SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: August 1, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM 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 at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
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https://reservations.scscourt.org/

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	20CV361306	EDGE LAW GROUP vs BOMI JOSEPH et al	The Court set this hearing for Defendants to show cause why terminating sanctions should not be imposed, including striking defendants' answers and dismissing their cross-complaints, for their attempt to commit fraud on the Court during the July 9, 2024 trial setting conference. Nothing is on file with the Court to respond to the two declarations substantiating that this fraud took place. Accordingly, the Court intends to impose the outlined terminating sanctions, default the defendants, and have Plaintiff move forward by default judgment.
2-3	22CV403980	Amel Mohamed vs Akamai Technologies, Inc. et al	Jonathan Cavalier's and Timothy McCarthy's unopposed pro hac vice applications are GRANTED. Court to use form of orders on file.
4	22CV404571	Lori Henderson vs Mark Emerson et al	Plaintiff's motion to compel is GRANTED. Ms. Henderson's declaration sets forth specific facts constituting good cause for believing additional documents exist that were not produced. Defendant's only response to this declaration is to point to its PMQ's deposition testimony that all documents were produced. However, not only was that answer given "subject to objections", but it related to a list of documents served with the PMQ notice, not each of the requests before the Court, and it does not detail what document repositories were searched. Defendant's privacy, trade secret, attorney-client privilege, and relevance objections are not well taken. Defendant is a company; it owns its employees' communications conducted using company equipment; there is no employee right to privacy of those communications. (See, e.g., *Holmes v. Petrovich Development Co., LLC* (2011) 191 Cal. App. 4th 1047, 1051-1052 (finding employee's communications with counsel using company computers were not protected by the attorney-client privilege.) To the extent Defendant communicated with counsel regarding Ms. Henderson before this lawsuit was filed, those communications are relevant and should be listed on a privilege log, which it appears Defendant did produce. And, Defendant's sales and compensation data can be produced subject to a protective order, if it is in fact trade secret information. Given the nature of the allegations in the complaint, these discovery requests seek relevant information, and Defendant fails to explain the missing information detailed in Ms. Henderson's declaration. Accordingly, with 20 days of service of this formal order Defendant is ordered to (1) amend its written responses to each request to detail (a) what repositories it searched for responsive documents, (b) whether it is withholding any documents based on its objections and, if so what documents and what objections, (c) whether any documents are now missing, and (d) why such documents are missing; (2) produce any additional documents located during this additional search; and (3) pay Plaintiff $5,685 in sanctions. Court to prepare formal order.

