SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

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

DATE: 11-05-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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

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

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

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

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

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

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

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

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

DATE: 11-05-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV365010 Hearing: Demurrer	Dinesh Patel et al vs Santa Clara Unified School District et al	See Tentative Ruling. The Court will issue the final order.
LINE 2	24CV429843 Hearing: Motion to Strike	395 S WINCHESTER REALTY LLC vs CENTURY TOWER LLC et al	See Tentative Ruling. Defendants shall submit the final order.
LINE 3	19CV354235 Motion: Compel	Orchard Yield Fund I, LP vs Double L. Ranches, LLC et al	See Tentative Ruling. The Court will issue the final order.
LINE 4	24CV429843 Motion: Compel	Mindy Ni vs Urban Compass, Inc. et al	See Tentative Ruling. Defendant shall submit the final order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

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

DATE: 11-05-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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

LINE 5	24CV432178 Motion: Enforce Settlement	AMERICAN BUILDERS & CONTRACTORS SUPPLY CO., INC. vs CHAD HAYGOOD et al	Notice appearing proper and good cause appearing, the unopposed motion to enforce the settlement against Defendants Chad Roofing, Inc. and Chad Haygood for a final amount owed of $44,589.07 is GRANTED. The motion is DENIED as to Vanessa Haygood as she is not a signatory to the settlement agreement or to the stipulation. See Anderson Decl. Exs. 1 and 2. **Plaintiff shall submit the final order within 10 days.** If Plaintiff wants a judgment against Defendants Chad Roofing, Inc. and Chad Haygood, Plaintiff must either dismiss Vanessa Haygood or properly serve her (as there is no indication that she agreed to accept service by mail) and litigate the case against her first.
LINE 6	17CV317575 Hearing: For Entry of Judgment	Barclays Bank Delaware vs Richard Ptaszynski	Notice appearing proper and good cause appearing, the unopposed motion to enforce the settlement against Defendant Richard Ptaszynski and for judgment in the amount of $1,204.89 is GRANTED. The failure to file a written opposition "'creates an inference that the motion or demurrer is meritorious.'" *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. Plaintiff shall submit the final order and judgment.
LINE 7			
LINE 8			

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

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

DATE: 11-05-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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

LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

- oo0oo -

Calendar Line 1
Case Name: *Patel, et al. v. Santa Clara Unified School Dist., et al.*
Case No.: 20CV365010

On April 21, 2020, Jane Doe ("Doe"), a minor, by and through her guardian ad litem Dinesh Patel ("Patel"), and Patel as an individual and a taxpayer, filed a first amended complaint ("FAC") against defendants the California Department of Education ("CDE"), State Superintendent of Public Instruction Tony Thurmond ("SSPI"), State Board of Education ("SBE") (collectively, "State Defendants"), Santa Clara Unified School District ("District"), District Director of Supplemental and English Language Learner Programs Lorena Tariba ("Tariba"), District Assistant Superintendent, School Support & District Development and Uniform Complaint Procedures Compliance officer Andrew Lucia ("Lucia"), and District employee Jenny Leiva ("Leiva"), asserting causes of action for:

1) Violation of Education Code section 52164.1 (against all defendants);
2) Violation of Education Code section 49070 (against District, Lucia and CDE);
3) Violation of Education Code section 51101 (against District, Lucia and Tariba);
4) Violation of the Equal Protection Clause of the California Constitution (against all defendants);
5) Negligent supervision, training, hiring and retention (against District, CDE, SBE, Lucia and Tariba);
6) Negligence (against all defendants);
7) Violation of Government Code § 111135 (against all defendants);
8) Retaliation (against District, Lucia, Tariba, Leiva and CDE);
9) Defamation (against Tariba, Lucia and District);
10) False light (against Tariba, Lucia and District);
11) Invasion of privacy: public disclosure of private facts (against District and Lucia); and,
12) Violation of the Public Records Act (against District and Lucia).

State Defendants demurred to the FAC. On November 25, 2020, the Court [Hon. Kirwan] sustained the demurrer to the first, fourth, seventh and eighth causes of action and the petition for writ with 20 days leave to amend and sustained the demurrer to the second, fifth, sixth causes of action without leave to amend.

On December 15, 2020, Doe and Patel filed a second amended complaint ("SAC") against the same defendants (collectively, "Defendants"), asserting causes of action for:

1) Violation of Education Code section 52164.1 (against all defendants);
2) Violation of Education Code section 49070 (against District and Lucia);
3) Violation of Education Code section 51101 (against District, Lucia and Tariba);
4) Negligent supervision, training, hiring and retention (against District);
5) Negligence (against District, Lucia, Tariba, and Leiva);
6) Violation of Government Code § 111135 (against State Defendants and District);
7) Retaliation (against District, Lucia, Tariba, and Leiva);
8) Defamation (against Tariba, Lucia and District);
9) Invasion of privacy: False light (against Tariba, Lucia and District);
10) Invasion of privacy: public disclosure of private facts (against District and Lucia);
11) Violation of the Public Records Act (against District and Lucia); and,

12) Writ of mandate (against District, CDE, SBE, and SSPI).

On July 8, 2024 the Court granted Patel's motion for leave to file a third amended complaint ("TAC"), and on July 10, 2024, Patel filed the TAC, omitting Doe as a plaintiff, asserting causes of action against Defendants for:

1) Negligent supervision, training, hiring and retention (against District);
2) Negligence (against District and Lucia);
3) Violation of Government Code § 11135 (against State Defendants and District);
4) Retaliation (against District, Lucia, Tariba, Leiva and CDE);
5) Defamation (against Tariba, Lucia and District);
6) Invasion of privacy: False light (against Tariba, Lucia and District);
7) Invasion of privacy: public disclosure of private facts (against District and Lucia);
8) Violation of the Public Records Act (against District and Lucia);
9) Writ of mandate (against District, CDE, SBE, and SSPI);
10) Violation of Title VI of the Civil Rights Act—42 U.S.C. § 2000d; and,
11) Illegal expenditure and waste of funds pursuant to Code of Civil Procedure section 526a.

The TAC alleges that on January 18, 2017, Patel and the mother of former plaintiff Jane Doe filled out a "Santa Clara Unified School District Student Registration Form" ("subject form") to enroll Doe at defendant Santa Clara Unified School District ("District"), and specified Doe's race as "Asian Indian" and "White." (See TAC, ¶¶ 35-36.) Patel is Indian or "Asian Indian," as listed on the subject form. (See TAC, ¶ 37.) However, District changed Doe's specification of race to "Asian Indian" without providing any reason, and Patel believes that District is also incorrectly reporting Doe's race in mandatory statistical data it provides to State and Federal government. (See TAC, ¶ 40.)

