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: 05-30-24 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. 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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV398130 Motion: Stay	Jane Doe vs FRANKLIN-MCKINLEY SCHOOL DISTRICT et al	See Tentative Ruling. The Court will issue the final order.
LINE 2	22CV398130 Motion: Judgment on Pleadings	Jane Doe vs FRANKLIN-MCKINLEY SCHOOL DISTRICT et al	See Tentative Ruling. The Court will issue the final order.
LINE 3	23CV425776 Hearing: Demurrer	Trung Tran vs Linh Tran	See Tentative Ruling. The Court will issue the final order.
LINE 4	22CV398156 Motion: Compel	Central Coast Community Energy et al vs BigBeau Solar, LLC	Matter off calendar in light of ruling on Line 5.
LINE 5	22CV398156 Hearing: Motion Summary Judgment	Central Coast Community Energy et al vs BigBeau Solar, LLC	See Tentative Ruling. The Court will issue the final order.
LINE 6	20CV374118 Motion: Compel	Rita Zambrano vs Build Group, Inc. et al	Notice appearing proper and good cause appearing, Defendant's unopposed Motion for Order Compelling Plaintiff's Responses to Special Interrogatories, Set One, is GRANTED. Plaintiff shall pay sanctions of $310 to Defendant's counsel. No anticipatory time is granted on the sanctions. Verified, code-compliant responses and sanctions are due within 20 days of the final order. Defendant 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.)

LINE 7	20CV374118 Motion: Compel	Rita Zambrano vs Build Group, Inc. et al	Notice appearing proper and good cause appearing, Defendant's unopposed Motion for Order Compelling Plaintiff's Responses to Requests for Production of Documents, Set One, is GRANTED. Plaintiff shall pay sanctions of $310 (1 hour plus filing fee) to Defendant's counsel. No anticipatory time is granted on the sanctions. Verified, code-compliant responses and sanctions are due within 20 days of the final order. Defendant shall submit the final order.
LINE 8	21CV385612 Motion: Compel	Indradevi Joseph vs Xilinx, Inc. et al.	See Tentative Ruling. Plaintiff shall submit the final order.
LINE 9	23CV418793 Motion: Compel	William Gay et al vs Christian Rocha-Ponce et al	Notice appearing proper and good cause appearing, Defendants' unopposed Motion to Compel Plaintiffs William and Janace Gay's Responses to Defendants' Discovery Requests (FIs Set One, SIs Set One, and RFP Set One) is GRANTED. Plaintiffs shall pay sanctions of $480 (2 hours plus filing fee) to Defendants' counsel. No anticipatory time is granted on the sanctions. Verified, code-compliant responses without objections and sanctions are due within 20 days of the final order. Defendants 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.)

LINE 10	21CV383378 Hearing: Compromise of Minor's Claim	Miguel Ortiz vs Lucile Packard Children's Hospital et al	The GAL and counsel for GAL shall appear at the hearing so that the court can conduct voir dire and determine that the settlement is reasonable and knowing.
LINE 11	21CV384858 Hearing: Compromise of Minor's Claim	Diane Freitas et al vs Kimberly James et al	The GAL and counsel for GAL shall appear at the hearing so that the court can conduct voir dire and determine that the settlement is reasonable and knowing.
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

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Calendar Lines 1 and 2
Case Name: *Doe v. Franklin-McKinley School Dist*., *et al.*
Case No.: 22CV398130

This action for damages arises out of a sexual assault purportedly suffered by Jane FSC Doe ("Plaintiff") when she was approximately ten years old. (Complaint, ¶¶ 4-5, 15.)

Now before the Court is Defendant Franklin-McKinley Unified School District's ("District" or "Defendant") motion to stay proceedings ("motion to stay") and motion for judgment on the pleadings to the first amended complaint ("FAC") filed by Plaintiff.

I. Background

A. Factual

According to allegations in the FAC, Plaintiff, who is currently 34 years old, was a student at Jeanne Meadows Elementary School ("Jeanne Meadows") located in Santa Clara County. (FAC, ¶¶ 4, 11.) Jeanne Meadows was an agent of Defendant, a public entity and school district. (FAC, ¶¶ 17-18.) Defendant employed Dikran Missak Daderian ("Daderian,") a then Jeanne Meadows substitute teacher, mentor, and advisor to elementary students. (FAC, ¶¶ 1-2, 4, 13, 17, 22, 23.) In approximately 2000, Daderian sexually harassed, assaulted, and abused Plaintiff, while a minor. (FAC, ¶¶ 4-5.) Plaintiff alleges she was under the custody, care, and control of Defendant, and Defendant stood *in loco parentis* with Plaintiff while she attended Jeanne Meadows. (FAC, ¶ 24.)

At the time of Plaintiff's attendance at Jeanne Meadows, Defendant held Daderian out to the public, Plaintiff, and Plaintiff's parents, as "highly-qualified" in navigating students', including Plaintiff's, personal and academic challenges. (FAC, ¶¶ 17, 21) Defendant further represented that Daderian was a person of "high ethical and moral standing." (*Ibid.*) Consequently, Plaintiff and her parents reasonably assumed Daderian was an individual "worthy of their trust." (*Ibid*.)

As Plaintiff's teacher and mentor, Daderian had direct contact with Plaintiff, and he used his "position of authority and trust" to sexually abuse and harass her. (FAC, ¶ 23.) Specifically, Daderian isolated Plaintiff, asked Plaintiff whether she "liked hugs," "pull[ed] her to his chest," and rubbed his body against Plaintiff's in an attempt "to grope her body, including her breasts." (FAC, ¶ 47.) Daderian's misconduct resulted in Plaintiff's emotional and psychological trauma. (FAC, ¶¶ 47, 52.)

Plaintiff alleges Defendant "knew or should have known" Daderian had engaged in sexual misconduct with minor students in the past, and was engaging in such conduct with Plaintiff. (FAC, ¶ 25.) Defendant had a duty to disclose these facts to Plaintiff, her parents, and others, but it breached that duty by failing to take reasonable steps to implement safeguards against Daderian's unlawful conduct. (*Ibid*.) Specifically, Plaintiff alleges, Defendant failed to adequately supervise, monitor, investigate, report, and ultimately stop Daderian from committing sexual misconduct against minor children, including Plaintiff. (FAC, ¶¶ 67-70.)

B. Procedural

Based on the foregoing allegations, Plaintiff filed her initial complaint on May 3, 2022, asserting 13 causes of action. On July 18, 2022, the District filed both a demurrer and motion to strike to the original complaint. Defendant demurred to the fourth through ninth causes of action. After the hearing on Defendant's demurrer and motion to strike on October 20, 2022, this Court issued its order sustaining the demurrer (on failure to state sufficient facts) to the fourth through seventh causes of action with ten days leave to amend, and deeming the motion to strike moot, as a result. The Court sustained Defendant's demurrer to the eighth and ninth causes of action, without leave to amend. (See Court Order Case No. 22CV398130 entitled *Jane FSC Doe vs. Franklin-Mckinley School District, et al*. filed on October 26, 2022.) On November 4, 2022, Plaintiff filed her operative pleading, the FAC, alleging nine causes of action against Defendant, Daderian, and Does 1 through 100, inclusive (collectively "Defendants.") Plaintiff asserts the following causes of action:

(1) negligence (Gov. Code §§ 815.2 and 820) **(against ALL Defendants);**

(2) negligent supervision **(against District and Does 1 through 100);**

(3) negligent hiring/retention **(against District and Does 1 through 100);**

(4) intentional infliction of emotional distress **(against ALL Defendants);**

(5) sexual harassment (Civ. Code § 51.9) **(against ALL Defendants);**

(6) assault (against Daderian and Does 1 through 100);

(7) sexual battery (Civ. Code § 1708.5) (against Daderian and Does 1 through 100);

(8) gender violence (Civ. Code § 52.4) (against Daderian and Does 1 through 100); and

(9) false imprisonment (against Daderian only)

On February 17, 2023, District filed a joint stipulation agreement with Plaintiff to dismiss the fourth and fifth causes of action against it. Additionally, per the stipulation agreement, Plaintiff agreed to withdraw, without prejudice, from the FAC, her prayer for treble damages, and to strike, without prejudice, the term "fiduciary" from paragraphs 24 through 25, and 65, of the FAC. (See Joint Stipulation to Dismiss Causes of Action, to Strike Language from FAC; and Order Thereon, p. 2:11-28.) A year later, on February 16, 2024, Defendant District filed a motion to stay based on an appeal of another trial court's decision in another appellate district.[1] (Memorandum of Points and Authorities in Support of Defendant's Motion to Stay Proceedings ("Stay MPA,") pp. 2:14-25-3:20-26.) On May 17, 2024, Defendant filed a motion for judgment on the pleadings for the remaining causes of action: 1) negligence, 2) negligent supervision, and 3) negligent hiring/retention. The primary basis for the District's motion is that Assembly Bill 218 ("AB 218,") which amended the limitations period for bringing a childhood sexual assault claim under Code of Civil Procedure section 340.1

[1] See Contra Costa County Superior Court Case No. C22-02613 entitled *Jane Doe v. Acalanes Union High School District*; First District Court of Appeal Case No. A169013, initiated November 8, 2023.)

("section 340.1,") is unconstitutional under Article XVI, section 6 of the California Constitution, also known as the "Gift Clause."

Both motions are opposed[2], and currently before this Court.

II. Motion to Stay

As noted above, Defendant District filed a motion to stay this case on grounds that a pending appeal of another trial court's decision in another appellate district presents the same issues currently before this Court. (See MPA Stay, pp. 2-3.)

A. Defendant's Requests for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117, citations and quotation mark omitted.)

Defendant asks this Court to take judicial notice of Superior Court Judge Danielle Douglas's June 13, 2023, Order in Contra Costa County Case No. C22-02613 as well as a second trial court decision.[3] The requests are procedurally improper because they are made in a footnote within the Stay MPA. Requests for judicial notice must be made in a separate document. (Cal. Rules of Ct., rule 3.1113(l) [a request for judicial notice must be made in a separate document listing the specific items for which notice is requested].) In any event, Defendant's request for judicial notice of Judge Douglas' Order is GRANTED. (Evid. Code, § 452, subd. (d) [court documents]; *Becerra v. McClatchy Co.* (2021) 69 Cal.App.5th 913, 929 [taking judicial notice of trial court order under parallel circumstances].) But, Defendant is admonished to provide code-compliant requests in the future.

In support of its reply brief, Defendant filed a supplemental request for judicial notice of the following court orders:

1) California Court of Appeal, First Appellate District, Division Five, entitled, *West Contra Costa Unified School District v. The Superior Court of Contra Costa County*, No. A169314, filed on February 27, 2024, Order to Show Cause – Exhibit A
2) Los Angeles Superior Court Judge John Kralik's Order on demurrer in the matter of *E.L. v. Pasadena Unified School District* (Case No. 22STCV23228) – Exhibit C

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[2] On May 16, 2024, Plaintiff filed her opposition a day before Defendant's motion for judgment on the pleadings was filed. The Court notes Plaintiff was timely served with the moving papers prior to filing her opposition.

