintiff to substitute the name of Doe 1 with the name of its respective corporation in her amended complaint, yet Plaintiff failed to do just that. (See Minute Order Case No. 22CV4047932 entitled *J.C. vs. Doe 1, a New York Corporation, et al.*, filed on July 25, 2023.) The court admonishes Plaintiff to comply with all further orders of the court.

[2] The factual background to the action largely mirrors the Court's Order filed on July 25, 2023, on Defendant's demurrer and motion to strike portions of the initial Complaint. Consequently, the full background will not be repeated here.

Upon information and belief, Plaintiff asserts that Congregation Defendants "still" maintain "a database of reports from Doe 2" regarding Doe 3's prior sexual misconduct and Defendant Doe 1 maintained "all records" of "suspected and reported" child sexual abuse. (FAC, ¶¶ 25, 40.)

Defendant instituted policies requiring minor children to be separated from their parents during youth bible study, even when it took place in the parents' home. (FAC, ¶ 32-34.) When seven-year-old Plaintiff attended "mandated" youth bible study, she was sexually assaulted, multiple times, by Doe 3. (FAC, ¶ 31.) Specifically, during Defendant-sponsored church activities, Doe 3 "would place a blanket over himself and Plaintiff, fondle, and then digitally penetrate" Plaintiff. (*Ibid.*) Doe 3 used his authorized position of power and leadership within the Congregation to accomplish the sexual assault. (*Ibid*.) Plaintiff asserts the sexual assault and abuse occurred "over a span of a few months" in 1995[3] and that other minor children, including her brother and cousin, were also victims of abuse. (FAC, ¶¶ 35-40.)

Plaintiff's parents reported the alleged sexual abuse to Congregation staff members, including the Elders, to no avail. (FAC, ¶ 37.) Congregation members attempted to "further conceal and cover up" Doe 3's sexual misconduct by instructing Plaintiff's parents not to notify the police. (FAC, ¶ 37-38.) Despite Plaintiff's parents notifying police, Congregation Elders failed to alert other church members of Doe 3's sexual misconduct and to take administrative action against Doe 3. (FAC, ¶¶ 32-52.) Upon information and belief, Plaintiff asserts Defendant's failure to comply with California's mandatory reporting laws on sexual abuse resulted in ongoing sexual abuse of minor children by Doe 3. (*Ibid.*)

B. Procedural

Plaintiff filed her initial complaint on November 28, 2022. On April 12, 2023, Defendants filed a demurrer to the original complaint. Two weeks later, Defendants filed a motion to strike portions of Plaintiff's complaint. After the hearing on Defendant's initial demurrer and motion to strike on July 25, 2023, this Court issued its order sustaining the demurrer (on failure to state sufficient facts) with ten days leave to amend, and deeming the motion to strike moot as a result. (See Minute Order Case No. 22CV4047932 entitled *J.C. vs. Doe 1, a New York Corporation, et al*. filed on July 25, 2023.) On September 12, 2023, Plaintiff filed her operative pleading, the FAC, alleging three causes of actions against three named defendants, including the following cause of action against Defendant Doe 1: negligent hiring, supervision, and retention (third case of action).

On October 16, 2023, Defendant filed a demurrer and motion to strike to the FAC. Plaintiff filed an opposition to both the demurrer and motion to strike on January 24, 2024. Defendant filed a reply to both oppositions on January 30, 2024.

---

[3] As noted in the court's July 25, 2023, order with respect to the prior demurrer, Plaintiff alleges elsewhere in the FAC that the abuse occurred in 1989. (See FAC, ¶ 27.)

II. DEMURRER

A. Plaintiff's Request for Judicial Notice

In support of opposition to demurrer, Plaintiff requests that the Court take judicial notice of prior versions of Code of Civil Procedure section 340.1 and selected legislative history pertaining to section 340.1, attached as Exhibits 1 through 3, respectively to Michael A. Amaro's Declaration. (Opposition, p. 12.) Documents constituting legislative history have long been recognized as proper subjects of judicial notice. (See Evid. Code, § 452, subd. (c); *Home Depot U.S.A., Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 233, fn. 6.) Accordingly, Plaintiff's request for judicial notice is granted.

B. Legal Standard

The function of a demurrer is to test the legal sufficiency of a pleading. (*Trs. Of Capital Wholesale Elec. Etc. Fund v. Shearson Lehman Bros.* (1990) 221 Cal.App.3d 617, 621.) Consequently, "[a] demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732, internal citations and quotations omitted; see also Code Civ. Proc., § 430.30, subd. (a).) "It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. … Thus, … the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958, internal citations and quotations omitted.)

In ruling on a demurrer, the allegations of the complaint must be liberally construed, with a view to substantial justice between the parties. (*Glennen v. Allergan, Inc.* (2016) 247 Cal.App.4th 1, 6.) Nevertheless, while "[a] demurrer admits all facts properly pleaded, [it does] not [admit] contentions, deductions or conclusions of law or fact." (*George v. Automobile Club of Southern California* (2011) 201 Cal.App.4th 1112, 1120.)

