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: 02-27-24 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	23CV410157	Jane Doe v. Support Systems Homes, Inc. et at	Off Calendar
LINE 2	Demurrer	Weiting Zhan v. Taktejeva Kristine	See Tentative Ruling. Court will issue the final order.
LINE 3	Demurrer	Jane Doe D.A. v. Fremont Union High School District, et al	See Tentative Ruling. Court will issue the final order.
LINE 4	Motion to Compel	RREF II Bridgepointe, LLC v. Thomas Anthony et al	See Tentative Ruling. Plaintiff shall file the final order within 10 days.
LINE 5	Motion to Compel	Jane Doe v. Franklin-McKinley School District, et al	Notice does not appear proper as there is no amended notice filed regarding the 2/27/24 hearing date. It also appears that the motion is moot given that default has been entered against the person about whom the motion to compel is directed. If Plaintiff appears, the Court may continue the hearing to allow for proper notice if the matter is not mooted by the default. If Plaintiff fails to appear the matter will go off calendar.

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

LINE 6	Motion to Compel	Federated Mutual Insurance Co. v. Francisco Sumano Aquino	Notice appearing proper and good cause appearing, the unopposed motion to compel is GRANTED. Defendant is to provide code-compliant responses within 10 days of service of the final order. Defendant shall not have to pay sanctions as the circumstances render the imposition unjust. Plaintiff is cautioned that Defendant is Spanish-speaking and requires the use of a court interpreter.
LINE 7	Motion to Confirm Arbitration Award	RHRC v. Diana George et al	Notice appearing proper and good cause appearing, the unopposed motion is GRANTED. Plaintiff shall submit the final order and judgment within 10 days of the hearing.
LINE 8	Motion for Trial Preference	Louis Versman v. Edward Karpman et al	Notice does not appear proper as there is no proof of service indicating that the motion was served on Defendants. If Plaintiff appears at the hearing, the matter may be continued to allow for proper service or may be granted if Plaintiff can prove that service was proper. If Plaintiff fails to appear the matter will go off calendar.
LINE 9			
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 2
Case Name: *Zhan v. Taktejeva*
Case No.: 23CV421483

I. Factual and Procedural Background

Plaintiff Weiting Zhan ("Plaintiff") brings this action against defendant Mikaela Kristine Taktejeva ("Officer Taktejeva" or "Defendant"), a City of San Jose Police Officer.

On August 21, 2023, Plaintiff filed a form complaint against Officer Taktejeva. On August 28, 2023, Plaintiff filed an amended form complaint ("FAC") against Officer Taktejeva, asserting a single cause of action for general negligence. The FAC alleges Officer Taktejeva engaged in police misconduct on March 19, 2021 when she displayed inaccuracies in her police report in relation to an attack by Tang Jianing ("Jianing") on Plaintiff.[1] Specifically, the FAC alleges: inaccurate reporting regarding Jianing's account of the attack and weapon utilization; failure to communicate Plaintiff's injury to the on-call judge who issued the emergency protective order; Plaintiff was arrested without a valid warrant; and police were negligent in gathering evidence related to the incident. (See FAC, PLD-PI-001(2), ¶¶ 1-5.)

On November 3, 2023, San Jose Office of the City Attorney, on behalf of Officer Taktejeva, filed a demurrer to the entire FAC. Plaintiff opposes the demurrer.

II. Demurrer

a. Legal Standard

"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." (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.)

b. Untimely Opposition

As a preliminary matter, the Court notes that Plaintiff's opposition was untimely filed and served. Code of Civil Procedure section 1005, subdivision (b) states, "[a]ll papers opposing a motion . . . shall be filed with the court and a copy served on each party at least nine court days . . . before the hearing." Based on the February 27, 2024 hearing date,

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[1] The Court acknowledges that on demurrer it is bound by the allegations contained in Plaintiff's pleading. However, the Form Complaint filed by Plaintiff contains few factual allegations. For clarity in understanding the facts, it appears there was a dispute between Plaintiff and her roommate, Tang Jianing. The police were called to Plaintiff's apartment. Plaintiff was thereafter arrested by Officer Taktejeva and an emergency protective restraining order was issued. (See Demurrer, p. 2, subd. (II) Plaintiff's Allegations.) Plaintiff does not dispute these clarifying facts in her opposition to the demurrer; nevertheless, the Court relies only on the allegations in the FAC in reaching its conclusion.