In completing the form, Patel entered languages spoken by the mother to be "English, Italian Spanish," and although the mother also has a postgraduate degree in German, there was no space left to enter it in the field; Patel entered languages spoken by him as "English, Gujarati, Hindi," and although he also speaks Bangla, there was no space left to enter it in the field. (See TAC, ¶ 41.) In the form, Patel also stated that: the language Doe first learned when she began to talk was "English, Italian and Gujarti"; the language identified as most frequently spoken at home was "English, Italian"; the language the parents most frequently used when speaking with Doe was identified as "English, Italian"; and, the language most often spoken by adults in the home was identified as English. (See TAC, ¶ 42.) Patel does not speak, read, write or understand Italian language and did not so indicate on the subject form. (See TAC, ¶ 44.) Patel believes that District ignored Patel's answers of English and falsely and arbitrarily determined Doe's primary language as Italian based on Doe's mother's surname, Doe's perceived nationality, Doe's perceived minority-language status, and Doe's and Patel's race. (See TAC, ¶ 45.) Patel also feels that District and its employees arbitrarily determined Doe's primary language as Italian which was discriminatory in violation of 20 U.S.C. § 6312(c)(3)(D), Government Code section 11135 and Title VI of the Civil Rights Act. (See TAC, ¶ 46.) Since 2017, the CDE has ignored and supported District's false identification of students' primary or home language other than English (PHLOTE) based on the student's perceived nationality and their perceived language-minority status, as demonstrated by their use of a form that it had used prior to January 2017 when District did not have a defined procedure to accurately and timely identify PHLOTE students. (See TAC, ¶¶ 54-56.) The State Defendants

do not have the discretion to create, adopt, prescribe, recommend, or enforce any procedures, rules or policies which violate or supersede any California or Federal laws; however, the State Defendants adopted the policy that "if a language other than English is indicated on any of the first three questions, the student should be tested with the CELDT," which was counter to the voter-approved Proposition 58 and thus unlawful. (See TAC, ¶¶ 59-62.)

On November 6, 2018, Patel filed a uniform complaint with District which included Patel's complaints about arbitrary and false race and primary language listed on Doe's school records and District's false identification of Doe based on arbitrarily selected and false primary language and false classification of Doe as an English Learner. (See TAC, ¶ 103.) After Patel submitted evidence to District, including files that were large in size, on December 7, 2018, defendant District Assistant Superintendent, School Support & District Development and Uniform Complaint Procedures Compliance officer Andrew Lucia ("Lucia") provided a response on behalf of District. (See TAC, ¶¶ 104-112.) Patel asserts that he was denied due process because the response made false statements of facts and blamed Plaintiffs without evidence, placing the best interests of Tariba and District ahead of a fair and just response, and did not interview him or Doe. (See TAC, ¶¶ 111-122.)

On December 22, 2018, Patel mailed an appeal of the response to the uniform complaint to the CDE. (See TAC, ¶ 126.) On February 20, 2019, Patel received a partial response to the appeal from CDE, rejecting a portion of the appeal and concluding that there was no discrimination by District, that District followed its complaint procedure, that District's decision was supported by substantial evidence and that District's legal conclusions were not contrary to law. (See TAC, ¶ 127-133.) After extending its investigation regarding the appeal, on October 21, 2019, Patel received the final decision from CDE, denying the appeal in its entirety. (See TAC, ¶¶ 137-138.) Patel asserts that the CDE's conclusion that the subject registration form indicated that other languages in addition to English were spoken at home, that the CELDT was administered in compliance with 20 USC § 6841(d)(1), former Education Code § 313, Education Code §§ 521464.1 and 60810 and 5 CCR 11307(a) and 11511, and that Doe received an overall performance level CELDT score of 3-Intermediate and was classified as an EL was uninformed, incompetent, and invalid, demonstrating gross and deliberate mishandling of the appeal by the CDE. (See TAC, ¶¶ 144-148.)

Patel also complains that the State Defendants notified Patel that Education Code section 52164.1 sunsetted in 1987 in their demurrer to the SAC, and thus have been using the no longer operative statute in the implementation and enforcement of their education policies, which he believes is a grave failure of their ministerial duties. (See TAC, ¶¶ 149-154.) Patel was unaware of the sunset of Education Code section 52164.1 and other statutes under the Bilingual Bicultural Act of 1976, and relied on the CDE's publications in the complaint, FAC and SAC. (See TAC, ¶¶ 155-162.) Patel asserts that the State Defendants continue to mislead the public regarding Education Code section 52164.1. (See TAC, ¶ 164.)

State Defendants demur to the third, fourth, ninth and eleventh causes of action.

I. STATE DEFENDANT'S DEMURRER TO THE TAC

State Defendants' request for judicial notice

State Defendants request judicial notice of the following documents:

- The January 14, 2021 stipulation allowing Plaintiffs to file the TAC (attached as Exhibit 1);
- The November 25, 2020 order regarding the State Defendants' demurrer to the FAC (attached as Exhibit 2); and,
- The SAC (attached as Exhibit 3).

State Defendants' request for judicial notice is GRANTED. (Evid. Code § 452, subds. (d), (h).)

Third cause of action for discrimination in violation of Government Code section 11135

State Defendants argue that the third cause of action for discrimination in violation of Government Code section 11135 fails to state facts sufficient to constitute a cause of action against them because: Government Code section 11135 is not available for education equity complaints brought under Education Code section 200, et seq.; the third cause of action fails to allege facts with sufficient particularity for a statutory cause of action; and, Patel does not have standing to sue for the alleged harms to Doe.

