SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

(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: 10-19-23 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

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 strongly prefers in person appearances. If you must 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

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and 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. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

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	22CV398994 Hearing: Demurrer	Sharon Lewis vs City of Milpitas et a	See Tentative Ruling. Defendants shall submit the final order.
LINE 2	22CV408177 Hearing: Demurrer	John Roe 1 et al vs 3 Doe et al	See Tentative Ruling. Court will issue the final order.
LINE 3	21CV383743 Motion: Compel	Pavel Zheltov vs Alexander Hartigan et al	See Tentative Ruling. Plaintiff shall submit the final order.
LINE 4	21CV384411 Motion: Compel	CREDITORS ADJUSTMENT BUREAU, INC. vs HAYDEN SARJI et al	OFF CALENDAR
LINE 5	20CV361904 Motion: Withdraw as attorney	ROBERT SIMPSON vs BENJAMIN HERNANDEZ et al	The motion is GRANTED. Moving attorney shall submit the final order, effective upon service of notice.
LINE 6	20CV361904 Hearing: Motion Substitute Transferee	Yosemite Capital LLC vs Edwin Heath et al	Notice appearing proper and good cause appearing, the unopposed Motion to Substitute Transferee is GRANTED. Plaintiff shall submit the final order.
LINE 7	22CV397983 Motion: Set Aside Entry Default	Mohammed Ali vs Nikhat Nazneen et al	See Tentative Ruling. Plaintiff shall submit the final order.

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

LINE 8	19CV358030 Pro Hac Vice	Weckworth Electric Group v. Metcalf Builders	The unopposed motion is GRANTED. Moving party shall submit the final order.
LINE 9			
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1
Case Name: *Sharon Lewis v. City of Milpitas, et al.*
Case No.: 22CV398994

I. FACTS

This is a breach of contract action brought by plaintiff Sharon Lewis ("Plaintiff") against defendants City of Milpitas ("City"), City of Milpitas Housing Authority ("CMHA"), Tim Wong ("Wong"), and Julie Edmonds-Mares ("Edmonds-Mares"; collectively, "Defendants") over a condominium located at 340 Celebration Drive, Milpitas, California ("Condo"). Plaintiff initiated this action by filing the complaint on June 9, 2022. Plaintiff filed the operative pleading, the first amended complaint ("FAC") on May 15, 2023.
The FAC alleges Plaintiff and the City of Milpitas signed a Residential Purchase Agreement and Joint Escrow Instructions ("2013 Contract") on October 18, 2013, formalizing the sale of the Condo to Plaintiff. (FAC, ¶ 12.) On January 15, 2018, Plaintiff opened escrow to record and close the 2013 Contract. (*Id*. at ¶ 11.) On March 1, 2018, City, Wong, and Plaintiff executed an oral contract separate from the Condo's escrow transaction, stipulating Defendants would provide $57,000 for repairs to the Condo ("Oral Contract"). (*Id*. at ¶ 14.) On August 26, 2018, Plaintiff signed a new purchase contract with Defendants for the Condo under duress ("2018 Contract"). (*Id*. at ¶ 13.)

The 2018 Contract unilaterally added $35,000 to the price, a 45-year ownership restriction, and approximately $140,000 in costs for an undisclosed loan and APR terms. (FAC, ¶ 31.) Defendants allegedly substituted the 2018 Contract in escrow and forced Plaintiff to sign. (*Id*. at ¶ 37.)

The FAC alleges the following causes of action:

1. Breach of Contract;
2. Negligent Misrepresentation, Fraud;
3. Intentional Interference with Performance of Contract;
4. Breach of Oral Contract;
5. Breach of Implied Duty to Deal in Good Faith, Fair Dealing, and/or with Care; and
6. Specific Performance and/or Restatement.[1]

On June 29, 2023, Defendants filed a demurrer contending the FAC is uncertain and fails to allege sufficient facts to state a valid cause of action. (Code Civ. Proc., § 430.10, subds. (e)-(f).)

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[1] The Court presumes that Plaintiff is alleging a sixth cause of action for Specific Performance and/or Restatement. California Rules of Court, rule 2.112 requires each claim to specifically state: "(1) Its number (e.g., 'first cause of action'); (2) Its nature (e.g., 'for fraud'); (3) The party asserting it if more than one party is represented on the pleading (e.g., 'by plaintiff Jones'); and (4) The party or parties to whom it is directed (e.g., 'against defendant Smith'). Plaintiff is hereby placed on notice to comply with the California Rule of Court.
While Plaintiff is a pro se litigant, pro per litigants are held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267, internal citations omitted.)

II. REQUEST FOR JUDICIAL NOTICE

"In ruling on a demurrer, a court may consider facts of which it has taken judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) This includes the existence of a document. When judicial notice is taken of a document, however, the truthfulness and proper interpretation of the document are disputable. [Citation.]" (*StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.)

The Court GRANTS Defendants' request for judicial notice of the Complaint as part of the Court's records and because of its relevance to Defendants' statute of limitations argument. (Evid. Code § 452, subd. (d); see also *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 ["judicial notice, since it is a substitute for proof… is always confined to those matters which are relevant to the issue at hand."])

The Court DENIES Plaintiff and Defendants' request for judicial notice of the First Amended Complaint as unnecessary because it is the pleading under review. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn.1.)

III. LEGAL STANDARD

In ruling on a demurrer, the court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In liberally construing the allegations within a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

A demurrer is appropriate when the time-bar defect ""clearly and affirmatively appear[s] on the face of the complaint; it is not enough that the complaint shows that the action may be barred."" (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232 [citing *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42].)

IV. ANALYSIS

Defendants demur to the FAC primarily on the ground of time-bar. The court will take these arguments out of order and first address the time-bar to the fraud and breach of contract claims, before reaching the derivative claims on intentional interference with performance of contract and breach of implied duty to deal in good faith.