C. Demurrer to Entire FAC

Defendant demurs to the entire FAC on the basis that it was untimely served. (Demurrer, pp. 7-8.) As stated above, this Court sustained the demurrer with ten days' leave to amend on July 28, 2023. Plaintiff served Defendant with the FAC on September 12, 2023, more than a month later. (*Ibid.*)

Where a demurrer has been sustained with leave to amend but no amendment has been made within the time allowed by the court, the court may dismiss the action on motion of either party. (See Civ. Code § 581, subd. (f)(2).) California Code of Civil Procedure section 581, subdivision (f)(2) provides:

The court may dismiss the complaint as to that defendant when:

* * *

(2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

Plaintiff does not assert that section 597 applies. In opposition to the dismissal of Defendant Doe 1, Plaintiff claims that the late service was the result of "an inadvertent calendaring mistake." (Opposition, p. 5.) Plaintiff has included a declaration from her attorney, Michael Amaro, which attests that because of a "calendaring mistake" at the court clerk's office, Plaintiff could not file her FAC until September 12, 2023 (Amaro Decl.) Plaintiff argues that Defendant does not claim prejudice as a result of the error and failed to meet and confer on this issue. As a result, Plaintiff seeks relief on the basis of a calendaring error under California Code of Civil Procedure[4] section 473, subdivision (b), which provides:

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

Defendant argues that Plaintiff has filed to comply with the procedural requirements of section 473, subdivision (b), including making an application for relief and providing a sworn affidavit from the requesting attorney.

The Court will allow the late filing on the ground that it does not affect the substantial rights of the parties. Indeed, Defendants have already filed their substantive demurrer and motion to strike, and they point to no prejudice from the late filing. In *Harlan v. Department of Transportation* (2005) 132 Cal.App.4th 868, 870 (*Harlan*), the Court of Appeal determined that a trial court "had discretion, after it sustained a demurrer, to accept the plaintiffs' late-filed amended complaint, even though plaintiffs did not move for leave to file late." The trial court had found that the opposing party would not be prejudiced by the amendment and it relied on section 475, which provides in part, "The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties." Moreover, in light of the fact that section 581, subdivision (f)(2) is a discretionary provision, this Court DENIES the request for dismissal of Defendant Doe 1 as a party to the action. That said, Plaintiff is admonished for the procedural violation. Any future violation may result in the court's refusal to consider the untimely filed papers.

D. Third Cause of Action – Negligent Hiring, Supervision, and Retention

Plaintiff maintains, as it did in its initial complaint, that a special relationship existed between Plaintiff and Doe 1, and Doe 1 thereby owed a duty of care toward Plaintiff. (FAC, ¶ 70.)

In its demurrer, Defendant also maintains, as it did in its preceding attack on the adequacy of the allegations of the initial complaint, that Plaintiff's claim fails due to a lack of sufficient facts demonstrating Doe 1's legal duty toward Plaintiff and that her claim is time-barred. (Demurrer, pp. 10-15.)

---

[4] All further undesignated statutory references are to the Code of Civil Procedure.

1. Sufficiency of the Allegations

Defendant argues that the third cause of action fails because Plaintiff has not pleaded facts showing any "legal duty" or "special relationship" between Plaintiff and Defendant, which is a required element for negligent hiring, supervision, or retention. (Demurrer, pp. 8-10.) Defendant cites multiple cases exploring what constitutes a "special relationship" in various "employer/employee" contexts, which the court has reviewed. (Demurrer, pp. 9-11.) Specifically, Defendant contends "merely being members of the same Congregation" is insufficient to establish a "special relationship," and here, Plaintiff fails to demonstrate that Defendant "had any control over" Plaintiff's welfare or that it was in a position to protect Plaintiff from Doe 3. (*Ibid.*) It further contends that when Plaintiff's parents left her alone, in a separate room, with Doe 3, as required by the Congregation, the parents were still "acting in a supervisory capacity." (*Ibid.*) The Court finds that Plaintiff has sufficiently pled facts in her FAC to demonstrate that "a special relationship" existed between Plaintiff and Defendant.

"[W]here a complaint alleges injuries resulting from the criminal acts of third persons as here, the common law, reluctant to impose liability for nonfeasance, generally does not impose a duty upon a defendant to control the conduct of another, or to warn of such conduct unless the defendant stands in some special relationship either to the person whose conduct needs to be controlled, or to the foreseeable victim of such conduct." (*Shoopman v. Pacific Greyhound Lines* (1959) 169 Cal. App. 2d 848, 856, internal citations and quotation marks omitted.)

Nonetheless "California case law recognizes the theory that an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee. Liability is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes." (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054 (internal citations omitted); see also CACI, No. 426.)