[3] Although the District requests judicial notice of a second trial court order, presumably in a different county, it provides a duplicate case number corresponding to Judge Douglas's Order in Contra Costa County. This appears to be a typo or mistake. Consequently, this request is DENIED because the case number for the trial court order has not been provided.

(See Defendant's RJN in Support of Reply, Exhs. A, C).

Requests for items one and two are GRANTED.[4] (Evid. Code, § 452, subd. (d) [court documents].)

The court takes judicial notice of the fact that the court orders were entered by the court and for the date on which they were entered. The court cannot take judicial notice of the correctness of another trial court's interpretation of the law or its findings of fact. (See *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761 (*Bolanos*) [a written trial court ruling has no precedential value]; *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409 [no "horizontal stare decisis"]; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749; *Kilroy v. State of Calif.* (2004) 119 Cal.App.4th 140, 145-148; *Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 437-438.) Additionally, the Court notes that it may not take judicial notice of the truth of hearsay statements contained in a trial court order. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.)

Defendant's request for judicial notice of "California Court of Appeal, Second Appellate District, entitled *Roe #2 v. Superior Court*, No. B334707, letter from Court responding to petition for a writ of mandate filed by Roe #2, attached hereto as Exhibit A" is DENIED. Judicial notice may be taken of *records* of any court of this state. A letter from court responding to a petition for writ of mandate is not a court record, and lacks relevance to the issues presented here. (See Evid. Code § 452, subd. (d) [court documents].) Although a court may individually notice a variety of matters, only relevant material may be noticed. (*Mangini v. R. J. Reynolds Tobacco* (1994) 7 Cal.4th 1057, 1063; overruled on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1258; see also *Gbur v. Cohen,* (1979) 93 Cal.App.3d 296, 301 [information subject to judicial notice must be relevant to the issue at hand].)

B. Legal Standard

A court ordinarily has the inherent power and discretion "'to stay proceedings when such a stay will accommodate the ends of justice.'" (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141 (*OTO*), quoting *People v. Bell* (1984) 159 Cal.App.3d 323, 329.) The "'power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants.'" (*OTO*, *supra*, 8 Cal.5th at p. 141, quoting *Landis v. North American Co.* (1936) 299 U.S. 248, 254; see also *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 [trial courts generally have the inherent power to stay proceedings in the interest of justice and to promote judicial efficiency]; *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1376-1379; Code Civ. Proc., § 128, subds. (a)(3) ["Every court shall have the power to do all of the following: To provide for the orderly conduct of proceedings before it, or its officers."] and (a)(5) ["Every

[4] Although new evidence generally may not be provided in connection with a reply brief, (see *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers."], the Court will grant the supplemental requests for judicial notice made with the reply because the orders for which Defendant seeks judicial notice were issued after Defendant's motion to stay was filed on February 16, 2024.

court shall have the power to do all of the following: To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto."]. The trial court's inherent power to exercise reasonable control over all proceedings connected with the litigation before it "rests upon and is limited by the exercise of sound judicial discretion." (*Bailey v. Fosca Oil Co*. (1963) 216 Cal.App.2d 813, 818.)

C. Merits of the Motion

The stay motion is based on an appeal of another trial court's decision in another appellate district: a ruling from the Contra Costa County Superior Court that is now before the First District Court of Appeal. Because that appeal presents the same issue that is presented here—the purported unconstitutionality of AB 218 under the Gift Clause—the District argues that resolution of this question "may make further proceedings in this and hundreds of other AB 218 cases unnecessary." (MPA Stay, p. 3:21-22.) The District concludes a stay will promote judicial economy by obviating "a needless expenditure of substantial funds by all involved and a waste of judicial resources." (MPA Stay, p. 3:3-6.)

Plaintiff, in opposition, contends that Defendant cannot show the likelihood of success on the pending appeal, it would not be prejudiced if this case were allowed to proceed, and, instead, Plaintiff herself will be prejudiced by an indefinite stay of this case. Finally, Plaintiff argues, Defendant attempts to mislead this Court by citing *only* two trial court decisions to bolster their position when there are 54 other trial court orders across California holding AB 218 is constitutional. (See Plaintiff's Opposition to MPA Stay ("Opp. to Stay,") pp. 3-5.). This Court agrees, and it finds that a stay is not warranted.

In its reply, the District discusses the factors set forth in the U.S. Supreme Court's decision in *Nken v. Holder* (2009) 556 U.S. 418, 434 (*Nken*) to guide the Court's decision, and the Court agrees that this decision provides a useful framework for evaluating the stay request. (Defendant's Reply Brief ("Stay Reply,") pp. 2:22-28-3:1-10.) As that case points out, "[t]he fact that the issuance of a stay is left to the court's discretion 'does not mean that no legal standard governs that discretion . . . . "[A] motion to [a court's discretion is a motion, not to its inclination, but to its judgment; and its judgment is guided by sound legal principles"'" (*Ibid.*, quoting *Martin v. Franklin Capital Corp.* (2005) 546 U.S. 132, 139 and *United States v. Burr* (CC Va. 1807) 25 F. Cas. 30, 35 (Marshall, C. J.), brackets in original.) "[T]hose legal principles have been distilled into consideration of four factors: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" (*Nken*, 556 U.S. at p. 434, quoting *Hilton v. Braunskill* (1987) 481 U.S. 770, 776.)

Applying the foregoing four factors, the Court finds that a stay is not warranted.

First, the Court agrees with Plaintiff that the District has not made a strong showing that any decision in the pending appeal "would be dispositive of this action." (Opp. to Stay, p. 3: 25-28.) The constitutionality of AB 218 is not a close question - AB 218 is not an appropriation of money, it plainly did not create a new tort liability that never existed before, and it clearly serves a public purpose. Additionally, as noted by Plaintiff, there are *numerous*

other trial court decisions that have addressed this issue, and have denied arguments by school districts on the constitutionality of AB 218. The District emphasizes that two judges (one in Contra Costa County and one in Los Angeles County) have found that AB 218 is unconstitutional, while Plaintiff maintains that 54 decisions from courts around the state have gone the opposite way. (See Opp. to Stay, p. 5:3-9; MPA Stay, p. 2:18-25; Stay Reply, p. 4:3-16.)

Next, the District has not shown that it would be irreparably injured without a stay. The District argues that the expense of litigating this case may ultimately be "needless" if the Court of Appeal agrees with the District's interpretation of the Gift Clause. While this may well be true in the unlikely event that AB 218 is found to be unconstitutional, this Court finds that incurring litigation costs is not an irreparable injury, as these are expenses that are incurred in every case. To find that these customary and expected costs of litigation are the basis for finding irreparable harm would mean that there is *always* irreparable harm and this second factor is *always* met in every case where a stay is requested. That is not a reasonable application of *Nken*, and the Court finds that the District has failed to satisfy its burden of showing this second factor.

In opposition, Plaintiff argues that delaying proceedings "will unequivocally prejudice Plaintiff…[w]itnesses will disappear, records will be lost, witness memories will diminish, and Defendants will be permitted time to clean up their malfeasance." (Opp. to Stay, p. 3:17-19.) In reply, the District claims that the appellate proceedings in the First and Second Districts should "have a resolution on this issue within the next six months." (Stay Reply, p. 2:5-6.) The Court notes that this latter fact cuts both ways on the stay analysis: on the one hand, a speedy resolution and shorter stay would diminish the prejudice to Plaintiffs under this factor, but on the other hand, a shorter stay would also diminish any alleged harm to the District from allowing the case to proceed under the second factor above. In the end, the Court generally agrees that a stay would be detrimental to the Plaintiff's interests here, given the age of her allegations.

Finally, the Court finds that public interest considerations support both sides, but that they weigh more heavily for the Plaintiff. Plaintiff argues that a stay would contravene the public purpose served by AB 218 which is to "further the explicit legislative intent of protecting child victims of sexual abuse and ensuring that they have the mere opportunity to seek justice for the harm suffered." (Opp. to Stay, p. 4:23-28.) In addition, a stay would be contrary to the more general, fundamental policy of the courts of providing prompt justice for litigants. (See Gov. Code, § 68607 ["[J]udges shall have the responsibility to eliminate delay in the progress and ultimate resolution of litigation, to assume and maintain control over the pace of litigation, to actively manage the processing of litigation from commencement to disposition, and to compel attorneys and litigants to prepare and resolve all litigation without delay. . . ."].)

As noted earlier, the District argues that a stay of this case and other AB 218 cases "until the common constitutional question is resolved has the potential to save taxpayers millions of dollars and countless hours of court resources." (MPA Stay, p. 3:21-26.) Although the District could theoretically be correct that a simultaneous stay here and in numerous other childhood sexual abuse cases around the state could save taxpayers a significant amount of money, this Court has no control over those hundreds of other cases. Moreover, the Legislature

has already determined with the enactment of AB 218 that there is a tangible public interest in seeing childhood sexual abuse victims obtain prompt justice. For purposes of analyzing this fourth factor and whether it supports a stay, the Court concludes that the Legislature's express determination of a specific public interest outweighs the broader and more general public interest in saving taxpayer funds.

In short, the Court finds that the *Nken* factors weigh against staying the present case.

Accordingly, Defendant's motion to stay is DENIED.

III. Motion for Judgment on the Pleadings

Defendant moves for judgment on the pleadings on the ground that Plaintiff's causes of action are barred because of the alleged unconstitutionality of section 340.1 as amended by AB 218. (Memorandum in Support of Defendant's MJOP ("MPA MJOP,") p. 3:8-9.)

A. Plaintiff's Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117, citations and quotation mark omitted.)

Plaintiff requests judicial notice of various documents concerning the legislative history of AB 218. (Plaintiff's Request for Judicial Notice in support of Plaintiff's Opposition to Defendant's Motion for Judgment on the Pleadings ("Opp. to MJOP") ("RJN") Exhs. 1-8.) These are official acts of the legislative department of this State. There is no opposition to Plaintiff's requests. Consequently, these requests are GRANTED under Evidence Code section 452, subdivisions (a), (c). (*See* Evid. Code, § 452, subd. (a) [the decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state]; *id.,* at subd. (c) ["Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States"].)

B. Defendant's Requests for Judicial Notice

In support of its motion, Defendant requests judicial notice of the California Assembly's Floor Analysis of AB 218 as amended August 30, 2019 (See Defendant's RJN in Support of MJOP to FAC, Exh. A.) This request is GRANTED under Evidence Code section 452, subdivisions (a), (c). Defendant also asks this Court to take judicial notice of Superior Court Judge Danielle Douglas's June 13, 2023, Order in Contra Costa County Case No. C22-02613 (RJN, Exh. B.) This request is GRANTED. Next, Defendant requests this Court to take judicial notice of Judge Douglas's October 2, 2023, Order in Case No. C22-02488. (RJN, Exh. C). Finally, Defendant requests judicial notice of Superior Court Judge Thomas W. Wills's February 2, 2024, Order in Monterey County Case No. 22CV003767. (See Defendant's RJN, Exh. D). Plaintiff objects to Defendant's requests for judicial notice of Exhibits B through D on relevance grounds (Evid. Code § 210) given that they are unpublished trial court orders. (See Plaintiff's Objection to Defendant's RJN, pp. 2-4.) These requests are GRANTED. (Evid.

Code, § 452, subd. (d) [court documents]; *Becerra, supra,* 69 Cal.App.5th at p. 929 [taking judicial notice of trial court order under parallel circumstances].)

