SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

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"Every case is important" . . . . . "No case is more important than any other."— United States District Judge Edward Weinfeld (https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the Biggest Case of Your Life."—Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and drink as friends." (Shakespeare, The Taming of the Shrew, act I, scene ii.)" (*Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the Code of Professionalism adopted by the Santa Clara County Bar Association: https://www.sccba.com/code-of-professional-conduct/

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DATE: Thursday, 14 September 2023
TIME: 9:00 A.M.

Please note that for the indefinite future, all hearings will be conducted remotely as the Old Courthouse will be closed. This Department prefers that litigants use Zoom for Law and Motion and for Case Management Calendars. Please use the Zoom link below.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
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APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwith. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California ***Rules of Court***, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: Line #/name/party. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with ***California Rules of Court***, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	19CV360605	ASNM, LLC. et al vs Cherry Blossom S-Corporation et al	**Order of Examination.** OFF CALENDAR per moving party.
LINE 2	21CV391969	Hien Vu vs Ramyar Siasi	**Order of Examination.** Both parties appeared on 06 July 2023 and again on 10 August 2023. The judgment debtor was sworn in. The parties were to conduct the examination off-line and report back to this Court. Defendant was previously sworn per the Court and Defendant remain on the Court's inherent power to allow a party in special circumstances to proceed under a pseudonym as set forth in Doe v. Lincoln Unified School Dist (2010) 188 CA4th 758, 767.)s under oath. Defendant is to provide Ms. Guadalupe with documents that he currently has in his possession. Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely. NO FORMAL TENTATIVE RULING. The parties should use the Tentative Ruling Protocol to advise the court if the matter has been concluded or the parties wish to continue the examination.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 3	23CV410252	Jane Doe vs. Kermit Edwards; California Highway Patrol.	**Motion of Plaintiff for Leave to File under Fictitious Name.** Plaintiff seeks permission to allow her to proceed under a fictitious name on the Court's inherent pursuant to ***Doe v. Lincoln Unified School District*** (2010) 188 Cal.App.4th 758, 767; ***Sealed Plaintiff v. Sealed Defendant*** (2nd Cir. 2008) 537 F3d 185, 189; and ***Does I thru XXIII v. Advanced Textile Corp.*** (9th Cir. 2000) 214 F3d 1058, 1067.) Defendants oppose the motion on three grounds. First, "[t]he names of all parties to a civil action must be included in the complaint. (***Code of Civil Procedure***, § 422.40.)" ***(Dep't of Fair Emp't & Hous. v. Superior Court*** (2022) 82 Cal.App.5th 105, 109.) Second, they argue that all court proceedings should be open to the public. (***NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*** (1999) 20 Cal.4th 1178, 1221.) Third, they claim using a fictitious name would make it difficult for them to obtain discovery referencing the plaintiff. NO TENTATIVE RULING. The party should use the Tentative Ruling Protocol to advise this Court if they wish to submit the matter on the papers filed or appear and argue the motion on the merits.
LINE 4	23CV410252	Jane Doe vs. Kermit Edwards; California Highway Patrol.	**Demurrer of Defendant California Highway Patrol to Plaintiff's First Amended Complaint.** SEE ATTACHED TENTATIVE RULING.
LINE 5	23CV410252	Jane Doe vs. Kermit Edwards; California Highway Patrol.	**Demurrer of Defendant California Highway Patrol to Plaintiff's First Amended Complaint.** SEE LINE #4.
LINE 6	21CV383123	John Doe 1 vs. Google, Inc.	**Motion of Plaintiff John Doe 1 to Set Aside Voluntary Dismissal.** Plaintiff voluntarily dismissed this case on 19 August 2022. The current motion was filed on 26 May 2023. This Court believes that it does not have jurisdiction to grant the motion on the basis of the relief sought. An application for relief under ***Code of Civil Procedure***, § 473(b) "shall be made withinreasonable time, in no case exceedin six months, after the judgment, dismissal, order, or proceeding was taken." "[A] court has no authority under section 473, subdivision (b), to excuse a party's noncompliance with the six-month time limit." (***Arambula v. Union Carbide Corp.*** (2005) 128 Cal.App.4th 333, 345.) NO FORMAL TENTATIVE RULING.
LINE 7	21CV390848	Kathleen O'Connor et al. vs. Plum Tree Care Center et al.	**Motion of Plaintiffs For Clarification and/or Reconsideration of Court's Order Re: Defendants' Demurrers And Motions To Strike Portions of Plaintiffs' First Amended Complaint.** Defendants have indicated that they will not be filing opposition to this motion. Does this Court have jurisdiction to hear the matter? SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 8	23CV411253	Museum Park Properties LLC vs. Dejan Kuzmanovic; Arthur Master a.k.a. Tim Gaskin	**Motion of Defendants to Reconsider Order Denying Motion to Vacate Judgment.** This motion was set today per email order of this Court to the litigants and to the calendar Secretary. NO TENTATIVE RULING.
LINE 9	23CV411253	Museum Park Properties LLC vs. Dejan Kuzmanovic; Arthur Master Arthur a.k.a. Tim Gaskin	**Motion of Plaintiff to Correct Clerical Error and Amend Pleadings;** The application of plaintiff to correct the name of plaintiff from MUSEUM PARK PROPERTIES, LLC to MUSEUM PARK PROPERTY, LLC is GRANTED. The judgment entered in this matter shall be so modified. No formal tentative ruling.
LINE 10	23CV417418	Erik Estavillo vs. Dave Cortese, Country Club Villa Apartments.	**Motion of Defendant Dave Cortese to Set Aside Request for Entry of Default.** Plaintiff filed untimely opposition to this motion. This Court did read and considered the untimely filed opposition. However, on the merits of the motion, the motion is GRANTED as counsel for defendant has filed a declaration of fault which mandates relief. There does not appear to be any prejudice to plaintiff. This defendant is to file a responsive pleading within 10 days of the filing and service of this Order. NO FORMAL TENTATIVE RULING.
LINE 11	2010-1-CV-176869	Citibank (South Dakota) N.A. vs. Johnny H. Nguyen	**Motion of Defendant to Vacate Judgment.** On 12 September 2011, the parties reached a conditional settlement and filed the Notice of Settlement and Request for Dismissal pursuant to ***Code of Civil Procedure***, § 664. The document was filed with the Court on 12 September 2011. Following default, the settlement agreement was set aside and judgment was entered for plaintiff on 20 May 2013. Judgment debtor filed the present motion on 26 May 2023 based on a claim that he was a victim of identity theft and that the entry of judgment did not comply with ***Civil Code***, § 1788.61. The motion is DENIED. Defendant effectively conceded jurisdiction when he signed the settlement agreement. The Civil Code section does not apply to this judgment creditor because it is not a debt purchaser vis-à-vis this particular debt. NO FORMAL TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 12	19CV353789	Discover Bank vs. Derek Mems	**Claim of Exemption.** On 06 May 2021, plaintiff acquired a judgment of default against judgment that are in the amount of $5,700.94. Judgment debtor's application for the claim of exemption does not appear in the file. In the opposition papers, judgment creditor represents that judgment debtor indicated on his financial statement form that his take home pay is $3,241.00 and that his expenses are $2,215.00. Also, He pays for two vehicles. No spouse listed. Therefore, it appears that judgment creditor has sufficient surplus Income to justify $100.00 per pay period which is acceptable to the judgment creditor. This Court asks counsel for judgment creditor to email a copy of the claim of exemption to department20@scscourt.org. NO FORMAL TENTATIVE RULING.
LINE 13	22CV405563	Wells Fargo Bank, N.A. vs. Mariah Romero	**Motion of Plaintiff to Have a Request for Admissions to Be Deemed Admitted.** The motion is MOOT following the court trial heard by Judge Kulkarni on 28 August 2023 in which judgment was granted in favor of the plaintiff in the amount of $5,561.08. As of 12 September 2023 a judgment has not yet been filed. NO FORMAL TENTATIVE RULING.
LINE 14	19CV348133	Cohesity, Inc. vs. Randall Seidl	**Motion of Defendant for a Protective Order.** A notice of settlement of the entire case was filed by plaintiff on 11 September 2023. The motion is OFF CALENDAR WITHOUT PREJUDICE. This Court will set the matter for a dismissal review on 25 January 2024 at 10:00 AM in Department 20.
LINE 15			SEE ATTACHED TENTATIVE RULING.
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.
LINE 20			SEE ATTACHED TENTATIVE RULING.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.
LINE 23			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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Calendar Line 2