"'An employer may be liable to a third person for the employer's negligence in hiring or retaining an employee who is incompetent or unfit.' 'Liability for negligent hiring … is based upon the reasoning that if an enterprise hires individuals with characteristics which might pose a danger to customers or other employees, the enterprise should bear the loss caused by the wrongdoing of its incompetent or unfit employees.' Negligence liability will be imposed on an employer if it 'knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.'" (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139 [internal citations omitted]; see also *Federico v. Superior Court* (1997) 59 Cal.App.4th 1207.)

As a general matter, "[t]he issue of whether a legal duty exists is an issue of law, not an issue of fact for the jury." (*Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819.) The existence and scope of a duty of care is a question of law for the court even at the pleading stage. (See *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 531.)

In *Brown v. USA Taekwondo* (2011) 11 Cal.5th 204, 209 (*Brown*), the California Supreme Court established a two-step inquiry to determine whether a defendant has a legal duty to take action to protect a plaintiff from injuries caused by a third party: "[f]irst, the court must determine whether there exists a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect. Second, if so, the court must

consult the factors described in *Rowland v. Christian* (1968) 69 Cal.2d 108, to determine whether relevant policy considerations counsel limiting that duty. (*Brown, supra,* 11 Cal.5th at p. 209.)

Plaintiff contends, in both her FAC and Opposition, that her new factual allegations against Defendant sufficiently demonstrate: 1) a "special relationship" under *Brown*, and 2) per the *Rowland* factors, Defendant had prior notice of Doe 3's sexual misconduct. (FAC, ¶ 70; Opposition, pp. 8-11.)

Here, the court acknowledges the following FAC allegations: 1) Defendant maintained internal reports of Doe 3's past suspected and reported sexual misconduct with minors (¶ 25); 2) since 1987, Doe 1 required that reports of suspected or reported abuse be made to it and not to police (¶ 24); and 3) Defendant "mandated and promulgated policies" requiring all minor children to be separated from their parents during bible study. (See FAC, ¶¶ 22, 24-33; Opposition, pp. 8-10.)

In its prior order, this court has discussed, at great length, multiple cases defining "special relationships." (See *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619; *Brown v. USA Taekwondo* (2011) 11 Cal.5th 204, 209 (*Brown*); *Doe v. Roman Catholic Archbishop of Los Angeles* (2021) 70 Cal.App.5th 657, 670; See also Minute Order Case No. 22CV4047932 entitled *J.C. vs. Doe 1, a New York Corporation, et al.*, filed on July 25, 2023.) Thus, a full discussion on the above-cited cases will not be repeated here.

As the *Brown* court explains:

> A special relationship between the defendant and the victim is one that 'gives the victim a right to expect' protection from the defendant, while a special relationship between the defendant and the dangerous third party is one that 'entails an ability to control [the third party's] conduct.' [Citation.] Relationships between parents and children, colleges and students, employers and employees, common carriers and passengers, and innkeepers and guests, are all examples of special relationships that give rise to an affirmative duty to protect. [Citations.] The existence of such a special relationship puts the defendant in a unique position to protect the plaintiff from injury. The law requires the defendant to use this position accordingly. [Citation.]

(*Brown, supra,* 11 Cal.5th at p. 216.)

"The 'common features' of a special relationship include 'an aspect of dependency in which one party relies to some degree on the other for protection' and the other party has 'superior control over the means of protection.' [Citations.]" (*Doe v. Roman Catholic Archbishop of Los Angeles*, *supra*, 70 Cal.App.5th at p. 670.) "Examples of special relationships that create an affirmative duty to protect include '[r]elationships between parents and children, colleges and students, employers and employees, common carriers and passengers, and innkeepers and guests.' [Citations.]" (*Id*. at pp. 670-671.)

> [C]ourts have found special relationships between a sport's governing body and minor athletes (*Brown*, at p. 222), a school district (including its employees) and the district's students (*C.A. v. William S. Hart Union High School Dist.* (2012)

> 53 Cal.4th 861, 869 []), a church camp and its campers (*Doe v. Superior Court* (2015) 237 Cal.App.4th 239, 246), a church and minor members engaged in church-sponsored 'field service' (*Conti v. Watchtower Bible & Tract Society of New York, Inc.* (2015) 235 Cal.App.4th 1214, 1217, 1235), a police department and teenage 'explorers' participating in a department program (*Doe 1 v. City of Murrieta* (2002) 102 Cal.App.4th 899, 918 [], disapproved on another ground in *Brown*, at p. 222, fn. 9), and a scout organization and its scouts (*Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 411 [], disapproved on another ground in *Brown*, at p. 222, fn. 9).

(*Doe v. Roman Catholic Archbishop of Los Angeles*, *supra*, 70 Cal.App.5th at p. 671.)