The court takes judicial notice of the fact that these orders were entered by the courts and for the dates on which they were entered. The court cannot take judicial notice of the correctness of another trial court's interpretation of the law or its findings of fact. (See *Bolanos, supra,* 169 Cal.App.4th at p. 761 [a written trial court ruling has no precedential value]; *In re Marriage of Shaban*, *supra*, 88 Cal.App.4th at p. 409 [no "horizontal stare decisis"].) Additionally, the Court notes that it may not take judicial notice of the truth of hearsay statements contained in a trial court order. (*Lockley, supra,* 91 Cal.App.4th at p. 882.)

In support of its reply brief, Defendant requests judicial notice of Los Angeles Superior Court Judge John Kralik's Order on demurrer in the matter of *E.L. v. Pasadena Unified School District* (Case No. 22STCV23228). This request is GRANTED.

C. Legal Standard

Code of Civil Procedure section 438 provides the statutory framework for a motion for judgment on the pleadings. (Code Civ. Proc., § 438, subd. (b)(1).) "The motion provided for in this section may only be made on one of the following grounds: . . . (B) If the moving party is a defendant, that either of the following conditions exist: . . . (ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant." (Code Civ. Proc., § 438, subd. (c)(1)(ii).)

A motion for judgment on the pleadings is the functional equivalent of a general demurrer, but is made after the time for demurrer has expired. (See *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548; see also *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254 (*Shea*).) "The grounds for the motion must appear on the face of the complaint, and in any matters subject to judicial notice. The court accepts as true all material factual allegations, giving them a liberal construction, but it does not consider conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts." (*Shea*, *supra*, 110 Cal.App.4th at p. 1254 [citations omitted]; *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.)

D. Merits of the Motion to the First, Second, and Third Causes of Action

i. Unconstitutionality of Section 340.1 as Amended by AB 218

1. Claims Presentation Requirement, AB 218 Exemptions, and Statute of Limitations for Child Sexual Abuse Claims

The thrust of the Defendant's motion is that Plaintiff's claims against it are barred by her failure to comply with the claims presentation requirement of the Government Claims Act (Gov. Code, § 810, et seq.) (the "Act") and, therefore, it never waived its sovereign immunity. (MPA MJOP, pp. 4-5.)

"Under the Act, no person may sue a public entity or public employee for 'money or damages' unless a timely written claim has been presented to and denied by the public entity." (*County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, 1267, citations and

quotation marks omitted.) To be timely, the claim generally must be presented to the particular entity within six months of accrual of the injury. (*A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257.) Absent an applicable exception, "failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing suit against that entity." (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) But, as Plaintiff briefly contends in opposition, Government Code section 905 enumerates a number of exceptions to the claims presentation requirement including, as relevant here, claims made pursuant to section 340.1 for damages resulting from childhood sexual abuse. (Gov. Code, § 905, subd. (m).) Thus, Plaintiff's claims fall under an express exception to the claims presentation requirement.

Previously, section 340.1 allowed such an action to be commenced "within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury of illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later." However, section 340.1 was significantly amended on October 13, 2019, when AB 218 was signed into law. Among other things, AB 218, lengthened the time within which an action for damages resulting from "childhood sexual assault" may be brought to 22 years from the date the plaintiff attains the age of majority or five years from the date the plaintiff "discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later, for any of the following actions: (1) An action against any person for committing an act of childhood sexual assault; (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff; (3) An action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff." (Former § 340.1, subd. (a).)[5]

As acknowledged by Defendant, AB 218 also amended Government Code section 905 by deleting from subdivision (m) of that section the language that previously limited the exception to the government claims presentation requirement to claims arising out of conduct

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[5] Due to the changes made by Assembly Bill 452 (Reg. Sess. 2022-2023), section 340.1, subdivision (a), currently provides:

> There is no time limit for the commencement of any of the following actions for recovery of damages suffered as a result of childhood sexual assault:
> (1) An action against any person for committing an act of childhood sexual assault.
> (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.
> (3) An action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.

However, Plaintiff filed her initial complaint in 2022 when the statute read as quoted above.

occurring on or after January 1, 2009, and adding subdivision (p), which made this change retroactive. (MPA MJOP, p. 3:20-27.)

Despite these retroactive changes to Government Code section 905, here, Defendant maintains that the claims presentation requirement provided by the Act applies to Plaintiff's claims against it and, because she "never complied with the claims presentation requirement," sovereign immunity operated as a complete bar to Plaintiff's claims at all times prior to the passage of AB 218. (MPA MJOP, p. 4 :1-12.)

At the time the Complaint was filed, subdivision (q) of section 340.1 provided:

> Notwithstanding any other provision of law, any claim for damages described in paragraphs (1) through (3), inclusive, of subdivision (a) that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claim presentation deadline, or any other time limit had expired, is revived, and these claims may be commenced within three years of January 1, 2020. A plaintiff shall have the later of the three-year time period under this subdivision or the time period under subdivision (a) as amended by the act that added this subdivision.[6]

Indeed, the exemption contained in subdivision (m) of Government Code section 905, which exempts claims for damages due to childhood sexual abuse from the claims presentation requirement in the Act, was not codified until 2008. The previous version of the statute expressly limited the exception for section 340.1 claims to those arising out of conduct occurring "on or after January 1, 2009." (Former Gov. Code § 905, subd. (m).) While the "on or after January 1, 2009" language was removed from the statute by AB 218, Defendant nevertheless contends that subdivision (m) of Government Code section 905 does not apply to Plaintiff's claims because it has no retroactive application to claims predicated on conduct occurring before January 1, 2009. However, the Court does not find this contention persuasive for the reasons discussed below.

As a general matter, there is a presumption against retroactive application of new statutes "in the absence of a clear indication of a contrary legislative intent, such as "express language of retroactivity." (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 955, citations and quotation marks omitted.) This presumption, however, does not apply here because, as briefly touched on above, AB 218 expressly made the new claims presentation exemption retroactive, with the statute providing as follows:

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[6] Section 340.1, subdivision (q) currently provides:

> Notwithstanding any other law, including Chapter 1 of Part 3 of Division 3.6 of Title 1 of the Government Code (commencing with Section 900) and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code (commencing with Section 910), a claim for damages described in paragraphs (1) through (3), inclusive, of subdivision (a), is not required to be presented to any government entity prior to the commencement of an action.

> The changes made to this section by the act that added this subdivision *are retroactive and apply to any action commenced on or after the date of enactment of that act*, and to any action filed before the date of enactment and still pending on that date, including any action or causes of action that would have been barred by the laws in effect before the date of enactment.

(Gov. Code § 905, subd. (p), emphasis added.)

The foregoing language is unequivocal with regards to retroactivity and this code section, read in concert with subdivision (q) of section 340.1, makes it clear to this Court that Plaintiff's claims against Defendant are exempt from the claims presentation requirement. If Plaintiff had attempted to file her section 340.1 claims against Defendant *prior to* the effective date of AB 218, those claims would have been subject to the claims presentation requirement because the exemption from that requirement was limited to section 340.1 claims predicated on conduct occurring "on or after January 1, 2009" - the abuse Plaintiff alleges that she suffered occurred on or about 2000. However, not only was such limiting language *removed* from subdivision (m), but subdivision (q) of section 340.1 unequivocally *revived* claims that would otherwise have been barred as of January 1, 2020, "because the applicable statute of limitations, claims presentation deadline, or any other time limit had expired." (Gov Code. § 905, subds. (m), (p).) Consequently, Defendant's reliance on California Supreme Court case *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1235, 1240, for the proposition that "claim presentation is a substantive element of any cause of action against a public entity" is misplaced given the case was decided before AB 218 was signed into law. (MPA MJOP, p. 5:5-18; Reply MJOP, p. 3:1-6.) Defendant similarly relies on other California Supreme Court cases decided pre-AB 218 for the same proposition. (MPA MJOP, pp. 4-5.) Based on the foregoing, the Court finds Defendant's argument on this point unpersuasive.

As mentioned, *supra,* the Plaintiff's opposition briefly, and correctly, contends that AB 218 not only expands the statute of limitations on childhood sexual abuse cases, but also removes the claims presentation requirement in such circumstances. (Opp. to MJOP, p. 6:12-28.) Plaintiff relies on *Coats v. New Haven Unified School Dist*. (2020) 46 Cal.App.5th 415 (*Coats*), for the proposition that AB 218 and its revival provisions do not violate constitutional principles. In *Coats*, the First District Court of Appeal noted (in a slightly different context involving claims made by a foster mother) that it was aware of "no reason the Legislature should be any less able to revive claims in this context as it expressly did in Assembly Bill 218." (*Coats*, *supra*, 46 Cal.App.5th at p. 428.) The *Coats* court also confirmed the retroactive application of the AB 218 amendments. "In the face of a revival provision *expressly and unequivocally encompassing claims of childhood sexual abuse previously barred for failure to present a timely government claim*, it is clear we must reverse the trial court's judgment and remand for further proceedings on appellants' complaint." (*Id*. at pp. 430-431, emphasis added.) Defendant contends that Plaintiff's reliance on *Coats* is "inapposite" because *Coats* was filed "prior to" the passage of AB 218 and involved "a technical issue of statutory interpretation." (MPA MJOP, p. 13:1-5; Reply MJOP, p. 3:24-28-4.) That conclusion is inaccurate given the court's lengthy discussion of AB 218, its amendment of section 340.1, and its consequent effect on the Act. (See *Coats, supra,* 46 Cal.App.5th at p.423-424.) Contrary to Defendant's conclusion, *Coats* is controlling. Further, as Plaintiff points out, other courts have held similarly. (See Opp. to MJOP, pp. 6:26-28-7:1-5, citing *Roman Catholic Bishop of Oakland v. Superior Court* (2005) 128 Cal.App.4th 1155, 1161 ["It is equally well settled that

legislation reviving the statute of limitations on civil law claims does not violate constitutional principles."].)

In sum, Government Code section 905, subdivision (p) and section 340.1, subdivision (q), demonstrate that Plaintiff's claims against Defendant are exempt from the claim presentation requirement.

2. AB 218 and Gift of Public Funds

Defendant next argues that the revival components of AB 218 and section 340.1 amount to an unconstitutional gift of public funds. (MPA MJOP, pp. 6:13-17; 9:3-10.) Specifically, Defendant explains, in great length, that under section 6 of Article XVI of the California Constitution, the Legislature has no power "to make any gift or authorize the making of any gift, or any public money or thing of value to any individual, municipal or other corporation …" (Cal. Const. Art. XVI, § 6), and "[a]n appropriation of money by the legislature for the relief of one who has no legal claim therefor must be regarded as a gift within the meaning of that term, as used in this section, and it is none the less a gift that a sufficient motive appears for its appropriation, if the motive does not rest upon a valid consideration." (*Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450 (*Jordan*), citations and quotation marks omitted.) It continues that the "expenditure of public funds to pay for invalid legal claims is inadequate consideration and the expenditure of public funds for such claims serves no public purpose and violates the gift clause." (*Jordan, supra*, p. 450; MPA MJOP, p. 12:13-15.) Moreover, Defendant argues, "when a public entity has a vested right under the law as it exists at that time, the Legislature cannot surrender, diminish, or impair those rights." (MPA MJOP, p. 12:1-4, citing *Estate of Cooke* (1976) 57 Cal.App.3d 595, 602-603.) Given the foregoing, Defendant insists, in enacting AB 218 and thereby forcing local public entities to be liable for claims which were legally barred, the Legislature has appropriated public money to pay past legal claims where no enforceable claims existed under the law- a gift which is unconstitutional. (MPA MJOP, p. 12:16-23.)