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Calendar Line 3

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Calendar Line 4

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 23CV410252 **Jane Doe v. Kermit Edwards, California Highway Patrol**
DATE: 14 September 2023 **TIME: 9:00 am** **LINE NUMBER: 04, 05**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 13 September 2023. Please specify the issue to be contested when calling the Court and Counsel.

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Orders on:
1. Defendant California Highway Patrol's Demurrer To First Amended Complaint; and
2. By Defendant Kermit Edwards/ Demurrer To Plaintiff's First Amended Complaint.

I. Statement of Facts.

At all relevant times, defendant California Highway Patrol ("CHP"), a state law enforcement agency, employed plaintiff Jane Doe ("Plaintiff" or "Doe") as an Office Services Supervisor II at its office located at 2020 Junction Avenue in San Jose ("San Jose Office"). (First Amended Complaint ("FAC"), ¶¶3 and 8.)

In or about March 2017, defendant Kermit Edwards ("Edwards"), employed as a Lieutenant with the CHP, transferred to the San Jose Office. (FAC, ¶¶2 and 9.) Defendant Edwards had a history of sexual harassment against female co-workers of which managers at defendant CHP were aware prior to and after his transfer to the San Jose Office. (FAC, ¶10.)

Between February and March 2017, Plaintiff received warnings from CHP employees who worked with defendant Edwards prior to his transfer informing Plaintiff that defendant Edwards was a problem and Plaintiff should stay away from him. (*Id.*) One Lieutenant informed Plaintiff that defendant Edwards did not respect personal boundaries and would attempt to harass and solicit a sexual relationship with her. (*Id.*) This same Lieutenant and another Lieutenant warned other employees at the San Jose Office of the same thing. (*Id.*)

Shortly after he began working at the San Jose Office, defendant Edwards initiated a pattern of continuing harassing conduct, sexual in nature, against Plaintiff. (FAC, ¶11.) Prior to his arrival at the San Jose Office, defendant Edwards emailed Plaintiff and called her "honey-buns" and said words to the effect of "you and I are made from the same cloth and are going to get along better than you think." (FAC, ¶12.) CHP Lieutenant George Gori saw this email shortly after it was sent. (*Id.*)

Shortly after his transfer, defendant Edwards put his arms around Plaintiff's shoulders and said, "Do you always dress like this?" (FAC, ¶13.) In or about April 2017, defendant Edwards also asked Plaintiff if she was "looking for a man?" (*Id.*)

In or about May 2017, defendant Edwards approached Plaintiff at her desk, pointed to a picture of Plaintiff's husband, and asked if she "fucked [her] husband." (FAC, ¶14.)

In or about June 2017, defendant Edwards approached Plaintiff and asked Plaintiff if "her pussy was made of gold" and asked if Plaintiff had "ever fucked a black guy." (FAC, ¶15.) Several other employees at the San Jose Office witnessed this interaction. (*Id.*)

In or about July 2017, Plaintiff drove defendant Edwards to drop off his car in Redwood City. (FAC, ¶16.) During the drive, defendant Edwards placed his hand on Plaintiff's upper thigh. (*Id.*) Although Plaintiff did not report this behavior, one Sergeant and one Lieutenant told Plaintiff they were concerned Plaintiff was driving defendant Edwards and informed Plaintiff she did not need to drive defendant Edwards in the future. (*Id.*) Plaintiff feared at the time that defendant Edwards was attempting and would attempt to initiate further physical contact of a sexual nature. (*Id.*)

Plaintiff's supervisors were aware of the sexual harassment by defendant Edwards and were trying to protect Plaintiff, but they failed to file any internal complaints against defendant Edwards or take administrative remedial measures against him on the matter. (FAC, ¶17.) One Lieutenant tried to report the behavior to CHP Captain Ceto Ortiz. (*Id.*)

Throughout May – July 2017, defendant Edwards continued to constantly make comments to Plaintiff of a sexual nature. (FAC, ¶18.) Two sergeants witnessed some of the above acts by defendant Edwards and asked Plaintiff if she was okay. (*Id.*)

On two occasions, defendant Edwards showed Plaintiff pictures of a naked woman on his phone saying words to the effect of, "see how many women want me?" (FAC, ¶19.)