A. Breach of Contract

Defendants demur to the first cause of action, contending the four-year statute of limitations bars the claim. (See Code Civ. Proc., § 337.)
The FAC alleges breach of the 2013 Contract on two separate occasions. The first alleged breach occurred at an unspecified date, and the FAC solely alleges breach when Defendants "unilaterally failed to record and close [the] 2013 contract." (FAC, ¶ 25.) As Defendants persuasively note, Plaintiff's failure to specify when she expected the transaction to close and whether failing to close escrow was a material breach of the contract renders her claim devoid of sufficient facts to survive demurrer.

The second alleged breach occurred on April 24, 2018, when "Defendant Tim Wong, unilaterally, in a breach of contract, gave [Plaintiff] and escrow the 2018 contract." (FAC, ¶ 33.) Defendants maintain that because Plaintiff became aware of the breach on April 24, 2018, the statute of limitations began to run, and Plaintiff had until April 24, 2022 to file the complaint. (*Menefee v. Ostawari* (1991) 228 Cal.App.3d 239, 246 (*Menefee*) ["[A] cause of action for breach of contract ordinarily accrues at the time of breach regardless of whether any substantial damage is apparent or ascertainable."]; see also FAC, ¶ 35.) Plaintiff did not file the complaint until June 9, 2022, well-after the acceptable four-year statute of limitations.
In opposition, Plaintiff insists that breach first occurred on August 26, 2018, when Defendants closed escrow on the Condo but failed to record the 2013 Contract. However, this assertion is unpersuasive as a direct contradiction to the allegations in the FAC and outside of the four corners of the subject pleading.

Plaintiff also argues that Defendants delayed Plaintiff's discovery of breach to May 8, 2021. However, the boilerplate allegations of the FAC are insufficient to plead delayed discovery. To be entitled to the benefit of the delayed discovery rule a plaintiff must specifically plead the time and manner of discovery and show the following: 1) Plaintiff had an excuse for late discovery; 2) Plaintiff was not at fault in discovering facts late; 3) Plaintiff did not have actual or presumptive knowledge to be put on inquiry; 4) Plaintiff was unable to make earlier discovery despite reasonable diligence. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1319, 1324-1325 (*E-Fab, Inc.*).) In *E-Fab, Inc.*, a pleading sufficiently invoked the delayed discovery rule by alleging "in November 2003 when Plaintiff was first informed of Vickie Hunt's criminal record by the police." (*E-Fab, Inc., supra,* 153 Cal.App.4th 1308, 1325.) In particular, the *E-Fab, Inc.* court held that "Plaintiff's allegations show that it 'actually learned something [it] did not know before'" and the allegations did not "suggest any circumstances that should have alerted plaintiff to its injury at defendant's hands." (*Ibid*. [citing *Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 563].)

Here, the FAC's general statement that "[Plaintiff] could not have discovered the breach of contract through reasonable diligence, hence, [Plaintiff] did not fully realize [Defendants'] breach and non-performance of the 2013 contract and the 2018 contract until on/or around May 8, 2021" are insufficient to raise delayed discovery. (FAC, ¶ 53.) Plaintiff does not allege the manner or circumstances of discovery.

Notwithstanding the above, because this is the first substantive pleadings challenge, the Court SUSTAINS Defendants' demurrer to the first cause of action and grants 10 days leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

B. Fraud

Defendants demur to the second cause of action on the grounds of statute of limitations, statutory immunity, and specificity. The FAC alleges Defendant Wong made knowing, negligent, and/or recklessly false and misleading statements about Defendants' intentions to perform or close the 2013 Contract. (FAC, ¶ 57.) Plaintiff reasonably relied on Defendants' representations and did not realize they were deceitful until April 24, 2018, resulting in at least $700,000 in equity and property losses. (*Id*. at ¶¶ 57-60.) The FAC further alleges that Defendant Wong was an employee, agent, and/or servant of the City of Milpitas when he made the misrepresentations. (*Id*. at ¶ 2.)

Defendants persuasively argue that Plaintiff cannot maintain her claim for negligent misrepresentation or fraud. Unless provided by statute, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (See Gov. Code, § 815, subd. (a).) California law immunizes both public entities and their employees from damages resulting from either negligent or intentional misrepresentations made by the employees. (See Gov. Code, §§ 818.8, 822.2; *Tokeshi v. State of California* (1990) 217 Cal.App.3d 999, 1004 (*Tokeshi*).) With respect to public entities, this immunity is absolute. (*Tokeshi, supra,* 217 Cal.App.3d at p. 1004.) In view of the foregoing, the Court need not reach the question of whether the claim is pled with sufficient specificity or otherwise time-barred.

The Court SUSTAINS without leave to amend, Defendants' demurrer to the second cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

C. Breach of Oral Contract

Defendants demur to the fourth cause of action, contending the statute of limitations and statute of frauds[2] bar the claim for breach of oral contract. (See Code Civ. Proc., §339; Civ. Code, § 1624.)

1. Statute of Limitations

The FAC appears to allege that Defendants breached the Oral Contract when Defendants failed to pay the $57,000 "during, and/or shortly after the close of escrow." (FAC, ¶ 100.) The FAC alleges escrow closed on August 26, 2018, thus, Defendants contend that the statute of limitations ran on August 26, 2020. (*Id*. at ¶ 13; see also *Menefee, supra*, 228 Cal.App.3d at p. 246.) As Defendants point out, the breach of oral contract claim first appears in the operative FAC, filed on May 15, 2023, well after the acceptable two-year statute of limitations.

