SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding
Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 4/11/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (4/10/2024) 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 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 3**.
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.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept. and line number.

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.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV409331	A.O. vs DOE 1	Motion: Strike to portion of Complaint by Defendant DOE 1, a public entity school district Ctrl Click (or scroll down) on Lines 1-2 for tentative ruling. The court will prepare the order.

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LINE 2	22CV409331	A.O. vs DOE 1	Hearing: Demurrer to Complaint by Defendant DOE 1, a public entity school district Ctrl click (or scroll down on Lines 1-2) for tentative ruling. The court will prepare the order.
LINE 3	23CV421956	Pshatoia LaRose vs Apple Inc.	Hearing: Demurrer to Plaintiff Pshatoia LaRose's [**Unfiled**] Second Amended Complaint; or alternatively motion to dismiss by Defendant Apple Inc. **Appear by Teams**. Parties should appear to discuss the impact of Plaintiff's filing of Notice of Removal [to Federal Court] on 4/2/2024. Such notice appears to divest the state court of jurisdiction until notice is given to the state court clerk in the form of a certified copy of the remand order [see *Spanair S.A. v. McDonnell Douglas Corp.* (2009) 172 Cal.App.4th 348, 356 (state court jurisdiction is suspended when party seeking removal gives notice to the state court clerk, and it is reacquired when the district court clerk gives notice to the state court clerk in the form of a certified copy of the remand order)].)
LINE 4	22CV407879	JIMMY ORTEGA vs MCGRATH ELECTRIC, INC.	Motion: Compel Defendant McGarth Electric, Inc.'s further resp. to request for production of documents set one, by Plaintiff. Jimmy Ortega Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	22CV407879	JIMMY ORTEGA vs MCGRATH ELECTRIC, INC.	Motion: Compel Defendant Flagship Facility Services further resp. to Special Interrogatories set one, by Plaintiff Jimmy Ortega Ctrl Click (or scroll down) on Line 5 for tentative ruling. The court will prepare the order.

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DATE: 4/11/2024 TIME: 9:00 A.M.

LINE 6	22CV407879	JIMMY ORTEGA vs MCGRATH ELECTRIC, INC.	Motion: Compel Defendant Flagship Facility Services, Inc. further resp. to form interrogatories set one, by Plaintiff Jimmy Ortega Ctrl Click (or scroll down) on Line 6 for tentative ruling. The court will prepare the order.
LINE 7	23CV418527	POLYXENE G. KOKINOS, M.D., A.P.C. vs Bradley Hill, MD et al	Motion: Vacate arbitration award by Polyxene G Kokinos, M.D., A.P.C. ** c/f 2/6/2024 m/o** Ctrl Click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.
LINE 8	24CV429871	David Williams vs County of Santa Cruz	Motion: Change of Venue to Santa Cruz County Superior Court by defendant County of Santa Cruz Unopposed and GRANTED.
LINE 9	**ADD ON (related to Line 7)**: 23CV418527	POLYXENE G. KOKINOS, M.D., A.P.C. vs Bradley Hill, MD et al	Cross-Motion/Petition: Enter judgment in accordance with amended arbitration award by Bradley Hill, M.D. ** c/f 2/6/2024 m/o** Ctrl Click (or scroll down) on Line 9. The court will prepare the order.
LINE 10			
LINE 11			
LINE 12			

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Calendar Lines 1-2
Case Name: *A.O. v. Doe 1*
Case No.: 22CV409331

I. Factual and Procedural Background

This case arises from childhood sexual abuse and exploitation. Plaintiff "A.O." ("Plaintiff") brings this action against defendants Does 1-90. Doe 1 ("Defendant" or "Doe 1") is a public school district. Doe 6, a former employee of Doe 1, committed acts of sexual assault against Plaintiff.

In or around 1975, Plaintiff was about eleven years old and a student at Doe 1's school district. (Compl., ¶ 14.) Doe 6 was a teacher employed by Doe 1 who abused his position of power to groom young students, including Plaintiff. (*Id.* at ¶ 15.)

After Doe 6 gained Plaintiff's trust, his sexual advances against Plaintiff became more aggressive. (Compl., ¶ 16.) Doe 1's employees knew, or should have known, that Doe 6 was sexually grooming and sexually abusing Plaintiff. (*Id.* at ¶¶ 18, 26.) Doe 6 targeted Plaintiff because of his gender. (*Id.* at ¶ 20.)

On December 29, 2022, Plaintiff brought this action against Does 1-90, asserting the following causes of action:

1) Sexual Abuse of a Minor [against Doe 6];
2) Intentional Infliction of Emotional Distress [against Does 6, 7-50];
3) Sexual Harassment (Civil Code §§ 51.9, 52) [against all defendants];
4) Negligent Hiring, Supervision, and Retention of an Unfit Employee [against Does 1, 2-5, 7-90];
5) Negligent Failure to Report Suspected Child Abuse (Penal Code § 11164 et seq.) [against Does 1, 2-5, 7-90]; and
6) Negligence [against Does 1, 2-5, 7-90].

On March 15, 2024, Doe 1 filed its demurrer and motion to strike portions of the Complaint. Plaintiff opposes the motion.