In or about October 2017, defendant Edwards called Plaintiff while she was driving alone. (FAC, ¶20.) Defendant Edwards told Plaintiff to pull over so they could talk in private. (*Id.*) Defendant Edwards told Plaintiff that if she did not do what he said or if she reported him, someone would write anonymous letters and defendant Edwards was trying to prevent that from happening. (*Id.*) Defendant Edwards asked if Plaintiff was having sexual relations with another co-worker and if that person "had a big dick." (*Id.*)

Defendant Edwards threatened the anonymous letters would be sent to CHP management about Plaintiff which would ruin Plaintiff's career and those Plaintiff considered to be her friends. (*Id.*) Plaintiff told defendant Edwards he was scaring her. (*Id.*) Plaintiff loved her job and the risk of defendant Edwards doing something to jeopardize her employment or those of her co-workers/ friends was terrifying. (*Id.*) Defendant Edwards told Plaintiff not to tell anyone about the phone call. (*Id.*) Out of fear, Plaintiff refrained from reporting the incident or any of defendant Edward's sexual harassment to management. (*Id.*)

Between 2017 and 2019, defendant Edwards continued to sexually harass Plaintiff and had directly propositioned Plaintiff for sex several times. (FAC, ¶21.)

Approximately two months after the aforementioned phone conversation, an anonymous letter was sent to Plaintiff's manager stating Plaintiff and a co-worker were running a business together during work hours at CHP. (FAC, ¶22.) In truth, Plaintiff and her co-worker attempted to start a private investigation business in their off hours. (*Id.*) Plaintiff and her co-worker disclosed this business to CHP and had filled out all appropriate forms and received approval from CHP. (*Id.*)

In or about May 2018, Plaintiff was called into Captain Ceto Ortiz's office at the San Jose Office to discuss the anonymous letter. (FAC, ¶23.) Plaintiff disclosed to Captain Ortiz that defendant Edwards threatened to send the letter and defendant Edwards wanted more than a professional relationship with Plaintiff. (*Id.*) Neither Captain Ortiz nor any other CHP manager took any action to investigate defendant Edwards for the hostile and retaliatory act. (*Id.*) Therefore, Plaintiff did not believe she had protection from her employer and continued to fear defendant Edwards would send additional anonymous letters harmful to Plaintiff and her co-workers, which he later did. (*Id.*)

As of May 2018, Plaintiff had not disclosed defendant Edwards's sexual harassment to her supervisors for fear of further negative repercussions from defendant Edwards. (FAC, ¶24.) Plaintiff did not believe defendant CHP management was protecting her or would protect her from defendant Edwards. (*Id.*)

In 2018, defendant Edwards further threatened Plaintiff by informing Plaintiff that he was protected by Amanda Ray ("Ray") who was upper management at defendant CHP and would eventually become the Commissioner. (FAC, ¶25.) Defendant Edwards showed Plaintiff that he had Ray's personal phone number on

"speed-dial" and Ray was "his girl" and Ray would protect him. (*Id.*) This frightened Plaintiff further and caused her to refrain from disclosing defendant Edwards' harassment to any third parties. (*Id.*)

In July 2018, Captain Ortiz informed Plaintiff that defendant Edwards was performing poorly as the Field Lieutenant and his intention to move defendant Edwards to Administrative Lieutenant which would make defendant Edwards Plaintiff's direct manager. (FAC, ¶26.) Plaintiff expressed to Captain Ortiz how the move would make Plaintiff's job more difficult because it was her belief defendant Edwards wanted more from Plaintiff than a working relationship. (*Id.*) However, because she still feared defendant Edwards' threats, Plaintiff did not specifically disclose defendant Edwards's harassment. *(Id.*) Captain Ortiz nevertheless made defendant Edwards the Administrative Lieutenant. (*Id.*)

After defendant Edwards became the Administrative Lieutenant, the harassment continued. (FAC, ¶27.) At one staff meeting, defendant Edwards texted Plaintiff that he "could see [her] titties." (*Id.*)

In or about April 2019, CHP Captain Jason Reardon transferred to the San Jose Office. (FAC, ¶28.) Captain Reardon had a reputation for holding officers accountable in the workplace. (*Id.*) After receiving negative performance reviews from Captain Reardon, defendant Edwards requested a transfer from the San Jose Office in or about August 2019. (FAC, ¶29.)

Despite defendant Edwards's transfer, Plaintiff still feared he would send anonymous letters to punish Plaintiff if Plaintiff revealed his conduct to supervisors. (*Id.*) Between approximately October 2019 and November 2020, defendant Edwards sent four additional anonymous letters concerning Plaintiff to the San Jose Office, Captain Reardon, and other co-workers. (*Id.*)

In or about November 2020, Ray became the CHP Commissioner. (FAC, ¶31.)

In or about December 2020, another anonymous letter was sent to upper management at CHP alleging Captain Reardon was a racist, repeating the allegation that Plaintiff was running a business with a co-worker during work hours, and Plaintiff was engaged in a sexual relationship with a co-worker. (FAC, ¶30.)

In or about February 2021, Commissioner Ray ordered an investigation into the allegation that Plaintiff and her co-worker were running a business on CHP time. (FAC, ¶31.) Defendant CHP opened an extensive and intrusive internal investigation in about March 2021. (*Id.*) In or about October 2021, during the investigation, Plaintiff was compelled to disclose defendant Edwards's harassment and threats of retaliation. (FAC, ¶32.)

Plaintiff conveyed her belief that defendant Edwards authored the anonymous letters in retaliation for Plaintiff repeatedly rebuffing his many sexual advances and solicitations. (*Id.*) No action was taken against defendant Edwards. (*Id.*) Plaintiff did not receive any notice that CHP was initiating an investigation against defendant Edwards. (*Id.*) The inaction against defendant Edwards led Plaintiff to believe defendant Edwards received protection from upper-management at CHP, including Commissioner Ray. (*Id.*) As a result, Plaintiff feared taking any additional action against defendant Edwards beyond answering questions at the interrogation. (*Id.*)

On 1 November 2021, Plaintiff interviewed for the position of Staff Services Analyst with the Golden Gate Division's Commercial Operations Unit. (FAC, ¶33.) This position would have been a promotion with a pay increase. (*Id.*) Plaintiff was very qualified for the position and received numerous recommendations within CHP management. (*Id.*) Plaintiff was told she was the most qualified candidate and that she should expect an offer. (*Id.*) Plaintiff did not receive an offer, a decision Plaintiff believes is attributable to defendant Edwards' anonymous letters and because Plaintiff had informed CHP investigators of defendant Edwards' harassment. (*Id.*) Although Plaintiff believed the denial of a promotion was retaliatory, Plaintiff feared taking any further action because of defendant Edwards's threats against Plaintiff and Plaintiff's co-workers. (*Id.*)

In or about December 2021, defendant CHP received an anonymous letter reciting Defendant Edwards's sexual harassment against Plaintiff. (FAC, ¶34.) An internal investigation was initiated in January 2022 during which Plaintiff was interrogated and compelled to disclose all facts regarding defendant Edwards's harassment. (*Id.*) In March 2022, defendant Edwards retired rather than subjecting himself to interrogation. (*Id.*)