5	23CV418058	Modesta Castaneda vs AMERICAN HONDA MOTOR CO., INC., a California Corporation	Plaintiff Modesta Castaneda's motion to compel strike American Honda Motor Co., Inc.'s objections and compel further responses to Plaintiff's request for production of documents (set two) nos. 10, 14, 23 and 24 is DENIED. First, the Court provided a detailed analysis of the scope of permissible discovery in lemon law cases in its February 2, 2024 order denying Plaintiff's first motion to compel. Plaintiff fails to address what the Court already stated in that order. Next, Plaintiff once again relies on a single meet and confer letter to constitute its meet and confer efforts even though the Court *twice* admonished Plaintiff that sending a letter, failing to respond to a request for a phone call, then filing a motion was not code-compliant meet and confer. Again, it appears to the Court Plaintiff simply ignored the Court's February 2, 2024 and March 20, 2024 orders. Finally, in response to each of the requests for production Plaintiff seeks to compel, Defendant clearly and unequivocally responded that after a reasonable search, no responsive documents exist to produce. Thus, it is unclear to the Court what Plaintiff would have the Court order produced here, and Plaintiff says nothing about this even in reply. Defendant argues this conduct is sanctionable, and the Court agrees. However, Defendant does not submit any information regarding fees to which Plaintiff could have responded in reply. Suffice it to say at this time that Plaintiff's blatant disregard of the Court's two prior discovery orders and repeated admonishments will be heavily considered when this case is concluded and Plaintiff seeks attorneys' fees under the statute. Court to prepare formal order.
6	23CV427611	Carrie LeRoy vs Robin Love	Defendant's motion for attorneys' fees pursuant to Code of Civil Procedure section 425.16(c)(1) is GRANTED. The Court granted Defendant's anti-SLAPP motion by order dated May 8, 2024. The award of fees to a prevailing defendant on an anti-SLAPP motion is mandatory. (*Marshal v. Webster* (2020) 54 Cal.App.5th 275, 285.) Anti-SLAPP fee awards should include expenses incurred for all proceedings "directly related" to the special motion to strike and fees "addressing matters with factual or legal issues that are 'inextricably intertwined' with those issues raised in an anti-SLAPP motion." (*Henry v. Bank of Am. Corp.* (N.D.Cal. Aug. 23, 2010) 2010 WL3324890 *4.) To determine the correct award, the Court applies the lodestar method which is calculated by multiplying "the number of hours reasonably expended. . . by the reasonable hourly rate" of counsel. (*PLCM Group, Inc. v. Drexler* (2000) 17 Cal.4th 1084, 1095.) To determine reasonableness, the Court considers "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure." (*Id.* at 1096.) "The verified time statements of attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees of Cal. St. Univ.* (2005) 132 Cal.App.4th 359, 396; *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.) Defendant's rate of $600 per hour is reasonable for this case type in Santa Clara County. The Court has reviewed Defense counsel's time sheets and finds the number of hours spent on this case to be reasonable given the nature of this particular case, which involves numerous factual assertions amongst numerous purported witnesses, each of which had to be researched and fact checked. The Court carefully considered whether the fees incurred after the anti-SLAPP motion was granted were appropriately awarded here, and concludes that those fees are properly awarded because they were incurred in direct relation to this motion for attorneys' fees, which fees are plainly recoverable. Plaintiff is accordingly ordered to pay Defendant $76,852.18 in attorneys' fees and costs. Court to prepare formal order.
7	23CV428303	John Doe R.V.R. vs Robert Crose, an individual et al	Santa Clara County's Demurrer is SUSTAINED WITH 20 DAYS LEAVE TO AMEND. Scroll to line 7 for complete ruling. Court to prepare formal order.

8	24CV432356	Lisa Bargas et al vs Thomas Zscherpel	Defendant's motion to enforce settlement is GRANTED. For the Court to enforce a settlement pursuant to Code of Civil Procedure section 664.6, the Court must first determine whether the parties entered a valid and binding settlement of all or part of the case. (*Corkland v. Boscoe*, (1984) 156 Cal. App. 3d 989.) The parties' settlement agreement must contain all material terms and the parties must agree to those terms to have a meeting of the minds necessary for contract formation. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793.) Study of the exhibits attached to the Declaration of Steven Sayad reveals that these requirements for enforcement are met. Exhibit A makes a conditional policy limit demand with the following terms (1) acceptance before April 27, 2024, (2) proof of all liability insurance policies, their limits, and unredacted declaration pages, and (3) if there is a release, it be consistent with the terms of the demand. The letter further states that these terms are all material, and "any deviation from this settlement demand within the release will be treated as a counteroffer." Defendant responds in writing on April 19, 2024, (1) accepting the demand, (2) providing proof of the only liability insurance policy Defendant has, confirming that no others exist and including an unredacted declaration page, and (3) enclosing a release consistent with the terms of the policy limits demand. It appears from emails attached as Exhibit F that post-acceptance, Plaintiff sought an asset affidavit. However, an asset affidavit is not in the demand attached as Exhibit A (although it appears that was part of an earlier demand Defendant rejected). Plaintiff's argument that the demand was too uncertain to accept is unpersuasive. The Court need not rely on extrinsic evidence to conclude that the demand related only to Thomas Bargas, since the entire focus of the demand relates to his injuries and makes no mention of Lisa Bargas. And the letter, which Plaintiff wrote, demands "acceptance" by a date certain; the plain language of the letter makes clear that Plaintiff intended it to be an offer when written. The letters, taken together, are a textbook offer and acceptance right out of law school exam. Defendant's motion is accordingly granted. Court to prepare formal order.