Plaintiff's opposition had to be filed and served no later than February 13, 2024. Plaintiff did not file and serve her opposition until February 20, 2024, five court days late.

California Rules of Court, rule 3.1300, subdivision (d) states, "[n]o paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate." Since the Court has discretion to consider a late filed paper, Defendant has not suffered any prejudice from the late filing,[2] and to avoid the expenditure of any further judicial resources, the Court will look past this procedural violation and consider the opposition on its merits. However, Plaintiff is reminded that self-represented litigants are held to the same standard of knowledge as attorneys, and she must follow all California statutory rules and rules of court going forward. (See e.g., *Kobayashi v. Superior Court* (2009) 175 Cal. App. 4th 536, 543.) Any future violation may result in the Court's refusal to consider the untimely filed papers.

c. Defendant's Request for Judicial Notice

In support of her demurrer, Defendant requests the Court take judicial notice of the following:

1) That Plaintiff did not file a government claim with the City of San Jose (Ex. A); and
2) That Plaintiff did not file a petition to file a late government claim (Ex. B).

In support of her request, Defendant provides a declaration of San Jose City Clerk Toni Taber's Certificate of No Records indicate she searched the records and found no claim filed by Plaintiff. (See *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1752 [judicial notice of state employee's declaration declaring no records found].) Accordingly, the requests are GRANTED. (See Evid. Code, § 452, subd. (c).)

d. Government Claims Act Generally

"Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see Gov. Code, § 905 [itemized exceptions].)" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 (*Shirk*) [overruled by statute on other grounds].) Additionally, before suing a public employee, a government claim act must be filed. (See *Watson v. State of California* (1993) 21 Cal.App.4th 836, 843.)

The purpose of the Government Claims Act (Gov. Code § 900 et seq.) is to apprise the governmental body of an imminent legal action so that the entity may investigate and evaluate the claim and, where appropriate, avoid litigation by settling meritorious claims. (*Krainock v. Superior Ct.* (1990) 216 Cal.App.3d 1473, 1477; see also *Gehman v. Superior Ct.* (1979) 96 Cal.App.3d 257, 262.)

"Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, a condition precedent to plaintiff's maintaining an action against defendant, and thus an element of the plaintiff's cause of action. Complaints that do not allege

[2] On February 20, 2024, Defendant filed a Notice of Non-Opposition requesting the Court sustain the demurrer without leave to amend as Plaintiff had not filed and served an opposition to the demurrer.

facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action." (*Shirk*, *supra*, 42 Cal.4th at p. 209 [internal citations and quotations omitted], citing *Bodde, supra,* 32 Cal.4th at pp. 1240, 1245.)

"Claims for personal injury must be presented not later than six months after the accrual of the cause of action, and claims relating to any other cause of action must be filed within one year of the accrual of the cause of action. Accrual for purposes of the [Government Claims] Act is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants." (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1118 [internal citations and quotations omitted].) "Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action . . . against the public entity." (*Ibid*. [quotations omitted].) "If a claim is not timely presented, a written application may be made to the public entity for leave to present such claim." (*Id.* at p. 1119.)

e. Plaintiff's Action

In support of her demurrer, Defendant asserts that she is a public employee and was acting within the scope of her employment when she responded as a law enforcement officer to a 911 call for assistance. (Demurrer, p. 4:12-15.) Defendant contends that Plaintiff claim is therefore subject to the Government Claims Act. The incident took place on March 19, 2021 and Plaintiff did not file a government claim. (See Demurrer, p. 4:15-19; see also FAC, PLD-PI-001, GN-1; Opposition, p. 2:11.)