In opposition, Plaintiff again invokes the delayed discovery rule, insisting that discovery could not have occurred until May 8, 2021. The FAC alleges that "[Plaintiff] could not have discovered through reasonable diligence [Defendants'] breach of the oral contract, hence, [Plaintiff] did not fully realize [Defendants'] breach of the oral contract until on or

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[2] While Defendants originally raise this argument in the context of the first breach of contract claim, the subject agreement is the Oral Contract. Accordingly, the Court addresses the statute of frauds issue here.

around May 8, 2021." (FAC, ¶ 113.) While the FAC does allege that "[Plaintiff] was working on, and gathering information, to fully determine and understand the breach of the oral contract perpetrated against her by [Defendants]," a general averment, as noted above, is insufficient for pleading purposes. (See *E-Fab, Inc., supra,* 153 Cal.App.4th at pp. 1324-1325.)

2. Statute of Frauds

Defendants also maintain that Plaintiff's $57,000 claim pursuant to the Oral Contract is unenforceable under the statute of frauds. (Civ. Code, § 1624.)
Civil Code section 1624 provides that certain contracts are "invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged or by his agent." (Civ. Code, § 1624.) Defendants specifically maintain that the Oral Contract is covered by Civil Code section 1624 as a "special promise to answer for the debt, default, or miscarriage of another." (Civ. Code, § 1624, subd. (a)(2).)

The FAC alleges that the Oral Contract was for "[Defendants] to provide purchase orders or payments for [Plaintiff] for $57k for condo repairs." (FAC, ¶ 99.) To the extent that the Oral Agreement constitutes Defendants' promise to answer for Plaintiff's debt (*i.e.,* repair costs incurred by Plaintiff), the statute of frauds does apply to the Oral Contract. Furthermore, Plaintiff does not address the statute of frauds with any supporting argument or citation to legal authority. Accordingly, because the Oral Contract was not in writing, the statute of frauds bars Plaintiff's breach of oral contract claim.

Notwithstanding the above, because this is the first substantive pleadings challenge, the Court SUSTAINS Defendants' demurrer to the fourth cause of action and grants 10 days leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

D. Intentional Interference with Performance of Contract

The FAC alleges that, "Defendants Tim Wong and Julie Edmonds-Mares, intentionally interfered with the performance of the 2013 contract between the City and the [Plaintiff]." (FAC, ¶ 90.) As a preliminary matter, Defendants mistakenly apply the four-year statute of limitations for written contracts to the third cause of action. The third cause of action specifically indicates intentional interference with performance of the *Oral Contract,* thus it is subject to a two-year statute of limitations. (Code Civ. Proc., § 339.)
To state a cause of action for inducing breach of contract and intentional interference with contractual relations, the plaintiff must show "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendants' intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (See *Pacific Gas & Electric Co. v. Bear Sterns & Co.* (1990) 50 Cal.3d 1118, 1126.)

As discussed above, Plaintiff has not established actual breach of the oral contract. Thus, Defendants' demurrer to the third cause of action is SUSTAINED with 10 days leave to amend.

E. Breach of Implied Duty to Deal in Good Faith and Fair Dealing

The FAC alleges "[Defendants] failed to use reasonable care in its performance, or lack thereof, regarding the 2013 contract, the 2018 contract, and the oral contract and [Defendants] failed to follow the contract terms and [Plaintiff] was harmed as a result." (FAC, ¶ 118.) "The prerequisite for any action for breach of the implied covenant of good faith and fair dealing is the existence of a contractual relationship between the parties." (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 49.) "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. [Citation.]" (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349.)

Defendants demur to the fifth cause of action also on the ground that it is barred by a four-year statute of limitations. (Code Civ. Proc., § 337.) Because the FAC does not establish a valid contractual relationship, Defendants' demurrer to the fifth cause of action is SUSTAINED with 10 days leave to amend. Having sustained the demurrer on this ground, the Court declines to consider the statute of limitations argument.

F. Uncertainty

A defendant may object to a complaint by demurrer or answer on the ground that the pleading is uncertain. (Code Civ. Proc., §430.10, subd. (f).) However, a demurrer based on uncertainty is typically sustained only if the pleading is so unclear that the responding party cannot reasonably respond. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.)

Here, it is clear from Defendants' arguments and overall demurrer that Defendants understand the nature of the claim and misapply Code of Civil Procedure section 430.10, subdivision (f) to contend that the FAC fails to allege facts sufficient to state a cause of action pursuant to Code of Civil Procedure section 430.10, subdivision (e). The absence of certain details however, does not render the complaint "so incomprehensible that a defendant cannot respond." It simply means that the complaint is not as specific as defendant would like. Accordingly, Defendants' demurrer to the FAC on the ground of uncertainty is OVERRULED. (Code Civ. Proc., § 430.10, subd. (f).)

V. CONCLUSION

Defendants' demurrer to the first, third, fourth and fifth causes of action on the ground of insufficient facts is SUSTAINED with 10 days leave to amend.

Defendants' demurrer to the second cause of action on the ground of public entity immunity is SUSTAINED without leave to amend.

Defendants' demurrer to the FAC on the ground of uncertainty is OVERRULED.

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Calendar Line 2
Case Name: *Roe 1, et al. v Mountain View Whisman School District, et al.*
Case No.: 22CV408177

I. Factual and Procedural Background[3]

Plaintiffs John Roe 1 ("Roe 1"), John Roe 2 ("Roe 2"), John Roe 3 ("Roe 3"), John Roe 4 ("Roe 4"), and John Roe 5 ("Roe 5")(collectively, "Plaintiffs") bring this Third Amended Complaint ("TAC") against defendants Mountain View Whisman School District ("MVWSD" or "Defendant"), Santa Clara Unified School District ("SCUSD")(collectively, "School District Defendants"), Nathaniel McCray ("McCray"), Roger Ray Murray ("Murray"), Ronald Wayne Murphy, and Kenneth Steven Carpenter (collectively, "Individual Perpetrator Defendants") for allegations of childhood sexual abuse.

In 1974, Individual Perpetrator Defendants were indicted for operating a child sex and photography ring involving hundreds of young boys. (TAC, ¶ 2.) The four men were indicted, convicted, and sent to prison, charged with numerous crimes involving children. (*Ibid*.)

