

**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: 07-30-24    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](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](http://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.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	22CV398319 Motion to Strike	PATRICK CHIANG vs ASHLEY RO et al	The parties stipulation for stay, as amended by the court, is granted, rendering moot the motion to strike and demurrer set for today. The motion for stay set for 8/20/24 is also moot and taken off calendar. Status conference set for 1/14/25 at 10 am.
<a href="#">LINE 2</a>	22CV403540 Motion to Strike	Mengxin Wu vs Mykleen Corp et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
<a href="#">LINE 3</a>	22CV409336 Hearing: Demurrer	Joselyn Rodick vs Does 1 to 50 et al	See Tentative Ruling. County shall submit the final order within 10 days.
<a href="#">LINE 4</a>	20CV361307 Motion: Compel	Kristy Bailey et al vs Vintage Towers et al	Cont'd to 8/1/24
<a href="#">LINE 5</a>	20CV361307 Motion: Compel	Kristy Bailey et al vs Vintage Towers et al	Cont'd to 8/1/24

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<a href="#">LINE 6</a>	23CV410594 Motion: Compel	Cahalan Properties LLC et al vs Pacific Construction & Management et al	Plaintiffs moved to compel responses to SROGs set Two on February 8, 2024. The motion was initially set to be heard on June 11, 2024. On May 29, 2024, Defendants filed an opposition claiming that they provided responses on February 8, 2024. However, on June 4, 2024, the parties filed a stipulation wherein Defendants promised to provide responses no later than June 20, 2024, thus conceding that Defendants had not provided complete code-compliant responses. The stipulation was entered and the hearing date was moved to July 30, 2024. On July 24 <sup>th</sup> , Plaintiffs filed a reply indicating that though it received draft amended replies on February 8, it had not received anything since that time and did not receive responses by June 20 <sup>th</sup> . As such, the Motion is GRANTED and Defendants are ordered to provide verified, code-complaint responses without objection within 15 days of receipt of the final order. Defendants Pacific Construction and Management, Barclay, and their counsel are also to pay sanctions to Plaintiffs in the amount of \$2200 within 15 days receipt of the final order. Plaintiffs shall submit the final order.
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**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 7</a>	19CV354144 Motion: Order for Atty Fees	Global Financial & Leasing Services, LLC vs Jose Medina	Plaintiff's unopposed motion for attorney's fees is GRANTED IN PART. Plaintiff is not entitled to any fees or costs prior to June 12, 2023, when Plaintiff first started preparing the OSC, as fees and costs are only allowed "in connection with the contempt proceeding." In addition, the Court finds that the amount billed is excessive and awards total attorney fees of \$15,000, and costs from June 23, 2023, forward only. Plaintiff shall submit the final order.
<a href="#">LINE 8</a>	21CV376558 Motion for Preference	Maria Teresa Arteche De Torres et al vs Alicia Arevalo Marcos	Defendant ask for priority in trial setting pursuant to CCP § 36(a). While Plaintiffs object and dispute that Defendant's health is sufficiently ill to justify trial preference, the Court finds it is not necessary to decide this issue and denies the motion. The trial is currently sent within 120 days from the hearing date. The trial date will remain as set. Parties will receive priority in order to preserve the current court date.
<a href="#">LINE 9</a>	23CV411312 Motion: re plaintiffs objection to appraisal	Daniel Balcazar vs David Balcazar	Notice appearing proper and good cause appearing, Plaintiff's unopposed objections to the valuation are SUSTAINED. The Court adopts the "as is" valuation of \$1,500,000 with a compensatory adjustment to Plaintiff of \$150,000. Accordingly, Defendant must pay \$900,000 to purchase Plaintiff's interest. Plaintiff shall submit the final order.

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<a href="#">LINE 10</a>	24CV429188 Motion: Admissions Deemed Admitted	Jpmorgan Chase Bank N.a. vs Maile Favela	Notice appearing proper and good cause appearing, Plaintiff's unopposed motion to deem admissions admitted is GRANTED, as Defendant failed to respond. Plaintiff shall submit the final order.
<a href="#">LINE 11</a>	24CV429933 Motion: Admissions Deemed Admitted	Capital One N.a. vs Angela Frutos	Notice appearing proper and good cause appearing, Plaintiff's unopposed motion to deem admissions admitted is GRANTED, as Defendant failed to respond. Plaintiff shall submit the final order.
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