Here, the FAC contains no allegations that Plaintiff timely filed a claim with the City of San Jose or that compliance was excused. Moreover, Plaintiff does not dispute that she was required to file a government claim, although she was unaware of this requirement at the time. (See Opposition, p. 3:18-19.) Further, she concedes she did not file a government claim but requests this Court order Defendant to correct their police report. (*Id.* at pp. 1:22-24 ["plaintiff agrees with the defendant that the plaintiff failed to file a government claim . . . the plaintiff only requests a complete and accurate police report from the defendant"]; 7:14-18.)

While the Court is sympathetic to Plaintiff's circumstances, "'no suit for money or damages may be brought against a public entity [or public employee] on a cause of action for which a claim is required to be presented until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board[.]'" (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 767.)

In this case, Plaintiff has brought a tort cause of action for negligence against a public employee and the FAC expressly seeks damages. As such, she was required to comply with the Government Claims Act and failed to do so.

Based on the foregoing, the demurrer is SUSTAINED. Here, Plaintiff concedes she has not filed a government claim. Further, the one-year period to file a written application requesting leave to file a claim has passed. Thus, the demurrer is sustained without leave to amend. (*Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 411 ["denial of leave to amend constitutes an abuse of discretion unless the complaint 'shows on its face that it is incapable of amendment'"].)

Given the Court's ruling, it need not address Defendant's remaining arguments regarding the sufficiency of the negligence allegations.

III. Conclusion and Order

The demurrer is SUSTAINED in its entirety without leave to amend. The Court shall prepare the final order.

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Calendar Line 3
Case Name: *Doe v. Fremont Union High School Dist., et al.*
Case No.: 22CV407915

This action for damages arises out of a sexual assault purportedly suffered by Jane Doe D.A. ("Plaintiff") when she was fifteen or sixteen years old. Defendant Fremont Union High School District ("Doe 1" or "Defendant") demurs to the Complaint filed by Plaintiff.

I. Background

A. Factual

This action for damages arises out of a sexual assault purportedly suffered by Plaintiff when she was "fifteen or sixteen years old." (Complaint, ¶¶ 1-2, 8, 11-14.) According to the allegations in the Complaint, Plaintiff, who is currently sixty-two years old, was a student at Lynbrook High School ("Lynbrook") located in Santa Clara County. (*Ibid.*) The alleged sexual abuse occurred between 1976 and 1977. Defendant, a public entity/school district, was an employer of Doe 2, a then 40-year-old Lynbrook science teacher who molested and sexually abused Plaintiff. (*Ibid.*) Specifically, during Plaintiff's senior year, Doe 2 "took advantage" of Plaintiff by "groom[ing] her" in preparation for his "sexual abuse." (*Id,* ¶ 14.) Doe 2 "befriended" and "flirted" with Plaintiff. (*Ibid.*) On one occasion, while Plaintiff waited for her mother during school pickup, Doe 2 approached Plaintiff and insisted on giving her a ride. (*Id.,* ¶ 15.) Doe 2 "used his position of trust and authority to prey on Plaintiff" and convinced her to "get in his car." (*Ibid.*) Plaintiff was sexually assaulted by Doe 2 while riding alone in the car with him. (*Id.,* ¶ 16.) Specifically, Doe 2 "expos[ed] his penis and forc[ed] [Plaintiff] to masturbate him until he ejaculated." (*Id.,* ¶ 17.) When Doe 2 finally arrived at Plaintiff's home, he "directed" her to keep his sexual misconduct "a secret." (*Id.,* ¶ 17.)