II. Demurrer

a. Legal Standard

In ruling on a demurrer, the court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

b. Procedural Matters

As an initial matter, the Court notes Plaintiff's opposition exceeds the fifteen-page limit on responding memorandum. (See Cal. Rules of Court, Rule 3.1113, subd. (d) [no responding memorandum may exceed 15 pages].) While the Court will review the entire opposition in this instance, Plaintiff's counsel is reminded to follow all Rules of Court going forward.

c. Doe 1's Request for Judicial Notice

In support of its demurrer and motion to strike, Doe 1 requests the Court take judicial notice of the following:

1) California Assembly's Floor Analysis of AB 218 (Ex. A);
2) Contra Costa County Superior Court Judge Douglas' June 13, 2023 Order (Ex. B);
3) Contra Costa County Superior Court Judge Douglas' October 2, 2023 Order (Ex. C); and
4) Monterey Superior Court Judge Wills' February 2, 2024 Order (Ex. D).

The Court finds it unnecessary to take judicial notice of the above exhibits. (E.g., *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].) Moreover, orders of the Superior Court of California may be judicially noticed, but not as to the correctness of the ruling or the truth of the factual findings. (See *Bolanos v. Superior Ct.* (2008) 169 Cal.App.4th 744, 761 [a written trial court ruling has no precedential value]; *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409 [there is no "horizontal stare decisis"].) The requests are DENIED.

d. Plaintiff's Request for Judicial Notice

Plaintiff has requested judicial notice of sixty separate documents. The categories of these documents include the following:

1) Assembly Bill Analyses;
2) Superior Court Law and Motion Orders; and
3) Superior Court Minute Orders.

While the Court appreciates Plaintiff's reasons for requesting judicial notice of the above exhibits, it finds the requests to be unmanageable and overbroad. To the extent the requests are relevant, they are nevertheless unnecessary to a resolution of these motions. Nevertheless, the Court will review the authority cited to in Plaintiff's oversize opposition. Accordingly, the requests are DENIED.

e. Analysis

Doe 1 demurs to each cause of action against it on the ground that Assembly Bill 218 is unconstitutional as applied to public entities. Additionally, Doe 1 demurs to the third and fifth causes of action on the ground they fail to allege facts sufficient to state a cause of action.

i. <u>Government Claims Act, Code of Civil Procedure section 340.1, and Assembly Bill 218 Generally</u>

In most instances, "[b]efore suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see Gov. Code, § 905 [itemized exceptions].)"

(*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 [overruled by statute on other grounds].)

The purpose of the Government Claims Act (Gov. Code, § 900 et seq.) is to apprise the governmental body of imminent legal action so the entity may investigate and evaluate the claim and, where appropriate, avoid litigation by settling meritorious claims. (*Krainock v. Superior Ct.* (1990) 216 Cal.App.3d 1473, 1477; see also *Gehman v. Superior Ct.* (1979) 96 Cal.App.3d 257, 262.)

Code of Civil Procedure section 340.1 ("section 340.1") establishes the statute of limitations for actions alleging damages from childhood sexual assault. Assembly Bill 218 ("AB 218") was later adopted by the Legislature, enacting the latest amendments to section 340.1. Effective on January 1, 2020, section 340.1 was amended to expressly preserve and revive claims that may have otherwise lapsed or expired under prior versions of the statute. (See e.g., *Safechuck v. MJJ Productions, Inc.* (2020) 43 Cal.App.5th 1094, 1100.) In other words, AB 218 lengthened the time within which an action for damages resulting from childhood sexual assault may be brought to 22 years from the date a plaintiff attains the age of majority or five years from the date a plaintiff discovers, or reasonably should have discovered, that psychological injury occurring after the age of majority was caused by the sexual assault, whichever period expires later. (Code Civ. Proc., § 340.1.)

AB 218 additionally amended a portion of the Government Claims Act (Gov. Code, § 905) by removing the section that limited the exception to the government claims presentation requirement to claims arising out of conduct occurring on or after January 1, 2009 and adding subdivision (p), which made this change retroactive. (See *Coats v. New Haven Unified School Dist.* (2020) 46 Cal.App.5th 415, 424 (*Coats*).)

Doe 1 first argues that all of the Complaint's causes of action against it are subject to dismissal because of the unconstitutionality of Code of Civil Procedure section 340.1, as amended by AB 218. Defendant asserts several arguments, including: 1) Plaintiff was required to comply with the Government Claims Act and courts are precluded from carrying out legislative intent where the constitution forbids such action; 2) Legislature has no power to impose liability on a public entity for a past occurrence; and 3) the California Supreme Court has held gifts of public funds are prohibited by the California Constitution. Most of Defendant's arguments are intertwined and the Court will address them in a similar order below.

1. Constitutionality of AB 218

Defendant asserts that AB 218, as applied to public entities, is unconstitutional. Defendant appears to contend that because Plaintiff never filed a Government Claim in the 1970s, he could never allege all of the elements of his claims prior to the passage of AB 218, and so he therefore never had an enforceable claim. (Demurrer, p. 5:11-12, 25-26.)

California courts "'will presume a statute is constitutional unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity.'" (*In re D.L.* (2023) 93 Cal.App.5th 144, 156.)

For example, the First District Court of Appeal determined that legislation may constitutionally revive lapsed civil limitations periods to restore common law remedies that existed at the time of the alleged misconduct. (*Coats, surpa,* 46 Cal.App.5th at p. 428 ["In Assembly Bill 218, the Legislature made clear its intent to revive causes of action previously barred by government claims presentation requirements."].) "In Assembly Bill 218, the Legislature has . . . attempted to balance the competing concerns of protecting public entities from stale claims and allowing victims of childhood sexual abuse to seek compensation. This

time, the Legislature came to a different conclusion, with an express revival provision for claims against public entities as well as those against private defendants." (*Id.* at p. 429.)