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## Calendar Line 2

**Case Name:** *Wu v. Mykleen Corp, et al.*

**Case No.:** 22CV403540

According to the allegations of the complaint, plaintiff Mengxin Wu (“Plaintiff”) began working as a financial application helper for defendant Mykleen Corp. (“Mykleen”) on July 2, 2021. (See complaint, ¶ 6.) Plaintiff was asked to work overtime on Independence Day on July 4, 2021, and defendant Edward Kang (“Kang”) asked her to attend dinner after work, which Plaintiff believed to be a part of her employee benefits for working overtime. (See complaint, ¶¶ 7-8.) When Kang and Plaintiff were waiting for the restaurant, Kang grabbed Plaintiff’s hand, molested her hand, attempted to kiss Plaintiff—which Plaintiff dodged, and then asked Plaintiff to be his girlfriend. (See complaint, ¶¶ 9-11.) When Plaintiff refused to be in a relationship with Kang, Kang then stated that he only wanted to have sex with Plaintiff. (See complaint, ¶ 11.) The following day, Kang requested Plaintiff to move into his apartment, to which Plaintiff declined. (See complaint, ¶ 12.) On July 15, 2021, uncomfortable with Kang’s sexual harassment and assault, Plaintiff demanded an apology from Kang. (See complaint, ¶ 13.) On July 16, 2021, Kang asked Plaintiff to work at a Korean restaurant that he also owned for the next five days; however, Plaintiff refused due to her discomfort around Kang and her lack of feeling safe at work. (See complaint, ¶ 14.) Plaintiff asked Kang to pay her wages; however, Kang did not pay her wages on time and terminated her on July 17, 2021. (See complaint, ¶ 15.) Plaintiff suffered damages to her emotional health, developing high levels of stress, anxiety and depression, ultimately leading to an attempted suicide, and continues to be treated for these damages. (See complaint, ¶ 16.)

On August 3, 2022, Plaintiff filed the complaint against Kang, Mykleen and defendant Woo Ri Dong Hang (“Hang”), asserting causes of action for:

- 1) Sexual harassment in violation of FEHA (against all defendants);
- 2) Retaliation in violation of FEHA (against all defendants);
- 3) Hostile work environment in violation of FEHA (against all defendants);
- 4) Failure to prevent or investigate discrimination (against all defendants);
- 5) Wrongful termination in violation of FEHA (against all defendants);
- 6) Assault (against all defendants);
- 7) Battery (against all defendants); and,
- 8) Intentional infliction of emotional distress (against all defendants).

On April 7, 2023, the Court entered default against Kang. Kang moved to set aside the default against him and, on October 26, 2023, the Court adopted the tentative ruling denying Kang’s motion.<sup>1</sup> On April 11, 2024, the Court entered defaults against Hang and Mykleen, and Plaintiff also filed a request for court judgment against Hang, Mykleen and Kang. As to the request for court judgment, the clerk indicated that there was “no proposed judgment form provided.” On April 15, 2024, Plaintiff filed a proposed default judgment against Hang, Mykleen and Kang.

Kang’s notice of motion indicates that he now moves to strike “the default and entry of default that was filed by Plaintiff, MENGXIN WU, (“WU”), on April 11, 2024, and April 15, 2024, respectfully, against KANG.”

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<sup>1</sup> A final order denying Kang’s motion was filed on January 31, 2024.

**I. DEFENDANT KANG’S MOTION TO STRIKE, OR, IN THE ALTERNATIVE, TO SET ASIDE THE DEFAULT AND ENTRY OF DEFAULT**

As to “the default and entry of default,” default was entered against Kang on April 7, 2023. No default was entered against Kang on either April 11 or 15, 2024. While Kang’s supporting memorandum also begins, stating that he “moves this Court for an order to strike or in the alternative, set aside the default and entry of default that was filed by Plaintiff,” the remainder of the memorandum discusses “WU’s default judgment papers.” As such, Kang fails to proffer any reason or analysis to strike or set aside the default or entry of default.

Additionally, Kang has already once attempted to set aside the default and entry of default; his motion was denied. This motion is well beyond the 10 days required for a motion for reconsideration pursuant to Code of Civil Procedure section 1008, subdivision (a). (See Code Civ. Proc. § 1008, subd. (a) (stating that “[w]hen an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend or revoke the prior order”).) Thus, to the extent that the motion is to either strike or set aside “the default and entry of default”—as stated in the notice at the beginning of the memorandum—the motion to strike and alternative motion to set aside is DENIED.