Collins v. Thurmond states that discrimination education claims are correctly dismissed because they have been removed by the Legislature from the scope of Government Code section 11135

In *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, the plaintiffs complained that the High School District of Kern County adopted and implemented policies that discriminated against minority students, and that rather than correct any biases, the High School District either willfully ignored the information or actively sought to hide their conduct from further public scrutiny. (*Id*. at pp.887-890.) The *Collins* complaint alleged a violation of Government Code section 11135 against CDE and the State Superintendent as being aware of the discriminatory policies but took no action to ensure that the High School District or the County Office of Education were in compliance with the state and federal anti-discrimination provisions. (*Id*. at pp. 902-903.) In affirming the demurrer to the section 11135 cause of action, the *Collins* court stated that "it is apparent that the Legislature intended to remove such claims from the scope of Government Code section 11135… [and] purposefully excluded 'educational equity claim[s]'—such as those brought under Education Code section 200, another statute generally covering discriminatory behavior…." (*Id*. at p.905 (also stating that "[k]nowing appellants retain rights under… Education Code section 200, we find the Legislature could rationally choose to exclude appellants' claims from the purview of Government Code section 11135 and, accordingly, conclude appellants' claims are mooted by the current statutory scheme… [t]hus, the trial court correctly dismissed this claim").)

Here, Patel's cause of action for discrimination in violation of Government Code section 11135 against State Defendants is likewise based on the State Defendants' ignoring and supporting of District's discriminatory policy. *Collins* is directly on point and the alleged conduct by State Defendants cannot be a basis for a cause of action for violation of Government Code section 11135.

In opposition, Patel contends that the TAC does not "make[] any allegation of education equity claims by a pupil; on the contrary, the TAC recites detailed factual allegations

focused on Plaintiff's parental rights related to his daughter's education records, the gross mishandling of a related appeal Plaintiff made to the CDE, and discriminatory policies of the State Defendants related to identification of potential English Learner pupils based on Plaintiff's and his daughter's race, perceived national origin and language-minority status, and on the process of their classification as EL." (Patel's opposition to the demurrer to the TAC ("Opposition"), pp.4:1-28, 5:1-28, 6:1-28, 7:1-28, 8:1-28, 9:1-19.) Patel also argues that the Family Educational Rights and Privacy Act (FERPA) is the actual statute at issue because "Plaintiff has the above-referenced FERPA rights, including the rights to seek to have his daughter's records amended, which is at the core of this lawsuit." (Opposition, pp. 4:9-19, 8:6-18.) However, "statutory causes of action must be pleaded with particularity" (*Covenant Care, Inc. v. Super. Ct. (Inclan)* (2004) 32 Cal.4th 771, 790; see also *Lopez v. Southern Cal. Rapid Transit Dist*. (1985) 40 Cal.3d 780, 795 (California Supreme Court stating that "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity"); see also *Searcy v. Hemet Unified School Dist*. (1986) 177 Cal.App.3d 792, 802 (stating that "to state a cause of action[,] every fact essential to the existence of statutory liability must be pleaded with particularity"); see also *Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349, 362 (stating "[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"); see also *Hood v. Hacienda La Puente Unified School Dist.* (1998) 65 Cal.App.4th 435, 439 (stating same)), and the TAC does not reference FERPA or 20 U.S.C. § 1232g at all. Moreover, FERPA does not confer any private cause of action for the student or parent. (See *Frazier v. Fairhaven Sch. Comm*. (1st Cir. 2002) 276 F.3d 52, 68-69 (affirming dismissal of FERPA claim, stating that "FERPA expressly authorizes the Secretary of Education -- and only the Secretary -- to take 'appropriate actions' to enforce its provisions... the legislative history bears out the suggestion that Congress did not intend FERPA to encompass a private right of action… [i]t is, therefore, not surprising that the three other courts of appeals that have addressed the question have held that FERPA does not create an implied private right of action"); see also *Smith v. Duquesne University* (W.D.Pa. 1985) 612 F.Supp. 72, 80 (stating that "it is clear that FERPA was adopted to address systematic, not individual, violations of students' privacy and confidentiality rights through unauthorized releases of sensitive educational records… [t]he underlying purpose of FERPA was not to grant individual students a right to privacy or access to educational records, but to stem the growing policy of many institutions to carelessly release student records"); see also *L.S. v. Mount Olive Bd. of Educ*. (D.N.J. 2011) 765 F.Supp.2d 648, 664 (stating that the parents' claims were dismissed because FERPA "do[es] not provide for a private right of action"); see also *Slovinec v. DePaul Univ*. (N.D.Ill. 2002) 222 F.Supp.2d 1058, 1061 (stating that "an individual plaintiff cannot maintain a private right of action for a violation of FERPA either directly or as a basis for a claim under § 1983"); see also *Curto v. Smith* (N.D.N.Y. 2003) 248 F.Supp.2d 132, 140-141 (stating that "FERPA itself does not create a private cause of action to enforce its provisions"); see also *Ashford v. Edmond Pub. Sch. Dist.* (W.D.Okla. 2011) 822 F.Supp.2d 1189, 1200 (stating that "'FERPA's nondisclosure provisions fail to confer [individually] enforceable rights' and provide no basis for a private right of action").) Patel's argument that FERPA grants him individual rights that can be a basis for a cause of action lacks merit.

Accordingly, the State Defendants' demurrer to the third cause of action is SUSTAINED on this basis.

Patel as an individual lacks standing to assert a cause of action for violation of Doe's rights

Moreover, as State Defendants note, Code of Civil Procedure section 367 states that "[e]very action must be prosecuted in the name of the real party in interest." (Code Civ. Proc. § 367.) Here, Government Code section 11135, subdivision (a) states that "[n]o person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state." (Gov. Code § 11135, subd. (a).) Section 11135 "does not give standing to a plaintiff who was not injured by a defendant's alleged discriminatory practices." (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1003-1004.) Here, the person subject to the alleged discrimination is Doe, not Patel. The causes of action of Doe, by and through Patel, have been abandoned in the TAC; as Patel admits, Doe is not "a plaintiff in the TAC" (Opposition, p.4:19) and "[t]he TAC contains no claims by Plaintiff's daughter." (*Id*. at p.10:6.)

In opposition, Patel again argues that FERPA "affords only the parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records." (Opposition, pp.9:27-28, 10:1-5.) However, as previously stated, FERPA does not confer any individual right to parents entitling them to a private right of action. The United States Supreme Court specifically stated that "there is no question that FERPA's nondisclosure provisions fail to confer enforceable rights." (*Gonzaga Univ. v. Doe* (2002) 536 U.S. 273, 287.) "To begin with, the provisions entirely lack the sort of 'rights-creating' language critical to showing the requisite congressional intent to create new rights." (*Id*.) "FERPA's nondisclosure provisions further speak only in terms of institutional policy and practice, not individual instances of disclosure." (*Id*. at p.288.) "[T]hey have an 'aggregate' focus… they are not concerned with 'whether the needs of any particular person have been satisfied,'[citation], and they cannot 'give rise to individual rights.'" (*Id*.) Further, even if FERPA specifically provided that a parent could sue for the education records of their child—which it does not—Patel forgets that he is no longer suing as the guardian ad litem of Doe.[1] Doe is the individual that was the participant in the program who was purportedly unlawfully denied full and equal access to the benefits of the program that was conducted, operated or administered by the State or a State agency. Patel lacks standing to assert the section 11135 cause of action. Further, Patel fails to show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

As Patel lacks standing to assert a section 11135 cause of action, State defendants' demurrer to the third cause of action is SUSTAINED without leave to amend.