As discussed, *supra,* the FAC now alleges that Defendant mandated that Plaintiff attend bible study sessions in her parents' home but also required that Plaintiff's parents not attend the bible study sessions or even be present in the same room. (FAC, ¶¶ 26, 32-33.) Defendant's policies also required that reports of sexual assaults by church members be reported only to church officials and not to the police and that all evidence of the sexual assaults be destroyed. (FAC, ¶ 24.)

The circumstances in this case satisfy the "common features" of a special relationship. While in "youth bible study" classes, Plaintiff and her parents, like in *Regents,* relied on Defendant for Plaintiff's protection, and Plaintiff sufficiently pled Defendant had "superior control over the means of protection" via its mandatory policies. (*Regents, supra*, 4 Cal.5th at pp. 620-621; see *id.* at p. 625 [colleges have a special relationship with students because of their "superior control over the environment and the ability to protect students," while "[s]tudents are comparatively vulnerable and dependent on their colleges for a safe environment"]; *C.A. v. William S. Hart Union High School Dist., supra*, 53 Cal.4th at p. 869 [school district's duty to protect its students arose in part from its comprehensive control over the students]; see also *J.H. v. Los Angeles Unified School Dist.* (2010) 183 Cal.App.4th 123, 142-143 ["'parents may legitimately expect adequate supervision'" in schools].)

Like schools, athletics organizations, junior recreational leagues, and youth programs, the Defendant and its San Jose Congregation, through its Church Elders and staff, assumed responsibility for the safety of member children in its youth bible study classes. (See *United States Youth Soccer, supra*, 8 Cal.App.5th at p. 1130; see also *Doe v. Superior Court, supra*, 237 Cal.App.4th at p. 247 [church summer camp "stood in loco parentis while minor was at the camp"].)

Defendant, in its Reply, contends that Plaintiff's allegations regarding being isolated with Doe 3 directly contradicts her previous allegation that Plaintiff was sexually assaulted "in full view" of Entity Defendants. The court does not find the allegations contradictory. The thrust of Plaintiff's allegations is that she was isolated from her parents and others who might have helped her while still in the presence of church Elders, Congregation staff, and Doe 3. (Reply, pp. 6-7.)

Consequently, with Plaintiff's newly pleaded facts, a "special relationship" between Plaintiff and Defendant existed. Defendant directly controlled and supervised (via mandated policies) Plaintiff's participation in youth bible study sessions with Doe 3.

Defendant also argues that it did not have day-to-day control over the activities of the local congregation. (Demurrer, p. 15.) It contends that, under the relevant case law, the mere promulgation of policies and procedures is insufficient to establish its control. In *Barenborg v. Sigma Alpha Epsilon Fraternity* (2019) 33 Cal.App.5th 70, 80, the Court of Appeal explained, "Absent an ability to monitor the day-to-day operations of local chapters, the authority to discipline generally will not afford a national fraternity sufficient ability to prevent the harm and thus will not place it in a unique position to protect against the risk of harm."

Defendant also relies on *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1083, affd. *Brown*, *supra*, 11 Cal.5th 204, which held that the United States Olympic Committee did not have control over the day-to-day activities of coaches and gymnasts and, therefore, did not have a special relationship with them. This is merely a reiteration of Defendant's argument regarding the special relationship element of the duty analysis.

Here, Plaintiff alleges that Elders, some of whom observed Doe 3's behavior were agents of Doe 1 and that they were acting under the immediate supervision, direction, and control of Doe 1. (FAC, ¶¶ 10(e), 34.) The court finds that this is sufficient at the pleading stage.

2. The *Rowland* Factors

The second step in the *Brown* framework is to consult the *Rowland* factors to determine whether relevant policy considerations limit or exempt Defendant from its duty of care. (*Brown, supra*, 11 Cal.5th at p. 209.) The *Rowland* factors are "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland, supra,* 69 Cal.2d at p. 113.)

"The *Rowland* factors fall into two categories. The first group involves foreseeability and the related concepts of certainty and the connection between plaintiff and defendant. The second embraces the public policy concerns of moral blame, preventing future harm, burden, and insurance availability. (*Regents, supra*, 4 Cal.5th at p. 629.) "The most important factor to consider in determining whether to create an exception to the general duty to exercise ordinary care… is whether the injury in question was *foreseeable*." (*Ibid*, emphasis original.) "The duty analysis [under *Rowland*] is categorical, not case specific." (*Ibid.*)

Defendant Doe 1 argues that Plaintiff fails to allege foreseeability because there are no allegations that Defendant had prior knowledge or notice of Doe 3's propensity for sexually assaulting minors. (Demurrer, pp. 13-14.) Defendant's contentions regarding foreseeability arise under the "legal cause" and duty element. Despite the lack of law and fact analysis under the *Rowland* factors, by both parties, Plaintiff sufficiently offers facts as to how Defendant knew or should have known about the alleged abuse, namely, reports maintained by Defendant of Doe 3's past sexual misconduct and prior incidents, and the later destruction of these reports.