Despite retiring, defendant Edwards continued sending anonymous letters against Plaintiff and her co-workers. (FAC, ¶35.) During the investigation, it was discovered that on one occasion Plaintiff accessed the CLETS system at the San Jose Office for personal purposes. (FAC, ¶36.) On or about 10 May 2022, a "Notice of

Adverse Action" was issued to Plaintiff assessing a 15-day suspension without pay for Plaintiff's misuse of the CHP computer. (FAC, ¶¶36 – 37.) The disciplinary response was extremely unusual in that other similar violations by other employees resulted in suspension of one to three days. (*Id.*)

On 16 May 2022, Plaintiff had an informal discussion with CHP Captain C.E. Oliver wherein she alleged discovery of Plaintiff's misuse of CLETS occurred during an investigation which commenced January 2021 and concluded in late April 2021. (FAC, ¶38.) Plaintiff asserted her suspension was improper as it was issued over one year after the investigation concluded. (*Id.*) Plaintiff's union representative and Captain Reardon both informed CHP's Division Chief and Internal Investigations that Plaintiff's suspension violated CHP internal policy as it fell outside the one-year window for implementation of disciplinary actions after discovery of improper acts. (FAC, ¶39.)

On information and belief, Plaintiff alleges several persons contacted Internal Affairs to speak on behalf of Plaintiff and request a reduction of the disciplinary action as it had been acknowledged to be excessive. (FAC, ¶42.) However, Internal Affairs stated the Commissioner's office insisted Plaintiff's 15-day suspension remain in place. (*Id.*) According to Plaintiff, CHP's refusal to reduce her suspension was in retaliation for disclosing defendant Edwards's harassment to CHP investigators. (*Id.*)

Plaintiff feared she would suffer retaliation if she made any complaints or took any legal action against defendant Edwards and/or CHP. (FAC, ¶44.) Only after Plaintiff received the 15-day suspension on 11 May 2022 did Plaintiff decide she needed to take legal action against defendant Edwards and CHP in order to protect her rights. (FAC, ¶¶37 and 44.)

On or about 20 September 2022, Plaintiff received correspondence from defendant CHP stating the suspension had been rescinded. (FAC, ¶46.)

On 7 October 2022, Plaintiff mailed a Government Claim form to the Government Claims Program, Office of Risk and Insurance Management. (FAC, ¶47.) The mailing was confirmed delivered on 10 October 2022. (*Id.*) No response was provided to Plaintiff within 45 days of receipt on 10 October 2022. (*Id.*)

On 9 November 2022, Plaintiff filed a complaint with the California Civil Rights Department against defendants Edwards and CHP and obtained a "Right to Sue" letter. (FAC, ¶48.)

On 20 January 2023[1], Plaintiff commenced the instant action by filing a complaint against defendants Edwards and CHP.

On 12 April 2023, Plaintiff filed the operative FAC which asserts the following causes of action:

(1) Sexual Battery (Civil Code Section 1708.5) [against defendant Edwards]

(2) Battery [against defendant Edwards]

(3) Work Environment Harassment [against defendants Edwards and CHP]

(4) Failure to Prevent Harassment [against defendant CHP]

(5) Negligent Supervision and Retention in Violation of FEHA [against defendant CHP]

(6) Retaliation in Violation of FEHA [against defendant CHP]

(7) Labor Code §1102.5 (Whistleblower) [against defendant CHP]

(8) Intentional Infliction of Emotional Distress [against defendants Edwards and CHP]

On 16 May 2023, defendant CHP filed the first of three[2] motions now before the court, a demurrer to Plaintiff's FAC.

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[1] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

On 12 June 2023, defendant Edwards filed the third motion now before the court, a demurrer to Plaintiff's FAC.

II. Analysis.

A. The Demurrer to Plaintiff's First Amended Complaint by Defendant Lt. Kermit Edwards is OVERRULED.

1. Claim presentation requirement.

"Before 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 Court* (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 (*Shirk*).)

> Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, " ' "a condition precedent to plaintiff's maintaining an action against defendant" ' " (*Bodde*, *supra*, 32 Cal.4th at p. 1240, 13 Cal.Rptr.3d 534, 90 P.3d 116, quoting *Williams v. Horvath* (1976) 16 Cal.3d 834, 842, 129 Cal.Rptr. 453, 548 P.2d 1125), and thus an element of the plaintiff's cause of action. (*Bodde*, *supra*, at p. 1240, 13 Cal.Rptr.3d 534, 90 P.3d 116.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Bodde*, *supra*, at p. 1245, 13 Cal.Rptr.3d 534, 90 P.3d 116.)

(*Shirk*, *supra*, 42 Cal.4th at p. 209; accord, *Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 65 ["plaintiff suing the state or a local public entity must allege facts demonstrating either compliance with the claim presentation requirement or an excuse for noncompliance as an essential element of the cause of action"].)

The timely claim presentation requirement applies not only to a suit against a public entity, but also extends to suits against a public employee or, in the instant case against defendant Edwards, an allegedly former public employee.

> Section 950.2[3] of the Government Code provides, in pertinent part, that "a cause of action against a public employee . . . for injury resulting from an act or omission in the scope of his employment as a public employee is barred" unless a timely claim has been filed against the employing public entity. (See Gov. Code, § 911.2.) It is settled that the filing of a timely claim against the employing public entity is a condition precedent to a tort action against either the public entity or the employee. (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838 [129 Cal.Rptr. 453, 548 P.2d 1125]; *Harman v. Mono General Hospital* (1982) 131 Cal.App.3d 607, 613 [182 Cal.Rptr. 570].)

(*Mazzola v. Feinstein* (1984) 154 Cal.App.3d 305, 310; see also *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750-1751.)

Only Plaintiff's first, second, third, and eighth causes of action are directed against defendant Edwards. Plaintiff's first, second, and eighth causes of action are for sexual battery, battery, and intentional infliction of emotional distress. As such, defendant Edwards contends Plaintiff, in order to make a timely claim regarding these three causes of action, must have presented a claim within six months after accrual. "A claim relating to a cause of

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[2] Also on 16 May 2023, Plaintiff filed the second motion now before the court, a motion for leave to proceed under fictitious name.

[3] Civil Code section 950.2 states, in relevant part, "a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred under Part 3 (commencing with Section 900) of this division or under Chapter 2 (commencing with Section 945) of Part 4 of this division. This section is applicable even though the public entity is immune from liability for the injury."

action for death or for injury to person … shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action." (Gov. Code, §911.2, subd. (a); see also *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1118 (*Willis*)—"Claims for personal injury must be presented not later than six months after the accrual of the cause of action.") "Accrual for purposes of the Act is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants." (*Willis*, *supra*, 48 Cal.App.5th at p. 1118.)