9	22CV398742	Richard Gardner et al vs Linming Jin et al	Plaintiff's motion for leave to file a first amended complaint is DENIED. The Court continued this motion from July 18 to permit Plaintiff to submit a redlined first amended complaint that showed both Plaintiff's proposed additions and deletions so that at least this portion of Plaintiff's motion would comply with California Rule of Court, Rule 3.1324. Despite this continuance, Plaintiff failed to include deletions that the Court is aware of, once again creating doubt about whether all Plaintiff's proposed changes have been disclosed. Plaintiff also fails to submit a declaration that explains "(2) Why the amendment is necessary and proper; (3) When the facts giving rise to the amended allegations were discovered; and (4) The reasons why the request for amendment was not made earlier." For these reasons alone, Plaintiff's motion is properly denied. (*Hataishi v. First American Home Buyers Protection Corp.* (2014) 223 Cal. App. 4th 1454 (trial court's denial of amendment affirmed where Plaintiff failed to file a noticed motion to amend or make the required evidentiary showing under California Rule of Court, Rule 3.1324.) Plaintiff also substantially delayed bringing this motion without explanation. "A long unexcused delay may be the basis for denying permission to amend pleadings. (*Moss Estate Co.* v. *Adler* (1953) *supra*, 41 Cal.2d 581, 586; *Bernstein* v. *Financial Indem. Co*. (1968) 263 Cal.App.2d 324, 328 [69 Cal.Rptr. 543]; *Stanley* v. *Kawakami* (1954) 127 Cal.App.2d 277, 279 [273 P.2d 709]), especially where the proposed amendment interjects a new issue (*Vogel* v. *Thrifty Drug Co.* (1954) *supra*, 43 Cal.2d 184, 189; *Donahue* v. *Ziv Television Programs, Inc*. (1966) 245 Cal.App.2d 593, 611 [54 Cal.Rptr. 130]), which may require further investigation or discovery procedures (*Waxman* v. *Superior Court* (1966) 246 Cal.App.2d 668, 671 [54 Cal.Rptr. 924]; *Hayutin* v. *Weintraub* (1962) 207 Cal.App.2d 497, 508 [24 Cal.Rptr. 761])." (*Nelson v. Specialty Records, Inc.* (1970) 11 Cal. App. 3d 126, 139.) Trial is set for November 18, 2024, after the parties agreed to a continuance, without Plaintiff seeking to amend the complaint at that time. Although, "[i]t is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case,'" the Court finds this to be such a rare case. (*Guidery* v. *Green*, 95 Cal. 630, 633; *Marr* v. *Rhodes*, 131 Cal. 267, 270.) Permitting this amendment now, after Plaintiff's delay and failure to timely comply with the rules even after the Court granted a continuance unfairly prejudices the Defendants' ability to timely conduct discovery and prepare for trial, and improperly condones Plaintiff's failure to timely and correctly seek this leave. (See *Nelson* v. *Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton* v. *Bassett*, 158 Cal. 425, 427.) The motion is accordingly denied. Court to prepare formal order.

Calendar Line 7
Case Name: *John Doe R.V. R. v. Robert Crose et.al*.
Case No.: 23CV428303

Before the Court is Defendant County of Santa Clara's demurrer to Plaintiff's complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a sexual abuse case filed 23 years after the alleged abuse ended. According to the complaint, in January 2000, when Plaintiff was 13 years old, the County took legal custody of him and placed him at a group home operated by Defendant Redwood Trails, Inc. ("Redwood"). (Complaint ¶¶ 22, 26-27, 30.) The County and Redwood assigned Plaintiff to room with an older, larger juvenile offender. (Complaint ¶¶ 35, 40-41, 43.) Plaintiff became the target of the other residents, including his roommate, who "routinely intimidated, hit, and verbally abused" him, and "discouraged [him] from attending Redwood events." (Complaint. ¶¶ 29, 32-33.) Plaintiff told Redwood staff he did not feel safe, the other residents wanted to beat him up, and that his roommate had grabbed his butt. (Complaint ¶ 35.) In February 2000, he spoke to his County social worker, who noted that he appeared extremely guarded and untrusting. Despite that concern, the County social worker did not visit Plaintiff at Redwood again. (Complaint ¶ 36.)