The court finds that Plaintiff's factual allegations are sufficient to withstand demurrer. It is reasonably foreseeable, based on reports of Doe 3's past sexual misconduct, that a minor would be sexually assaulted or abused by Doe 3. (See *Brown, supra,* 40 Cal.App.5th at pp. 1097-1098 [sexual molestation by coaches was reasonably foreseeable to the governing body, even though they had no knowledge of prior sexual misconduct by a specific coach because plaintiff alleged the governing body "regularly received complaints from athletes or their parents regarding improper sexual conduct by coaches" and it was aware "that female taekwondo athletes…were frequently victims of sexual molestation by their coaches]; see also *United States Youth Soccer, supra,* 8 Cal.App.5th at pp. 1132, 1135 [youth soccer association could reasonably foresee minors might be sexually abused by their coaches where the associations "were aware that sexual predators were drawn to their organization in order to exploit children and that there had been prior incidents of sexual abuse of children in their programs."].)

Defendant could have conceivably taken steps to decrease the risk of sexual assault and avert the harm because of its prior knowledge, via internal reports of Doe 3's past sexual misconduct. Therefore, the *Rowland* factors are satisfied here, and Plaintiff adequately alleges a duty to protect from third party conduct arising from a special relationship. (*Brown, supra,* 11 Cal.5th at p. 209.) Thus, Defendant's demurrer to the first cause of action, on this ground, is OVERRULED.

3. Statute of Limitations

Defendant next contends that Plaintiff cannot maintain a negligent hiring, supervision, and retention cause of action because Plaintiff has not provided evidence to support that Defendant was the "legal cause" of the alleged childhood sexual assault. (Demurrer, pp. 11-14.) Additionally, it contends Plaintiff's "conclusory statements" on Defendant's prior knowledge of Doe 3's sexual misconduct is insufficient to extend the statute of limitations and to revive her third cause of action pursuant to Code of Civil Procedure section 340.1, subd. (c). (*Ibid*.)

As a preliminary matter, Plaintiff seeks damages for childhood sexual abuse and the parties agree that these claims are governed by the statute of limitations set forth in Code of Civil Procedure section 340.1. But, Plaintiff, in her Opposition, contends Defendant's interpretation of section 340.1, is "outdated and inapplicable" given the more recent statutory language cited in the FAC. (Opposition, pp. 6-7.)

Plaintiff claims that in approximately 1989, she was the victim of sexual abuse by Doe 3. (FAC, ¶ 27.) Previously, Section 340.1 allowed such an action to be commenced "within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury of illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later." However, Section 340.1 was significantly amended on October 13, 2019, when Assembly Bill 218 was signed into law. Among other things, Assembly Bill 218, lengthened the time within which an action for damages resulting from "childhood sexual assault" may be brought to 22 years from the date the plaintiff attains the age of majority or five years from the date the plaintiff "discovers or reasonably should have discovered that psychological injury or

illness occurring after the age of majority was caused by the sexual assault." (Former Code Civ. Proc. § 340.1, subd. (a).)

Here, Plaintiff is seeking relief from Defendant pursuant to section 340.1 because Doe 3 was allegedly hired by, employed by, and under the supervision and control of Defendant. Additionally, as discussed *supra,* Plaintiff alleges facts demonstrating Defendant had prior knowledge and notice of Doe 3's propensity to commit sexual assault against minors. At the time Plaintiff filed the initial complaint (November 23, 2022), an action by the victim of childhood sexual abuse against persons or entities legally responsible for the perpetrator's acts (e.g., the perpetrator's employer under respondeat superior) "shall not be commenced on or after the plaintiff's 40th birthday unless the person or entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard. Nothing in this subdivision shall be construed to constitute a substantive change in negligence law." (Former § 340.1, subd. (c).) [5]

Since Plaintiff was over the age of 40 when she filed this action against Defendant, the FAC must allege: (1) Defendant knew or had reason to know, or was otherwise on notice, (2) that Doe 3 – an employee, volunteer, representative or agent – had engaged in unlawful sexual conduct, and (3) Defendant failed to take reasonable steps to implement safeguards to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545-546 [interpreting prior version of section 340.1].)

Defendant argues that the FAC does not plead facts sufficient to show that it was the "legal cause" of Plaintiff's injuries. Specifically, it contends that the FAC does not allege that Defendant had knowledge of Doe 3's sexual misconduct prior to his abuse of Plaintiff. The

---

[5] Due to the changes made by Assembly Bill 452 (Reg. Sess. 2022-2023), Section 340.1, subdivision (a), currently provides:

> There is no time limit for the commencement of any of the following actions for recovery of damages suffered as a result of childhood sexual assault:
> (1) An action against any person for committing an act of childhood sexual assault.
> (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.
> (3) An action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.