Defendant attempts to distinguish *Coats* from the present case by arguing that it was decided prior to the passage of AB 218 "and the initial question before the Appellate Court was whether a plaintiff seeking relief for childhood sexual abuse against a school district was required to comply with local claim presentation requirements authorized by Government Code § 935." (Demurrer, p. 12:19-22.) This argument is not persuasive. The Court of Appeal specifically acknowledged that the revival provision in Code of Civil Procedure section 340.1 was amended during the pendency of the appeal which "expressly and unequivocally encompasses claims of childhood sexual abuse previously barred for failure to present a timely government claim." (*Coats*, *supra*, 46 Cal.App.5th at pp. 430-431 [stating also "The District initially offered the additional argument that it would be improper for us to base a decision on a law that had not yet taken effect. That point is no longer relevant due to the passage of time, as Assembly Bill 218 became effective on January 1, 2020."].)

As Plaintiff notes in opposition, the *Coats* Court cites to several appellate decisions indicating that the legislature does not violate constitutional principles by reviving statute of limitations on civil law claims. (See *Coats*, *supra*, 46 Cal.App.5th at p. 425 ["Legislation reviving the statute of limitations on civil law claims does not violate constitutional principles[.]"]; see also Opposition, p. 13:6-16, citing *Liebig v. Superior Court* (1989) 209 Cal.App.3d 828, 830; *Roman Catholic Bishop of Oakland v. Superior Court* (2005) 128 Cal.App.4th 1155, 1161 ["It is equally well settled that legislation reviving the statute of limitations on civil law claims does not violate constitutional principles."].)

Finally, the explicit language of Government Code section 905, subdivision (m) states that claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual assault are exempt from the Government Claims provisions and, pursuant to Government Code section 905, subdivision (p), the section applies retroactively. (See e.g., *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 914-915 [the legislative history behind Government Code section 905, subdivision (m) indicates the Legislature intended for the Bill to "'expressly provide[] that childhood sexual abuse actions against public entities are exempted from government tort claims requirements and the six-month notice requirement'"].)

Accordingly, the Court is not persuaded by Defendant's argument that AB 218 is unconstitutional and therefore declines to sustain the demurrer to the entire Complaint on that basis.

2. <u>Gift of Public Funds</u>

Defendant next argues that AB 218's amendments to section 340.1 amount to an unconstitutional gift of public funds. (See Demurrer, p. 12:8-13.) Defendant primarily relies on cases from the late 1800s and early 1900s. Plaintiff contends these cases concern the allocation of money for claims that previously did not exist, which may be a violation of the gift clause, and the giving of money for claims that did exist but have since expired. (Opposition, p. 10:25-27.)

Defendant first cites to *Bourn v. Hart* (1892) 93 Cal. 321 (*Bourn*). In *Bourn*, the state legislature enacted a statute appropriating $10,000 to pay an employee's claim for personal injuries sustained while in the discharge of his duties as a guard at a state prison. The Supreme Court determined that legislative appropriation made to an individual in payment of a claim for damages due to personal injuries sustained while working for the state, and for which the state is not responsible, "is a gift within the meaning of section 31, article IV of the Constitution, prohibiting the legislature from making any gift of public money." (*Bourn*, *supra*, at pp. 326-

327.) Plaintiff asserts that *Bourn* involves a specific appropriation of public funds to a specific person and it is therefore inapposite. (See Opposition, p. 10:10-12.) Plaintiff's assertion is well-taken, as the Supreme Court specifically stated that "[i]f the state desires to make itself liable for such damages as may be sustained by those in its service, *it must do so by general law which shall embrace all cases which may come within its provisions*." (*Bourn, supra,* at p. 328 [emphasis added].) In this case, unlike in *Bourn*, there was no statutory enaction directed at a specific individual.

Defendant next cites *Conlin v. Board of Supervisors* (1893) 99 Cal. 17 (*Conlin*). In *Conlin*, plaintiff entered into a contract with a city to complete road work. The plaintiff completed the work but was not paid by the city. The Legislature passed an act ordering the city to pay the plaintiff. The plaintiff brought an action against the city after it refused to pay him. The superior court held in favor of the plaintiff. The Supreme Court reversed, holding the act constituted a gift to plaintiff and was prohibited by Article IV, section 31 of the Constitution. Similar to above, the act in *Conlin* was directed at an individual. Neither AB 218 nor section 340.1 is directed at individual. Therefore, *Conlin* is unhelpful here.

Defendant also cites to *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431 (*Jordan*) and asserts that the *Jordan* Court recognized the term "gift" to include all appropriations of public money for which there is no authority or enforceable claim. (*Id.* at p. 450.) Defendant's argument depends on the Court's acceptance of its assertion that Plaintiff's claims are "invalid." As discussed above, Plaintiff's childhood sexual abuse claims were not invalidated given the retroactive application of AB 218 and its exemption of such cases from the Government Claims requirements.

Furthermore, AB 218 did not create a new tort liability that never previously existed. Rather, it removed a procedural barrier to a plaintiff's ability to bring a claim. (See e.g., *Chapman v. State* (1894) 104 Cal. 690, 696 [Legislature's provision of a judicial remedy for claims that could previously only be brought before state board of examiners was not a violation of the gift clause because it did not create any *new liability*].)

Based on the foregoing, the Court is not persuaded by Defendant's argument that AB 218's amendments to section 340.1 amount to an unconstitutional gift of public funds and declines to sustain the demurrer on this ground.