The Court does not find this argument persuasive. Defendant's argument is dependent upon the Court's acceptance of its assertions that Plaintiff's claims against Defendant are "invalid" and that Defendant possessed vested interests that have been surrendered by the Legislature due to the changes effectuated by AB 218. As discussed *supra,* and as Plaintiff argues in her opposition, Plaintiff's childhood sexual abuse claims were never invalidated given the retroactive application of AB 218 and its exemption of such cases from the claims presentation requirements.

3. AB 218 Does Not Create a New Liability

Defendant further contends Plaintiff did not have an enforceable claim, and the Legislature had no authority to retroactively impose liability on a public entity "for a past occurrence." (MPA MJOP, p. 8:22-26.)

As Plaintiffs point out in her opposition, AB 218 did not create a new tort liability that never existed before. It merely removed a procedural barrier against bringing those claims in court. (Opp. to MJOP, p. 7:7-12.) Plaintiff cites several cases, albeit ancient, supporting this proposition. One such case, *Chapman v. State* (1894) 104 Cal.690, 696 (*Chapman*), is directly on point. (Opp. to MJOP, pp. 5-6.) In *Chapman*, the California Supreme Court held that the

Legislature's provision of a judicial remedy for claims that could previously only be brought before the State Board of Examiners was not a violation of the gift clause because it did not create any *new liability*:

> We are entirely satisfied that plaintiff's cause of action, as alleged in the complaint, arises upon contract, and that the liability of the state accrued at the time of its breach; that is, when the coal was lost through the negligence of the officers in charge of the state's wharf, although there was then no law giving to the plaintiff's assignors the right to sue the state therefor. At that time the only remedy given the citizen to enforce the contract liabilities of the state, was to present the claim arising thereon to the state board of examiners for allowance, or to appeal to the legislature for an appropriation to pay the same; but the right to sue the state has since been given by the act of February 28, 1893, and in so far as that act give the right to sue the state upon its contracts, the legislature did not create any liability or cause of action against the state where none existed before. The state was always liable upon its contracts, and the act just referred to merely gave an additional remedy for the enforcement of such liability, and it is not, even as applied to prior contracts, in conflict with any provision of the constitution.

(*Chapman, supra,* p. 696.)

Both Defendant's motion and reply brief fail to address *Chapman*, *supra,* and instead, cite to multiple age old cases with fact patterns entirely distinguishable from the instant case—*Bourn v. Hart* (1892) 93 Cal.321 (*Bourn*); *Conlin v. Board of Supervisors of the City and County of San Francisco* (1893) 99 Cal.17, 21 (*Conlin*); *Heron v. Riley* (1930) 209 Cal.507 (*Riley*); *Perez v. Roe 1* (2006) 146 Cal.App.4th 171 (*Perez*); *Powell v. Phelan* (1903) 138 Cal.271 (*Powell*); *Jordan*, *supra*, 100 Cal.App.4th at p. 441; *Orange County Foundation v. Irvine Co.* (1983) 139 Cal.App.3d 195—all of which involved an appropriation of specific sums of money, or an identification of a specific fund, for specific recipients. (MPA MJOP, pp. 6-8, 10.) In contrast to those cases, and as Plaintiff points out, there is no "appropriation" here—there is no sum of money or fund set aside or designated for a specific use—and so there is no "gift." (Opp. to MJOP, p. 4:14-25.)

Further, as explained by the California Supreme Court in *Riley, supra*, 209 Cal.507 at p. 517:

> 'We are not strongly impressed with the contention of the respondent that the application of funds to pay judgments obtained against the state constitutes a gift of public money, within the prohibition of the Constitution. The state cannot be subjected to suits against itself except by its express consent; but it may surrender its sovereignty in that particular. The judgments which are to be paid bear no semblance to gifts. They must first be obtained in courts of competent jurisdiction, to which the parties have submitted their claims in the manner directed by law. In other words, they are judgments obtained after the requirements of due process of law have been complied with.'

Consequently, this Court agrees with Plaintiff's conclusion that a "gift" clause is not implicated by the revival of a lapsed claim. (Opp. to MJOP, p. 2:1-11.)

4. AB 218 Serves a Public Purpose/Interest

Next, even if AB 218 could be construed to provide for an "appropriation" of public funds, the Court finds that its amendments to section 340.1 and Government Code section 905 are directed to a public purpose. "It is well settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose. If they are to be used for a public purpose, they are not a gift within the meaning of this constitutional prohibition. [Citations omitted]." (*California Teachers Assn. v. Board of Trustees* (1978) 82 Cal.App.3d 249, 257; see also *Teachers' Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1036.) "The benefit to the state from an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom. The determination of what constitutes a public purpose is primarily a matter for legislative discretion, which is not to be disturbed by the courts so long as it has a reasonable basis." (*County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281 (*Janssen*), internal citations omitted; see also *Paulson v. Abdelnour* (2006) 145 Cal.App.4th 400, 419.)

Based on its reading of *Conlin, supra,* 99 Cal.17, 21-22, Defendant argues that, while "the legislative history undeniably explains the motivations for retroactive elimination of the claim presentation requirements," the California Supreme Court in *Conlin* made clear that "all appropriations of public money for which there is no authority or enforceable claim" are unconstitutional regardless of whether "a sufficient motive appears for its appropriation." (Reply, p. 7:15-28.) In its reply, Defendant explains, that by rendering Plaintiff's claims enforceable, the Legislature exceeds "its constitutional limitations." (Reply MJOP, pp. 6-7.) Finally, Defendant concludes this Court has both the authority and precedent to question the "Legislature's encroachment of the California Constitution." (MPA MJOP, p. 14:12-13.) In support, Defendant cites trial court decisions from Contra Costa County and Monterey County which held in favor of the District's position.[7]

Additionally, Defendant contends "the portion of AB 218 meant to deter future abuse is simply inapplicable to governmental entities." (Reply, p. 7:23-24.) Plaintiff contends the Legislature specifically explained the need "to further the laudable public purpose of protecting child victims of sexual abuse and ensuring that they have the mere opportunity to seek justice for the harm suffered." (Opp. to MJOP, p. 13.)

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[7] Defendant cites both Judge Douglas's and Judge Wills's Superior Court Orders because they made rulings embracing the similar reasoning to Defendant's in the instant motion for judgment on the pleadings. (MPA MJOP, p. 14: 12-28 Exhs., A-C.) As Defendant concedes, this Court is not bound by a trial court's ruling, and it does not find the ruling persuasive for the reasons discussed above. (See *Bolanos, supra,* 169 Cal.App.4th at 761[a written trial court ruling has no precedential value].) Further, and of particular importance, Defendant's discussion of Judge Douglas's Orders is devoid of reasoned explanation as to why the Court should find it persuasive. (See *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [points asserted without reasoned argument need not be considered].)

Here, in the event that Plaintiff prevails on her causes of action, the benefits of such a result would not be limited to Plaintiff. The stated purpose of AB 218, in addition to allowing victims of childhood sexual abuse to be compensated for their injuries, is to "help prevent future assaults by raising the costs for [harm caused by childhood sexual abuse]" and to serve "as an effective deterrent against individuals and entities who have chosen to protect perpetrators of sexual assault over victims." (See *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1027, review granted Dec. 1, 2021, S271478, quoting Off. of Assem. Floor Analyses, Analysis of Assem. Bill No. 218 (2019-2020 Reg. Sess.), as amended Aug. 30, 2019, p. 2.) The prevention of future sex assaults on minors by Defendant's employees in a position of power, such as an elementary school substitute teacher, provides a public purpose and benefit, which contrasts sharply with the narrow scope of benefits conferred in the gift clause cases cited by Defendant in both its motion and reply (*Bourn, Conlin*, *Powell*, *Perez,* and *Jordan*, *supra*). Consequently, the Legislature had a "reasonable basis" to waive sovereign immunity. (*Janssen, supra,* 16 Cal.2d at pp. 281-282; Opp. to MJOP, p. 12:3-12.) To conclude otherwise, would compromise the Court's primary role to interpret laws, rather than establish policy. The "latter role is for the Legislature." (*Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1112, citations and quotations omitted.) Therefore, any liability that may ultimately result from this case or similar cases involving childhood sexual assault serves a public purpose and does not qualify as a "gift" within the meaning of the "gift clause" of Article XVI, section 6 of the California Constitution. (See Opp. to MJOP, p. 14: 9-12.)

Accordingly, the motion for judgment on the pleadings is DENIED.

IV. Conclusion

The motion to stay proceedings is DENIED.

The motion for judgment on the pleadings is DENIED.

The Court will prepare the final order.

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Calendar Line 3
Case Name: *Trung Tran v. Lihn Tran*
Case No.: 23CV425776

I. Background

This action arises out of a dispute over the ownership of real property located on North Sunnyvale Avenue in Sunnyvale (the "Property"). (Complaint, ¶ 1.) Plaintiff Trung Tran ("Plaintiff") is the brother of Defendant Linh Tran ("Defendant"). (Complaint, ¶ 2.) Their father died in 2016. (Complaint, ¶ 2.) There is no dispute that Trinh Tran ("Trinh"), the sister of Plaintiff and Defendant, owns 50% of the Property (now along with her husband).[8] (Complaint, ¶ 4.) Plaintiff contends he owns the remaining 50% interest in the Property, and Defendant asserts that he owns the same 50% interest. (Complaint, ¶ 3.)

Sometime prior to 2006, Plaintiff purchased the Property for $300,000. (Complaint, ¶ 9.) On January 6, 2006, Plaintiff Trung agreed to a family transfer of the Property to his sister Trinh and brother, Defendant Linh, as joint tenants. (Complaint, ¶ 10.) Plaintiff transferred the Property to Trinh and Defendant by Grant Deed. (Complaint, ¶ 11, Ex. A.) Plaintiff executed this property transfer pursuant to an oral agreement between himself on the one hand, and his two siblings on the other. (*Ibid.*) "[A]ll parties understood that neither Linh Tran nor Trinh Tran then would be able to pay plaintiff the agreed price of $150,000 from each." (*Ibid.*)

For cultural and family reasons, it was understood that Trinh and Defendant would have a reasonable time to pay the $150,000. (Complaint, ¶ 12.) After many years, Trinh paid Plaintiff $150,000. (Complaint, ¶ 13.) Defendant has not paid any of the $150,000. (Complaint, ¶ 14.)

In approximately 2022, Defendant's wife began living in the Property with him. (Complaint, ¶ 15.) In July 2023, Plaintiff rescinded the oral agreement and requested Defendant return the 50% ownership interest. (Complaint, ¶ 16.) In August 2023, Defendant responded by email to Plaintiff, writing: "Hey, see you [in] court ok?" (Complaint, ¶ 17.)