Fourth cause of action for retaliation

In its November 25, 2020 order, the Court sustained the State Defendants' demurrer to the eighth cause of action of the FAC for retaliation with 20 days leave to amend. The Court

[1] The caption indicates that Patel sues as "an individual and a taxpayer."

noted that there were no allegations supporting compliance with the government tort claims presentation requirements and "Plaintiffs also fail to allege facts material to the existence of CDE's statutory liability, much less with particularity." (November 25, 2020 order re: State Defs.' demurrer to the FAC, pp.17:13-28, 18:1-11.) In response, the plaintiffs filed the SAC which included the seventh cause of action for retaliation, but now omitted CDE from the cause of action, effectively abandoning the cause of action against CDE. In the TAC, Patel now seeks to revive the retaliation cause of action more than 3 years after the Court gave the plaintiffs leave as to the FAC, now re-adding CDE as a defendant to the cause of action.

In opposition, Plaintiff asserts that: he inadvertently omitted CDE from the SAC's retaliation cause of action; "he is not an attorney and does not have any education in law… [but] is attempting his best to adhere to all legal requirements of this Court"; and, the parties were engaged in mediation efforts when the SAC was operative, and no substantive filings were made by the parties during that time, thus, there is no prejudice to any party. (See Opposition, pp.10:25-28, 11:1-7.)

As stated in the prior order, "mere self-representation is not a ground for exceptionally lenient treatment… the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; see also *Nuno v. California State University, Bakersfield* (2020) 47 Cal.App.5th 799, 811 (stating that a self-represented litigant "must expect and receive the same treatment as if represented by an attorney—no different, no better, no worse"); see also *Burkes v. Robertson* (2018) 26 Cal.App.5th 334, 344–345 (stating that "[t]he same burdens are imposed uniformly and equally on all appellants, and self-represented parties are 'held to the same restrictive procedural rules as an attorney'").) Where a party's dismissal of a cause of action was done through his inadvertence, Code of Civil Procedure section 473, subdivision (b) requires that any amendment be made within six months and that it be accompanied by a declaration. Here, Patel provided a declaration but there is no statement regarding the inadvertence, and the filing of the TAC was made more than three years after inadvertently dismissing CDE from the retaliation cause of action. Further, while Patel asserts that there was no prejudice to CDE as a result of the inadvertent dismissal because the parties were involved in mediation, the parties were engaged in mediation efforts about one less cause of action than contained in the SAC; it cannot be said that Patel's inadvertence did not ultimately affect those mediation discussions.

Moreover, as with the FAC, the TAC does not contain any allegations regarding compliance with the government tort claim requirements. (See November 25, 2020 order re: State Defs.' demurrer to the FAC, p.17:13-28, 18:1-9, citing *Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932, 938 (stating that "[o]rdinarily, filing a claim with a public entity pursuant to the Claims Act is a jurisdictional element of any cause of action for damages against the public entity [citations] that must be satisfied in addition to the exhaustion of any administrative remedies").) In opposition, Patel argues that "the retaliations alleged by Plaintiff were related to his appeal relating to Gov Code § 11135 and Title VI Of The Civil Rights Act (TAC, ¶ 46 and 224-225) and as such he was not required to present a tort claim to the State Defendants; Title VI Of The Civil Rights Act also provides Plaintiff with the private right of action for related retaliation when such allegations were made." (Opposition, p.11:7-11.) However, the TAC's fourth cause of action for retaliation does not reference Title VI or

the Civil Rights Act[2]; it only references Education Code section 51101(a)(10), (14), and (15). (See *Covenant Care, Inc. v. Super. Ct. (Inclan)* (2004) 32 Cal.4th 771, 790 (stating that "statutory causes of action must be pleaded with particularity"); see also *Lopez v. Southern Cal. Rapid Transit Dist*. (1985) 40 Cal.3d 780, 795 (California Supreme Court stating that "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity"); see also *Searcy v. Hemet Unified School Dist*. (1986) 177 Cal.App.3d 792, 802 (stating that "to state a cause of action[,] every fact essential to the existence of statutory liability must be pleaded with particularity"); see also *Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349, 362 (stating "[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"); see also *Hood v. Hacienda La Puente Unified School Dist.* (1998) 65 Cal.App.4th 435, 439 (stating same).) The SAC also had no reference whatsoever to Title VI of the Civil Rights Act. Patel's argument regarding a statute neither previously referenced nor referenced in the subject cause of action is not supported.

Lastly, as to the alleged retaliation, Patel again fails to allege facts material to the existence of CDE's statutory liability with particularity as to any retaliation. The TAC alleges that "[t]he CDE's employee Gutierrez was indifferent to Patel's complaints to her of retaliations by Lucia" and "refused to answer any of Patel's questions on the Discrimination-Decision" and "indifferently forced Patel to further communications with Lucia for any explanation on the Discrimination-Decision." (TAC, ¶ 275.) In opposition, Patel argues that "a recipient violates Title VI if it retaliates against a private individual who opposes a discriminatory action or participates in a matter alleging discrimination whether the underlying matter concerns intentional discrimination or disparate impact." (Opposition, p.11:11-21.) However, as previously stated, the fourth cause of action does not mention Title VI. (See *Covenant Care, Inc. v. Super. Ct. (Inclan)* (2004) 32 Cal.4th 771, 790 (stating that "statutory causes of action must be pleaded with particularity"); see also *Lopez v. Southern Cal. Rapid Transit Dist*. (1985) 40 Cal.3d 780, 795 (California Supreme Court stating that "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity"); see also *Searcy v. Hemet Unified School Dist*. (1986) 177 Cal.App.3d 792, 802 (stating that "to state a cause of action[,] every fact essential to the existence of statutory liability must be pleaded with particularity"); see also *Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349, 362 (stating "[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"); see also *Hood v. Hacienda La Puente Unified School Dist.* (1998) 65 Cal.App.4th 435, 439 (stating same).)