3. Public Purpose

Finally, Defendant asserts that the elimination of the Government Claims requirement does not serve a public purpose. (Demurrer, p. 8:20-21.) The Court, however, is persuaded by Plaintiff's argument that even if AB 218 could be construed as providing for an appropriation of public funds, its amendments to section 340.1 and Government Code section 905 are directed at a public purpose. (See Opposition, p. 7:15-17.)

"It is well settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose. If they are to be used for a public purpose, they are not a gift within the meaning of this constitutional prohibition." (*California Teachers Assn. v. Board of Trustees* (1978) 82 Cal.App.3d 249, 257; see also *Teachers' Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1036.) "The benefit to the state from an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom. The determination of what constitutes a public purpose is primarily a matter for legislative discretion, which is not to be disturbed by the courts so long as it has a reasonable basis." (*County of Alameda v. Janssen* (1940) 16

Cal.2d 276, 281 (*Janssen*), [internal citations omitted]; see also *Paulson v. Abdelnour* (2006) 145 Cal.App.4th 400, 419.)

The stated purpose of AB 218, in addition to allowing victims of childhood sexual abuse to be compensated for their injuries, is to "help prevent future assaults by raising the costs for [harm caused by childhood sexual abuse]" and to serve "as an effective deterrent against individuals and entities who have chosen to protect perpetrators of sexual assault over victims." (See *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1027.) The prevention of future sexual abuse against minors by Defendant's employees in a position of power, such as a school teacher, provides a public purpose and benefit, which contrasts sharply with the narrow scope of benefits conferred in the gift clause cases relied on by Defendant. Consequently, the Legislature had a "reasonable basis" to waive sovereign immunity and the Court does not find cases involving childhood sexual assault under section 340.1 to qualify as a gift under Article XVI, section 6 of the California Constitution. (*Janssen, supra,* 16 Cal.2d at pp. 281-282.)

For the above stated reasons, the Court declines to sustain the demurrer to the Complaint in its entirety on the ground AB 218's amendments to section 340.1 are unconstitutional. The demurrer to the entire Complaint is OVERRULED.

ii. Third Cause of Action – Sexual Harassment (Civil Code §§ 51.9, 52)

Defendant demurs to the third cause of action on the ground it is within the Unruh Civil Rights Act ("Unruh Act"), respondeat superior is not available, and no facts demonstrate aiding and abetting or ratification. (Demurrer, p. 15:5-11, citing *Brennon B. v. Superior Court* (2022) 13 Cal.5th 662 (*Brennon*) and *K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717 (*K.M.*).)

Unruh Act

The Unruh Act (Civil Code section 51) is intended to provide protection from discrimination and is aimed at the conduct of private business establishments. (*Brennon, supra*, 13 Cal.5th at p. 675.) While the *Brennon* Court did determine that a school district was not a business establishment for purposes of the Unruh Act, as Defendant itself acknowledges, the *Brennon* Court does not address Civil Code section 51.9 or whether section 51.9 falls within the Unruh Act. In Opposition, Plaintiff asserts that Civil Code section 51.9 does not fall within the Unruh Act. (Opposition, p. 22:3-7, citing *Smith v. BP Lubricants USA Inc.* (2021) 64 Cal.App.5th 138 (*Smith*).)

The Court does not find *Brennon* or *Smith* to be sufficiently helpful in addressing this issue. In 2009, the Supreme Court stated that "Civil Code section 51.9 has sometimes been described as being part of the Unruh Civil Rights Act, presumably because of that statute's close proximity in the Civil Code to the Unruh Civil Rights Act, which appears in section 51 of the Civil Code. . . . But Civil Code section 51 is the only statute comprising the Unruh Civil Rights Act." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1044, fn. 1; see also *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 606 ["Civil Code section 51.9 is not part of the Unruh Civil Rights Act; it is a separate civil rights statute."].) Thus, Civil Code section 51.9 is not within the Unruh Act.

In any event, Defendant's reliance on *K.M.* is well taken, as the Court of Appeal explained that Civil Code section 51.9 applies to a "person" in a professional relationship with the plaintiff. (*K.M., supra*, 84 Cal.App.5th at p. 751.) The Fourth District continued that a "'public school district is a political subdivision of the State of California'" and not a person as defined by the Civil Code. (*Ibid.*; see also *Butt v. State of California* (1992) 4 Cal.4th 668, 681 ["Local districts are the State's agents for local operation of the common school system[.]"].)

Plaintiff does not address *K.M.* in his opposition. Accordingly, Civil Code section 51.9 does not apply to public school districts and the demurrer to the third cause of action may be sustained on this ground. The Court need not address Defendant's remaining arguments.

As such, the demurrer to the third cause of action is SUSTAINED without leave to amend. (See *City of Stockton v. Superior Ct.* (2007) 42 Cal.4th 730, 747 [leave to amend is liberally allowed as a matter of fairness, *unless the pleading shows on its face that it is incapable of amendment*].)

iii. Fifth Cause of Action – Negligent Failure to Report Suspected Child Abuse

Defendant demurs to the fifth cause of action on the ground the California Child Abuse and Neglect Reporting Act ("CANRA") postdates Plaintiff's childhood sexual abuse. (Demurrer, p. 15:17-21.) Plaintiff does not oppose Defendant's demurrer to the fifth cause of action. (Opposition, p. 22, fn. 8 ["Plaintiff does not oppose the District's demurrer to Plaintiff Fifth Cause of Action under CANRA."].)

Accordingly, the demurrer to the fifth cause of action is SUSTAINED without leave to amend.