On November 7, 2023, Plaintiff initiated this matter by filing a Complaint against Defendant, asserting: (1) rescission; (2) breach of contract; (3) breach of implied-in-law contract; (4) constructive fraud; and (5) quiet title. Defendant filed the instant demurrer to the Complaint on March 20, 2024. Plaintiff opposes.

II. Request for Judicial Notice

Plaintiff Trung requests judicial notice of the Complaint and of the Grant Deed attached as Exhibit A to the Complaint. The requests are GRANTED. (Evid. Code, § 452, subd. (d) [the court may take judicial notice of court records].)

III Legal Standard

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[8] Because individuals involved in this case share the same last name, the court will refer to them by their first names. No disrespect is intended. (See *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2; *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

As relevant here, Code of Civil Procedure, section 431.10 states: "The 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: [¶] … (e) The pleading does not state facts sufficient to constitute a cause of action. [¶] (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible." A demurrer may be utilized by the 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 more of the grounds enumerated by the statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court in ruling on a demurrer treats "as admitted 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.) In ruling on a demurer, 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 a demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

III. Analysis

Defendant Linh demurs to the Complaint and each cause of action on the grounds that the pleading is uncertain and fails to state facts sufficient to constitute a cause of action. (Defendant's Notice of Demurrer, Demurrer, and Memorandum of Points and Authorities ("Dem."), p. 1, lns. 21-28.)

A. Demurrer to Complaint

Defendant initially demurs to the entire Complaint on the grounds that it is uncertain and is barred by the statute of frauds. (Dem., p. 3, lns. 2-6.)

1. Uncertainty

Defendant contends the Complaint is uncertain under Code of Civil Procedure, section 430.10, subdivision (e). Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Ibid*.)

"[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Defendant appears to be conflating uncertainty as the basis for the demurrer with failure to state sufficient facts. For instance, Defendant asserts the second and third causes of action are "uncertain as to the essential terms of the contract and other elements of a cause of action for breach of contract." (Dem., pp. 4, lns. 20-21; 5, lns. 7-8.) Though phrased in terms of uncertainty, these arguments are directed at the sufficiency of facts alleged. The Complaint as

a whole is not so unintelligible that Defendant cannot respond to it. (See *Khoury*, *supra*, 14 Cal.App.4th at p. 616.)

Accordingly, the demurrer to the entire Complaint on the ground of uncertainty is OVERRULED.

2. Statute of Frauds

Defendant demurs to the entire Complaint on the basis that a contract for the sale or purchase of real property must be in writing. (Dem., p. 7-10.) Plaintiff argues the statue of frauds does not apply because he executed a deed transferring the 50% interest to Defendant. (Opp., p. 2, lns. 16-22.)

"Under the statute of frauds, contracts for the sale of real property, or of an interest therein (Civ. Code, § 1624, subd. (a)(3)) are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent (Civ. Code, § 1624, subd. (a))." (*Lee v. Lee* (2009) 175 Cal.App.4th 1553, 1556 (*Lee*), internal quotation marks omitted.) "The statue primarily serves an evidentiary purpose. [Citation.] It requires reliable evidence of the existence and terms of the contract so as to prevent enforcement through fraud or perjury of contract that was never in fact made." (*Ibid.*, citing *Sterling v. Taylor* (2007) 40 Cal.4th 757, 766.)

Nevertheless, the statute of frauds is not absolute. "[T]he statue of frauds does not apply to an executed contract. [Citation.]" (*Lee*, *supra*, 175 Cal.App.4th at p. 1557.) "A valid deed, i.e., one that is executed by the grantor and delivered to the grantee, is an executed contract." (Civ. Code, §§ 1040, 1054; *Estate of Stephens* (2002) 28 Cal.4th 665 672 [(*Stephens*)].)" (*Ibid.*) "[A] contract partly performed is usually taken out of the operation of the statute of frauds. [Citation.]" (*Grant v. Long* (1939) 33 Cal.App.4th 725, 742.) "Verbal contracts for the sale of land, if part performed by the party seeking remedy, may be specifically enforced, [citation]…." (*Howard v. Stephens* (1918) 38 Cal.App. 296, 312 [internal quotation marks omitted].) "Part performance will serve to take a contract out of the statute [of frauds] and it then will be enforced in equity." (*Francis v. Colendich* (1961) 193 Cal.App.2d 128, 131.)

Here, Defendant has not sufficiently developed his argument that the statute of frauds renders the entire Complaint subject to demurrer. The Complaint alleges Plaintiff partially performed the alleged oral contract by executing and recording the Grant Deed transferring a 50% interest to Defendant. Defendant offers no reply to Plaintiff's argument that the executed deed takes the agreement out of the statute of frauds, effectively conceding the argument. The Complaint also seeks relief in equity by asserting an implied-in-law contract and constructive fraud.

Accordingly, Defendants demurrer to the entire Complaint based on the statute of frauds is OVERRULED.

B. Sufficiency of Facts

Defendant also demurs to each of the five causes of action of the Complaint on the ground that the pleading fails to allege sufficient facts. (Dem., pp. 4-5.)

1. <u>First Cause of Action: Rescission</u>

In the first cause of action, the Complaint alleges that Plaintiff's transfer in 2006 of a 50% interest in the Property is subject to rescission. (Complaint, ¶¶ 32-33.) Defendant contends that rescission is not cause of action, but a remedy, and that the Complaint does not

sufficiently allege a contract to be rescinded. (Dem., p. 8, lns. 7-8, 25-27.) Plaintiff asserts that rescission is a recognized cause of action. (Opp., p. 4, lns. 4-7.)

"Rescission is not a cause of action; it is a remedy." (*Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 70. citing Civil Code, § 1689[9].) "The traditional equitable action to have the rescission of a contract adjudged was recognized in former *Civil Code* 3406." (4 Witkin, California Procedure (6th ed. 2023) Pleading § 549.) "The equitable action was abolished in 1961," and "the current remedy is a legal action for restitution based on a completed unilateral rescission." (*Ibid*.) "The following must be alleged in an action for restitution after completed unilateral rescission: (1) the contract or other contractual instrument; (2) the ground for rescission; (3) if the ground is breach of contract, plaintiff's own performance." (4 Witkin, California Procedure (6th ed. 2023) Pleading § 550; see also *Runyan v. Pacific Air Industries, Inc.* (1970) 2 Cal.3d 304 (*Runyan*).) "Relief given in rescission cases—restitution and in some cases consequential damages—puts the rescinding party in the status quo ante, returning him to his economic position before he entered the contract." (*Runyan*, *supra*, 2 Cal.3d at p. 316, fn. 15.)

Here, the Complaint identifies an alleged agreement between the parties and Plaintiff's own performance, but it does not allege the ground for rescission. Instead, it lists five different grounds ("misrepresentation, fraudulent concealment, unconscionableness, failure of consideration") in addition to "other legally-recognized causes." (Complaint, ¶ 33.) These broad and conclusory allegations are uncertain and unsupported by facts.

Accordingly, the demurrer to the first cause of action is SUSTAINED on the ground of failure to state a cause of action with 10 days' leave to amend.

2. Second Cause of Action: Breach of Contract

In the second cause of action, the Complaint alleges Plaintiff and Defendant entered into an oral agreement for the sale of the 50% interest in the Property, and Defendant breached

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[9] Civil Code section 1689 states:

> (a) A contract may be rescinded if all the parties thereto consent. [¶] (b) A party to a contract may rescind the contract in the following cases: [¶] (1) If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party. [¶] (2) If the consideration for the obligation of the rescinding party fails, in whole or in part, through the fault of the party as to whom he rescinds. [¶] (3) If the consideration for the obligation of the rescinding party becomes entirely void from any cause. [¶] (4) If the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause. [¶] (5) If the contract is unlawful for causes which do not appear in its terms or conditions, and the parties are not equally at fault. [¶] (6) If the public interest will be prejudiced by permitting the contract to stand. [¶] (7) Under the circumstances provided for in Sections 39, 1533, 1566, 1785, 1789, 1930 and 2314 of this code, Section 2470 of the Corporations Code, Sections 331, 338, 359, 447, 1904 and 2030 of the Insurance Code or any other statute providing for rescission.

the agreement (albeit after Plaintiff rescinded the agreement). (Complaint, ¶¶ 35-37.) Defendant contends that the Complaint does not allege the specific terms required, such as time of performance. (Dem., p. 9, lns. 11-15.) Defendant further argues that the cause of action is barred by the statute of limitations. (Dem., p. 16-18.) Plaintiff asserts the statute of limitations has not run because the alleged contract was not breached until August 2023. (Opp., pp. 20-21.)

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186; see also CACI, No. 303.) "The elements of a breach of oral contract claim are the same as those for breach of a written contract; its performance or excuse for nonperformance; breach, and damages." (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.) Mutual assent or consent is necessary for the formation of a contract. (Civ. Code, §§ 1550, 1565.) For a meeting of the minds to exist, the parties must agree on all material contract terms. (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1430.)

"Mutual consent necessary for the formation of a contract is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings. Although mutual consent is a question of fact, whether a certain or undisputed state of facts establishes a contract is a question of law for the court." (*DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal.App.4th 800, 813 [internal quotation marks and citations omitted].)

Here, the allegations of the Complaint are lacking in facts necessary to show the formation of an oral contract. Specifically, the Complaint fails to allege that there was an outward manifestation or expression of the parties to establish the necessary mutual consent to the material contract terms. The Complaint alleges that "all parties understood that neither Linh Tran nor Trinh Tran then would be able to pay plaintiff the agreed price of $150,000 from each." (Complaint, ¶ 11.) But this assertion lacks any indication of an outward manifestation of this purported mutual understanding. In particular, the Complaint is completely lacking in facts establishing Defendant's assent to the alleged contract. Thus, because the Complaint does not allege the mutual assent necessary for contract formation, it does not allege sufficient facts to state a cause of action for breach of contract. Having found that the Complaint does not sufficiently allege a contract, the court need not address whether this cause of action is barred by the statute of limitations.

Accordingly, the demurrer to the second cause of action is SUSTAINED with 10 days' leave to amend.

3. Third Cause of Action: Breach of Implied-in-Law Contract

In the third cause of action, the Complaint alleges that Plaintiff is entitled to an equitable right of restitution, either in the form of the return of the 50% ownership interest in the Property or damages of $750,000. (Complaint, ¶¶ 40-43.) In demurring, Defendant asserts that Plaintiff, by his own admission, never thought Defendant would pay any of the $150,000. (Dem., p. 9, lns. 7-10.) Defendant again argues that the lack of specific terms of the alleged and the statute of limitations renders the cause of action subject to demurrer. (Dem., p. 9, lns. 13-18.) In opposition, Plaintiff argues that the statute of limitations has not run for same reasons addressed above. (Opp., p. 3, 14-21.)