State Defendants demonstrate that the fourth cause of action of the TAC fails to state facts sufficient to constitute a cause of action for retaliation, as was the case with the FAC, as stated in the November 25, 2020 order. Despite the prior order's statements, Patel fails to cure the prior defects of the cause of action. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 (stating that "Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading").)

---

[2] The TAC's tenth cause of action is for violation of Title VI of the Civil Rights Act and is only against District; also, paragraphs 368 through 381 are not incorporated into the allegations of the cause of action for retaliation.

Accordingly, State Defendants' demurrer to the fourth cause of action for retaliation is SUSTAINED without leave to amend.

Ninth cause of action for writ of mandate

State Defendants demur to the ninth cause of action for writ of mandate arguing that Patel lacks standing, Patel has not alleged any ministerial duty owed to him, nor any abuse of discretion that he claims to have suffered.

Here, as previously stated with respect to the third cause of action, Patel does not have standing to bring a petition. Patel alleges that: District "is knowingly misleading parents through a disguised Alleged HLS in arbitrarily and falsely identifying PHLOTE pupils" (TAC, ¶ 327); District "altered [Doe's] race designation to a false race designation in her school records without authority or discretion to do so, in violation of EDC § 35010" (TAC, ¶ 330); District "ignored information provided on the Registration Form in arbitrarily determining Italian as [Doe's] primary language based on Patel's and [Doe's] perceived minority-language status, [Doe's] perceived nationality; and the Mother's surname, in violation of 20 U.S.C. § 6312(E)(3)(D) and Gov. Code § 11135" (TAC, ¶¶ 331-332); "[e]ven though [Doe's] primary language has always been English, as indicated by numerous details provided on the Registration Form, since 2017, [District] has refused to correct [Doe's] primary language to English in her school records without providing any reason whatsoever" (TAC, ¶ 336); District "falsely identified [Doe] as PHLOTE, and despite a ministerial duty pursuant to 5 C.C.R. § 11518.20(b), since 2017 [District] has refused to correct [Doe's] classification to English Only" (TAC, ¶ 337); [Doe's] school records held by District, and others who receive the, from [District] still list false and arbitrary race, primary language, and English Learner/RFEP classification" (TAC, ¶ 338); District and Lucia grossly mishandled the uniform complaint (see TAC, ¶ 340); District continues to enforce the requirements of EDC § 52164.1 and 52164.6 despite knowing of the sunset of section 52164.1 (see TAC, ¶ 341); District and Lucia deliberately ignored their ministerial duty to follow District's own uniform complaint procedures to cover up District's inaccurate identification of Doe as PHLOTE (see TAC, ¶ 343); the CDE has made false assertions in the Discrimination-Decision and the Appeal-Decision (see TAC, ¶ 346); the CDE also based the Appeal-Decision on inapplicable sunset statute of EDC § 52146.1 while falsely claiming that EDC § 52146.1 was applicable to the uniform complaint (see TAC, ¶ 347); the CDE failed in its ministerial duty pursuant to 5 CCR § 4633 in knowingly making false assertions in the Discrimination-Decision and the Appeal-Decision (see TAC, ¶ 348).

Here, all of these alleged harms are to Doe; however, as Patel admits, Doe is not "a plaintiff in the TAC" (Opposition, p.4:19) and "[t]he TAC contains no claims by Plaintiff's daughter." (*Id*. at p.10:6.) Again, Patel lacks standing in his individual capacity and as a taxpayer to seek redress for the harms to Doe.

Further, as State Defendants argue, Patel references a ministerial duty codified by 5 C.C.R. § 4633 (see TAC, ¶ 348); however, the TAC fails to allege facts demonstrating a violation of section 4633 which requires the CDE to notify the LEA of the appeal if the LEA investigation report is appealed and meets the requirements of section 4632, subdivisions (a)-(c).

State Defendants' demurrer to the ninth cause of action for writ of mandate is SUSTAINED without leave to amend.

Eleventh cause of action for illegal expenditure and waste of funds

The TAC newly alleges a cause of action for illegal expenditure and waste of funds pursuant to Code of Civil Procedure section 526a. However, section 526a provides for an action in favor of a resident or corporation "who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid, a tax that funds the defendant local agency, including… An income tax… A sales and use tax or transaction and use tax initially paid by a consumer to a retailer… A property tax, including a property tax paid by a tenant or lessee to a landlord or lessor pursuant to the terms of a written lease… [or] A business license tax." (Code Civ. Proc. § 526a, subd. (a).) The TAC does not allege what tax Patel has paid. Further, as State Defendants argue, the eleventh cause of action fails to "allege specific facts and reasons for the belief the expenditure of public funds sought to be enjoined is illegal." (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 714.) "The term 'waste' as used in section 526a means something more than an alleged mistake by public officials in matters involving the exercise of judgment or discretion." (*Sagaser v. McCarthy* (1986) 176 Cal.App.3d 288, 310.) "[U]nless the conduct complained of constitutes a nuisance as declared by the Legislature, equity will not enjoin it even if it constitutes a crime, as the appropriate tribunal for the enforcement of the criminal law is the court in an appropriate criminal proceeding." (*Animal Legal Defense Fund v. California Exposition & State* Fairs (2015) 239 Cal.App.4th 1286, 1301.) Here, the TAC alleges the enforcement of former Education Code section 52164.1 despite it no longer being operative (see TAC, ¶ 385). However, the eleventh cause of action fails to include any allegations that demonstrate that it is something more than an alleged mistake. Moreover, there is no allegation that the conduct complained of constitutes a nuisance.

State Defendants' demurrer to the eleventh cause of action is SUSTAINED without leave to amend.

The Court shall prepare the Order.