In or around 1972-1973, Roe 1 was an eighth-grade student at Graham Junior HS of MVWSD.[4] (TAC, ¶ 5.) Defendant McCray committed acts of sexual assault against Roe 1 during school hours over a six-month period. (*Ibid*.) Roe 1 was often alone with McCray in his classroom but he was easily visible to administrators, teachers, employees, and students who were in or walking through the parking lot facing McCray's classroom. (*Ibid*.) During lunch, McCray would look at gay pornographic magazines depicting young boys engaging in sexual activities as shown to Roe 1. (*Ibid*.) On one occasion, a science teacher from an adjoining classroom walked into McCray's classroom and witnessed Roe 1 alone with McCray while he was looking at these magazines. (*Ibid*.) Additionally, school personnel frequently witnessed Roe 1 alone with McCray and when other students were out at lunch, Roe 1 was left alone unsupervised in McCray's classroom where McCray committed acts of sexual assault, abuse, molestation, and harassment against Roe 1. (TAC, ¶ 6.) Gerald B. DeFries ("De Fries") was the principal of Roe 1's school and "had actual knowledge of McCray's 'private life' and his participation in the 'child sex and photography ring.'" (*Ibid*.)

In the early 1970's, McCray sexually assaulted Roe 2 at defendant Murray's home. (TAC, ¶ 7.) Murray was the school photographer at Pomeroy Elementary School and Curtis Junior HS of SCUSD. (*Ibid*.) McCray told Roe 2 he was a sex education teacher at Graham Junior HS of MVWSD. (*Ibid*.) Also in the early 1970's, Roe 4 was a student in McCray's science and theater class with MVWSD. (TAC, ¶ 9.) During theater costume changes, McCray would sexually grope Roe 4 and would ask him inappropriate questions making him feel confused and uncomfortable. (*Ibid*.) In his theater and science class, McCray baited, groomed, and sexually assaulted Roe 4 in "plain view" of other students and other school personnel,

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[3] As there are numerous allegations against multiple different defendants, the Court states the allegations relevant to MVWSD, the demurring party, for clarity.
[4] MVWSD is a public entity and a school district in the County of Santa Clara. (TAC, ¶ 22.) At all relevant times, MVWSD administered, owned, operated, ran, controlled, oversaw, managed, and/or maintained Graham Middle School located in Mountain View, California. (TAC, ¶ 21.)

including teachers, supervisors, and administrators. (*Ibid*.) Roe 5 was also sexually assaulted by McCray. (TAC, ¶ 10.)

Plaintiffs bring this action as one for damages as a result of childhood sexual assault for which the statute of limitations has been extended pursuant to Code of Civil Procedure section 340.1, subdivision (q). (TAC, ¶ 13.) Plaintiffs are adult individuals over the age of forty and have filed all necessary declarations pursuant to Code of Civil Procedure section 340.1 subdivisions (f), (g), and (h). (*Ibid*.)

On September 1, 2023, Plaintiffs filed their TAC, asserting the following eleven causes of action:

1) Negligence [against all defendants];
2) Negligent Supervision [against all defendants];
3) Negligent Hiring and/or Retention [against all defendants];
4) Negligent Failure to Warn, Train, or Educate [against all defendants];
5) Intentional Infliction of Emotional Distress [against all defendants except School District Defendants];
6) Sexual Battery [against all defendants except School District Defendants];
7) Sexual Assault [against all defendants except School District Defendants];
8) Gender Violence [against all defendants except School District Defendants];
9) Violation of Penal Code §§ 226j, 286, 287, 288a, 289(h), (i), (j), 3.114, and 647.6 [against all defendants except School District Defendants];
10) Violation of Civil Rights, Civil Code §§ 51.7, 52, and 52.1 [against all defendants]; and
11) Human Trafficking, Civil Code § 52.5 [against all defendants except School District Defendants].

On June 27, 2023, defendant MVWSD filed a demurrer to the first, second, third, fourth, and tenth causes of action. Plaintiffs oppose the motion. However, Plaintiffs' opposition states they will no longer be asserting a negligence per se claim under the Child Abuse and Neglect Reporting Act. (Opposition, p. 8:7-8.) Accordingly, the Court will not address MVWSD's argument related to this claim.

II. Demurrer

MVWSD demurs to the first, second, third, fourth, and tenth causes of action on the ground they fail to state facts sufficient to constitute a cause of action.

A. Statute of Limitations

MVWSD contends the above stated causes of action are barred by the applicable statute of limitations as the events occurred "sometime before 1974[.]" (Demurrer, p. 10:4-5.) MVWSD's argument is that the TAC fails to allege Code of Civil Procedure section 340.1, subdivision (q), as these are the only claims that may benefit from the extended statute of limitations. (Demurrer, p. 10:23-25.)

In opposition, Plaintiffs argue the TAC references section 340.1 on 20 separate occasions and each of the TAC's 11 causes of action incorporates by reference all prior paragraphs of the complaint. (Opposition, p. 6:8-19.)

Section 340.1, subdivision (q) states:

> 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.

The Court notes that it is not necessary for Plaintiffs to allege they are making claims pursuant to section 340.1; it is sufficient that Plaintiffs allege facts showing that the limitations period applies. (See *A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1262.) In any event, Plaintiffs do allege they bring their claims pursuant to section 340.1 and reference subdivision (q) directly. (See TAC, ¶ 41, p. 18 ["the statute of limitations is governed and extended, by CCP § 340.1(q) pursuant to which these claims may be commenced within three years of January 1, 2020"].) In this case, Plaintiffs filed their initial pleading on December 5, 2022. Accordingly, the statute of limitations does not bar their claims based on childhood sexual abuse.

The demurrer to the TAC on the ground the statute of limitations has run on each claim is OVERRULED.

B. First Cause of Action – Negligence

"To establish a cause of action for negligence, the plaintiff must show that the 'defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.'" (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213.)