Generally, a cause of action accrues "'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.'" (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.)

> Although a cause of action typically "accrues" "'when [it] is complete with all of its elements'" (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [123 Cal. Rptr. 3d 578, 250 P.3d 181]), a cause of action will at times be deemed to accrue at a later date, such as when the plaintiff did not discover and had no occasion to discover the cause of action until that later date, when the defendant fraudulently concealed the existence of a possible claim until that later date, or when the defendant committed multiple wrongs that ended on that later date (*Aryeh*, *supra*, 55 Cal.4th at p. 1192).

(*Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953, 961.)

Defendant Edwards does not undertake a formal or comprehensive analysis with regard to when Plaintiff's claims for sexual battery, battery, and intentional infliction of emotional distress accrued. Defendant Edwards deems it sufficient to note that the last act attributable to him occurred in December 2020 when Plaintiff alleged "another anonymous letter was sent [by defendant Edwards] to upper management at CHP … repeating the allegation that Plaintiff was running a business with a co-worker during work hours for CHP, and was engaged in a sexual relationship with a co-worker." (FAC, ¶30.)

Defendant Edwards contends Plaintiff's claims (including the first, second, and eighth causes of action) thus accrued no later than December 2020 and Plaintiff had to present her claim no later than June 2021. However, in the FAC, Plaintiff alleges she "mailed a Government Claim Form … to the Government Claims Program, Office of Risk and Insurance Management" on 7 October 2022. (FAC, ¶47 and Exh. C.)

Since Plaintiff, by her own allegation, did not present a claim by June 2021, defendant Edwards contends Plaintiff's claims (first, second, and eighth causes of action) are barred.

2. Equitable estoppel.

Defendant Edwards acknowledges Plaintiff's attempt to plead around[4] the untimely claim presentation in the FAC. In relevant part, Plaintiff alleges:

> A defendant whose threats have caused plaintiff to delay filing suit (or filing a governmental tort claim) may be estopped from raising the delay as a defense. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445.) Here, both Defendant Edwards and Defendant CHP are estopped from contending, and have waived any right to contend that any of the causes of action set forth herein are barred by the applicable statute of limitations[5] based on Defendant Edwards' threats against Plaintiff that he would retaliate against her and her co-workers, which she believed and caused her to refrain from seeking legal assistance to seek affirmative relief through the California Judicial System. The threats were carried out, including Defendant Edwards' threats that he would be protected and Plaintiff would be punished if she revealed his actions. At the time the threats were made, Defendant Edwards was an employee of Defendant

[4] "When a plaintiff relies on a theory of fraudulent concealment, delayed accrual, equitable tolling, or estoppel to save a cause of action that otherwise appears on its face to be time-barred, he or she must specifically plead facts which, if proved, would support the theory." (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.) "Estoppel must be pleaded and proved as an affirmative bar to a defense of statute of limitations." (*May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1337.)

[5] "[C]ontrary to the deadline for filing a lawsuit after a Government Claims Act claim is acted upon or deemed denied—the initial claim presentation deadline is not a statute of limitations." (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1119.)

CHP. CHP management was even made aware of these threats, yet took no action against Defendant Edwards, leading Plaintiff to believe that they would not protect her, and that she needed to take action to protect herself not only from Defendant Edwards, but also Defendant CHP.

(FAC, ¶45.)

"The venerable doctrine of equitable estoppel or estoppel in pais, which rests firmly upon a foundation of conscience and fair dealing, [footnote omitted] finds its classical statement in the words of Lord Denman: '[T]he rule of law is clear, that, where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is [precluded] from averring against the latter a different state of things as existing at the same time … .' [Citation.]" (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488 [91 Cal. Rptr. 23, 476 P.2d 423] (*Mansell*); see Evid. Code, § 623.)

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be [sic] acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305 [61 Cal. Rptr. 661, 431 P.2d 245]; see *Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 37 [24 Cal. Rptr. 3d 179, 105 P.3d 544].)

The government is not immune from the doctrine, and it may be applied " 'where justice and right require it.' " (*Mansell*, *supra*, 3 Cal.3d at p. 493.) However, it must not be applied if doing so "would effectively nullify 'a strong rule of policy, adopted for the benefit of the public … .' [Citation.]" (*Ibid.*, quoting *County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 829–830 [186 P.2d 124].) Accordingly, "[t]he government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present *and*, in the considered view of a court of equity, the injustice [that] would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy [that] would result from the raising of an estoppel." (*Mansell*, *supra*, 3 Cal.3d at pp. 496–497, italics added.)

The existence of an estoppel is generally a factual question. (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 266 [42 Cal. Rptr. 89, 398 P.2d 129].) …

Although estoppel is generally a question of fact, where the facts are undisputed and only one reasonable conclusion can be drawn from them, whether estoppel applies is a question of law. (*Albers v. County of Los Angeles*, *supra*, 62 Cal.2d at p. 266; *Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 319 [24 Cal. Rptr. 2d 597, 862 P.2d 158].) Moreover, where estoppel is sought against the government, "the weighing of policy concerns" is, in part, a question of law. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 403 [261 Cal. Rptr. 310, 777 P.2d 83].) As the court in *Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770 [9 Cal. Rptr. 2d 120], explained, "the question whether estoppel should apply is not solely a question of fact. Whether the injustice [that] would result from a failure to uphold an estoppel is of sufficient dimension to justify the effect of the estoppel on the public interest must be decided by considering the matter from the point of view of a court of equity." (*Id.* at p. 776.)

(*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1359-1360 (emphasis added); see also *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032, 1072.)

Defendant Edwards acknowledges further that threats of retaliation may be a basis for estoppel. In *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445 (*John R.*), the court explained:

> It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act. (See, e.g., *Fredrichsen v. City of Lakewood* (1971) 6 Cal.3d 353, 357-359 [99 Cal.Rptr. 13, 491 P.2d 805]; *Rand v. Andreatta* (1964) 60 Cal.2d 846, 850 [36 Cal.Rptr. 846, 389 P.2d 382]; *Bruce v. Jefferson Union High Sch. Dist.* (1962) 210 Cal.App.2d 632, 635 [26 Cal.Rptr. 762].) Estoppel most commonly results from misleading statements about the need for or advisability of a claim; actual fraud or the intent to mislead is not essential. (See *Industrial Indem. Co. v. Ind. Acc. Com.* (1953) 115 Cal.App.2d 684, 689-690 [252 P.2d 649].) ***A fortiori, estoppel may certainly be invoked when there are acts of violence or intimidation that are intended to prevent the filing of a claim.*** (See, e.g., *DeRose v. Carswell*, *supra*, 196 Cal.App.3d at p. 1026; *Longo v. Pittsburgh and Lake Erie Railroad Co., N.Y.C. Sys.* (3d Cir. 1966) 355 F.2d 443, 444.) And here, the teacher's threats to retaliate against John if the boy reported the incidents of sexual molestation allegedly did just that.