III. Motion to Strike

Defendant moves to strike portions of Plaintiff's Complaint, pursuant to Code of Civil Procedure sections 436 and 435.5 on the ground the language is irrelevant, false, improper, and not drawn in conformity with the laws of this state.

a. Legal Standard

A court may strike out any irrelevant, false, or improper matter asserted in a pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436, subd. (a).) The grounds for a motion to strike must appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) In ruling on a motion to strike, a court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (*Clauson v. Superior Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

b. Analysis

Defendant moves to strike the following from the Complaint's Prayer for Damages:

1) Plaintiff's request for treble damages;
2) Plaintiff's request for attorney's fees under Civil Code section 52; and
3) Plaintiff's request for punitive damages.

In opposition to the motion to strike, Plaintiff asserts it does not oppose Defendant's motion to strike Plaintiff's prayer for treble damages or prayer for punitive damages. (See Opposition, p. 2, fn. 1.) Accordingly, the motion to strike Item Nos. 1 and 3 is GRANTED without leave to amend.

As the Court has sustained the demurrer to the third cause of action without leave to amend, Defendant's motion to strike attorney's fees under Civil Code section 52 is MOOT.

IV. Conclusion and Order

The demurrer to the Complaint in its entirety on the ground that AB 218 is unconstitutional is OVERRULED. The demurrer to the third and fifth causes of action is SUSTAINED without leave to amend. The motion to strike treble and punitive damages is GRANTED without leave to amend. The motion to strike attorney's fees under Civil Code section 52 is MOOT.

The Court will prepare the final order.

Calendar Line 3

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Calendar line 4

Case Name: *JIMMY ORTEGA vs MCGRATH ELECTRIC, INC.*
Case No.: 22CV407879

Plaintiff Jimmy Ortega **(**Plaintiff)'s Motion to Compel defendant McGrath Electric, Inc ("Defendant")'s Further Responses to Plaintiff's Requests for Production of Documents ("RPD"), Set One, Nos. 1-68 ("Motion") is GRANTED IN PART.

On March 24, 2024, after this Motion was filed and served, Defendant served Defendant's Further Responses to RPD, Set One, and Document Production MEI00001-00309. Defendant contends that RPD Set One, Nos. 27-30, 36, 37 and 61 seek privileged information, but has not provided any privilege log.

Accordingly, the Motion is MOOT, *except* Defendant is ORDERED to provide Code of Civil Procedure ("CCP" or "Code") compliant further responses to RPD, Set One, Nos. 27-30, 36, 37, and 61, within 20 days of this Order (including a privilege log.)

A Code compliant privilege log must be sufficiently specific so that the court may determine whether a specific document or information withheld is or is not privileged. (See *Best Product Inc. v. Superior Court* (2004) 119 Cal.app.4th 1181, 1188-1189; *Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292.)

The Court will prepare the Order.

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Calendar Line 5
Case Name: *JIMMY ORTEGA vs MCGRATH ELECTRIC, INC*
Case No.: 22CV407879

Plaintiff Jimmy Ortega **(**Plaintiff)'s Motion to Compel defendant McGrath Electric, Inc ("Defendant")'s Further Responses to Special Interrogatories ("SI"), Set One, ("Motion") is MOOT.

On March 24, 2024, after this Motion was filed and served, Defendant served Defendant's Further Responses to SI, Set One,

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Calendar Line 6

Case Name: *JIMMY ORTEGA vs MCGRATH ELECTRIC, INC*
Case No.: 22CV407879

Plaintiff Jimmy Ortega **(**Plaintiff)'s Motion to Compel defendant McGrath Electric, Inc ("Defendant")'s Further Responses to Form Interrogatories ("FI"), Set One, ("Motion") is GRANTED IN PART.

On March 24, 2024, after this Motion was filed and served, Defendant served Defendant's Further Responses to FI, Set One. Defendant contends that FI, Set One, Nos. 211.1, 211.2, 211.3 and 216.1 seek privileged information, but has not provided any privilege log.

Accordingly, the Motion is MOOT, *excep*t Defendant is ORDERED to provide Code of Civil Procedure ("CCP" or "Code") compliant further responses to FI, Set One, Nos. 211.1, 211.2, 211.3 and 216.1, within 20 days of this Order (including a privilege log.)

A Code compliant privilege log must be sufficiently specific so that the court may determine whether a specific document or information withheld is or is not privileged. (See *Best Product Inc. v. Superior Court* (2004) 119 Cal.app.4th 1181, 1188-1189; *Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292.)

The Court will prepare the Order.

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Calendar Line 7

Case Name: *Kokinos v. Hill*
Case No.: 23CV418527

Petitioner Polyxene G. Kokinos, M.D., A.P.C. ("Kokinos")'s petition to vacate ("Petition") the arbitration award, as amended, pursuant to Code of Civil Procedure ("CCP")[1] section 1286.2 issued by Arbitrator Dana Welch ("Welsh" or the "Arbitrator") is DENIED.

On 6/28/2023, Kokinos filed a petition to vacate the final arbitration award entered by the Arbitrator (Welsh) in favor of respondent Bradley Hill, M.D. (Hill) on May 23, 2024, in the principal amount of $894,443.54 that was modified on June 5, 2023, to $979,425.90, on two major grounds.

First, Kokinos claimed that vacatur is required pursuant to "section 1286.2(a)(6)(B) because WELSH refused to honor KOKINOS's timely demands for disqualification of herself and of her designated forensic accountant Vanessa Hill (Hill), when WELSH was required to remove herself and the accountant from the proceedings" citing sections 170.1, 1286.2(a)(6)(B) and 1281.91. (Petition to Vacate, p. 2.) According to Kokinos, "[t]he applicable disqualification standard is an objective one; if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial, the judge should be disqualified." (See *Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.) Considering the evidence submitted by both sides in this matter, the court finds that Kokinos failed to establish any arbitral bias by Welsh or any bias of Hill the forensic accountant (that the parties through their counsel stipulated to use) under any objective standard.