MVWSD asserts the TAC fails to sufficiently allege facts that it knew or should have known about the harm alleged and without notice of the harm, the harm was not reasonably foreseeable sufficient to create a duty for it to act. (Demurrer, p. 12:22-23.) In opposition, Plaintiffs argue that MVWSD may be held liable for childhood sexual abuse even if a particular act of sexual abuse was not foreseeable. (Opposition, p. 7:3-5.)

Defendant is correct that courts have held foreseeability is crucial in determining the existence and scope of duty. (See Demurrer, p. 12:12-13, citing *John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1189 (*John B*).) In *John B*, the Supreme Court explained that the "'very concept of negligence presupposes that the actor either does foresee an unreasonable risk of injury, or could foresee it if he conducted himself as a reasonably prudent person.'" (*Id.* at p. 1190.)

"In examining foreseeability, the court's task is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is

sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed." (*Doe v. Roman Catholic Archbishop of Los Angeles* (2021) 70 Cal.App.5th 657, 675 [emphasis original, internal quotations omitted][also determining it was reasonably foreseeable that minors might be sexually molested by a priest, "even though the Archdiocese did not have knowledge of prior sexual misconduct" by the priest specifically].) Moreover, California courts have repeatedly held that violence and abuse against children in the classroom is a foreseeable occurrence. (See e.g., *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 629; *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 870 (*C.A.*); *Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 132 ["consistent with California negligence law, [] school administrators have a duty to protect students from sexual abuse by school employees, even if the school does not have actual knowledge of a particular employee's history of committing, or propensity to commit, such abuse"].)

In this case, the TAC alleges, among several other allegations, that: teachers, administrators, and the school principals were aware, knew, or should have known of the abuse that was taking place at school (TAC, ¶ 6); that one of the school's principals had actual knowledge of defendant McCray's participation in the "'child sex and photograph ring'" (*ibid*.); these school staff knew or should have known Plaintiffs were at risk of foreseeable injury when left alone and unsupervised during lunch breaks and after school in the science classroom (*ibid*.); defendant McCray committed acts of sexual assault against Roe 1 during school hours over a six-month period (TAC, ¶ 5); Roe 1 was visible to "administrators, teachers, employees and students who were in or walking through the parking lot" when Roe 1 was alone in the classroom with McCray (*ibid*.); another teacher witnessed Roe 1 alone with McCray while McCray was viewing pornographic magazines (*ibid*.); Roe 1 advised other teachers he was alone with McCray during lunch time (*ibid*.); McCray was seen by students and school personnel "baiting, grooming and sexually assaulting" Roe 3 in theater and science classes (TAC, ¶ 9); that the School District defendants, school personnel, and supervisory and administrative employees knew that the Individual Perpetrator Defendants had engaged in unlawful sexually-related conduct with minors in the past, and/or were continuing to engage in such conduct (TAC, ¶¶ 47, 62); and that by knowingly subjecting Plaintiffs to such foreseeable danger, School District Defendants had a duty to take reasonable steps and implement reasonable safeguards to protect Plaintiffs (TAC, ¶ 62).

The Court finds the TAC sufficiently alleges that the harms to Plaintiffs were reasonably foreseeable in the absence of supervision by the school. (See *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1459-1460.) "Whether plaintiff[s] can prove these allegations, or whether it will be difficult to prove them, are not appropriate questions . . . when ruling on a demurrer." (*Id.* at p. 1460.)

Based on the foregoing, the demurrer to the first cause of action is OVERRULED.

C. Second Cause of Action – Negligent Supervision & Third Cause of Action – Negligent Hiring/Retention

MVWSD asserts that the second and third causes of action fail because 1) there is no statutory basis for a claim against a public entity based on negligent hiring and supervision practices; and 2) Plaintiffs fail to allege that district supervisors were aware of any risk of harm.

1. Statutory Basis

Defendant contends that several California cases hold that there is no statutory basis for a claim against a public entity based on negligent hiring and supervision practices. (Demurrer, p. 14:7-11, citing *DeVillers v. County of San Diego* (2008) 156 Cal.App.4th 238, 252-253 (*DeVillers*); *Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1182 (*Eastburn*)*; Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1111 (*Munoz*).) In opposition, Plaintiff argues that the Supreme Court addressed these three cases in *C.A.*, *supra,* and rejected the proposition that public entities cannot be held liable for the negligence of school personnel. (Opposition, p. 8:19-23, citing *C.A.*, *supra,* 53 Cal.4th at pp. 873-875.)

In *C.A.*, plaintiff sued a public high school guidance counselor and the school district for damages arising out of sexual harassment and abuse by the counselor. (*C.A.*, *supra*, 53 Cal.4th at p. 862.) The trial court sustained the district's demurrer holding it could not be vicariously liable for the negligence of supervisory or administrative personnel who knew, or should have known, of the counselor's propensities and nevertheless hired, retained, and inadequately supervised her, and the Court of Appeal affirmed. (*Ibid*.) The California Supreme Court reversed, concluding that the plaintiff's theory of vicarious liability for negligent hiring, retention, and supervision was legally viable as there is a great deal of case authority establishing that school personnel owed students under their supervision a protective duty of ordinary care, for breach of which the school district could be held vicariously liable. (*Ibid*.) If a supervisory or administrative employee of the school district were proven to have breached that duty by negligently exposing the minor to a foreseeable danger of molestation by his guidance counselor, resulting in his injuries, and assuming no immunity provision applied, liability would fall on the school district under Government Code section 815.2. (*Ibid*.) As Plaintiffs also note in opposition, the *C.A.* Court rejected the three cases cited by Defendant stating that "none of [those] decisions supports the sustaining of a demurrer on the facts alleged here." (*Id.* at p. 873.)

The Supreme Court explained each case in turn. The Court first rejected *Eastburn*, as there was no statute imposing liability on public entities for negligence in handling emergency calls and the court had not considered any theory of vicarious liability analogous to a public entity being vicariously liable for the actions of administrative or supervisory personnel in hiring, supervising and retaining other employees. (*C.A.*, *supra*, 53 Cal.4th at p. 873.)