"An implied contract is one, the existence and terms of which are manifested by conduct." (Civil Code, § 1621; see also *California Emergency Physicians Medical Group v. PacfiCare of California* (2003) 111 Cal.App.4th 1127, 1134 [an implied contract "consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words. In order to plead a cause of action for implied contract, the facts from which the promise is implied must be alleged."], disapproved on another ground in *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1014, fn. 10.) "An implied contract … must be founded upon an ascertained agreement of the parties to perform it… ." (*Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 887, internal quotation marks and citation omitted.) "Although an implied in fact contract may be inferred from the 'conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise.' [Citation.]" (*Ibid.*)

Here, the Complaint lacks allegations of Defendant's conduct showing an implied intent to promise. For example, there are no allegations that Defendant made payments on the alleged implied contract, or that he changed his position in any way. Rather, the Complaint alleges that Defendant has made no payments at all. (Complaint, ¶ 14.) Therefore, the Complaint does not allege facts sufficient to state a cause of action for an implied contract.

Accordingly, the demurrer to the third cause of action is SUSTAINED with 10 days' leave to amend.

4. Fourth Cause of Action: Constructive Fraud

In the fourth cause of action, the Complaint alleges that if Defendant never intended to pay for the 50% ownership interest in the Property, he had a duty to disclose that intent before Plaintiff recorded the Grant Deed transferring the ownership interest to Defendant. (Complaint, ¶¶ 45-47.) Defendant again argues that Plaintiff never expected to be paid, and that the Complaint alleges no facts to demonstrate any fraud. (Dem., p. 10, lns. 12-14, 21-23.) Plaintiff does not directly address the demurrer to the fourth cause of action in his opposition.

A complaint must generally plead each element of a fraud cause of action with specificity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "Constructive fraud is unique species of fraud applicable only to a fiduciary or confidential relationship." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1131 [internal quotation marks and citation omitted].) The elements of constructive fraud are: (1) a fiduciary or confidential relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive; and (4) reliance and resulting injury. (*Ibid.*) Whether conduct constitutes constructive fraud depends on the facts and circumstances of the case. (*Ibid.*)

Here, the Complaint does not plead the elements of a fraud cause of action, either generally or specifically. It does not allege a confidential or fiduciary relationship, nor does it allege an intent to deceive. As discussed above, the Complaint is lacking in allegations of Defendant's conduct. Furthermore, Plaintiff does not address the demurrer to the fourth cause of action in his opposition.

Accordingly, the demurrer to the fourth cause of action is SUSTAINED with 10 days' leave to amend.

5. Fifth Cause of Action: Quiet Title

In the fifth cause of action, the Complaint alleges that the Grant Deed attached to the Complaint does not reflect the parties' true ownership interest, and that Plaintiff seeks to quiet title to record a new deed. (Complaint, ¶50.) Defendant contends the Complaint does not

allege any facts to constitute fraud on Defendant's part, and again argues that Plaintiff knew Defendant would not be able to pay. (Dem., p. 11, lns. 6-13.) Plaintiff asserts that the fifth cause of action incorporates paragraphs 1 through 30 of the Complaint and those paragraphs recite all the elements required for a quiet title cause of action. (Opp., p. 4, lns. 14-16.)

"To maintain an action to quiet title, a plaintiff's complaint must be verified and must include (1) a description of the property including both its legal description and its street address or common designation; (2) the title of plaintiff as to which determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which a determination is sought; and (5) a prayer for determination of plaintiff's title against the adverse claims." (Code Civ. Proc., § 761.020.).

The purpose of a quiet title action is to settle all conflicting claims to the property and to declare each interest or estate to which the parties are entitled. (See *Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284.) "Quieting title is the relief granted once a court determines that title belongs in plaintiff … [T]he plaint must show he has a substantive right to relief before he can be granted any relief at all." (*Leeper v. Beltrami* (1959) 53 Cal.2d 195, 216.)

Here, the court has sustained the demurrer to Plaintiff's claims regarding his substantive right to relief. Therefore, the Complaint does not sufficiently state the basis of plaintiff's claim to the title.

Accordingly, the demurrer to the fifth cause of action is SUSTAINED with 10 days' leave to amend.

IV. Conclusion

The demurrer to each cause of action in the Complaint is SUSTAINED with 10 days' leave to amend. The Court will issue the final order. Plaintiff shall file the amended complaint within 20 days of the final order.

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Calendar Line 5
Case Name: *Central Coast Community Energy et al. v. BigBeau Solar, LLC*
Case No.: 22CV398156

I. Factual and Procedural Background

Plaintiffs Central Coast Community Energy ("3CE") and Silicon Valley Clean Energy Authority ("SVCE") (collectively, "Plaintiffs") bring this action against defendant BigBeau Solar, LLC ("BigBeau" or "Defendant").

According to the allegations of Plaintiffs' complaint, the Plaintiffs are parties to substantially identical long-term contracts with BigBeau for the purchase of renewable energy generated by a solar photovoltaic electricity generating facility ("the Facility") constructed, owned, and operated by BigBeau ("the Project"). (Complaint ("Compl."), ¶¶ 1, 19.)

Plaintiffs negotiated with EDF Renewable Development (a parent company of BigBeau) regarding the terms and conditions of the Project. (Compl., ¶ 18.) On October 25, 2018, Defendant executed renewable energy purchase contracts ("PPAs") with each Plaintiff. (Compl., ¶¶ 3, 18.) The Facility was intended to become operational by the end of 2021 and then would be used to sell renewable energy at a fixed price to Plaintiffs for twenty years. (Compl., ¶ 19.)

Among the key terms of the PPAs is a provision that provides for BigBeau to deliver a "Development Security" to Plaintiffs to secure its financial obligations under the PPAs. (Compl., ¶ 20.) BigBeau is entitled to return of the Development Security only upon either delivery of the Performance Security or sixty days after termination of the PPA. (*Ibid*.) The aggregate amount of the Development Security between the two PPAs is $11.28 million. (*Ibid*.)

Under the PPAs, Plaintiffs were entitled to 100% of the renewable energy produced by the Facility for a period of 20 years at a fixed price. (Compl., ¶ 22.) The PPAs were designed to provide guaranteed purchasers for the Project in order to secure funding to construct the Facility. (Compl., ¶ 23.) Plaintiffs benefitted by securing a guaranteed and long-term source of renewable energy at a fixed contract price, protecting their customers from future increases in the market rate for energy. (*Ibid*.)

Each PPA contains detailed procedures for early termination due to an Event of Default, Force Majeure, or Load Reduction and each PPA specifies the necessary steps, liability, and procedures to follow to recover damages, if any. (Compl., ¶ 24.) After the parties executed the PPAs, they performed their duties for years while the Facility was developed. (Compl., ¶ 25.) The original anticipated Commercial Operation Date ("COD") was December 1, 2021; however, the date was extended through agreement of the parties. (*Ibid*.)

As of November 22, 2021, the solar photovoltaic ("PV") portion of the Facility started providing Test Energy, demonstrating that the Facility was operational and capable of generating renewable energy contemplated by the parties under the PPAs. (Compl., ¶ 26.)

On March 17, 2022, during a call between Plaintiffs and Defendant, BigBeau advised that it was seeking to renegotiate the terms of the PPAs and increase the price for the Storage

Rate by 233%. (Compl., ¶ 27.) Thereafter, BigBeau stated it would terminate the PPAs if Plaintiffs did not agree to the price hike. (*Ibid*.)

Plaintiffs asserted that BigBeau could not unilaterally terminate the PPAs under the circumstances but BigBeau insisted it had such a right. (Compl., ¶ 28.)

On May 4, 2022, BigBeau sent each of the Plaintiffs a letter terminating the PPAs pursuant to Section 11.9 of the PPAs. (Compl., ¶ 29.) Plaintiffs allege the letters 1) contradict and are inconsistent with similar terms elsewhere in the PPA; 2) contain what BigBeau admits were typos on fundamental terms addressed consistently in an opposite manner by other PPA terms and the parties' course of performance; and 3) are subject to the PPAs' broad cumulative remedies provision found in section 11.6. (*Ibid*.)

On May 9, 2022, Plaintiffs filed their complaint for declaratory relief. On July 1, 2022, Defendant filed its cross-complaint for declaratory relief.

On March 15, 2024, BigBeau filed a motion for summary judgment as to Plaintiffs' complaint and its cross-complaint. BigBeau asserts that if the Court finds that BigBeau was entitled to terminate before the COD, that it did so validly, and that the price for that exercise is defined in Section 11.9, it will dispose of both the complaint and cross-complaint.

Plaintiffs oppose BigBeau's motion. Plaintiffs have also filed a motion for summary judgment/adjudication as to their complaint and Defendant's cross-complaint, to be heard on June 4, 2024.

II. Legal Standards

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id*. at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Augilar*, *supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid*.) "[I]f the court concludes that the [opposing party's] evidence or inferences raise a triable issue of material fact, it must conclude its consideration and deny the [moving party's] motion." (*Id*. at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences reasonably drawn therefrom[.]" (*Aguilar*, *supra*, 25 Cal.4th at p. 844 [internal quotations omitted].) The moving party's evidence is strictly construed, while the opposing party's evidence is liberally construed. (*Id*. at p. 843.)

III. The Pleadings

Plaintiffs' complaint seeks a declaration that: 1) Section 11.9 of the PPAs is subject to Section 11.6, governing Cumulative Remedies; 2) BigBeau's actions trigger its responsibility and liability for the Termination Payment; 3) Section 11.9 is to be interpreted consistent with the terms of contract termination provision governing Historical Load Reduction Events (Section 2.6), Force Majeure (Sections 10.3, 10.4), and Events of Default (Sections 11.2, 11.3), or stricken as inconsistent; 4) that the Section 11.9 discretion that BigBeau is asserting is subject to the covenant of good faith and fair dealing, precluding BigBeau from terminating except for an Event of Default; and 5) conforming the second sentence of Section 11.9 to correct BigBeau's admitted typos.

Defendant's cross-complaint seeks a declaration that: 1) states Section 11.9 of the PPAs provided BigBeau with the right to terminate the PPAs for any reason prior to the Commercial Operation Date; 2) the Commercial Operation Date had not occurred prior to May 4, 2022; 3) that Section 11.9 sets forth Plaintiffs/Cross-Defendants' sole right and remedy upon termination by BigBeau and does not provide them with any right to dispute or reject the termination; 4) BigBeau's termination was not an Event of Default under Section 11.1 and does not trigger its responsibility for the Termination Payment; 5) that Section 11.9 is consistent with other provisions of the contract; and 6) that Section 11.9 is consistent with the implied covenant of good faith and fair dealing.[10]

"An action for declaratory relief is appropriate to determine the legal rights and duties of the parties to a written contract." (*Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 52.) "Summary judgment is appropriate in a declaratory relief action when only legal issues are presented for the court's determination. The defendant's burden in a declaratory relief action 'is to establish the plaintiff is not entitled to a declaration in its favor. It may do this by establishing (1) the sought-after declaration is legally incorrect; (2) undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief.'" (*California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 185 [internal citations omitted].)

The PPAs contain the essential elements of a contract: 1) parties capable of contracting; 2) their consent; 3) a lawful object; and 4) sufficient cause or consideration. (*Marshall & Co. v. Weisel* (1966) 242 Cal.App.2d 191, 196.) The parties do not dispute that the PPAs were valid agreements, but rather, they dispute the meaning and effect of Section 11.9. "Whether language in a contract is ambiguous is a question of law." (*Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 912.) Thus, this issue is properly determined on a motion for summary judgment.