(Emphasis added.)

The *John R.* court declined to reach a determination, as a matter of law, that the defendant public entity would be "estopped from asserting as a defense plaintiffs' failure to comply with the claims statutes. That is a question of fact for the trial court on remand. [Citation.] Because the trial court did not analyze the timeliness of plaintiffs' claims in this light, it made no findings on any of the factual issues relevant to the equitable estoppel doctrine. It did not determine (1) whether any threats were in fact made by the teacher, (2) when the effect of any such threats ceased, or (3) whether plaintiffs acted within a reasonable time after the coercive effect of the threats had ended." (*John R.*, *supra*, 48 Cal.3d at p. 446.)

The same general principle (estoppel based on acts of intimidation intended to prevent filing of claim) is expressed in *V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 516-517 (*V.C.*):

> "A public entity may be estopped from asserting noncompliance with the claims statutes where its agents or employees have deterred the filing of a timely claim by some 'affirmative act.' [Citation.]" (*Christopher P.*, *supra*, 19 Cal.App.4th at p. 170; accord, *John R.*, *supra*, 48 Cal.3d at p. 445.) Estoppel may be established by acts of intimidation or violence that are intended to prevent the filing of a claim. (*John R.*, *supra*, at p. 445.) In *John R.*, for example, the court found that the doctrine of equitable estoppel could be applied when a student failed to tell his parents about a teacher's sexual abuse because the teacher threatened to retaliate if he disclosed the incidents. (*Id.* at pp. 445–446; see also *Doe v. Bakersfield City School Dist.*, *supra*, 136 [*517] Cal.App.4th at pp. 571–573 [undisputed evidence of teacher's threats and the plaintiff's fear, even into adulthood, supported application of the equitable estoppel doctrine]; *Ortega v. Pajaro Valley Unified School Dist.*, *supra*, 64 Cal.App.4th at p. 1050 [teacher's continuous verbal threats and intimidating conduct, including driving by student's new school and filing a defamation action against her for reporting abuse to school officials, supported application of the equitable estoppel doctrine]; *Christopher P.*, *supra*, at p. 173 ["A directive by an authority figure to a child not to tell anyone of the molestation is a sufficient inducement of delay to invoke an estoppel"].)

The *V.C.* court went a step further in concluding there was no abuse of discretion to deny a plaintiff leave to amend to allege facts supporting application of equitable estoppel. In V.C., the minor plaintiff commenced an action against a middle school teacher and the school district based upon the teacher's sexual abuse of the plaintiff which allegedly occurred between 2001 and 2003. For much of that time, the plaintiff's mother had long suspected something going on between plaintiff and teacher. In July 2003, plaintiff's mother expressed her concerns about teacher to the school district in writing. The teacher was arrested on 15 August 2003 and subsequently convicted for his sexual abuse of plaintiff. Plaintiff presented a claim for damages against school district on 17 September 2004 which the school district rejected on 28 September 2004 as untimely. On 7 October 2004, plaintiff sought permission to present a late claim which school district also rejected as untimely. In December 2004, plaintiff (through her guardian ad litem) filed a complaint against the teacher and school district accompanied by a separate action seeking relief from the claim presentation requirement. The trial court granted plaintiff relief from the claim presentation requirement and allowed plaintiff to proceed with her complaint. The trial court sustained the school district's demurrer without leave to amend ruling the claims against school district were barred as a matter of law

because plaintiff failed to timely comply with the claim presentation requirements. The appellate court upheld the trial court's ruling on the demurrer and also denial of leave to amend to assert equitable estoppel. In that regard, the *V.C.* court wrote:

> [minor plaintiff] V.C. points to evidence that [teacher] Castro told her "if you tell anyone 'You're going to have to pray to God that you never met me,' " as well as evidence that V.C. continued to suffer stress as late as May 2004 as a result of seeing Castro in public. But she ignores all other evidence in the record. Most notably, V.C.'s disclosure of Castro's threats occurred in the context of an August 14, 2003 interview with police officers, where V.C. described in great detail how Castro had abused her over the preceding two years. Given that Castro's threats did not serve as a deterrent to her reporting the abuse to the police, we cannot conclude that his threats served as a deterrent to her presenting a claim. In assessing the propriety of applying equitable estoppel, the court must assess not only whether the threats occurred, but also "when the effect of any such threats ceased [and] whether plaintiffs acted within a reasonable time after the coercive effect of the threats had ended." (*John R.*, *supra*, 48 Cal.3d at p. 446.) Here, the effects of Castro's threats ceased when V.C. reported the abuse on August 14, 2003, and certainly no later than the following day when Castro was arrested. Given's V.C.'s immediate reporting of the abusive events, together with her mother's knowledge of the abuse both in and before August 2003, we cannot find that a "reasonable" time for V.C. to present her claim is anything other than statutory six-month and one-year time limits specified in Government Code sections 911.2 and 911.4.

Employing the same argument, defendant Edwards here invites this court to decide, as a matter of law, that Plaintiff cannot assert equitable estoppel. Defendant Edwards points to Plaintiff's allegations at paragraphs 23 and 26 of the FAC wherein Plaintiff disclosed to Captain Ortiz in May 2018 and June 2018 her belief that Edwards was the author of the anonymous letters and her belief that "Edwards wanted more than a professional relationship." Defendant Edwards finds it doubtful that Plaintiff did not disclose details of Edwards's sexual harassment during these conversations despite Plaintiff's affirmative allegations otherwise.

"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.) Defendant Edwards's doubts about the veracity of Plaintiff's allegations are not persuasive on demurrer. Unlike *V.C.*, the allegations discussed above do not establish, as a matter of law, that defendant Edwards's threats had ceased to deter Plaintiff.

Defendant Edwards points also to paragraphs 32 and 34 of the FAC wherein Plaintiff, in October 2021 and January 2022, was compelled to disclose all facts regarding Defendant Edwards's harassment. Like the minor plaintiff's disclosure of her teacher's abuse to police, defendant Edwards contends Plaintiff's admitted disclosures in October 2021 and January 2022 also signal that any threat had ceased. At that point, the court must look to "whether plaintiffs acted within a reasonable time after the coercive effect of the threats had ended." The *V.C.* court held the 13 months which transpired between the minor plaintiff's 14 August 2003 disclosure of her teacher's abuse to the police and her 17 September 2004 claim presentation when coupled with the plaintiff's mother's knowledge of the abuse "in and before August 2003" was "unreasonable" as a matter of law.