To the extent that Kang’s motion can be interpreted as a motion to strike or set aside the default judgment, no judgment has yet been signed. Plaintiff has filed a *proposed* judgment; however, that document is merely that—a proposed judgment. Kang states that “[t]he grounds for this motion are made pursuant to C.C.P. § 436,” however, section 436 states that “[t]he court may, upon a motion made pursuant to Section 435... [s]trike out any irrelevant, false, or improper matter inserted in any pleading... [or s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc. § 436.) Section 435 defines “pleading” as “a demurrer, answer, complaint, or cross-complaint.” (Code Civ. Proc. § 435, subd. (a)(2) (stating that “[t]he term ‘pleading’ means a demurrer, answer, complaint, or cross-complaint”).) Neither section 435, section 436, section 580 nor section 425.11, subdivision (c) provides for the striking of a proposed judgment. Therefore, to the extent that Kang’s motion is a motion to strike the proposed judgment filed by Plaintiff on April 15, 2024, it is also DENIED.

The Court will prepare the Order.

### **Calendar Line 3**

**Case Name:** *Joselyn Rodick v. County of Santa Clara*

**Case No:** 22CV409336

Plaintiff Joselyn Rodick initiated this action against defendant County of Santa Clara (“County”) based on the alleged conduct of the County regarding the placing of Rodick in foster care as a minor. The County brings the present demurrer as to all five causes of action in Rodick’s Second Amended Complaint (“SAC”).

## **I. BACKGROUND**

### **A. Factual**

According to the SAC, Rodick was born on August 2, 1976. (SAC, ¶ 2.) The complaint alleges the County removed Rodick from her birth parents and placed Rodick in the foster care system in the care of Robert Rodriguez (“Rodriguez”) and his wife Maria Rodriguez. (*Id.*, ¶ 3.) Rodriguez sexually harassed, molested, and abused Rodick, a minor at the time, and other children. (*Id.*, ¶ 19.) On January 20, 1987, Rodriguez was convicted of 26 counts of lewd acts on a minor, in violation of Penal Code section 288, subdivision (a), between August 2, 1983 and June 1, 1984. (*Id.*, ¶ 21.)

### **B. Procedural**

On December 29, 2022, Rodick filed a complaint. On June 2, 2023, Rodick filed a first amended complaint. Rodick filed the SAC on March 18, 2024 alleging causes of action against the County for: (1) negligence; (2) negligent supervision; (3) negligent hiring and/or retention; (4) intentional infliction of emotional distress; and (5) sexual battery. On June 14, 2024, the County filed the instant demurrer. On July 17, 2024, Rodick filed an opposition. The County filed its reply on July 23, 2024.

## **II. REQUEST FOR JUDICIAL NOTICE**

The County has submitted a request for judicial notice with their demurrer. “Judicial notice may not be taken of any matter unless authorized or required by law.” (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 fn. 18, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to “[furnish] the court with sufficient information to enable it to take judicial notice of the matter.”

The County requests the court take judicial notice of Exhibits A to T in support of the County’s demurrer. (Request for Judicial Notice (RJN), pp. 1-4.) Exhibits A through S consist of prior versions of the following California statutes: Welfare and Institutions Code sections 328, 300, 16501, subdivision (f), and 16504; Health and Safety Code section 1522; and Penal Code sections 11165.7, 11165.9, and 11166. Exhibit T consists of the Department of Social Services Child Welfare Manual. In support of its request for judicial notice, the County cites



Evidence Code sections 451, subdivision (a), 452, subdivisions (a) through (h), and 453, subdivisions (a) and (b). Rodick does not oppose the County’s requests.

The court GRANTS judicial notice of Exhibits A through T pursuant to Evidence Code sections 451, subdivision (a) and 452, subdivisions (a)-(c) and (g)-(h). (See *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 176, fn. 12 [taking “judicial notice of prior versions of the applicable statutes”]; *Becerra v. McClatchy Co.* (2021) 69 Cal.App.5th 913, 927-928 [taking judicial notice of a Division of Labor Standards Enforcement manual].)

### **III. DEMURRER**

#### **A. General Legal Standard**

As relevant to the instant case, “[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . [t]he pleading does not state facts sufficient to constitute a cause of action[;] . . . [t]he 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 in ruling on a demurrer treats it “as admitting all properly pleaded material facts, 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. [Citation.] 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.’ [Citation.]” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 227.) Evidentiary facts found in exhibits attached to a complaint may be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) In ruling on a demurrer, courts may also consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.)