In April 2000, Plaintiff's roommate began to sexually assault him. (Complaint ¶ 43.) Because Plaintiff thought the Redwood staff would not believe him, he did not cry for help. (Complaint ¶¶ 43-46.) The alleged sexual assaults continued several times in April 2000. (Complaint ¶¶ 47-49.) Plaintiff disclosed the assaults to his parents during a family visit. (Complaint ¶¶ 45, 50.) His parents then notified law enforcement, and a criminal investigation and prosecution ensued, during which the perpetrator admitted to sexually assaulting Plaintiff. (Complaint ¶¶ 51-52.) Plaintiff was then moved to a different Redwood facility, but was still forced into multiple direct, face-to-face contacts" with his perpetrator during lunch and at Redwood events. (Complaint ¶¶ 54-55.)

In May 2000 the County placed Plaintiff in a group home operated by Defendant Kings View. (Complaint ¶¶ 58-59.) After two or three months at this home, Plaintiff met an adult female counselor who made sexual advances toward him. (Complaint ¶¶ 61-63.) The Kings View counselor pursued Plaintiff romantically, frequently engaging in sexual banter, then secretive kissing, groping, and

fondling, and ultimately, to penetrative sex. (Complaint ¶¶ 64-65.) After Plaintiff left Kings View, the counselor continued to pursue him, regularly calling him for years. (Complaint ¶¶ 73-74.)

Plaintiff filed his complaint on December 20, 2023, alleging negligence, negligence per se, negligent supervision of minors, negligent failure to warn, train, and educate, and intentional infliction of emotional distress against the County.

II. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on

the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id*.)

III. Analysis

All governmental tort liability is based on statute, and the general rule that statutory causes of action must be pleaded with particularity is therefore applicable to each cause of action addressed below. "[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." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal. 3d 780, 795 ("*Lopez*"), *City of Los Angeles v. Superior Court* (2021) 62 Cal. App. 5th 129, 138; see also *Zipperer v. County of Santa Clara* (2005) 133 Cal. App. 4th 1013, 1020.) "[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate." (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal. App. 3d 1, 5.)

A. First Cause of Action – Negligence.

"To prevail in a negligence action, a plaintiff must show the defendant owed a legal duty to [plaintiff], the defendant breached that duty, and the breach proximately caused injury to the plaintiff." (*Doe v. L.A. County Dep't of Children & Family Servs.* (2019) 37 Cal. App. 5th 675, 682 ("*Doe"*).) However, "[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.3 d 859, 866.) Therefore, unless 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); *Caldwell v. Montoya* (1995) 10 Cal. 4th 972, 980.)

"Generally, all persons have a duty to take reasonable care in their activities to avoid causing injury, though particular policy considerations may weigh in favor of limiting that duty in certain circumstances." (*Brown v. USA Taekwondo*, (2021) 11 Cal. 5th 204, 209, ("*Brown*"), citing Cal. Civ. Code § 1714.) As a rule, "one owes no duty to control the conduct of another, nor to warn those endangered by such conduct." (*Regents of Univ. of Cal. v. Superior Ct*., (2018) 4 Cal. 5th 607, 619

("*Regents*").) An exception to this no-duty-to-protect rule exists for cases in which the defendant has a special relationship with either the dangerous third party or with the victim. (*Brown, supra*, at 211.) A special relationship between the defendant and the victim is one that "gives the victim a right to expect" protection from the defendant. (*Id*. at 216, quoting *Regents, supra*, at 619.)