- oo0oo -

Calendar Line 2
Case Name: 395 S WINCHESTER REALTY LLC vs CENTURY TOWER LLC et al
Case No.: 24CV429843

Notice appearing proper and good cause appearing, the unopposed Request for Judicial Notice and Motion to Strike Plaintiff's Complaint filed by Defendants 395 S. Winchester Blvd., LLC and AR Capital Group LLC (together referred to as "Defendants") are GRANTED. "A corporation, unlike a natural person, cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director or other employee who is not an attorney. It must be represented by licensed counsel in proceedings before courts of record." *CLD Construction, Inc. v. City of San Ramon*, 120 Cal. App. 4th 1141, 1145. The rationale for the rule applies not just to corporations, but to any kind of business entity, including LLCs. See C*aressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd*. (2002) 99 Cal. App. 4th 1094, 1102 (explaining that because a "corporation . . . is an artificial entity created by law . . . it can neither practice law nor appear or act in person. Out of court it must act in its affairs through its agents and representatives and in matters in court it can act only through licensed attorneys. A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in propria persona. [Citations.]"). Under CCP § 436, a court may strike a complaint not in conformity with the laws of the state. Moreover, the failure to file a written opposition "'creates an inference that the motion or demurrer is meritorious.'" *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. As such, the First Amended Complaint is stricken.[3] Because the Court may strike the complaint on its own motion under § 436, the FAC is stricken as it relates to all Defendants, not just the moving Defendants, based on the Plaintiff's failure to have legal representation. However, because this is a curable defect, Plaintiff is given 20 days from receipt of the final order for leave to obtain counsel. See *CLD Construction, Inc.*, 120 Cal. App. 4th at 1149-52.

Defendants shall submit the final order within 10 days and are ordered to serve it on Plaintiff with a filed proof of service. Should Plaintiff obtain counsel, it is required to contact the Department (at department16@scscourt.org) and schedule an identification of counsel (IDC) hearing within the 20 day window.

There is an OSC on calendar for Plaintiff's failure to appear scheduled for November 7, 2024. This OSC was intended for Plaintiff's FTA, not Plaintiff's former counsel Mr. Sakai, though it appears the notice mistakenly went to Mr. Sakai.

- oo0oo -

[3] Although Defendants ask to strike the Complaint, the operative complaint is the First Amended Complaint.

Calendar Line 3
Case Name: *Orchard Yield Fund I, LP v. Double L Ranches, LLC, et al..*
Case No.: 19CV354235

McAfee Farms LLC ("McAfee Farms"), defendant Lapsley Farms LLC ("Lapsley Farms") and Lutz Farms LLC ("Lutz Farms") are managing members of defendant Double L Ranches ("DLR"). (See third amended complaint ("TAC"), ¶¶ 5, 21.) Aaron McAfee ("Aaron") is the managing member of Lapsley Farms and McAfee Farms, Mark McAfee ("Mark") is a managing member of McAfee Farms, Joshua Lutz ("Lutz") is a managing member of Lutz Farms. (See TAC, ¶¶ 11, 13, 15.) Orchard Yield Funds, LLC ("OYFLLC") is the managing member of Orchard Yield Fund I, L.P. ("OYF"), which was created for the purpose of purchasing securities for DLR. (See TAC, ¶¶ 1, 3.) Park Capital Management LLC ("PCM") was one of two managing members of OYFLLC. (See TAC, ¶ 3.) Adam McAfee ("Adam") is the managing member of PCM and of McAfee Farms, and also owns a stake in Organic Pastures Dairy Company ("Organic Pastures"). (See TAC, ¶ 5.) Eric McAfee ("Eric") is the managing member of McAfee Farms; however, in 2006, the Securities and Exchange Commission ("SEC") filed fraud charges against Eric and he entered into a consent decree that prevented him from violating federal securities laws in the future including the offering of securities by DLR to OYF. (See TAC, ¶¶ 6-8.) Adam, Eric and Mark are brothers (collectively, "Brothers"); Aaron is the son of Mark; Lutz is the son in law of Mark. (See TAC, ¶¶ 22-24.) Eric is the moving force behind the Brothers, Aaron and Lutz in connection with matters between OYF and DLR, making decisions on how to proceed in connection with any issues, and the others would follow Eric's advice either directly or through the entities they controlled. (See TAC, ¶ 25.) By December 31, 2015, DLR was indebted to McAfee Farms in the amount of $698,561.23 and to Organic Pastures in the amount of $179,578.80, for a total amount of $878,139.73, thus requiring third party investment capital to meet its needs. (See TAC, ¶¶ 27-32.) Defendants solicited OYF for investment capital, and in a term sheet dated February 16, 2016 and in the Subscription Agreement, the Defendants represented that they would not use the investment proceeds for purposes not approved by the Investment Fund. (See TAC, ¶ 34.) In connection with Plaintiff raising funds to invest in DLR, Plaintiff drafted a private placement memorandum to secure third party investment. (See TAC, ¶ 35.) As a member of OYFLLC , PCM actively participated in drafting and approving all drafts of the PPM. (See TAC, ¶ 36.) As the managing member of PCM, Adam actively participated in drafting and approving drafts of the PPM including the final version and reviewed the subscription agreement; however, OYF did not know that Adam simultaneously served as a managing member of McAfee Farms. (See TAC, ¶¶ 37-39.) DLR, McAfee Farms, Lapsley Farms and Lutz Farms and Adam, Eric, Mark, Aaron and Lutz also participated in drafting and signing off on the final version of the PPM. (See TAC, ¶¶ 40-42.) On April 12, 2016, OYF and DLR entered into a subscription agreement to which OYF invested $2 million in DLR in consideration for which OYF received a 12% preferred member interest in DLR and became a member of DLR. (See TAC, ¶ 47.) The subscription agreement concealed the fact that Adam was a managing member of McAfee Farms and had conflicting duties to both McAfee Farms and Plaintiff in connection with the offering. (See TAC, ¶ 52.) The defendants and the subscription agreement also concealed that while the agreement indicated that the value of DLR was $20 million, the true value was approximately $3 million. (See TAC, ¶¶ 55-63.) Additionally, defendants failed to disclose that they also lent All Pro over $900,000, and the soil on the farm was of poor grade. (See TAC, ¶¶64-71.)

On July 17, 2024, plaintiff OYF filed the TAC against DLR, PCM, Lapsley Farms, McAfee Farms, Lutz Farms, Aaron, Adam, Eric, Mark and Lutz (collectively, "Defendants"), asserting causes of action for:

1) Breach of contract (2016 Subscription Agreement, operating agreement, the amendment and the note) (against DLR);
2) Securities law violations (PPM, subscription agreement, operating agreement and amendment (against DLR);
3) Securities law violations (PPM, subscription agreement, operating agreement and amendment) (against Lapsley, McAfee Farms, Lutz Farms, PCM, Aaron, Adam, Eric Mark and Lutz);
4) Negligent representation (against DLR);
5) Fraud/intentional misrepresentation of fact re: subscription agreement, amendment and note;
6) Aiding and abeting fraud/ international misrepresentation of fact re subscription agreement, amendment and note (against DLR, PCM, Lapsley Farms, McAfee Farms, Lutz Farms, Aaron, Mark, Lutz and Eric);
7) Breach of fiduciary duty (against Adam and PCM);
8) Aiding and abetting breach of fiduciary duty (against DLR, Lapsley Farms, McAfee Farms, Lutz Farms, Aaron, Mark, Lutz and Eric);
9) Conspiracy to commit fraud (against DLR, Lapsley Frms, PCM, McAfee Farms, Lutz Farms,
10) Conspiracy to commit breach of the fiduciary duty (against DLR, Lapsley Farms, Lutz Farms, McAfee Farms, Aaron, Mark, Lutz, Eric, Adam and PCM).