Second, Kokinos claimed that vacatur is required pursuant to sections "1286.2(a)(3) and 1286.2(a)(5) because KOKINOS's rights were substantially prejudiced by WELSH's unjustified refusal to allow for an evidentiary hearing and 'to hear evidence material to the controversy'." (Petition to Vacate, p. 2.) Considering the evidence submitted by both sides in this matter, the court finds that Kokinos failed to establish this second ground as well.

I. Legal Standard

An arbitration award is final and conclusive, "because the parties have agreed that it be so." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 13 (*Moncharsh*).) The trial court may not review the "merits of the controversy or the sufficiency of the evidence supporting the award." (*California Faculty Assn v. Superior Court* (1998) 63 Cal.App.4th 935, 943.) Absent a clear expression of illegality or public policy undermining the strong presumption in favor of private arbitration, an arbitral award should ordinarily stand immune from judicial scrutiny. (*Moncharsh, supra,* 3 Cal.4th at p. 14.)

"[P]arties must be free to fashion agreements which restrict or limit the arbitrator's authority." (*California Faculty Assn., supra,* 63 Cal.App.4th 935, 944; see also *Mocharsh, supra,* 3 Cal.4th 1, 8 ["In cases involving private arbitration, '[t]he scope of arbitration is . . . a matter of agreement between the parties.'" (quoting *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 323.) As such, the scope of judicial review of arbitration awards is extremely narrow; the court "may not review either the merits of the controversy or the sufficiency of the evidence supporting the award." (*California Faculty Assn., supra,* 63 Cal.App.4th 935, 943.) Although this creates a risk of an erroneous decision by the arbitrator, it is tolerated because the parties have voluntarily submitted to

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

arbitration, and because "the Legislature has reduced the risk to the parties of such a decision by providing for judicial review in circumstances involving serious problems with the award itself, or with the fairness of the arbitration process." (*Mocharsh, supra,* 3 Cal.4th at p.12.)

In general, an arbitrator "does not exceed his or her powers by making a legal or factual error or by giving erroneous reasons for an award." (*Harris v. Sandro* (2002) 96 Cal.App.4th 1310, 1313.)

The court agrees with Hill that much of Kokinos's argument and evidence supporting her Petition to Vacate relates to her disagreement with the merits of the Arbitrator's decision. The court lacks authority to review the merits of the Arbitrator's decision, including the Arbitrators' interpretation of the law and the evidence. Thus, the court addresses only the limited grounds on which it is statutorily authorized to review an arbitration award under section 1286.2 (that were raised by Kokinos).

Here, the parties (through their counsel) agreed to the Stipulation Between the Parties for Appointing of Accounting Expert (the "Stipulation"). (See Appendix A to the Final Arbitration Award.) This agreement set forth the selection of Hill as the accounting expert and set forth the procedures for resolving disputes concerning Hill's accounting work. It states that "This Agreement is intended to fully decide all claims and counterclaims of this Arbitration Case except for Respondent's counterclaim (4). … If the matter cannot be resolved within 20 days of receipt of the expert's final report, either party can request the Arbitrator to reschedule discovery cut-off dates and the arbitration dates *limited to this counterclaim (4)*. (*Id*., p. 4 ¶ 8 B [emphasis added].) "The expert's final report will be admitted into evidence, over any hearsay and foundational objections." (*Id*., p. 3 ¶ 6 C.) "If either party wishes to challenge any findings or conclusion of the expert *that was objected to timely in response to the draft report*, that party may submit by email to the Arbitrator a legal opinion not to exceed 3 pages and documentary attachments as to their objections within 10 days from the date the [expert] emailed it to the Arbitrator." (*Id*., p. 3 ¶ 6 D [emphasis added].) It states in a section entitled "Disputes" that "The Arbitrator will consider the legal opinions and documentary evidence, *and either render decision, or schedule a hearing* between the parties to resolve the dispute. Once determined by the Arbitrator, the Arbitrator will email the expert the decision, copying the parties and the decision will be final…." (Id., p.3 ¶ 5 A. [emphasis added.]) It also provides that "The Arbitrator will render a final decision for all matters of this Arbitration (Award) pursuant to the Employment Arbitration Rules of AAA." (*Id*., p. 4 ¶ 8 C.)

The Stipulation was signed and ordered by the Arbitrator. Kokinos had knowledge of it; participated in providing documents and evidence to Hill the accounting expert under it and has received its benefits. Therefore, Kokinos is estopped from denying the agreement. (*Fidelity & Casualty Co. of New York v. Abraham* (1945) 70 Cal.App.2d 776, 785.) Kokinos's attorney stated that Kokinos consented, and the Stipulation was executed on his request. Thereafter, the parties acted in accordance with the Stipulation being a binding agreement. Any claim by Kokinos that the Stipulation is not binding is without merit.

Interpretation of the underlying agreement is ordinarily a question of law for the arbitrator, not the court. (*Safeway Stores, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County* (1978) 83 Cal.App.3d 430, 438.) When the arbitrator's award represents a plausible interpretation of the contract in the context of the parties' conduct, the inquiry ceases, and the award must be affirmed. (*Screen Actors Guild v. A. Shane Co.* (1990) 225 Cal.App.3d 260, 265.)