Upon graduating from Lynbrook, Plaintiff "cautioned" the high school dean about Doe 2, and "strongly implied" he was "inappropriate with female students and should be closely monitored." (*Id.,* ¶ 17.) Lynbrook administrators received complaints and "warnings" from both parents and school staff about Doe 2's "improper behavior," prior to the time he sexually assaulted Plaintiff. (*Id.,* ¶ 18.) The prior complaints included, but were not limited to, Doe 2's sexual assault of other "underage female students," "flirting" and/or "inappropriately" touching female students. (*Id.,* ¶¶ 18, 22.) Despite these complaints, Defendant failed to investigate Doe 2's alleged misconduct against minor female students. (*Id.,* ¶ 20.) Plaintiff asserts Defendant, by acting through its Lynbrook administrators and staff, "should have known" that Doe 2 "was not fit to be on campus with students." (*Id.,* ¶¶ 20-21.) Consequently, Defendant's inactions resulted in the sexual abuse and molestation of Plaintiff, "on several occasions." (*Ibid.*)

Within one year of Doe 2's sexual abuse of Plaintiff, additional complaints related to Doe 2's sexual misconduct were lodged against him. (*Ibid.*) In response, the dean of Lynbrook initiated an investigation, which revealed Doe 2's ongoing sexual assault of another underage female student. (*Ibid.*) Upon being arrested and criminally charged, Defendant terminated Doe 2 from his school position and the "California Commission on Teacher Credentialing" revoked his "credentials." (*Ibid.*) Doe 2 is currently registered as a sex offender in California. (*Id.,* ¶ 24.)

B. Procedural

Based on the foregoing allegations, Plaintiff filed her operative Complaint on November 21, 2022, against Defendants Doe 1, Doe 2, and Does 3 through 60, inclusive (collectively "Defendants").[3] Plaintiff asserts the following causes of action, three of which are against Defendant Doe 1:

(1) childhood sexual abuse (Code Civ. Proc., § 340.1[4]) (against Doe 2 and Does 21-25);
(2) intentional infliction of emotional distress (against Doe 2 and Does 21-25);
(3) negligence (Gov. Code §§ 815.2 and 820) **(against Defendant Doe 1 and Does 3 through 20);**
(4) failure to report suspected child abuse (Gov. Code §§ 815.2, 815.6, and 820) **(against Defendant Doe 1 and Does 26-40);**
(5) negligent supervision of a minor (Gov. Code §§ 815.2 and 820) **(against Defendant Doe 1 and Does 3 through 20);** and
(6) negligence (against Does 41 through 50 only);

On October 30, 2023, Defendant demurred to the third, fourth, and fifth causes of action in the operative Complaint, and makes the following arguments: (1) section 340.1, "as amended by" Assembly Bill 218 ("AB 218") both unconstitutionally eliminates the Claim Presentation Requirement and changes the Statute of Limitations for child sexual abuse claims; (2) given Plaintiff's failure to comply with the Government Claims Act, Defendant never waived its available sovereign immunity defense; and (3) the revival components of AB 218 and section 340.1 amount to an "unconstitutional gift" of public funds. Specifically, Defendant asserts payment of legal claims "previously barred" is an "abrogation" of Public Entities' Rights under the Constitution (4). (Demurrer, pp 2-20.) Plaintiff opposed the motion on February 13, 2024. Defendant filed a reply brief two weeks later.

II. Demurrer

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 both the legislative history of AB 218. (Plaintiff's Request for Judicial Notice ("RJN") Exhs. 1-8.) These are

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[3] On August 1, 2023, the Complaint was amended to add the identities of Does 1 and 2.

[4] All further undesignated statutory references are to the Code of Civil Procedure.

official acts of the legislative department of this State. There is no opposition to Plaintiff's request. Consequently, this request is 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) [o]fficial 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 demurrer, 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 Demurrer to Complaint, 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.) 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). In support of its reply brief, Defendant filed a supplemental request for judicial notice of Superior Court Judge Thomas W. Wills' February 2, 2024, Order in Monterey County Case No. 22CV003767. (See Defendant's RJN in Support of Reply to Opposition to Demurrer: Exh. A). These requests are granted.[5] (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].)

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 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.)

C. Legal Standard

"In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which

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[5] 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 request for judicial notice made with the reply because the order for which Defendant seeks judicial notice was not issued until February 2, 2024, after Defendant's demurrer was filed.

may be judicially noticed.'" (*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-r214.)