#### **B. Analysis**

##### **i. First Cause of Action: Negligence**

Rodick alleges negligence under two theories of liability: breach of mandatory duties under Government Code section 815.6 and vicarious liability. (See SAC, ¶¶ 32, 33.) The County argues Rodick’s first cause of action fails because Rodick does not plead the duty, breach, or causation elements of a negligence cause of action. (Memorandum of Points and Authorities, at pp. 9:25-13:3 (“MPA”).)

The County cites a number of cases in support of its argument that Rodick has failed to sufficiently plead duty. (See, e.g., MPA, *supra*, at pp. 10:2-11:22.) “To prevail in a negligence

action, a plaintiff must show the defendant owed a legal duty to her, the defendant breached that duty, and the breach proximately caused injury to the plaintiff. [Citation.] 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.’” (*Doe, supra*, 37 Cal. App. 5th at p. 682.) In *Doe*, the court explained, “Here, there is no real dispute that Children’s Institute had a special relationship with Doe. However, nonsuit was properly granted as there was no evidence from which the jury could reasonably infer Children’s Institute knew Doe had contact with Clifford or Dwayne, much less that the brothers possessed criminal propensities that posed a risk to Doe.” (*Doe, supra*, 37 Cal. App. 5th at p. 683; see also *J.L. v. Children’s Institute, Inc.* (2009) 177 Cal.App.4th 388, 396-398 [affirming summary judgment where a minor sued a home daycare after the home daycare owner’s grandson assaulted the minor because there was no evidence the daycare knew of the grandson’s assaultive tendencies].)

The court finds this case law persuasive, and Rodick’s opposition does not address it. Instead, Rodick reiterates allegations in the SAC. (Memorandum of Points and Authorities in Opposition to the County of Santa Clara’s Demurrer, at pp. 5:15-17:9 (“Opposition”).) The SAC includes only one factual allegation that the County knew of Rodriguez’s propensities for abuse. The SAC alleges the County “had notice through an unnamed employee of the County, who had specific mandatory reporting duties, that Rodriguez had or was capable of sexually and/or sexually abusing [Rodick] and other victims.” (SAC, ¶ 27.) Yet “all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, ‘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.’ [Citation.]” (*City of Los Angeles v. Super. Ct.* (2021) 62 Cal.App.5th 129, 138.)

Rodick’s allegation on information and belief regarding an unnamed county employee fails to meet this standard. (SAC, ¶ 27.) The SAC does not address when Rodriguez’s prior abuse occurred or when the County had notice of Rodriguez’s prior abuse. “A pleading must conform to ‘the general rule that a complaint must contain only allegations of ultimate facts as opposed to allegations of . . . legal conclusions . . . .’ [Citation.] Thus a pleading that did no more than assert boilerplate allegations that defendants knew or were on notice of the perpetrator’s past unlawful sexual conduct would not be sufficient nor would allegations of information and belief that merely asserted the facts so alleged without alleging such information that “lead[s] [the plaintiff] to believe that the allegations are true. [Citation.]” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551 n.5.)

Rodick also alleges liability for negligence against the County pursuant to California Government Code section 815.6. (SAC, ¶ 32.) Government Code section 815.6 provides that “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.” (See also *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854 (*Perry*).) “Government Code section 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (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 a proximate cause of the injury suffered.” (*Perry, supra*, 150 Cal.App.3d at p. 854, citations omitted.)

Rodick alleges the County is directly liable for negligence pursuant to California Government Code section 815.6 because the County failed to discharge mandatory duties under the Department of Social Services Child Welfare Services Manual and a series of California statutes – Welfare and Institutions Code sections 328, 16501, subdivision (i), and 16504; Health and Safety Code section 1522, et seq.; and Penal Code sections 11165.7, 11165.9 and 11166. (SAC, ¶ 12.) The court finds persuasive the County’s various arguments as to the applicability of each of these statutes and the Department of Social Services Child Welfare Services Manual, and, regardless, Rodick’s opposition does not address any of the County’s arguments as to California Government Code section 815.6. Therefore, Rodick impliedly concedes these points. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566 [“By failing to argue the contrary, plaintiffs concede this issue.”].)