A. Bias as Grounds for Disqualification

An arbitrator is subject to disqualification if "any ground specified in Section 170.1 exists". (CCP § 1281.91(d).) This includes circumstances where for any reason, a person aware

of the facts might reasonably "entertain a doubt that the judge would be able to be impartial.", or where bias or prejudice towards a lawyer is found. (CCP § 170.1, subd. (6)(A)(iii), (B).)

The relevant inquiry in assessing bias is how an "objective, reasonable person" would view the arbitrator's ability to be impartial. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385.) An impression of bias means that "one could reasonably form a belief that an arbitrator was biased for or against a party for a particular reason." (*Betz v. Pankow*, 31 Cal.App.4th 1503, 1511.) The party asserting that the arbitration award was corrupted by bias bears the burden of levying facts to establish its position. (*Rebmann v. Rohde* (2011) Cal.App.4th 1283, 1290.)

B. Substantial Prejudice as Grounds for Disqualification

An arbitration award shall be vacated if the court determines that a party's rights were substantially prejudiced by a neutral arbitrator's misconduct, or by such arbitrator's refusal to hear evidence material to the controversy. (CCP § 1286.2(a)(3), (5).)

Vacatur on refusal to hear evidence grounds requires the moving party to show their rights were *substantially* prejudiced by the arbitrator's evidentiary decisions. (*Blatt v. Farley* (1990) 226 Cal.App.3d 621, 626, italics added.) It is insufficient to simply show that the excluded evidence was material. (*Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 439.) If the court must "routinely review the arbitrator's decision on materiality before reaching the question of substantial prejudice, the legislative goal of arbitral finality will be unattainable". (*Id.* at p. 438.)

II. Discussion

Welch's and Hill's Alleged Bias

Here, Kokinos's claims that the Arbitrator (Welsh) or the agreed accounting expert (Hill) should have been disqualified on bias grounds fails. Kokinos's assertion that "Welch revealed her personal animus towards Kokinos" by reason of her Final Arbitration Award is unsupported by the record. The Arbitrator's conduct here does *not* compare to the judge's comments in *Evans v Superior Court of Los Angles Conty (1930) 107 Cal.App.327* ("*Evans"*), where he likened the petitioners to pirates and made remarks about their intelligence. (Petition at p. 9.) To equate Welsh's evidentiary and procedural decisions, which were within her arbitral authority, to the *Evans* statements is too far of a leap for this court to make.

Kokinos acknowledges on page 11 of her Petition to Vacate that it did *not* disclose a bank account [to the agreed accounting expert Hill] (but claims that it did it on the advice of former counsel.) "The discovery of a previously undisclosed bank account caused undue delay" (see Final Award, page 5, 2nd full paragraph.) After discovery of this undisclosed bank account, Kokinos claims that the attitude of the accounting expert Hill and the arbitrator Welsh both became "biased and suspicious" of Kokinos. The is *not* objective evidence of bias. Any reasonable accounting expert (or arbitrator) would be "suspicious" of a party who failed to disclose a bank account that [according to the Final Award hundreds of thousands of dollars of] deposits (related to the accounting the expert was working on) were made into.

Kokinos's bias claim also rests on Welsh's findings in the Final Report that Kokinos failed to present "persuasive documentation" to support her contentions. (Petition at p. 11.) Kokinos also asserts bias in the Final Award stating that Kokinos "comingled personal expenses with those of the practice", and in it failing to define what constitutes contemporaneously prepared records. (Petition at pp. 11-12.)

These instances plainly do not evince the appearance of bias or personal animus, but merely an independent arbitrator and accounting expert acting within the bounds of its functions. Also, to further scrutinize the standards of the Arbitrator's Final Award as amended (as requested by Kokinos) would come dangerously close to encroaching on the strong policy

of deference accorded to arbitral reasoning. In sum, no bias is found in Welsh's actions, nor in the actions of Hill the forensic accountant that the parties agreed to use.

Substantial Prejudice

Here, Kokinos claims that Welsh's conduct was substantially prejudicial fails because Kokinos is essentially asking the Court to review the arbitrator's interpretation of the underlying agreement between the parties. (Petition at p. 16.) Kokinos argues that Welsh misapplied the Stipulation between the parties by refusing Kokinos's request to present oral evidence regarding the inadequacy of the accountant's findings. (Petition at pp. 16-17.)

There was no provision for demanding oral evidence to be presented to Welsh in the Stipulation. Had the parties wished for that avenue to be available, it stands to reason that they would have included it in the Stipulation. Thus, Welsh's refusal to allow for the presentation of oral evidence was a plausible interpretation of the Stipulation and does not represent substantial prejudice towards Kokinos. Consequently, Kokinos's contention that the excluded oral evidence was material and significant is ineffectual. Regardless, whether the evidence was material is not sufficient to sustain such a contention.

"Under section 1286.2, subdivision (e), the arbitrator's obligation 'to hear evidence' does not mean that the evidence must be orally presented or that live testimony is required. 'Legally speaking the admission of evidence is to hear it.' (*Gonzales* v. *Interinsurance Exchange* (1978) 84 Cal. App. 3d 58, 63.) An arbitrator 'hears' evidence by providing a 'legal hearing,' that is, by affording an 'opportunity to . . . present one's side of a case.' (Webster's Third New Internat. Dict. (1981) p. 1044, col. 2 [defining 'hear' and 'hearing'].) An arbitrator also 'hears' a matter by 'consider[ing] a motion upon presentation thereof by counsel.' (Ballentine's Law Dict. (3d ed. 1969) p. 552, col. 2.) Thus, a 'hearing' does not necessarily include 'an opportunity to present live testimony or be subject to cross examination.' (B*uxton* v. *Lynaugh* (5th Cir. 1989) 879 F.2d 140, 145, cert. den. 497 U.S. 1031 [111 L. Ed. 2d 803, 110 S. Ct. 3295].)" (*Schlessinger v. Rosenfeld, Meyer & Susman* (1995) 40 Cal.App.4th 1096, 1105.) "The parties may be heard on the papers rather than at a live hearing [Citation], but the opportunity to be heard must be extended to all parties equitably." (*Royal Alliance Associates, Inc. v. Liebhaber* (2016) 2 Cal.App.5th 1092, 1108.)