Regarding *DeVillers*, the Supreme Court explained that "'section 815.2 . . . did not come into play'" because no one in the coroner's office had the responsibility to ensure employees were not using laboratory poison to murder their relatives. (*C.A.*, *supra*, 53 Cal.4th at p. 874.) The *C.A.* Court continued that, "[i]n contrast, school personnel have a duty to protect students from harm, which includes an obligation to exercise ordinary care in hiring, training, supervising, and discharging school personnel. . . . Under section 815.2, the school district is liable for the administrator's negligence." (*Ibid*. [internal citations omitted].)

Finally, addressing *Munoz*, the Supreme Court explained that the Court of Appeal rejected a theory of direct liability based on negligent selection, training, retention, supervision, and discipline of a police officer, as there was no statute that made a public entity liable for the type of negligence at issue, no direct liability could be established under section 815. (*C.A.*, *supra,* 53 Cal.4th at p. 874.) The *C.A.* Court went on to explain that a school district could be vicariously liable for school personnel based on section 815.2. (*Id.* at p. 875.)

Accordingly, Defendant's argument that a public entity cannot be liable for negligent hiring and supervision practices is not well taken and the demurrer to the second and third causes of action cannot be sustained on this basis.

2. District's Knowledge

Defendant next argues that even if Plaintiffs' claims could be sustained against the District, the TAC still fails to allege facts demonstrating that a person in a supervising role knew or should have known about the alleged conduct by Individual Perpetrator Defendants. (Demurrer, p. 14:18-21.) In opposition, Plaintiffs assert the TAC alleges actual knowledge on behalf of another teacher who witnessed McCray commit acts of sexual misconduct, that principal DeFries had actual knowledge of McCray's participation in a child sex and photography ring. (Opposition, p. 9:19-27.)

The *C.A.* Court explained that "[s]chool principals and other supervisory employees, to the extent their duties include overseeing the educational environment and the performance of teachers and counselors, also have the responsibility of taking reasonable measures to guard pupils against harassment and abuse from foreseeable sources, including any teachers or counselors they know or have reason to know are prone to such abuse." (*C.A., supra,* 53 Cal.4th at p. 871.)

Here, the TAC clearly alleges that a person in a supervisory role, the school's principal, knew or should have known about the alleged abuse. (See TAC, ¶ 6.) Moreover, Plaintiffs further allege that "MVWSD's other teachers, institutional aids, teacher's aides, teacher's assistants, classified employees, principals and/or administrators at the School were aware, knew or should have known of Defendant McCray's dangerous propensities but nevertheless hired, retained and failed to properly supervise him . . . and failed . . . to prevent foreseeable risk of sexual abuse and harassment by McCray." (*Ibid*.) These allegations are sufficient to survive a demurrer. (See *C.A., supra,* 53 Cal.4th at p. 872 ["To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action"].) As such, the Court declines to sustain the demurrer on this basis as well.

Based on the foregoing, the demurrer to the second and third causes of action is OVERRULED.

D. Fourth Cause of Action – Negligent Failure to Warn, Train, or Educate

Defendant argues the fourth cause of action fails because the TAC "cites to no statute or other source which would create the obligation for the District to take the specific steps raised. Where no statute or other enactment creates an obligation to provide the training, warning, or educate pled in the TAC, such matters are the subject of discretion and cannot serve as the basis of a claim." (Demurrer, p. 15:21-25, citing *Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802.)

Plaintiffs rely on *C.A.* to support their argument in opposition that a public entity can be liable for its negligent failure to warn, train, or educate. However, *C.A.* did not involve a cause of action for failure to warn, train, or educate students, but considered causes of action for negligent supervision and hiring. Further, Plaintiffs do not cite to any statutory duty to warn, educate, or train students about childhood sexual harassment.

As a matter of law, a duty to educate is one that has been created solely through common law by the ruling in *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377 (*Juarez*), and there is no common law tort liability for governmental entities. Further, the court in *Juarez* expressly confined its holding to the facts before it, and consequently, no subsequent California cases have expanded the decision beyond the Boy Scouts of America. Moreover, California courts have typically held that public school districts cannot be liable under a theory of negligent failure to warn, train, or educate its students. (See *Peter W. v. San Francisco Unified School Dist.* (1976) 60 Cal.App.3d 814, 825 ["The novel- and troublesome- question on this appeal is whether a person who claims to have been inadequately educated, while a student in a public school system, may state a cause of action in tort against the public authorities who operate and administer the system. We hold that he may not"]; see also *Chevlin v. L.A. Cmty. College Dist.* (1989) 212 Cal.App.3d 382, 389 ["For policy reasons, however, the law refuses to hold a public school system liable to a student who claims he was inadequately educated"].) Thus, Plaintiffs cannot state a cause of action for negligent failure to warn, train, and educate against MVWSD.

As such, the fourth cause of action is SUSTAINED without leave to amend. (See *Berkeley Polics Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931, 942 ["where the nature of plaintiff's claim is clear, but under substantive law no liability exists, leave to amend should be denied, for no amendment could change the result"].)

E. Tenth Cause of Action – Violation of Civil Rights Act, Civil Code §§ 51.7, 52, and 52.1

Defendant argues Plaintiffs' tenth cause of action is based entirely on ratification and a claim against a public entity based entirely on ratification is not recognized by statute. (Demurrer, p. 16:1-7.) In opposition, Plaintiffs contend liability is provided by statute if the statute defines the tort in general terms and Civil Code section 51.7 defines a tort in general terms, thus, Defendant is liable under Civil Code sections 51.7 and 52. (Opposition, p. 11:11-19.)[5] In reply, Defendant cites to *John R. v. Oakland Unified School District* (1989) 48 Cal.3d 438 (*John R.*) to support its argument that school districts cannot be held vicariously liable for sexual assault by a teacher. (See Reply, p. 13:9-11, 24-25.)