However, Plaintiff filed her FAC in 2022 when the statute read as quoted above.

FAC alleges, "Prior to DOE 3's sexual assault and/or sexual abuse, and molestation of Plaintiff,
Church Defendants, through their agents and Elders knew that DOE 3's conduct and relationship
with minor children, including Plaintiff, was inappropriate, unlawful, wrongful, and/or otherwise
created a risk of childhood sexual assault." (FAC, ¶ 39.) It further states that "Plaintiff is informed, believes, and thereupon alleges that Church Defendants' maintained and currently still maintain a database of reports from DOE 2 regarding DOE 3's prior inappropriate and sexual assaults of minors within their congregations which occurred prior to DOE 3's abuse of Plaintiff." (FAC, ¶ 40.) The FAC also alleges that Defendant's policy of failing to report sexual abuse to the police and of failing to report abuse to the congregation began in 1987, two years before the alleged abuse of Plaintiff. (FAC, ¶ 24.) These allegations are sufficient at the pleading stage.

Defendant also argues that the FAC does not sufficiently allege that it failed to take reasonable steps or impose reasonable safeguards to prevent child sexual abuse. But, this argument ignores the allegations that, as early as 1987, prior to the alleged abuse of Plaintiff, the FAC alleges that it was Defendant's policy not to address the abuse, not to warn the congregation, not to contact law enforcement when faced with reports of abuse, and even to destroy evidence of abuse. (FAC, ¶¶ 24, 25.)

In accordance with the discussion, *supra,* Defendant had prior notice and knowledge via internal reports regarding Doe 3's past sexual misconduct and failed to take reasonable steps to prevent child sexual abuse. Consequently, Defendant's demurrer to the third cause of action on the ground that it is time-barred because it fails to make the allegations required by section 340.1 when the complaint is filed after the plaintiff's 40th birthday is OVERRULED.

III. Motion to Strike

A. Defendant's Request for Judicial Notice ("RFJN") and Plaintiff's Objection

In support of its motion to strike, Defendant requests that the Court take judicial notice that "Elders and Ministerial Servants in the religious tradition of Doe 1 are lay clergy who are unpaid, volunteers of their respective congregations and not employees" pursuant to Evidence Code section 452, subdivision (h). (RFJN, pp. 1-3.) As evidence of this alleged fact, Defendant has directed the court to excerpts from Wikipedia.

Evidence Code section 452, subdivision (h) authorizes judicial notice of facts not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h).) "Judicial notice under Evidence Code section 452, subdivision (h) is intended to cover facts which are not reasonably subject to dispute and are easily verified. These include, for example, facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter. [Citation.]" (*Gould v. Md. Sound Indus.* (1995) 31 Cal.App.4th 1137, 1145.)

Here, Petitioner does not adequately explain why the subject items fall within the purview of Evidence Code section 452, subdivision (h) other than to state that insight into Defendant's "religious tradition" can be found on Wikipedia. (RFJN, pp. 3-4.) But a court may not rely on the mere fact that information is published on a website for the proposition that the information is not reasonably subject to dispute. (*Huitt v. S. Cal. Gas Co.* (2010) 188 Cal.App.4th 1586, 1604, fn. 10.) Furthermore, Plaintiff disputes the accuracy of the subject items and has objected to the RFJN. As Plaintiff points out, at this stage in the proceedings, the court takes the factual allegation that Doe 3 was an employee of Doe 1 as true unless Defendant can show otherwise from judicially noticeable material as a matter of law. The employment status of Doe 3 is a disputed factual issue that cannot be resolved via the materials Defendant provides which do not speak to the facts of this case. Consequently, the court finds that items are not proper subjects of judicial notice
under Evidence Code section 452, subdivision (h).

Accordingly, Defendant's request for judicial notice is DENIED.

B. Legal Standard

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (§ 436, subd. (a).) A court may also strike out all or any part of a pleading not drawn or filed in conformity with the laws of the State of California. (§ 436, subd. (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (§ 437, subd. (a).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (§ 437, subd. (a).)

Irrelevant matter includes "immaterial allegations." (Code Civ. Proc., § 431.10, subd. (c).) "An immaterial allegation in a pleading is any of the following: (1) An allegation that is not essential to the statement of a claim or defense; (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint." (Code Civ. Proc., § 431.10, subd. (b).)

Motions to strike are disfavored and courts considering such motions must presume the allegations contained therein are true and must consider those allegations in context. (See *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) A motion to strike should not be a "procedural line item veto for the civil defendant." (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.)

The court's decision to strike the petition pursuant to section 436 is discretionary. (See § 436 ["The court may . . .strike"]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].) A motion to strike should be applied cautiously and sparingly because it is used to strike substantive defects. (*PH II*, *supra*, 33 Cal.App.4th at 1682-1683.)