"The corollary of dependence in a special relationship is control. Whereas one party is dependent, the other has superior control over the means of protection." (*Regents, supra*, at 621.) The existence of such a special relationship puts the defendant in a unique position to protect the plaintiff from injury. (*Brown, supra*, at 216.) In cases involving minors, courts generally have recognized a special relationship where adults and organizations "acted as 'quasi-parents' by assuming responsibility for the safety of [minors] whose parents were not present." (*Doe v. Roman Catholic Archbishop of Los Angeles*, (2021) 70 Cal. App. 5th 657, 671, quoting *Doe v. United States Youth Soccer*, (2017) 8 Cal. App. 5th 1118, 1130.) "Where such a special relationship exists between the defendant and a minor, the obligation to provide such protection and assistance may include a duty to protect the minor from third party abuse." (*Brown, supra*, at 220.) Where the defendant does not "sit[] in a relation to the parties that creates an affirmative duty to protect the plaintiff from harm, however, our cases have uniformly held the defendant owes no legal duty to the plaintiff." (*Id*. at 216.)

Here, the complaint alleges the County, through its Behavioral Health Services Agency is liable to Plaintiff for its failure to (1) implement reasonable safeguards to prevent acts of unlawful sexual conduct, (2) supervise Plaintiff, and (3) take reasonable steps to protect him from sexual abuse. The complaint further alleges:

- The County assumed the legal in loco parentis relationship with Plaintiff in approximately January 2000, when Plaintiff was thirteen years old, and through a referral from Santa Clara County Mental Health, placed Plaintiff with Defendant Redwood at a group home. (Complaint ¶¶ 22, 27)
- Plaintiff was a minor in the care, custody and control of the County. (Complaint ¶ 21)
- The County, by way of the special loco parentis relationship existing between Plaintiff and the County, owed Plaintiff a duty of care. (Complaint ¶ 103)

- As an institution entrusted with the care of minors, the County expressly and implicitly represented that its employees and agents would watch over Plaintiff and place him in facilities where minors will be will supervised and protected from physical and emotional danger. (Complaint ¶ 104)
- Yet, the County placed Plaintiff into facilities where multiple perpetrators were poorly supervised. The County placed Plaintiff with Redwood Defendants to live with serious juvenile offenders placed by the County's and other counties' probation departments. (Complaint ¶¶ 105-106)
- The County and its agents and employees knew, had reason to know, were otherwise on notice, and/or had a duty to take reasonable measures to discover the lack of supervision and general safety exercised by Defendants Kings View and Redwood. (Complaint ¶ 107)
- The County and its agents and employees knew, had reason to know of the vulnerabilities of children like Plaintiff to sexual molestation and abuse, as well as knew the acute vulnerability Plaintiff had to such abuse given his past victimization. (Complaint ¶ 109)
- Had the County and its agents and employees fulfilled their duty to Plaintiff, he would not have suffered the irreparable harm of child sexual abuse. The wrongful conduct of the County and its employees was a substantial factor in causing Plaintiff harm. (Complaint ¶ 111)

Plaintiff fails to identify a statute providing for the County's direct liability. Plaintiff's negligence cause of action instead relies on common law negligence theories and is thus subject to demurrer on this basis.

To the extent Plaintiff is alleging Defendant is vicariously liable for the acts and/or omissions of its employees within the course and scope of their employment, then the County's liability would be premised upon Government Code section 815.2(a), which is referenced in the complaint's introduction. Government Code section 815.2(a), provides: "[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. . . 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.) 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 and the public entity is vicariously liable for any injury which its employee causes to the same extent as a private employer (See, Gov. Code §§ 815(b), 815.2(a), 820(a).)

The County, relying on *Doe v. L.A. County Dep't of Children & Family Servs.*, supra, 37 Cal. App. 5th 675, contends the complaint fails to state a viable claim because it fails to allege specific facts showing (1) existence of a special relationship between the parties, (2) County's prior actual knowledge of the offenders' assaultive propensities, (3) how the County breached its alleged duty by implementing insufficient or unreasonable safeguards to prevent sexual abuse, (4) how any conduct by the County would have prevented sexual assault, and (5) how the County's conduct caused Plaintiff's injuries.