"… [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850, citations and quotation marks omitted.)

D. Merits of Demurrer to the Third, Fourth, and Fifth Causes of Action

i. Defendant's Challenge to Validity of Revival Provisions of Code of Civil Procedure Section 340.1

1. Claims Presentation Requirement, Exemptions, Statute of Limitations, and Code of Civil Procedure Section 340.1

The thrust of the Defendant's demurrer 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. (Demurrer, pp. 2-7.)

"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 section 340.1, subd. (a).)[6]

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 occurring on or after January 1, 2009, and adding subdivision (p), which made this change retroactive. (Demurrer, p. 3:23-26.)

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 filed such a claim, those claims are barred and "unenforceable." (Demurrer, pp. 5-7.) According to Defendant, Plaintiff's claims against it would have accrued when the last act giving rise to them took place, i.e., the sexual assault by Doe 2, which would be "no later than 1978." (Demurrer, p. 6:3-5.) Defendant maintains section 340.1 should not retroactively eliminate the claims presentation requirement and subdivision (m) of section 340.1 does not apply because neither of the foregoing laws were in effect when the alleged incidents of sexual abuse took place. Additionally, it claims, the formerly applicable statute of limitations would have run before AB 218 went into effect.

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

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[6] 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 Complaint in 2022 when the statute read as quoted above.

> 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.[7]

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, i.e., that it has no retroactive application to claims predicated on conduct arising 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:

> 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 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 1976 to 1977. However, not only was such limiting language *removed* from subdivision (m), but subdivision (q) of § 340.1 unequivocally *revived* claims that would otherwise have been

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[7] 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.

barred as of January 1, 2020, "because the applicable statute of limitations, claims presentation *deadline*, or any other time limit had expired." 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. (Demurrer, p. 6: 21-26; Reply, p. 3:3-9.) Defendant similarly relies on other California Supreme Court cases decided pre-AB 218 for the same proposition. (Demurrer, p. 7: 1-20.) Based on the foregoing, the Court finds Defendant's reading of the pertinent statutes and the effect of AB 218 to be 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. (Plaintiff's Opp., pp. 2-3.) 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, in its reply, 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." (Reply, p. 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. As Plaintiff points out, other courts have held similarly. (See *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."]; Opp. at p. 5.)

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. Defendant's demurrer on the ground that the causes of action against it are barred for failure to comply with the claims presentation requirement is therefore OVERRULED.

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. (Demurrer, pp. 7-12.) 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, 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." (*Id*., at 8.) 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." (*Ibid; Estate of Cooke* (1976) 57 Cal.App.3d 595, 602-603.) Given the foregoing, Defendant insists, in enacting AB 218, 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. (Demurrer, p. 8.)

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 claim presentation requirements.

3. AB 218 Does Not Create a New Liability

Defendant 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." (Demurrer, pp. 9-10; Reply, pp. 2, 7.)

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 (previously enacted by the very same California Legislature) against bringing those claims in court. (Opp., p. 9.) Plaintiff cites several cases, albeit ancient, supporting this proposition. (Opp., p. 10.) One such case, *Chapman v. State* (1894) 104 Cal. 690, 696 (*Chapman*), is directly on point. (Opp., pp. 10-11.) 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.

(*Ibid.*)

Both Defendant's demurrer and Reply brief fail to address *Chapman*, *supra,* and instead, cite to multiple old cases with fact patterns entirely distinguishable from the instant case—*Boum v. Hart* (1892) 93 Cal.21 (*Boum*); *Conlin v. Board of Supervisors of the City and County of San Francisco* (1893) 99 Cal.17, 21 (*Conlin*); *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—all of which involved an appropriation of specific sums of money, or an identification of a specific fund, for specific recipients. Notably, *Perez*, did not involve a public entity, and Defendant concedes this distinction. (Demurrer, p. 14:21-27; *Perez, supra,* 146 Cal.App.4th at pp. 175-176.) 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." (Demurrer, pp. 9-11; Opp., p. 6.)