IV. BigBeau's Motion for Summary Judgment

[10] Plaintiffs argue that BigBeau seeks a declaration that it performed on the PPAs or their performance was excused, but BigBeau has not made a showing as to that request. (See Opposition, p. 13:19-20.) Plaintiffs do not cite to the cross-complaint and the cross-complaint does not seek such relief. BigBeau indicates that they are not seeking such a declaration in their reply.

a. BigBeau Meets its Initial Burden

The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the mutual intention of the parties. (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1269 (*ASP*); Civ. Code, § 1636.) "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation." (*Ibid.* [internal citations omitted].) "Such intent is to be inferred, if possible, solely from the written provisions of the contract." (*Ibid*., citing Civ. Code, § 1639.)

"The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' controls judicial interpretation. Language in a contract must be interpreted as a whole, and in the circumstances of the case, and cannot be found to be ambiguous in the abstract. Courts will not strain to create ambiguity where none exists. Interpretation of a contract must be fair and reasonable, not leading to absurd conclusions." (*ASP*, *supra*, 133 Cal.App.4th at p. 1269 [internal citations and quotations omitted].) "The court must avoid an interpretation which will make a contract extraordinary, harsh, unjust, or inequitable." (*Ibid*.)

Defendant argues the meaning of Section 11.9 is plain and unambiguous. (Memo, p. 9:18.) Defendant asserts that because the language of the PPA is clear, it is unnecessary for the Court to review extrinsic evidence. (See e.g., *ASP*, *supra*, 133 Cal.App.4th at p. 1266.)

Section 11.9 of the PPA states:

> 11.9 **Additional Seller Pre-COD Rights.** At any time prior to the Commercial Operation Date, Seller may by notice to Buyer terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security in the amount then required to be posted by [Seller][11] and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of Daily Delay Damages and Commercial Operation Delay Damages accrued and unpaid as of the Agreement termination date.

(UMF No. 9, Vol. 1, Ex. 1, p. 000169.)

Defendant first argues it is not a matter of dispute that the Facility had not reached COD as of May 4, 2022, when BigBeau issued its notice of termination. (See Memo, p. 9:18-20, Beltz Decl., ¶¶ 4, 5, 8.) Defendant further asserts that Plaintiffs admit that as of May 4, 2022, they were buying Test Energy and assessing Commercial Operation Delay Damages. (Memo, p. 12:2-3, UMF Nos. 67-72, Beltz Decl., ¶ 15, Rock Decl., ¶ 14.)[12] The PPAs define Test Energy as being pre-COD:

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[11] BigBeau indicates this should state "Seller" and not "Buyer." (See Memo, p. 10, fn. 9.)

[12] Plaintiffs dispute some of these UMFs and include objections to the supporting evidence. Objections made in separate statements are improper. (See Cal. Rules of Court, Rule 3.1354, subd. (b) [objections must be served and filed separately from other papers].) Moreover, the

> **"Test Energy"** means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO[13] informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that seller has conditional or temporary permission to parallel and (b) ***ending upon the occurrence of the Commercial Operation Date***.

(UMF No. 9, Vol. 1, Ex. 1, p. 000138 [emphasis added].)

Additionally, BigBeau argues, there is no dispute that it would have to sacrifice its Development Security and any accrued Commercial Operations Delay Damages as of May 4, 2022. (Memo, pp. 12:25-13:2, UMF Nos. 68-69, citing Beltz Decl., ¶¶ 10-12, Exs. 58, 59.)

Defendant further argues that the parties' negotiating history regarding Section 11.9 disposes of any of Plaintiffs' arguments that Section 11.9 does not mean what it says. (Memo, pp. 9:24-26, 11:19-25; UMF Nos. 28-36, 37-45.) Specifically, the parties traded language that would afford BigBeau a pre-COD limitation of liability and discussed its request for discretion to terminate with financial consequences identical to the limitation of liability provision. BigBeau asserts it produced drafts incorporating the parties' discussions and that Plaintiffs provided no comments and accepted the provisions of the draft. (Memo, p. 11:20-25, UMF Nos. 28-36, 37-45.)

Finally, Defendant contends that none of the provisions of the PPA are in conflict with Section 11.9, including Section 11.1, 11.2, and 11.3. (See Memo, p. 15.) Defendant asserts that nothing in these sections refer to or limit Section 11.9. (See Memo, p. 15:10-15, UMF Nos. 79-81.)[14] Further, Defendant contends that other Sections at issue, such as Section 2.6, merely describe different conditions under which BigBeau may terminate the contract and different financial consequences for doing so, and are therefore not in conflict with Section 11.9. (Motion, p. 14:6-11.)

The Court finds that the language of Section 11.9 is not limited by, or referred to by, Section 11.1, 11.2, or 11.3. Moreover, Section 11.9 is referred to as "*additional*" rights. The Court finds that Defendant has met its burden of demonstrating the language of section 11.9 is plain and unambiguous and that any time prior to COD, BigBeau could give notice of termination of the PPAs. Moreover, Defendant presents sufficient evidence that the COD had not passed at the time it terminated the PPAs. The burden now shifts to Plaintiffs to demonstrate that there is a triable issue of material fact.

V. Plaintiffs' Burden

In opposition, Plaintiffs assert that Defendant's motion must be denied for the following reasons: 1) material facts are disputed; 2) BigBeau fails to make the required

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evidence is not being used to interpret the PPAs, as Plaintiffs suggest, but instead to show that the COD had not been reached.

[13] "CAISO is the acronym for the California Independent System Operator, which operates the electric grid for about 80% of California." (See Motion, p. 12, fn. 10.)

[14] Plaintiffs indicate that these UMFs are disputed but cite no evidentiary support and instead raise improper objections in the separate statement.

showing under 437c; 3) BigBeau fails to proffer a reasonable interpretation of Section 11.9; and 4) BigBeau breached its contractual obligation to sell Test Energy.

a. Disputed Material Facts

Plaintiffs first argue that the motion must be denied because material facts are disputed. Specifically, Plaintiffs assert that they dispute UMF Nos. 21-23, 25-26, 35, 46, and 49. (See Opposition, p. 15, subd. (A).)

As to UMF Nos. 21-23 and 25-26, Plaintiffs' separate statement indicates that the facts are disputed but does not include evidence to support this contention. (See e.g., *Bitner v. Department of Corrections & Rehabilitation* (2023) 87 Cal.App.5th 1048, 1067 [plaintiff did not present evidence to dispute facts set forth in defendant's separate statement and therefore did not raise a triable issue of material].) In any event, the Court did not rely on these UMFs in reaching its conclusion as to Defendant's burden and moreover, they relate more to the formation of the PPAs than the interpretation of them.

As to UMF No. 35, Plaintiffs appear only to dispute that a PPA phone call occurred at "the end of May or early June" and clarify that the call occurred on June 6, 2018. Plaintiffs, however, do not appear to dispute the contents of the phone call, and the evidence they cite further supports Defendant's characterization of the contents of the phone call. (See Plaintiffs' Ex. 34, at pp. 8:13-18, 14:16-27, and 16:6-14.)

As to UMF No. 46, Plaintiffs' response indicates they do not dispute the fact, but assert it is a legal contention. Objections made in a separate statement are improper. Additionally, Plaintiffs did not dispute UMF No. 49.

Plaintiffs additionally contend that where "the moving party includes a material fact in its separate statement, and that fact is in dispute, the court must deny the motion." (Opposition, p. 13:15-18, citing *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.) However, as Defendant notes in its reply, a party must do more than simply "dispute" the material fact. Instead, the party must present the Court with evidence to support how the fact is disputed. (See e.g., *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 226 ["Admissible evidence is required to show that disputed issues of material fact exist."]; see also Reply, pp. 3:22-4:3.) Plaintiffs have failed to do so.

Thus, the Court does not find Plaintiffs' first argument persuasive and it does not establish that they have met their burden on summary judgment.

b. Required Showing Under 437c

Plaintiffs next argue that BigBeau makes no effort to show it performed its obligations under the PPAs or to disprove of Plaintiffs' affirmative defenses. As the Court notes above, Defendant has met its initial burden and the burden now shifts to the *Plaintiffs* to establish a triable issue of fact. (See Code Civ. Proc., § 437c, subd. (p)(1) ["A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action."].) Thus, Plaintiffs' second argument is not well taken.

c. Interpretation of PPA Section 11.9

Next, Plaintiffs assert that BigBeau's proffered interpretation of Section 11.9 holds that BigBeau could determine whether the COD had come, contradicting the plain terms of the PPAs. (Opposition, p. 16:15-17.) Plaintiffs rely on Sections 2.2 and 1.1 of the PPAs to support this argument.

Section 2.2 of the PPAs states, in relevant part:

> 2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to ***Buyer's reasonable satisfaction*** each of the following conditions: . . .

(AUMF No. 114 [citing BigBeau's Evidence, Vol. 1, Ex. 1, p. 000141][emphasis added].)

Section 1.1 of the PPA defines "Delivery Term" as:

> **"Delivery Term"** shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

(*Id.* at p. 000126.)

Plaintiffs argue that *they* had the right to determine the COD. (Opposition, p. 16:25-27.) This interpretation is contradictory to the language throughout the PPAs.[15] For example, Exhibit B to the PPA states, in part: "The Commercial Operation Date" shall be the later of (x) the Expected Commercial Operation Date or (y) the date on which the Commercial Operation is achieved; **provided** that *Seller [BigBeau] at any time may revise the Expected Commercial Operation Date*[.]" (UMF No. 62.) Additionally, "Test Energy" is defined as the date the CAISO *informs Seller* that Seller may deliver Facility Energy and the first date *Seller is informed it has conditional or temporary permission* to parallel, ending upon the occurrence of the COD. (UMF No. 49.) Plaintiffs do not dispute that they could purchase Test Energy before the Facility reached COD and that they began purchasing this Test Energy beginning in November 2021. (See Plaintiff's Response to UMF Nos. 46, 48.) In any event, even if the COD was determined by Buyer/Plaintiffs, Plaintiffs present no evidence that the COD had passed on May 4, 2022 when BigBeau issued its notices terminating the PPAs. Thus, the Court does not find Plaintiffs' argument that they could determine the COD persuasive.

Plaintiffs additionally argue that because Section 11.9 does not include language such as "elect" or "sole discretion" or "may see fit," BigBeau did not have an "unfettered" right to terminate the PPAs and instead the section is subject to the doctrine of good faith and fair dealing. (See Opposition, p. 18:21-23.) They contend that if BigBeau sought to exercise its right to terminate, it could do so only by affirmatively acting in recognition of Plaintiffs' right to declare the COD and requiring BigBeau to inquire whether Plaintiffs' were prepared to

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[15] This argument also contradicts footnote 2 on page 23 of Plaintiffs' opposition, which states that BigBeau had the contractual right to finish early and move the COD to May 1, 2021. (See Opposition, p. 23, fn. 2.)

exercise their right to accept the project. (Opposition, p. 18:24-27, citing *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 76.)