The court finds this implied concession well taken. The County correctly notes that Rodick does not explain what mandatory duty Welfare and Institutions Code section 328 imposed upon the County, as the code section governs a social worker’s responsibilities in offering social services to a family, conducting child welfare agency investigations, and determining whether proceedings in juvenile court should be commenced – the SAC makes no mention of a social worker and the County correctly points out that Welfare and Institutions Code section 328 discusses children four years of age or older and Rodick alleges the County commenced juvenile dependency proceedings for her upon birth. (See SAC ¶ 3; MPA, *supra*, at p. 14:4-13.) Welfare and Institutions Code section 16501, subdivision (f), defines emergency response services and the County correctly notes that the SAC does not discuss how this authority relates to the allegations contained therein. (See MPA, *supra*, at pp. 14:23-15:7.) Welfare and Institutions Code Section 16504 concerns instances where a party reports child abuse to the county welfare department, and the County correctly notes the SAC includes no mention of any reports made to the County.<sup>2</sup> (*Id.* at p. 15:8-20.)

The County also correctly contends the legislature enacted Penal Code sections 11165.7 and 11165.9 in 1987, and thus these statutes cannot provide a basis for Rodick’s mandatory duty cause of action. (See RJN, Ex. R; *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 501 n. 3 [noting the need “to ensure the provisions upon which plaintiff relies to establish mandatory duties were in force at the times such duties were allegedly violated”].) Penal Code section 11166 concerns duties to report child abuse or neglect, and the County correctly notes the SAC does not allege a county employee or mandated reporter observed or knew of Rodriguez’s abuse against Rodick, specifically. (MPA, *supra*, at p. 16:11-17.) Finally, the sections of the Department of Social Services Child Welfare Services Manual cited in the SAC

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<sup>2</sup> The County also correctly notes that courts have held county officials exercise discretion in performing duties under Welfare and Institutions Code section 16504. (*Newton v. Cnty. of Napa* (1990) 217 Cal.App.3d 1551, 1560 [“County welfare department officials thus are immune from liability for the decision to conduct an in-person response to an emergency situation” under Welf. & Inst. Code, § 16504].)

were first published in 1993, and therefore cannot support Rodick's cause of action. (See RJN, Ex. T.)<sup>3</sup>

Contrary to the County's argument, Rodick does identify a statute in support of its claim the County is vicariously liable for the acts or omissions of its employees, agents, and/or independent contractors. (MPA, *supra*, at p. 17:9-21.) Rodick cites California Government Code sections 815.2, subdivision (a), and 820. (Complaint, ¶¶ 13-14.) For reasons already discussed, however, Rodick fails to state a cause of action for negligence, rendering Rodick's vicarious liability theory as to the County moot.

The court SUSTAINS the County's demurrer as to the first cause of action with 20 days' leave to amend. " 'Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment. [Citation.] . . . ' " (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Here, the court does not find that there is no reasonable possibility the defect can be cured.

**ii. Second and Third Causes of Action: Negligent Supervision and Negligent Hiring and/or Retention**

The County argues that Rodick's second and third causes of action fail because Rodick has not alleged the elements required for negligence, Rodick has not provided a statutory basis for negligent supervision or negligent hiring/retention, and these causes of action are premised on the existence of an employment relationship between the County and Rodriguez, the foster parent. (MPA, *supra*, at pp. 17:22-18:6.) In opposition, Rodick repeats allegations in the SAC and states, without any legal support, that the "placement of Plaintiff within the care of Rodriguez created a special relationship and duty to protect her from Rodriguez which the County failed to do" and the SAC alleged "facts [that] show complete neglect by the County to adequately supervise a dependent child of the county who had no means to defend herself in the situation that she was placed in by the county." (Opposition, *supra*, at pp. 7:10-9:12.)

The court agrees with the County that Rodick fails to provide the required statutory basis for either the second or the third causes of action. (*Landeros v. Dep't of Corrections* (2002) 99 Cal. App. 4th 271, 274 ["Government Code section 815, subdivision (a) states that, unless otherwise provided by statute, a public entity is not liable for any injury caused by its acts or omissions. A public entity's tort liability, therefore, must be based on statute."].) Nowhere in the SAC does Rodick identify a statute supporting a cause of action for negligent supervision or hiring/retention against the County. Nor does Rodick address this argument in opposition.