In *Doe*, minor plaintiff sued a county department of children and family services and a private foster care agency for negligence and failure to perform mandated duties after becoming pregnant by one adult son of the foster parent she had been placed with and being raped by another adult son. On plaintiff's claim against the private foster care agency for negligently screening the foster parent's home, placing plaintiff there, and monitoring plaintiff's placement, the trial court granted nonsuit finding no evidence that the private foster care agency owed plaintiff a duty to protect against the foster parent's two adult sons because their sexual abuse was not foreseeable or imminent. Affirming the nonsuit, the Court explained:

> "A defendant does not owe a legal duty to protect against third party conduct, unless there exists a special relationship between the defendant and the plaintiff. [Citation.] In that circumstance, "[i]n addition to the special relationship … , there must also be evidence showing facts from which the trier of fact could reasonably infer that the [defendant] had prior actual knowledge, and thus must have known, of the offender's assaultive propensities. [Citation.] In short, the third party's misconduct must be foreseeable to the defendant. [Citation]"

(*Doe, supra,* at pp 682-683; internal citations omitted.)

Doe relied on *Romero v. Superior Court* (2001) 89 Cal. App. 4th 1068, 1084 ("*Romero*") for this proposition. However, *Romero's* holding was narrowly tailored. In *Romero,* a sixteen-year-old boy sexually assaulted a thirteen-year-old gild while they were both visiting the home of another teenager. The girl sued the host parents, contending they failed to protect her from sexual abuse. After concluding the host parents had a special relationship with the girl, the court held "sound public policy requires that where one invitee minor sexually assaults another in the defendant's home, the question of whether the defendant owed a duty of reasonable care to the injured minor depends on whether the assailant minor's conduct will be deemed to have been reasonably foreseeable, but that conduct will be deemed to have been reasonably foreseeable only if the defendant had actual knowledge of the assaultive propensities of the teenage assailant." (*Romero, supra,* at 1081.)

Romero was decided before the Supreme Court's more recent decisions making clear that, when determining whether the defendant has a duty, such case-specific questions are not the right ones to ask. As the Supreme Court explained in *Regents of University of California v. superior Court* (2018) 4 Cal. 5th 607 ("Regents"), "case-specific foreseeability questions are relevant in determining the applicable standard of care or breach in a particular case. They do not, however, inform our threshold determination that a duty exists." (*Regents, supra,* at p. 629 ["the duty analysis [under *Rowland*] is categorical, not case specific"].) The Supreme Court decisions issued since *Romero* are controlling on the issue of foreseeability.

Here, the complaint alleges sufficient facts for the Court to reasonably infer the existence of a special relationship between Plaintiff and the County. Plaintiff not only alleges that the County took custody and care of the Plaintiff in a loco parentis relationship, but also alleges the County exerted control over the Plaintiff's placement in a particular group home. Therefore, the County had a duty to take reasonable measures to protect the Plaintiff from injuries at the hands of others while he was placed in a group home.

Regarding foreseeability, "the court's task … 'is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed.'" (*Regents, supra,* at p. 629;

accord, *Brown v. USA Taekwondo, supra,* at p. 1096.) This is where the Complaint lacks sufficient factual allegations. There are no allegations, for example, that the County had knowledge of the perpetrators' prior sexual misconduct or received complaints about Redwood's and/or Kings View's group homes. Allegations regarding Plaintiff's age and vulnerabilities and/or that the County placed Plaintiff with serious juvenile offenders are insufficient –as are the conclusory allegations that the County knew, had reason to know, was otherwise on notice, or had a duty to discover that Kings View and Redwood were dilatory in their supervision and general safety, which in turn provided a favorable environment for sexual misconduct and predatory behavior. (Complaint ¶ 107.) The County has no general duty to investigate or make forecasts because doing so might have revealed the foreseeable danger. (*Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141, 156.)

The County's demurrer to the first cause of action is therefore SUSTAINED WITH 20 DAYS LEAVE TO AMEND.

B. Second Cause of Action for Negligence Per Se.

The complaint alleges the County violated Government Code section 815.6 by breaching various mandatory duties under (1) California Department of Social Services ("CDSS") Manual of Policies and Procedures Regulations 31-310.12, 31-405.22, 31-320.2, 31-320.4 and (2) California Child Abuse and Neglect Reporting Act ("CANRA"), Penal Code §11166.