In *John R.*, the California Supreme Court explained that an "employer's liability extends to torts of an employee committed within the scope of his employment. This includes willful and malicious torts as well as negligence. Whether a tort was committed within the scope of employment is ordinarily a question of fact; it becomes a question of law, however, where the undisputed facts would not support an inference that the employee was acting within the scope of his employment." (*John R., supra*, 48 Cal.3d at p. 447 [internal quotations and citations omitted].) The Supreme Court explained further that "[t]he employer is not liable if the employee substantially departs from his duties for purely personal reasons." (*Ibid*. [internal

[5] Plaintiffs cite to a dissenting opinion and a lower federal court opinion to support their argument that public entities may be held liable for violations of Civil Code sections 51.7 and 52. (See Opposition, p. 11:14-17; see also TAC, ¶ 144.) The Court declines to review these cases as they are not binding authority. (See e.g., *People v. Seaton* (2001) 26 Cal.4th 598, 653 ["[d]ecisions of the federal courts of appeal are not binding on this court"]; *People v. Lopez* (2012) 55 Cal.4th 569, 585 ["dissenting opinions are not binding precedent"].)

quotations and citations omitted].) The *John R.* Court then addresses "whether an employer (specifically, a school district) can be held liable for a sexual assault committed by an employee (here, a teacher) on another person (particularly, on a student committed to that teacher's supervision)." (*Ibid*.) The Supreme Court ultimately held that "vicarious liability [should not] attach here for the teacher's tort." (*Id.* at p. 452; see also *C.A.*, *supra*, 53 Cal.4th at p. 875 [distinguishing negligent hiring and supervision theory from vicarious liability and reiterating that the court rejected the theory that a school district was vicariously liable for the teacher's molestation, "on the ground the molestation was beyond the scope of the teacher's employment"].)

Here, the TAC alleges MVWSD "ratified the violations of section 51.7 committed by Individual Perpetrator Defendants against Plaintiffs, by failing to investigate, discharge or otherwise take action . . . for which Individual Perpetrator Defendants are liable under a respondeat superior theory under Government Code section 815.2 and/or the District's ratification through one or more of its employees." (TAC, ¶ 145.) The TAC further states that MVWSD's liability "is not predicated upon the actual sexual abuse itself, when such conduct is held to be outside the course and scope of employment, but on the actions of supervisory employees who ratified the conduct on behalf of the District." (TAC, ¶ 146.) Thus, Plaintiffs have additionally alleged a ratification theory in addition to vicarious liability under a respondeat superior theory.

"'As an alternative theory to respondeat superior, an employer may be liable for an employee's act where the employer either authorized the tortious act or subsequently ratified an originally unauthorized act. The failure to discharge an employee who has committed misconduct may be evidence of ratification. The theory of ratification is generally applied where an employer fails to investigate or respond to charges that an employee committed an intentional tort, such as assault or battery. Whether an employer has ratified an employee's conduct is generally a factual question." (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1110.) Here, the pleading contains allegations of ratification. (See TAC, ¶¶ 145-146.) Further, neither party directs the Court to authority to support their argument that a school district can or cannot be held liable under a ratification theory. Moreover, as ratification is a question of fact, it is not properly decided on a pleading challenge by demurrer. (See e.g., *Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1240 [where an issue "raises a question of fact [it] is not amendable to resolution on demurrer"].) Instead, the issue should be determined by the trier of fact or by a dispositive motion for summary judgment.

Accordingly, the demurrer to the tenth cause of action is OVERRULED.

III. Conclusion and Order

The demurrer to the first, second, third, and tenth causes of action is OVERRULED. The demurrer to the fourth cause of action is SUSTAINED without leave to amend. The Court will issue the final order.

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Calendar Line 3
Case Name: Pavel Zheltov v. Alexander Hartigan, et al.
Case No.: 21CV383743

Claims

Plaintiff Pavel Zheltov ("Plaintiff") seeks to compel the deposition of Defendant Hartigan, the CEO of PageBites, Inc. (hereinafter "Defendant"). Plaintiff claims that deposing Defendant is necessary because he deposed PageBites' person most knowledgeable, Cherry Rocha, but she could not answer his questions regarding (1) who created the contract at issue; (2) who drafted the Restricted Stock Unit ("RSU") Award Agreement' (3) who drafted Plaintiff's Agreement; or (4) information regarding the drafting history of the Agreement. Motion, pp5-7.

Defendant opposes the motion arguing that Defendant has no knowledge regarding the facts alleged in the complaint, such that it would be a waste of time and money to depose him. Defendant also claims that, regardless of whether Mr. Hartigan is an "apex CEO," it is entitled to a protective order to protect it from unwarranted and wasteless discovery, since Plaintiff has failed to show Defendant has relevant knowledge about the Complaint.

In reply, Plaintiff broadens the scope of information he seeks to obtain and includes , for example, information regarding PageBites' equity compensation policies or practices, equity compensation provided to various categories of employees or the terms thereof, and knowledge of comments or criticisms of PageBites' equity compensation plans and practices.

Request for Judicial Notice

Plaintiff requests judicial notice of the Court's Order of July 14, 2023. The Court declines to do so as the Order is not necessary for the Court's decision or relevant to the issue at hand. See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 (judicial notice is confined to those matters which are relevant to the issue at hand).

Objections

Defendant objects and moves to strike Plaintiff's Reply Declaration and request for judicial notice of October 12, 2023 claiming they are untimely and procedurally improper. The Court finds that the additional portions of Ms. Cherry's deposition is improper. There is no reason this could not have been included in Plaintiff's moving papers. The Court denies the motion to strike with respect to the deposition of Ms. Cai, as that information was not available at the time of the opening brief and is relevant to steps Plaintiff took to use less intrusive means. Because the Court denied the request for judicial notice, it need not strike it.