On January 29, 2024, OYF propounded a third set of requests for production of documents ("RPDs") on defendant DLR. After numerous extensions, DLR responded on April 26, 2024, in which DLR objected to responding as to 110 of the 112 RPDs and a qualified commitment to provide documents to the other 2 RPDs. DLR provided further responses on the evening of May 30, 2024; however, their responses were incomplete. After DLR did not initially further meet and confer, OYF filed the instant motion to compel further responses to RPDs 1-39, 42-43, 46-53 and 55-112, the production of documents and a privilege log on June 3, 2024. DLR's counsel experienced an unexpected leave of absence from June 7, 2024 through August 19, 2024.

Through further meet and confer, the parties were able to resolve issues as to 82 of the 112 RPDs. 44 of the 112 requests were voluntarily withdrawn. 30 RPDs remain, with 27 of them involving a reference to a preamble or a particular document.

<u>RPDs referencing a document: RPDs 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112</u>

The RPDs referencing other documents are: 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112. These RPDs state that "[r]eference is made to" a particular document or item that is attached as an exhibit and then indicates what portion of the document to which it refers and asks for documents that relate to that portion of the document.

DLR objects to these RPDs on the grounds that they are argumentative, unduly burdensome and harassing because they request reference to a document that is unnecessary, oblique, errant, and irrelevant to the entirety of the stated request, and that it implicitly and

improperly seeks an admission with respect to said document or item referenced therein, inconsistent with Code of Civil Procedure section 2033.060, subdivision (h) which states that no party should combine in a single document requests for admission with any other method of discovery.

Here, it is clear that there is good cause for the documents sought. As to DLR's objection that the referenced exhibit does not contain all the pages from the original PPM so is not a true and correct copy, or that the RPDs implicitly and improperly seek an admission with respect to said document or item referenced therein, the Court disagrees. This is a request for production of documents, not a request for admission. The document is merely provided for what the request states it is provided for: reference. The RPD also states the relevant portion in text. If DLR wishes to object only to the inclusion of the document attached for its reference, Code of Civil Procedure section 2031.240, subdivision (a) states that DLR must provide a response containing a statement of compliance or a representation of inability to comply. (See Code Civ. Proc. § 2031.240, subd. (a) (stating that "[i]f only part of an item or category of item in a demand for inspection, copying, testing, or sampling is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category").) DLR's objection to the RPDs based on the claim that the referenced document improperly seeks an admission is OVERRULED. As to the objections of argumentativeness, undue burden, harassment, unnecessariness, obliqueness, and errantness, these objections are also OVERRULED.

OYF's motion to compel a further response to RPDs 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112 is GRANTED. DLR shall provide a verified, code-compliant further response to RPDs 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112 within 20 calendar days of this order.

If parties have not already entered into a protective order, parties are ordered to enter into the Model Confidentiality Order as found on the Complex Civil Litigation webpage of the Superior Court at https://santaclara.courts.ca.gov/system/files/model-confidentiality-order_0.pdf.

RPD 67

RPD 67 seeks all documents showing bank balances for each day from March 1, 2019 to April 24, 2019. DLR objects to the RPD on the grounds of overbreadth, and lack of relevance. "The scope of discovery is very broad." (*Tien v. Super. Ct. (Tenet Healthcare Corp.)* (2006) 139 Cal.App.4th 528, 535; see also *Children's Hospital Central California v. Blue Cross of California* (2014) 226 Cal.App.4th 1260, 1276 (stating that "[t]he scope of permissible discovery is very broad").) "For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement." (*Children's Hospital Central California*, *supra*, 226 Cal.App.4th at pp.1276-1277 (also stating that "[a]dmissibility is not the test… [r]ather, it is sufficient if the information sought might reasonably lead to other admissible evidence"); see also *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 44 (stating that "[i]n the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement"); see also *Haniff v. Super. Ct. (Hohman)* (2017) 9 Cal.App.5th 191, 205 (Sixth District stating that "Section 2017.010 has been construed to authorize discovery of information that is relevant because 'it 'might reasonably assist a party in evaluating the case,

preparing for trial, or facilitating settlement'"").) Certainly, these documents are well within the scope of discovery and could assist OYF in evaluating the case, preparing for trial or facilitating settlement. The objections to RPD 67 are OVERRULED.

OYF's motion to compel a further response to RPD 67 is GRANTED. DLR shall provide a verified, code-compliant further response to RPD 67 without objections within 20 calendar days of this order

RPD 95

RPD 95 seeks documents relating to a withdrawal authorized by DLR from any of its bank accounts in excess of $10,000 for the period of January 1, 2019 to March 31, 2019. DLR objects on the grounds of overbreadth, undue burden and lack of relevance. Here, there is very clearly good cause for the request. Moreover, these documents are well within the scope of discovery and could assist OYF in evaluating the case, preparing for trial or facilitating settlement. OYF does not demonstrate undue burden for the production of these documents. The objections to RPD 95 are OVERRULED.

OYF's motion to compel a further response to RPD 95 is GRANTED. DLR shall provide a verified, code-compliant further response to RPD 95 without objections within 20 calendar days of this order.

RPF 96

RPD 96 seeks all communications involving or relating to, or discussing any withdrawal authorized from any of its bank accounts in excess of $10,000 from January 1, 2019 and March 31, 2019. DLR objects overbreadth, undue burden and lack of relevance. Here, there is very clearly good cause for the request. Moreover, these documents are well within the scope of discovery and could assist OYF in evaluating the case, preparing for trial or facilitating settlement. OYF does not demonstrate undue burden for the production of these documents. The objections to RPD 96 are OVERRULED.

OYF's motion to compel a further response to RPD 96 is GRANTED. DLR shall provide a verified, code-compliant further response to RPD 96 without objections within 20 calendar days of this order.