Government Code section 815.6 provides that "[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Courts use a three-prong test to determine whether an entity is liable under section 815.6: "(1) an enactment must impose a mandatory, not discretionary duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability; and (3) breach of the mandatory duty must be the proximate cause of the injury suffered." (*State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854.)

1. CDSS Manual of Policies and Procedures

The County contends the purported CDSS regulations do not impose mandatory duties on the County because they (1) only set general policy goals for social workers, (2) do not require any particular acts to implement them, and (3) allow social workers considerable discretion. The County further argues that even assuming the social worker did not make additional visits after placement and/or initial removal of the child, in violation of the CDSS regulation 31-320.2, it would be pure speculation to conclude that the sexual abuse would not have occurred had there been additional visits.

The CDSS regulations establish requirements for the supervision by county social service agencies of children placed in foster care under the agencies' supervision, are promulgated by the CDSS pursuant to section 16501 of the Welfare and Institutions Code, and impose mandatory duties on local agencies. Therefore, public entities are liable under Government Code section 815.6 for injuries to children in foster care that occur as a result of violations of those duties; public entities and their employees are not immune under Government Code sections 815.2 and 820.2 for such violations. (*Scott v. County of Los Angeles*, (1994) 27 Cal. App. 4th 125, 134)

However, the complaint fails to allege specific facts showing how Plaintiff's sexual abuse would not have occurred had the social worker made additional visits. The complaint alleges "[h]ad Defendant County and its agent and employee adequately visited, monitored, and safeguarded Plaintiff, initial and further harm to Plaintiff would have been prevented." (Complaint ¶ 144.) This conclusory, speculative allegation is insufficient.

2. CANRA Violation

The relevant version of Penal Code section 11166(a) requires (with some exceptions) a childcare custodian who "has knowledge of or observes a child, … whom he or she knows or reasonably suspects has been the victim of child abuse" to report such abuse to a child protective agency.

The complaint alleges:

- the County was subject to CANRA's statutory duty to report known or suspected incidents of sexual molestations or abuse of minors to a child protective agency pursuant to California Penal Code § 11166. (Complaint ¶ 145.)

- Plaintiff was a member of the class of persons for whose protection California Penal Code § 11166 was adopted to protect. (Complaint ¶ 146.)
- The County and its agents/employees knew or should have known that Staff Perpetrator committed sexual abuse against Plaintiff at Kings View's group home and Resident Perpetrator committed sexual abuse against Plaintiff at Redwood's group home gave rise to a duty to report such conduct. (Complaint ¶ 147.)
- The County and its agents/employees should have suspected the sexual abuse at Redwood's because Plaintiff became withdrawn, depressed, and anxious during his placement. (Complaint ¶ 148.)
- Plaintiff spoke with his County social worker who noted that one month after Plaintiff's placement with Redwood, he appeared extremely guarded and untrusting. (Complaint ¶ 36.)
- The County's failure to report such suspected emotional damage proximately caused Plaintiff to suffer further mental and emotional injuries arising from the sexual abuse committed by the Resident Perpetrator. Had the County adequately reported the abuse, further harm would have been prevented. (Complaint ¶¶149, 150.)

These allegations are insufficient to show the County knew or reasonably suspected that Plaintiff was the victim of abuse. Anxiety, depression and being guarded do not trigger mandatory reporting. (*Dwight R. v. Christy B.* (2013) 212 Cal. App. 4th 697, 708, fn. 4 [anxiety, depression, and withdrawal permit, but do not require, reporting]; *Storch v. Silverman* (1986) 186 Cal. App. 3d 671, 677, fn. 7 [same, citing Penal Code, § 11166, subd. (b)].) The Complaint also alleges the social worker observed Plaintiff's emotional state before any assault but it fails to allege the County knew Plaintiff's emotional state after any sexual assault.

The County's demurrer to the second cause of action is accordingly SUSTAINED WITH 20 DAYS LEAVE TO AMEND.