The Final Arbitration Award issued by the arbitrator suggests an equitable and measured consideration of the objections and evidence that were submitted in accordance with the Stipulation. Here, the Arbitrator allowed Kokinos to exceed the number of pages originally allowed for her objections to the final report of the forensic accountant. In turn, the Arbitrator permitted Hill to submit an additional 10 pages in reply to the letter of legal objections by Kokinos. This plainly demonstrates the efforts of the Arbitrator to maintain neutrality in allowing each party to submit an equal amount of evidence to prove their respective cases.

Disposition

The petition to vacate is DENIED.

The court will prepare the Order.

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Case Name: *Kokinos v. Hill*
Case No.: 23CV418527

Respondent and cross-petitioner Bradley Hill, M.D. ("Hill")'s petition to confirm the arbitration award dated May 23, 2023, as amended June 5, 2023, issued by arbitrator Dana Welch ("Welsh" or the "Arbitrator") against petitioner and cross-respondent Polyxene G. Kokinos, M.D., A.P.C. aka Polyxene Gazetas Kokinos, M.D., A Professional Corporation, dba South Bay Vascular Center and Vein Institute ("Kokinos") is GRANTED.

Kokinos's motion to vacate the [same] arbitration award dated May 23, 2023. as amended June 5, 2023, was DENIED in a separate **[tentative]** ruling.

I. Legal Standard

Any party to an arbitration in which an award has been made may petition the court to confirm the award. (CCP § 1285.) If a petition to confirm the award is duly served and filed, the court must confirm the award as made, unless the court vacates or corrects the award. (CCP § 1286.)

A petition to confirm the award shall (1) set forth the substance of, or attach the arbitration agreement, (2) set forth the name of the arbitrator and (3) set forth or have attached a copy of the award and the written opinion of the arbitrator, if any. (CCP § 1285.4.) The petition may not be served and filed until at least 10 days of service of the award upon the petitioner, but not later than 4 years from the award. (CCP §§ 1288, 1288.4.)

If the agreement sets forth a method of service for the petition, that method holds. (CCP §1290.4(a).) If the arbitration agreement does not set forth a method, service shall be made in the manner provided by law for service of summons in an action if the party has not appeared. (CCP § 1290.4(b).)

As to notice, the law requires the petitioner serve a "copy of the petition and a written notice of the time and place of the hearing thereof and any other papers upon which the petition is based. . ." (CCP § 1290.4.) Costs incurred in judicial proceedings to enforce an arbitration award are recoverable by the prevailing party as a matter of right. (CCP § 1293.2.)

Every presumption is in favor of the arbitration award. (*Firestone Tire & Rubber Co. v. United Rubber Workers of America* (1959) 168 Cal.App.2d 444, 449.) CCP section 1286.2 provides grounds for vacatur, and the court must confirm the award unless any of these grounds are present. (CCP § 1286.2.)

II. Discussion

Here, Hill's request is timely: his petition to confirm was filed on February 13, 2024, and the award was issued on May 23, 2023, and amended June 5, 2023, satisfying the 4-year window prescribed in section 1288.4. (Petition to Confirm at p. 1, Declaration of Hill Exhibit A.) Respondent also satisfies its section 1285 burden, as it has set forth the substance of the arbitration agreement, the name of the arbitrator, and has attached a copy of the written arbitration award, as amended. (Dec. of Hill, Exh. A.) It was properly served by electronic mail. In addition, Hill properly gave notice to Kokinos under section 1290.4. (Notice of Hearing.)

This court has discussed its denial of the Kokinos's opposing Petition to Vacate the arbitration award in a separate **[tentative]** ruling. There, this court found that Kokinos failed to demonstrate bias on the part of the Arbitrator or the accounting expert, and failed to demonstrate that it was substantially prejudiced by the Arbitrator. As such, that petition to vacate was denied. Therefore, the request here to confirm the arbitration award as amended is GRANTED.

III. Conclusion

The Petition to confirm the arbitration award as amended is GRANTED in the amount of $979,425.50. Hill has not indicated the amount of costs of suit that he seeks.

Hill is the prevailing party entitled to costs against Kokinos. Hill is awarded judgment for $979,425,90 against Kokinos, which consists of the following amounts:

i) $731,213 in actual damages.

ii) Pre-award interest in the amount of $248,212.04 [$731,213.86 at 10% statutory interest per annum for 1239 days from 1/1/20020 to 5/23/2023 ($200.33 per diem), the date of the Final Award.

iii) Pursuant to California Civil Code § 329876(a), post award, pre-judgment interest in an amount to be determined, at the statutory rate of 10% based on the compensatory damages of $731,213.86, which equates to $200.33 per diem.

iv) In all other respects the Final Award Dated May 23, 3033 is reaffirmed and remains in full force and effect.

Hill is to prepare the proposed judgment. It should include a copy of the arbitration award dated May 23, 2023, and the amended arbitration award dated June 5, 2023, as exhibits.

The court will prepare the order.

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