The Court does not find persuasive Plaintiffs' cited authorities. For example, Plaintiffs cite *Steiner v. Thexton* (2010) 48 Cal.4th 411, 419 (*Steiner*). There the Supreme Court explained that the language permitting the plaintiffs to terminate the agreement even if all the contingencies had been satisfied "means the agreement is an option." (*Ibid*.) The plaintiffs argued, as Plaintiffs do here, that the Court of Appeal "should have applied the implied covenant of good faith and fair dealing to narrow the escape clause to give [plaintiffs] only a limited power to terminate the agreement." (*Ibid*.) The Supreme Court plainly stated: "We disagree." (*Ibid*.) The Supreme Court explained that an *implied* covenant does not trump an agreement's *express* language. (*Ibid*. [emphasis original].)

Plaintiffs argue *Steiner* supports their position because Section 11.9 does not contain language granting Defendant "sole discretion" (or words to a similar effect) to terminate the PPAs, but that the language "sole discretion" is used in other portions of the PPAs. (Opposition, p. 18:13-19.) Here, while the language of Section 11.9 is not identical to the language in *Steiner*, it still states that: "*At any time prior to the Commercial Operation Date*, ***Seller may*** by notice to Buyer ***terminate*** this Agreement." (UMF No. 9, Vol. 1, Ex. 1, p. 000169 [emphasis added].) Thus, as in *Steiner*, the express language of the agreement controls over the implied covenant. Moreover, Plaintiffs proffer no evidence that Defendant breached the implied covenant.[16]

Plaintiffs assert additional arguments to support their assertion that the motion must be denied because Defendant fails to proffer a reasonable interpretation of Section 11.9, including that Section 11.9 does not provide an independent termination right and is subject to Section 11.6 and that BigBeau's proffered interpretation of Section 11.9 "posits numerous contradictions." These arguments are addressed in turn below.

i. Independent Termination Right

First, Plaintiffs assert that Section 11.9 is subject to the PPAs' Cumulative Remedies provision found in Section 11.6.

Section 11.6 of the PPA states:

> 11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

(UMF No. 82.)

[16] Any assertion that Plaintiffs "would likely" have decided to declare COD is not sufficient to raise a triable issue of material fact. (See Opposition, p. 19:17-27; see also *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 889-890 ["Responsive evidence that 'gives rise to no more than mere speculation' is not sufficient to establish a triable issue of material fact."].)

As to the first argument, Plaintiffs quote a portion of *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1135 (*Wolf*). In *Wolf*, the Second District Court of Appeal, in considering an appeal from a denial of a motion for judgment notwithstanding the verdict, was concerned with the definition of "purchaser" in the parties' agreements and whether a subsidiary was a purchaser. (*Wolf*, *supra*, 162 Cal.App.4th at p. 1134.) The Court determined the definition by turning to the "express definition of the [t]erm 'Purchaser' in the [agreement], which specifically includes Walt Disney Productions, its successors and assigns and does not mention subsidiaries." (*Id.* at p. 1135.) The Court looked to other portions of the agreement to confirm that subsidiaries were not purchasers. (*Ibid*.)

Here, the issue appears to be whether Plaintiffs are entitled to additional damages because liquidated damages are not the exclusive remedy found in Section 11.9. Plaintiffs, however, fail to address the remaining language of Section 11.9, which states: "As ***Buyer's sole right and remedy*** (and ***Seller's sole liability and obligation***) ***arising out of any such termination*** under this Section 11.9, ***Buyer shall be entitled*** (A) to liquidate and retain all Development Security in the amount then required to be posted by [Seller] and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of Daily Delay Damages and Commercial Operation Delay Damages accrued and unpaid as of the Agreement termination date." (UMF No. 9, Vol. 1, Ex. 1, p. 000169 [emphasis added].)

When two provisions of a contract are inconsistent, the more specific provision controls. (*National Ins. Underwriters v. Carter* (1976) 17 Cal.3d 380, 386; Code Civ. Proc., § 1859.) Moreover, "[c]ourts must interpret contractual language in a manner which gives force and effect to *every* provision, and not in a way which renders some clauses nugatory, inoperative or meaningless." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473 [emphasis original].) Here, the language of Section 11.9 is more specific than that of Section 11.6 and therefore controls. Thus, as to Plaintiffs' second argument regarding good faith and fair dealing, Plaintiffs' cite to no evidence to support their argument.

ii. BigBeau's Interpretation of the PPAs

Plaintiffs contend that that Section 11.9 is properly interpreted as applying only to a load reduction termination under section 2.6. (Opposition, p. 23:12-14.) Again, Plaintiffs do not support their argument with evidence. Moreover, there is nothing in the terms of the contract that indicate Section 11.9 is subject to Section 2.6.

Article 11 of the PPAs is titled: Defaults, Remedies, Termination. The various sections of Article 11 address these three categories. Section 2.6 is titled "Termination for Historical Load Reduction Events." Historical Load Reduction Events is not previously defined, but is defined in Section 2.6, subdivision (b)(ii) as: "with respect to any Load Certificate [], (1) Buyer's 12-Month Load [] set forth in such Load Certificate does not equal or exceed eighty-five percent (85%) of 3,218 GWhs and (2) Buyer's applicable Long-Term Contract Percentage set forth in such Load Certificate equals or exceeds fifty percent (50%)." (BigBeau's Evidence, Vol. 2, p. 000032.) There is nothing to suggest that Section 2.6 relates to anything but "Historical Load Reduction Events" or "Load Certificates." Based on this, Sections 11.9 and 2.6 are simply referring to two different mechanisms for termination.

Accordingly, Plaintiffs' argument does not establish a triable issue of material fact.

d. BigBeau's Contractual Obligation to Sell Test Energy

Finally, Plaintiffs contend that the motion must be denied because BigBeau breached its contractual obligation to sell Test Energy. Specifically, Plaintiffs argue that Section "11.9 does not extinguish [the requirement to provide] Test Energy" because Section 2.1, subdivision (b) states that "Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination." (Opposition, p. 23:22-25.)

Plaintiffs do not direct the Court to the evidence to support the assertion that BigBeau breached its contractual obligation to sell Test Energy or that Section 11.9 is an "[a]pplicable provision" under Section 2.1. Plaintiffs have submitted eight volumes of evidence to the Court. It is Plaintiffs' "duty to direct the court to evidence that supports their claims. It is not the court's duty to rummage through the papers to construct or resuscitate their case." (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 75.) Thus, as to Plaintiffs' final argument, the Court finds that they have not met their burden.

Based on the foregoing, while Defendant has met its burden, Plaintiffs' have failed to meet their burden to establish a triable issue of material fact. Therefore, Defendant's motion for summary judgment is GRANTED.

Plaintiffs have asserted 63 objections to Defendant's evidence. The Court declines to rule on Objections 1-37, 38, 41-43, 45, 49-50, 52-63 since the Court did not consider the material objected to in rendering its ruling. (See Code Civ. Proc., § 437c, subd. (q) ["In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review."].) Objections 39, 40, 44, 46, 47, 48, and 52 are OVERRULED.

e. Code of Civil Procedure Section 437c, subdivision (h)

Plaintiffs additionally argue that the motion for summary judgment should be denied or continued because of a discovery dispute between the parties. Plaintiffs are seeking testimony in deposition related to BigBeau's ownership of the Facility and BigBeau's truthfulness in reporting delays which Plaintiffs indicate is material in ruling there was a breach of the PPAs. The Court first notes that Plaintiffs are not bringing a breach of contract action against Defendant. Moreover, the Court does not find that the requested documents are material to interpreting the language of Section 11.9. Thus, the Court declines to deny or continue the motion on this ground.

Plaintiffs also ask the Court to consider their proposed amended complaint. (See Opposition, p. 25.) The Court finds this argument to be undeveloped and declines to consider the proposed amended complaint. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [court "not required to examine undeveloped claims or to supply arguments for the litigants."]

Given the above stated ruling, Plaintiffs' motion to compel attendance and testimony of BigBeau's Person(s) Most Qualified shall go off calendar.

VI. Conclusion and Order

Defendant's motion for summary judgment as to the complaint and cross-complaint is GRANTED. Given the Court's ruling, Plaintiffs' motion to compel set for May 30, 2024 and their motion for summary adjudication set for June 4, 2024 are taken off calendar. The trial date of July 22, 2024 is vacated. The Court will prepare the final order.

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Plaintiff brings a motion to compel to compel further responses to her requests for production of documents, set three.

With respect to RFP Nos. 161, 163-65, 168-203, 208-211, 213-215, 217-228, and 252-53, the parties cannot agree on whether Defendant "controls" communications by Defendant's employees or board members on personal devices. Defendant is correct that this Court already dealt with this issue twice. Both times which the Court noted, that though a party should not be able to "insulate itself from discovery obligations by parking work business onto third party platforms or databases and then claim and inability to retrieve them when such data might be either relevant or lead to the discovery of admissible evidence," it ultimately only ordered Defendant to "identify" the individuals who may have communicated about the subject, but did not order defendant to provide the texts or other communications on those individuals' personal devices. (Order of Dec. 19, 2023). The Court will not now change course. To the extent Defendant is not turning over communications because those communications are on the personal devices of Xilinx employees or board members, the Defendant must identify those employees or board members who did communicate on the given subjects of the requests. Defendant is also ordered to turn over any documents from, or generated on, personal devices which Defendant has obtained, and thus possesses, whether through discovery, collections, or imaging the device. Accordingly, these requests are PARTLY DENIED AND PARTLY GRANTED.

With respect to RFPs Nos 165, 186-228, Plaintiff objects to Defendant's statement that it will provide the documents "to the extent that they relate to claims that are still at issue in this case." Mot. p8. Plaintiff claims this allows Defendant to choose which documents to produce. But a responding party always chooses which documents to produce. Here, Defenant is simply limiting the response from the lawsuit as originally filed, to the lawsuit as presently constituted, which is proper. Plaintiff's motion on this basis is DENIED.

RFP No.160: Xilinx has agreed to produce notes that pertain to or reference Plaintiff. Nothing more is required. This request is DENIED.

RFP Nos. 166-167: Given the dismissal of Plaintiff's claims relating to her marketing work, these requests are DENIED.

RFP Nos.179-180: Defendant has indicated it will respond with documents for the relevant time period of Jan 2017-Aug 2018. At the hearing at the MTC on May 23, 2024, Plaintiff agreed this was the relevant time period. These requests are DENIED.

RFP No. 254: Plaintiff seeks these records as "evidence of a witness's character." However, the records requested do not relate to a particular witness but simply relate to an audit of Xilinx's earnings. This request is DENIED.

RFP Nos. 190-193: Defendant must comply with these requests and provide a log for any privileged or work product it claims. These requests are GRANTED.

RFP Nos. 203-209: Plaintiff's objections to Defendant's responses are DENIED.

RFP Nos. 210-215, 217-220, and 252: Defendant's objections are not well taken. The standard for trial is not the same as that for discovery purposes. These requests are GRANTED and Defendant must answer the questions without limitation.

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RFP Nos. 221-224: Plaintiff has not demonstrated what time frame is relevant. The Court agrees that records up to the present is overly broad and unnecessary. If the parties cannot agree to a time period, it shall be through 2020.

RFP Nos. 225-226: These requests are GRANTED. If Defendant has already complied, it shall so state and verify.

RFP No. 253: This request is GRANTED. If Defendant has already complied, it shall so state and verify.

The motion is denied to the extent any other RFPs were not specifically addressed. Plaintiff makes no request for sanctions. Plaintiff shall submit the final order within 10 days of the hearing.

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