What Defendant Edwards omits are Plaintiff's allegations that despite her disclosures of Edwards's sexual harassment during the interrogations of October 2021 and January 2022, Plaintiff remained in fear of taking any further action because no action was taken against Edwards in spite of her disclosures. (See FAC, ¶¶32, 34, and 35.) In other words, Plaintiff specifically alleges the coercive effects of Edwards's threats had not ceased. These factual allegations alone preclude this court from reaching any conclusion as a matter of law.

Accordingly, defendant Edwards's demurrer to the first, second, and eighth causes of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

3. DFEH – timely filing of administrative complaint.

Plaintiff's third cause of action is entitled, "Work Environment Harassment (Gov. Code, §§ 12923, 12490(J))," identifying statutory provisions from the California Fair Employment and Housing Act ("FEHA"), Government Code sections 12900 et seq.

> Under the FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the Department of Fair Employment and Housing[6] (Department) and must obtain from the Department a notice of right to sue in order to be entitled to file a civil action in court based on violations of "the FEHA. (Gov. Code, § 12960, 12965, subd. (b); *Rojo v. Kliger* (1990) 52 Cal. 3d 65, 88 [276 Cal. Rptr. 130, 801 P.2d 373]; *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal. App. 4th 1718, 1724 [35 Cal. Rptr. 2d 181].) ***The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under the FEHA.*** (*Accardi v. Superior Court* (1993) 17 Cal. App. 4th 341, 349 [21 Cal. Rptr. 2d 292]; *Denny v. Universal City Studios, Inc.* (1992) 10 Cal. App. 4th 1226, 1232 [13 Cal. Rptr. 2d 170].)

(*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 492; emphasis added.)

"On January 1, 2020, an amendment to section 12960 took effect that enlarges the time for filing a Department claim to three years from the date of the challenged conduct. (See § 12960, subd. (e).) …[compared to] the one-year deadline in former section 12960, subdivision (d)." (Brome v. Dept. of the California Highway Patrol (2020) 44 Cal.App.5th 786, 793, fn. 2.)

Defendant Edward identifies in the FAC five alleged incidents of harassment occurring between May and October 2017 (see FAC, ¶¶11 – 20) and one further alleged incident occurring in 2018 or early 2019 (see FAC, ¶¶26 – 28.) Plaintiff had one year to file a complaint with the Department for the incidents alleged to have occurred in 2017 or 2018 and three years to file a complaint with the Department for the incident alleged to have occurred in early 2019. By her own allegation, Plaintiff did not do so until 9 November 2022 (see FAC, ¶48 and Exh. F) and so her third cause of action is barred.

4. Equitable estoppel.

Defendant Edwards again acknowledges Plaintiff's allegations concerning estoppel but argues again that Plaintiff's factual allegations do not support estoppel. For the same reasons discussed above, Plaintiff has made allegations in the FAC which preclude this court from reaching any conclusion as a matter of law with regard to the application of equitable estoppel.

Accordingly, defendant Edwards's demurrer to the third cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating the timely filing of an administrative complaint, is OVERRULED.

B. Defendant CHP's demurrer[7] to Plaintiff's FAC is SUSTAINED, in part, and OVERRULED, in part.

1. Fifth [negligent supervision and retention] and eighth [intentional infliction of emotional distress] causes of action.

Defendant CHP begins by demurring to the fifth [negligent supervision and retention] and eighth [intentional infliction of emotional distress] causes of action of Plaintiff's FAC because "[u]nder the [Government Claims] Act, governmental tort liability must be based on statute; all common law or judicially declared forms of tort liability, except as may be required by state or federal Constitution, were abolished." (*Michael J. v. Los Angeles County Dept. of Adoptions* (1988) 201 Cal.App.3d 859, 866.) "[P]ublic entities are immune from liability except as provided by statute (§ 815, subd. (a))…." (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980.) "Except as otherwise

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[6] Now known as the Civil Rights Department. (See *Basith v. Lithia Motors, Inc.* (2023) 90 Cal.App.5th 951, 959.)

[7] "[T]o state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity." (*Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 819.)

provided by statute[,] [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, §815, subd. (a).)

Plaintiff states in her opposition that she "does not contest that her Eighth Cause of Action for Intentional Infliction of Emotional Distress be dismissed."[8] Plaintiff did not file a request for dismissal in advance of the hearing of defendant CHP's demurrer. Consequently, defendant CHP's demurrer to the eighth cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., ¶430.10, subd. (e)] for intentional infliction of emotional distress is SUSTAINED WITHOUT LEAVE TO AMEND.

However, as to the fifth cause of action, Plaintiff contends defendant CHP's liability is premised upon Government Code section 815.2 , subdivision (a), which states, "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative."[9] Plaintiff then cites *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879 (*Hart*) where the court held, "a public school district may be vicariously liable under section 815.2 for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student."

The *Hart* court reached this conclusion because:

> "[A] school district and its employees have a special relationship with the district's pupils, a relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel, 'analogous in many ways to the relationship between parents and their children.' [Citations.] Because of this special relationship, imposing obligations beyond what each person generally owes others under Civil Code section 1714, the duty of care owed by school personnel includes the duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally. [Footnote.] This principle has been applied in cases of employees' alleged negligence resulting in injury to a student by another student (*J.H. v. Los Angeles Unified School Dist.* (2010) 183 Cal.App.4th 123, 128–129, 141–148 [107 Cal. Rptr. 3d 182]; *M. W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 514–515, 517–521)…"

(*Hart*, *supra*, 53 Cal.4th at pp. 869 – 870.)

Hart does not aid Plaintiff here where no such special relationship exists. A claim for negligent retention and supervision is based upon the employer's direct liability, not the vicarious liability of its employees. "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. [Citation.] Liability is based upon the facts that the employer knew or should have

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[8] Plaintiff's counsel submits a declaration in which he states this issue (bar on common law claims) was not adequately raised and discussed during meet and confer efforts and that had defense counsel done so, it would have enabled Plaintiff's counsel "to delete portions of the pleading to decrease the issues in the demurrer." (See ¶7 to the Declaration of Daniel D. Hollingsworth in Support of Plaintiff Jane Doe's Opposition, etc.) "Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (Code Civ. Proc., §430.41, subd. (a)(4).) In the interest of judicial economy, the court will proceed on the merits, but the court reminds all parties that they should not treat Code of Civil Procedure section 430.41 as a procedural hurdle and should, instead, undertake the obligations set forth therein with sincerity and good faith.