Further, as explained by the California Supreme Court in *Heron v. Riley* (1930) 209 Cal. 509, 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 express 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/stale claim." (Opp., p. 11.)

4. AB 218 Serves a Public Purpose/Interest

Next, and as stated in Plaintiff's Opposition, even if AB 218 could somehow 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 *Janssen, supra,* 16 Cal.2d at pp. 281-282, Defendant argues the Legislature "did not have a reasonable basis to waive sovereign immunity," and "overstepped its constitutional authority"[8] by amending section 340.1. (Demurrer, pp. 13-14.) In its reply, Defendant explains, that by rendering Plaintiff's claims enforceable, the "Legislature exceeded its constitutional authority" and "retroactively" stripped public school entities of governmental immunity. (Reply, p. 2:23-26.) Additionally, Defendant contends the legislative history "offers no explanation" why compensating Plaintiff, would prevent future abuse, and/or constitute a "public purpose." (Demurrer, p. 14: 1-7.) Plaintiff contends the Legislature "specifically weighed and expressed" that AB 218 intended to "compensate the abused, punish abusers, and deter future misconduct." (Opp., p. 8:11-22; RJFN, Exs. 1-8.)

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 a high school science 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 demurrer and reply (*Boum, Conlin*, *Powell*, and *Jordan*, *supra*). Consequently, the Legislature had a "reasonable basis" to waive sovereign immunity. (*Janssen, supra,* 16 Cal.2d at pp. 281-282; Opp., p. 12:3-12.) As Plaintiff states, to conclude otherwise, would compromise the Court's primary role 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.

Thus, the demurrer is OVERRULED.

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[8] Defendant cites both Judge Douglas's and Judge Wills's Superior Court Orders because they sustained motions on similar grounds raised in the instant demurrer. (Demurrer, p. 14: 13-20; Reply, p. 8; 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 particularly important, 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].)

III. Conclusion

The demurrer is OVERRULED. The Court will prepare the Order.

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Calendar line 4
Case Name: RREF II Bridgepointe v. Thomas Richard Anthony, et al
Case No.: 21CV390116

Plaintiff moves to compel Happily Ever After Deign LLC (Defendant) to provide further responses to Request for Production, Set 2, Nos. 9, 10, 12, 13, and 20.

Plaintiff objects that Defendant's response "there are none," which was the response to Nos. 9, 10, 12, and 20, is objectionable because (1) it is not in compliance with CCP § 2031.230. That provision requires that a "representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." The reply "there are none" is not in compliance with this provision, as it is not clear whether documents ever existed and the response fails to include the other representations required.

Defendant also fails to provide documents claiming that under the literal reading of the requests, it does not have such documents. Defendant claims, for example, that a draft contract does not "relate" to a contract because no contract was ever finalized. This objection is not well taken. Draft contracts, regardless of whether there is a final contract, are within the scope of the request relating to contracts and must be responded to. Defendant's overly narrow interpretation of "YOUR" is also not well taken. YOUR includes HEAD's current and former agents and Defendant did not object to the term YOU. Defendant's objections are overruled and Defendant must provide responsive documents and comply with § 2031.230.

In response to request No. 13, Defendant provided redacted emails. As Plaintiff points out, this is not compliant with § 2031.220.

Plaintiff's motion to compel is GRANTED. Defendant must provide verified code-compliant responses -- to include the "magic words" of §§ 2031.220 and 2031.230 -- within 10 days of the final order. Defendant's objections to the scope of the word "contract," as not including draft contracts, and to the meaning of YOU and YOUR, are overruled, such that draft contracts and documents in the possession of former agents must be produced. Defendant is not to provide redacted responses unless in compliance with § 2031.220. Defendant is to pay sanctions to Plaintiff in the amount of $1,425 (4 hours at $325 and 1 hr at $125) within 10 days of the final order. Plaintiff shall file the final order within 10 days of the hearing.

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