The County also cites a series of cases Rodick again does not address in opposition. The court finds this case law persuasive. Negligent supervision and hiring/retention cases require the existence of an employment relationship. (See *Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1188 ["[T]he jury needed to answer the question of whether [defendant]

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<sup>3</sup> The County argues Rodick cannot allege duties "inter alia." (See SAC, ¶¶ 12, 32 [providing a nonexhaustive list of statutes alleged to impose duties on the County].) The Court agrees. "One of the essential elements [under Government Code section 815.6] that must be pled is the existence of a specific statutory duty. [Citation.]" (*County of Los Angeles v. Super. Ct.* (2002) 102 Cal.App.4th 627, 638.)

hired Dr. Murray before it could determine if [defendant] negligently hired, retained, or supervised him.”]; *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054 [“California case law recognizes the theory that an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee. [Citation.] Liability is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.”].)

California courts have found that a foster parent is not an employee of the government. (*J.J. v. Cnty. of San Diego* (2014) 223 Cal.App.4th 1214, 1228 [finding that a foster father “is not an employee or agent of the County and, thus, his alleged threats of intimidation against [the minor plaintiff] cannot be attributed to the County.”]; *Becerra v. Gonzales* (1995) 32 Cal.App.4th 584, 591 [affirming sustained demurrer, explaining that “[t]here is no evidence that by becoming a foster parent, a private person somehow becomes an ‘employee’ of the state or of any other public entity.”].)

The court SUSTAINS the County’s demurrer as to the second and third causes of action with 20 days’ leave to amend.

### **iii. Fourth Cause of Action: Intentional Infliction of Emotional Distress**

Similar to the second and third causes of action, the County argues Rodick fails to state a cause of action for intentional infliction of emotional distress against the County because Rodick has failed to provide a statutory basis for the cause of action. (MPA, *supra*, at pp. 19:8-20:8.) The court agrees. (*Landeros v. Dep’t of Corrections* (2002) 99 Cal. App. 4th 271, 274 [“Government Code section 815, subdivision (a) states that, unless otherwise provided by statute, a public entity is not liable for any injury caused by its acts or omissions. A public entity’s tort liability, therefore, must be based on statute.”].) Nowhere in the SAC does Rodick identify a statute supporting a cause of action for intentional infliction of emotional distress against the County. Nor does Rodick address this point in opposition.

The court also agrees with the County that SAC has failed to “identify any affirmative conduct directed at Plaintiff.” (MPA, *supra*, at p. 19:20-21.) “The tort of intentional infliction of emotional distress is comprised of three elements: (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 suffered severe or extreme emotional distress; and (3) the plaintiff’s injuries were actually and proximately caused by the defendant’s outrageous conduct. [Citation.]” (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.) The SAC pleads that the outrageous conduct by the County is its failure to protect Rodick and other minors from the risk for sexual abuse by Rodriguez. (SAC, ¶ 48.) While the SAC alleges an unnamed employee informed the County of Rodriguez’s sexual abuse, the court has already concluded that these allegations of notice were insufficient to create a duty on the part of the County. Without notice, according to the County, the County could not have intentionally attempted to harm Rodick, and, as the County points out, “[a]bsent an intent to injure, such inaction is not the kind of ‘extreme and outrageous conduct’ that gives rise to liability under the ‘intentional infliction of emotional distress’ tort.” (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 210.) Rodick does not respond to these points in opposition, impliedly conceding them. (See Opposition, *supra*, at p. 9:13-25.)

The court SUSTAINS the County's demurrer as to the fourth cause of action with 20 days' leave to amend.

**iv. Fifth Cause of Action: Sexual Battery**

Rodick concedes in opposition that the County's demurrer to the fifth cause of action, sexual battery, is well taken. (Opposition, at p. 10:1-6.)

Accordingly, the court SUSTAINS the County's demurrer as to the fifth cause of action without leave to amend.

**v. Punitive Damages**

Rodick concedes in opposition that it cannot seek punitive damages against the County. (Opposition, at p. 10:1-6.) Courts are specifically authorized to strike a pleading upon a motion or at any time in the court's discretion. (Code Civ. § 436.)

The court STRIKES punitive damages from the SAC on its own motion.

**C. Conclusion**

The court SUSTAINS the County's demurrer as to the first through fourth causes of action in the SAC on the ground of failure to state a claim with 20 days' leave to amend. The fifth cause of action is SUSTAINED without leave to amend.

The court STRIKES punitive damages from the SAC on its own motion.

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