C. Fourth Cause of Action for Negligent Supervision of Minor

"To establish negligent supervision, a plaintiff must show that a person in a supervisorial position over the actor had prior knowledge of the actor's propensity to do the bad act." (*Z.V. v. Cnty. of Riverside* (2015) 238 Cal. App. 4th 889, 902.)

The Court agrees with the County's contentions that (1) this claim is duplicative of Plaintiff's negligence and negligence per se claims and (2) Plaintiff does not identify the statutory basis for this claim. Negligent supervision is a claim of direct liability and Plaintiff fails to identify the statutory basis. (*Evan F. v. Hughson United Methodist Church*, (1992) 8 Cal. App. 4th 828, 836.) Basing this claim on the County's vicarious liability under Government Code sections 815.2, 815(a) is insufficient.

The County's demurrer to the fourth cause of action is therefore SUSTAINED WITH 20 DAYS LEAVE TO AMEND.

D. Fifth Cause of Action for Negligent Failure to Warn, Train, and Educate

Plaintiff alleges the County breached its duty by failing to warn, educate, and train Plaintiff and others similarly situated to protect them from the risks of sexual harassment, molestation, and abuse. (Complaint ¶¶ 215-219.)

The duty to warn, educate, and train is indisputably a duty created solely through common law by the ruling in *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App.4th 377. There is no statute imposing a duty on the County to warn, train, or educate its agents and minors under its care and custody regarding recognition, reporting, and investigation of sexual abuse. No court has found that a special relationship imposes such a duty. No court has extended the ruling in *Juarez v. Boy Scouts of America*, beyond the Boy Scouts of America. The California Supreme Court also disapproved of using the Rowland factors as an alternative source of duty where defendant did not create the risk that resulted in plaintiff's injuries. (*Brown v. USA Taekwondo* (2021) 11 Cal. 5th 204, 222 at fn 9.)

Accordingly, the County's demurrer to the fifth cause of action is SUSTAINED WITH 20 DAYS LEAVE TO AMEND.

E. Sixth Cause of Action for Intentional Infliction of Emotional Distress

A cause of action for intentional infliction of emotional distress exists when there is "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard

of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair*, (2009) 46 Cal. 4th 1035, 1050.) The defendant's conduct must be "intended to inflict injury or engaged in with the realization that injury will result." (*Id*.) For the "[c]onduct to be outrageous [it] must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Nally v. Grace Cmty. Church of the Valley*, (1988) 47 Cal. 3d 278, 300.)

The complaint alleges reasonable people neither expect nor tolerate the County's conduct of (1) placing Plaintiff in the same room as the Resident Perpetrator when he showed signs of sexual aggression toward Plaintiff and other residents, (2) forcing Plaintiff into close proximity with Resident Perpetrator after his admission of guilt for sexually assaulting Plaintiff, and (3) failing to prevent Resident Perpetrator's wrongful sexual acts. Plaintiff adds that Defendants intended to cause Plaintiff emotional distress and their extreme conduct was a substantial factor in causing him severe distress. (Complaint ¶¶ 225-233.)

Defendant contends the complaint fails to state a viable claim because,(1) placing Plaintiff in a group home was to provide housing and programming for his benefit and thus does not qualify as extreme and outrageous, (2) the County cannot be held vicariously liable under Government Code section 815.2 for the alleged intentional tort of an employee that falls outside the scope of employment, (3) Plaintiff fails to allege facts showing Redwood and/or Kings View staff acted as the County's employees or agents, and (4) it only contains generic boilerplate allegations.

Whether conduct is outrageous is usually a question of fact. However, "many cases have dismissed intentional infliction of emotional distress cases on demurrer, concluding that the facts alleged do not amount to outrageous conduct as a matter of law." (*Bock v. Hansen* (2014) 225 Cal.App.4th 215, 235.) Here, the Court finds that the alleged conduct does not fall into the category of conduct described as outrageous or that has gone beyond all reasonable bounds of decency.

Accordingly, the County's demurrer to the sixth cause of action is SUSTAINED WITH 20 DAYS LEAVE TO AMEND.