[9] "This section imposes upon public entities vicarious liability for the tortious acts and omissions of their employees." (Legislative Committee Comment to Gov. Code, §815.2; see also *Hoff v. Vacaville Unified School District* (1998) 19 Cal.4th 925, 932—"Through this section, the California Tort Claims Act expressly makes the doctrine of respondeat superior applicable to public employers. [Citation.] 'A public entity, as the employer, is generally liable for the torts of an employee committed within the scope of employment if the employee is liable. [Citations.]' [Citation.] Under section 820, subdivision (a), '[e]xcept as otherwise provided by statute . . ., a public employee is liable for injury caused by his act or omission to the same extent as a private person.' Thus, 'the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§815, subd. (b)).'")

known that hiring the employee created a particular risk or hazard and that particular harm materializes. [Citation.]" (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054 (emphasis added); see also CACI, No. 426.) Plaintiff has not specifically identified any factual or legal basis for direct liability against employees of defendant CHP for which defendant CHP could then be held vicariously liable. Consequently, defendant CHP's demurrer to the fifth cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for negligent retention and supervision is SUSTAINED with 10 days' leave to amend.

Defendant CHP demurs additionally to the fifth cause of action on the ground that Plaintiff has not sufficiently alleged compliance with the timely claims presentation requirement. This is, in essence, the same argument advanced by defendant Edwards. For the same reasons discussed above, defendant CHP's demurrer to the fifth cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

2. Third and fourth causes of action.

Defendant CHP demurs to Plaintiff's third and fourth (FEHA) causes of action by arguing, as defendant Edwards argued above, that Plaintiff did not timely file an administrative complaint. For the same reasons discussed above, defendant CHP's demurrer to the third and fourth causes of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

3. Seventh cause of action.

Plaintiff's seventh cause of action asserts a claim of whistleblower retaliation pursuant to Labor Code section 1102.5.

> Section 1102.5 provides whistleblower protections to employees who disclose wrongdoing to authorities. As relevant here, section 1102.5 prohibits an employer from retaliating against an employee for sharing information the employee "has reasonable cause to believe … discloses a violation of state or federal statute" or of "a local, state, or federal rule or regulation" with a government agency, with a person with authority over the employee, or with another employee who has authority to investigate or correct the violation. (§ 1102.5, subd. (b).) "This provision," we have explained, "reflects the broad public policy interest in encouraging workplace whistle-blowers to report unlawful acts without fearing retaliation." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 77 [78 Cal. Rptr. 2d 16, 960 P.2d 1046].) An employee injured by prohibited retaliation may file a private suit for damages. (Lab. Code, § 1105; see *Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 241 [101 Cal. Rptr. 2d 893].)

(*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 709.)

> The elements of a section 1102.5(b) retaliation cause of action require that (1) the plaintiff establish a prima facie case of retaliation, (2) the defendant provide a legitimate, nonretaliatory explanation for its acts, and (3) the plaintiff show this explanation is merely a pretext for the retaliation. (See *Flait*, *supra*, 3 Cal.App.4th at p. 476; see also *Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1453 [116 Cal. Rptr. 2d 602] (*Akers*); *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 68–69 [105 Cal. Rptr. 2d 652].)
>
> [To] establish[] a prima facie case of retaliation … a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two. (*Akers*, *supra*, 95 Cal.App.4th at p. 1453.)

(*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384.)

In demurring, defendant CHP contends a Labor Code section 1102.5(b) retaliation cause of action is subject to the claims presentation requirements which, as discussed above, require a plaintiff to present a claim within six months of accrual. (See *Le Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 245.)

Defendant CHP contends Plaintiff failed to timely present a claim within six months of any of the three allegedly retaliatory acts.[10]

This is, again, the same argument advanced by defendant CHP (and Edwards) above. For the same reasons discussed above, defendant CHP's demurrer to the seventh cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

III. Order.

Defendant Edwards's demurrer to the first, second, and eighth causes of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

Defendant Edwards's demurrer to the third cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating the timely filing of an administrative complaint, is OVERRULED.

Defendant CHP's demurrer to the eighth cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., ¶430.10, subd. (e)] for intentional infliction of emotional distress is SUSTAINED WITHOUT LEAVE TO AMEND.

Defendant CHP's demurrer to the fifth cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for negligent retention and supervision is SUSTAINED with 10 days' leave to amend. Defendant CHP's demurrer to the fifth cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

Defendant CHP's demurrer to the third and fourth causes of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

Defendant CHP's demurrer to the seventh cause of action of Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., Plaintiff does not allege facts demonstrating a claim was timely presented, is OVERRULED.

_____ _____

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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[10] Defendant CHP contends one of the allegedly retaliatory acts (instituting disciplinary charges, i.e., 15-day suspension) does not amount to an adverse employment action because Plaintiff acknowledges and alleges the discipline was later rescinded. The court need not consider or resolve the merits of this particular assertion since it is addressed to only a portion of the seventh cause of action. (See *Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 778—"[A] defendant cannot demur generally to part of a cause of action;" see also *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682—"A demurrer does not lie to a portion of a cause of action.")

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SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

DEPARTMENT 20

161 North First Street, San Jose, CA 95113
408.882.2320 · 408.882.2296 (fax)
smanoukian@scscourt.org
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(For Clerk's Use Only)

CASE NO.: 21CV390848 **Kathleen O'Connor et al. vs. Plum Tree Care Center et al.**
DATE: 14 September 2023 **TIME: 9:00 am** **LINE NUMBER:**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 13 September 2023. Please specify the issue to be contested when calling the Court and Counsel.

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Order on Motion of Plaintiffs For Clarification and/or Reconsideration of Court's Order Re: Defendants' Demurrers And Motions To Strike Portions of Plaintiffs' First Amended Complaint.

These motions were originally heard on 17 May 2022 by Judge Arand. Her written orders were signed on 07 June 2022 and filed and served on 08 June 2022.

Motions to strike and demurrers on amended pleadings were heard by this Judge on 25 October 2022. This Court issued a written ruling on the matters which was signed on 12 December 2022 and filed and served on 14 December 2022.

On 10 January 2023 plaintiffs filed an ex parte application seeking clarification of these orders. The court responded on 22 May 2023 indicating that a noticed motion was required for this type of relief. The present motion was filed on 31 May 2023.

This Court does not have jurisdiction to consider this motion pursuant to ***Code of Civil Procedure***, § 1008 since the motion was filed more than 10 days after the orders were issued. However, plaintiffs attempt to avail themselves of this jurisdictional issue by the citation of ***Le Francois v. Goel*** (2010) 35 Cal.4th 1094 wherein they are asking this Court to reconsider the orders on its own motion.

This Court would like the attorneys to meet and confer and provide this Court via written agreement filed through the eFiling queue with three dates and times during the week of 02 October 2023 after 2:00 PM to specially set further argument on this motion.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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