C. Merits of the Motion

Defendant repeats his argument that the entirety of the FAC should be stricken on the ground that it was filed after the court-imposed deadline of 10 days leave to amend. The

court's reason for considering Plaintiff's untimely filed FAC, on its merits, has already been discussed, *supra.* Consequently, Defendant's motion to strike on this ground is DENIED. (See *Harlan v. Department of Transportation* (2005) 132 Cal.App.4th 868, 870 (*Harlan*) [trial court "had discretion, after it sustained a demurrer, to accept the plaintiffs' late-filed amended complaint, even though plaintiffs did not move for leave to file late" and trial court had found that the opposing party would not be prejudiced by the amendment].)

Defendant also moves to strike the following thirteen portions of the FAC:

1) The allegation of "employee" and "employment" in FAC, ¶ 14
2) The allegation of "employee" and "employment" in FAC, ¶ 16
3) The allegation of "employee" and "employment" in FAC, ¶ 17
4) The allegation of "employee" and "employment" in FAC, ¶ 21
5) The allegation of "employee" and "employment" in FAC, ¶ 24
6) The allegation of "employee" and "employment" in FAC, ¶ 27
7) FAC, ¶ 37
8) FAC, ¶ 38
9) FAC, ¶ 41
10) FAC, ¶ 42
11) FAC, ¶ 43
12) FAC, ¶ 44
13) The allegation of "employee" and "employment" in FAC, ¶ 46
14) The allegation of "employee" and "employment" in FAC, ¶ 47
15) FAC, ¶ 47(c)
16) FAC, ¶ 47(d)
17) FAC, ¶ 48
18) FAC, ¶ 49
19) FAC, ¶ 50
20) FAC, ¶ 71, as follows: "failed to warn…other members of the congregation"
21) FAC, ¶ 72
22) FAC, ¶ 73
23) The allegation of "employee" and "employment" in FAC, ¶ 74
24) FAC, ¶ 79

Defendant asserts that several of these allegations refer to facts that occurred after the alleged abuse in this case and therefore they are irrelevant and improper. However, the court cannot tell from the FAC when many of the alleged actions contained in the challenged paragraphs occurred. Accordingly, the court declines to strike these factual allegations on this basis. With respect to the allegations of actions taken as a result of Doe's abuse (see, e.g., FAC, ¶ 37), the court declines to strike these allegations because they provide context to the allegations and because they purport to show that Doe 1 acted in conformity with its alleged policy of failing to inform law enforcement about alleged abuse.

Defendant also contends that portions of the FAC referring to its failure to contact law enforcement should be stricken because, at the time the alleged abuse occurred, Defendant contends, there was no mandatory reporting requirement for clergy. Specifically, it argues that the Child Abuse Reporting Act codified in Penal Code section 11164, et seq. was not enacted until 1998. Again, the court declines to strike these allegations. As Plaintiff maintains in her

Opposition, the FAC does not allege any mandatory duty to report based on the Child Abuse Reporting Act. Instead, the thrust of these allegations is that Doe 1 did not act reasonably prudently when faced with allegations of abuse.

Defendant next asserts that the allegations of the FAC provide for disclosure of communications covered by the clergy-penitent privilege (Evidence Code section 1030 through 1034). This is an evidentiary objection and thereby exceeds the scope of this motion. That said, even if this could properly be considered a reason to strike the challenged portions of the FAC, Defendant has not met his burden of showing that the privilege applies to the communications that form the basis of the allegations in the FAC. The party asserting any privilege has the burden of showing sufficient preliminary facts to assert the privilege. (See *Venture Law Group v. Super. Ct.* (2004) 118 Cal.App.4th 96, 102.) By Defendant's own admission, the FAC does not explain where Plaintiff's knowledge of the factual allegations regarding Defendant's policies came from. (Motion to strike, p. 9, lns. 8-9.) Thus, there is no basis to believe that the facts Plaintiff alleges were told to her in a context that would breach the clergy-penitent privilege. (Motion to strike, p. 9, lns. 9-11.) The specific paragraph Defendant alleges is offending on this ground, FAC paragraph 24 specifically states that it was Defendant's policy not to report allegations of sex assault. It is not clear how Defendant's *policies* would be covered by the privilege.

The court declines to strike any of the allegations of the FAC on the basis that Defendant's free speech and religious rights have been violated as Defendant makes no effort to identify the specific portions of the FAC that allegedly do so.

Finally, Defendant seeks to strike portions of the FAC that allege that Elders, Ministerial Servants, and lay clergy are employees of Doe 1. As discussed above, whether these persons qualify as employees is a disputed issue. The court has declined to take judicial notice of the fact that they are not employees. Accordingly, there is no basis to strike these allegations.

The motion to strike is DENIED.

IV. Conclusion

Defendant's demurrer to the FAC is OVERRULED in its entirety.

The motion to strike portions of the complaint is DENIED in its entirety.