Analysis

Defendant's claimed ignorance regarding Plaintiff's employment contract, hiring, or RSU Agreement is not a basis to refuse to be deposed. Code of Civil Procedure § 2017.010 states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Moreover, the discovery rules are to be applied liberally in favor of discovery (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal. 3d 785, 790), and fishing expeditions *are* permissible unless overly burdensome or done to harass, for example. See *Greyhound Corp. v. Superior Court* (1961) 56 Cal. 2d 355 (providing examples of improper fishing expeditions).

Here, Defendant's knowledge, or lack thereof, regarding the RSU Agreement in general and of Plaintiff's specific agreement is relevant to Plaintiff's claims against Defendant, as are the other areas of inquiry laid out in Plaintiff's Reply. Defendant cites nothing, outside of the context of an apex witness, to suggest that a witness's lack of knowledge, or even declaration attesting to a lack of knowledge, is sufficient to prevent that witness from being deposed.[6] Moreover, as Plaintiff points out, the declaration of Defendant does not deny knowledge of all issues relevant to Plaintiff's claims. A party is entitled to depose a witness to ascertain the extent of that witness' knowledge. Nor has Defendant cited any authority, outside the context of an apex defendant, suggesting that a party must present evidence showing a defendant's knowledge prior to being able to depose them. The case Defendant does cite, (see Opp. p3 citing S*mith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578), has nothing to do with discovery standards. The rules are clear that a party need only show that the information sought to be obtained is reasonably calculated to lead to the discovery of admissible evidence. Defendant's knowledge of the RSU Agreement and of Plaintiff's agreement, is reasonably calculated to lead to the discovery of admissible evidence.

Defendant next claims that he is entitled to a protective order under the holding of *Liberty Mutual Ins. Co. v. Superior Court* (1992) 10 Cal.App.4th 1282. He says this is true regardless of whether he is an apex CEO. But in fact, he is only entitled to it if he is an apex CEO. See *Liberty Mutual*, 10 Cal.App.4th at 1289 (limiting its holding to "when a plaintiff seeks to depose a corporate president or other official at the highest level of corporate management"). Given that it is Defendant who wants the protections of *Liberty Mutual*, the burden is on him to show that he is an apex CEO. He fails to meet this burden. He asserts no facts to support that he is an apex witness, other than that he is the CEO of PageBites. His title is insufficient, particularly where there is no evidence regarding the size of the company, his role in the company, and where Defendant does not even affirmatively claim to be an apex CEO. See Opp. p5 (stating "[w]hether Mr. Hartigan is an 'apex CEO,' but not claiming that he is an apex CEO). Moreover, because Defendant asks for a protective order, it is his burden to show that he is entitled to one. Again, Defendant cites nothing, not even the statute permitting a protective order, to demonstrate that he is entitled to one. He presents no facts to show that the deposition would cause "unwarranted annoyance, embarrassment, or oppression." See CCP

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[6] The only case he cites which may not be an apex witness case is *Watson v. Arts & Entm't TV Network* (S.D.N.Y. Mar. 26, 2008) 2008 U.S. Dist. Lexis 24059, at *50. But that case is not binding on this court, nor does the Court find it persuasive in this case.

§ 2025.420. He suggests that Plaintiff is on an improper fishing expedition, citing *Calcor Space Facility v. Superior Court* (1997) 53 Cal.App.4th 216, 225, but that case involved an inspection demand on a nonparty, not a deposition of a party. Given that Defendant is a party and may have relevant information, Plaintiff may properly depose him.

Accordingly, Plaintiff's motion to compel is GRANTED and Defendant must appear for deposition within 30 days of the final order.

Sanctions

Because Plaintiff's request for sanctions was not timely, sanctions are denied.

Plaintiff shall submit the final order.

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Calendar Line 7
Case Name: Mohammed Ali vs Nikhat Nazneen et al
Case No.: 22CV397983

Defendant Nikhat has moved to set aside the default entered against her on Feb. 21, 2023. Plaintiff has failed to timely oppose the motion. The opposition was due October 6, 2023. He provided a late opposition on October 17, 2023 claiming to have failed to calendar the motion. The Court finds this is not good cause for filing late. Plaintiff was served notice of the hearing. At a court appearance on August 3, 2023, Plaintiff acknowledged the hearing date and indicated he was going to oppose the motion. As such, the Court strikes the opposition and denies Plaintiff's request for a continuance.

Here, however, even without an opposition, the Court does not find good cause to grant the motion to set aside. Defendant claims that the default should be set aside under Code of Civil Procedure § 473(b) which allows a court to set aside a default for her "mistake, inadvertence, surprise, or excusable neglect." The Court does not find Defendant's failure to file an answer to be the result of mistake, inadvertence, surprise or excusable neglect. Defendant had a long time to file her answer. She admits she knew of the complaint since July 2022. Decl. of Naznee, ¶7. The default was not in fact entered until May 30, 2023. See Entry of Default p1. The Court specifically told Defendant at the hearing on February 21, 2023, that she still had time to stave off a default if she filed an answer prior to entry of the default. Despite being told this, she failed to file an answer prior to May 30, 2023. Moreover, not knowing the rules of civil procedure is not an excuse. Self-represented litigants are held to the same standards as attorneys. *Kobayashi v. Super. Ct. (*2009) 175 Cal.App.4th 536, 543; see also *McClain v. Kissler* (2019) 39 Cal.App.5th 399, 428, fn. 18 (stating that "clients who represent themselves are held to the same standard of excusable neglect as litigants who are represented by counsel"); see also *Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1413 (stating that "when a litigant accepts the risks of proceeding without counsel, he or she is stuck with the outcome, and has no greater opportunity to cast off an unfavorable judgment than he or she would if represented by counsel"); see also *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1288 (stating that "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney").

The Motion to set aside default is therefore DENIED. Plaintiff shall submit the final order.

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