OYF's request for monetary sanctions

In connection with the motion to compel, OYF requests monetary sanctions in the amount of $21,970.00. OYF has substantially prevailed on its motion. However, the request for monetary sanctions is not code-compliant. "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought…." (Code Civ. Proc. § 2023.040.) Here, OYF does not identify in the notice of motion any person, party or attorney against whom the sanction is sought.

Moreover, section 2023.040 requires the request for monetary sanction to be "accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." (Code Civ. Proc. § 2023.040.) While OYF's counsel provides a declaration that indicates that he spent "42.6 hours…preparing this motion and related documentation,"

and "expect[s]to spend an additional 20 hours," it is entirely unclear whether any of the 42.6 hours was spent on meeting and conferring or if he actually spent an excessive amount of time drafting the motion. The Court neither awards monetary sanctions for meeting and conferring nor anticipatory time. Moreover, the request is outrageously excessive.

It is also clear that OYF's counsel did not spend enough time attempting to meet and confer. The Santa Clara County Bar Association Code of Professionalism states that "[a] lawyer should engage in a meaningful and good faith effort to resolve discovery disputes and should only bring discovery issues to the court for resolution after these efforts have been unsuccessful." (Santa Clara County Bar Association Code of Professionalism, § 10 ("Discovery").) OYF's counsel received further responses—albeit incomplete—on May 30, 2024, and rather than attempting to resolve issues on over 100 RPDs, OYF felt compelled to file its motion just a few days later. This does not appear to be a meaningful and good faith effort to resolve discovery disputes and is a basis to deny monetary sanctions on its own. OYF's 521-page separate statement further demonstrated that it had not meaningfully and in good faith conferred, as it was offering concessions and stream of conscious commentary within the separate statement itself. "A lawyer should conduct discovery in a manner designed to ensure the timely, efficient, cost-effective, and just resolution of a dispute." (Santa Clara County Bar Association Code of Professionalism, § 10 ("Discovery").) "A lawyer should limit demands for production of documents, including electronically stored information (ESI), to those the lawyer actually and reasonably believes to be needed for the prosecution or defense of an action." (*Id*.)

OYF's request for monetary sanctions is DENIED.

Conclusion

DLR's objection to the RPDs 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112 based on the referenced document improperly seeking an admission is OVERRULED. As to the objections of argumentativeness, undue burden, harassment, unnecessariness, obliqueness, and errantness, these objections are also OVERRULED.

OYF's motion to compel a further response to RPDs 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112 is GRANTED. DLR shall provide a verified, code-compliant further response to RPDs 24-33, 42, 43, 65, 66, 68-72, 97, 98, and 107-112 within 20 calendar days of this order.

The objections to RPDs 67, 95 and 96 are OVERRULED. OYF's motion to compel a further response to RPDs 67, 95 and 96 is GRANTED. DLR shall provide a verified, code-compliant further response to RPD 67 without objections within 20 calendar days of this order.

If the parties have not aleady entered into a protective order, parties are ordered to enter into the Model Confidentiality Order.

OYF's request for monetary sanctions is DENIED.

The Court will prepare the Order.

- oo0oo -

Calendar line 4
Case Name: Ni v. Urban Compass et al.
Case No.: 24CV429843

On July 23, 2024, Defendant Compass California II, Inc. ("Compass" or "Defendant") filed a motion to compel Plaintiff Mindy Ni ("Ni" or "Plaintiff") to provide further responses to its Special Interrogatories (SROGs). On or about September 3, 2024, Plaintiff provided supplemental responses to the SROGs (See ¶ 4 and Ex. A to Decl. of Barrera. Although the Declaration states that Exhibit B contains the supplemental responses, it is in fact Exhibit A).

The parties now agree that the motion to compel further responses is moot, other than the issue of sanctions. Defendant continues its request for sanctions pursuant to CCP § 2030.300(d) for Plaintiff's failure to provide timely supplemental responses, necessitating the filing of this motion. Plaintiff opposes the sanctions contending that Defendant failed to meaningfully meet and confer, Plaintiff's objections to the SROGs were legitimate, the notice for sanctions is defective, and the request for sanctions is excessive.

Defendant did not fail to meaningfully meet and confer. Defendant sent a detailed initial meet and confer letter on June 14, 2024. (See Yu Decl. at ¶6 and Ex. 4.) Because Plaintiff failed to respond, Defendant followed up on June 20, 2024. (*Id*. at ¶7 and Ex. 5.) Plaintiff responded on June 22, 2024 and asked for an extension to July 8, 2024, which Defendant granted. (*Id*.) Plaintiff did not respond by its own deadline, prompting Defendant to file its MTC on July 23, 2024. On September 3, 2024, almost two months after its self-imposed deadline, Plaintiff provided supplemental responses and asked for the motion to be taken off calendar. (See Barrera Decl. ¶¶ 4 and 5 and Exs. A and B.)

Because Defendant sent a meet and confer letter, followed up with Plaintiff, and then granted Plaintiff an extension to the date suggested by Plaintiff, Defendant's efforts to meet and confer were sufficient. Plaintiff failed to respond in any way by its July 8, 2024 deadline. It was not incumbent upon Defendant to again follow up when Plaintiff blew its own deadline.

Plaintiff claims it should not have to pay sanctions because its objections were legitimate. The merits of the MTC is mooted because further responses were provided. Whether legitimate or not, the legitimacy of an objection is not a defense to the issue of timeliness.

Under CCP § 2023.040, a request for sanctions "shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." Defendant has complied with these requirements and Plaintiff points to no specific requirement that Defendant failed to abide. Plaintiff further claims that Defendant's factual basis is insufficient. The Court disagrees. Defendant's papers make clear that Plaintiff failed to timely respond despite being given an extension. Because Plaintiff failed to timely provide supplemental responses, Defendant was forced to file this motion and expend costs for doing so, and those costs are laid out in the declaration. Defendant properly requested sanctions and sanctions are appropriate under CCP § 2030.300(d).

Plaintiff contends that the request for sanctions is excessive. The Court agrees. Defendant claims nine hours to prepare a straightforward motion to compel further responses to six questions. Defendant is entitled to no more than two hours for drafting (at $400), one-half hour for review (at $650), and the $60 filing fee. Accordingly, Plaintiff and Plaintiff's Counsel are required to pay sanctions to Defendant in the amount of $1,185, payable within 10 days of receipt of the final order. Defendant shall submit the final order.

- oo0oo –