The Court will prepare the final order.

- oo0oo -

Calendar line 4
Case Name: Wesley v. Poirier
Case No.: 22CV396209

Plaintiff was hired to do construction work at Defendants' home. There is now a dispute about whether Defendants still owe Plaintiff money for the work he performed.

Defendants propounded discovery. Plaintiff responded to some of the discovery, but Defendants did not believe all requests were adequately answered or verified. Plaintiff then changed counsel and new counsel asked for more time to respond. After providing more time, but not sufficient time according to Plaintiff, Defendants filed this motion to compel. After the filing of the motion, Plaintiff further responded. Defendants still contend that some of the answers are insufficient. Defendants filed a second motion to compel, set to be heard on April 11, 2024, which appears to seek compulsion of the same interrogatories and RFPs.

Because the Court is not privy to what Plaintiff may have provided in December 2023 and the parties did not see fit to be specific about that, the Court will rule as best it can on the issues raised by Defendants in their original motion to compel. To the extent that the parties have resolved an issue, parties are admonished not to waste the court's time by failing to advise the court of the actual issues the parties wish to have addressed.

Defendants' requests for Form interrogatory 15.1, and Special Interrogatories 16-21 are GRANTED, for the reasons set out in Defendants' Separate Statement. The requests are relevant, specific, and do not call for private or privileged information. Requests for Production 43 and 44 are GRANTED, BUT ONLY TO THE EXTENT they relate to payments for the construction project at issue in this case.

Defendants are required to submit the final order within 10 days of the hearing. Plaintiffs are required to provide code-compliant verified responses within 20 days of service of the final order. Plaintiffs are required to pay sanctions in the amount of $742.50 (1.5 hours at $495/hr) as most of the objections were without substantial justification.

The Court is hopeful that the parties will advise the Court at the hearing on 2/6/24 that the MTC set for 4/11/24 can be vacated.

- oo0oo –

Calendar Line 8
Case Name: Qian Yang v. Robert Lee
Case No.: 22CV404490

Plaintiff Qian Yang moves for attorney fees pursuant to Code Civil Procedure 425.16(c), as she is the prevailing party on her anti-SLAPP motion. Plaintiff requests $440,134.80, based on 104.1 hours of work at a rate of $1057 per hour increased by a mutlitplier of four. Defendant does not dispute that Plaintiff is entitled to reasonable attorney fees, pursuant to Code of Civil Procedure (CCP) § 425.16(c). Rather, the dispute is over the amount of reasonable attorney fees and the application of a multiplier of four.

JUDICIAL NOTICE

Defendant requests judicial notice of facts from a website www.numeo.com. The request is DENIED, as the information is not the kind that is not subject to dispute and, in any event, it is not relevant to the issues to be decided. See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 (stating that "judicial notice. . .is always confined to those matters which are relevant to the issue at hand.

DISCUSSION AND ANALYSIS

Plaintiff's counsel has submitted billing records showing that it worked 104.1 hours on the anti-SLAPP motions, fee request, and appeals. In determining reasonable attorneys' fees, the court determines the lodestar figure which is the number of hours reasonably expended multiplied by the reasonable hourly rate for each attorney. See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96. The court may adjust this figure upward or downward based on factors specific to the case in order to fix the fee at the fair market value for the services rendered. *Id.* at p. 1095.

The hourly rate of Plaintiff's attorney is $1057. Defendant contests the hourly rate and argues it is excessive. The Court, based on its experience hearing dozens of fee motions in the last year, agrees that the rate is too high for counsel in Santa Clara County, which is the measure given that the case is here. As such the rate will be reduced to $800 per hour, which is still in excess of most attorneys in this area, including those who practice anti-SLAPP litigation.

Defendant also claims that Plaintiff is asking for an unreasonable amount of hours given the tasks billed. Specifically, Defendant cites to (1) the number of hours spent researching relevant cases, given counsel's claim of expertise; (2) time spent on a hearing that did not occur; and (3) an excessive amount of time spent on the fee motion. The Court does not award fees for anticipatory time, and Plaintiff's counsel has made a claim of 4 hours to prepare for and attend a hearing on this motion, things which have not yet occurred, and to attend the hearing the motion for reconsideration, which did not occur. That time must be deleted from the calculation. Moreover, the Court agrees that the time for many items, such as reviewing case law and drafting the fee request, appear excessive. As such, the Court will reduce the overall time by 15 percent. Accordingly, the counsel shall be paid for 100.1 hours of work [(104.1-4) x .85] at a rate of $800/hour, which equals $68,068

.

Plaintiff requests a multiplier of 4. While the Court agrees that a multiplier is appropriate given the contingent nature of the representation, a multiplier of 1.25 suffices in this case. Fees are granted in the total amount of $85,085. Defendant must pay fees within 20 days of service of the final order. Plaintiff shall submit the final order.

- oo0oo -