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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

K.F., a Minor, etc., et al., Plaintiffs and Appellants, v. LOS ANGELES UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.	B276410 (c/w B277982) (Los Angeles County Super. Ct. No. BC459879)

APPEALS from a judgment and postjudgment order of the Superior Court of Los Angeles County. Gregory Wilson Alarcon, Judge. Affirmed as to judgment; reversed as to order.

The Homampour Law Firm, Arash Homampour and Wendi O Wagner for Plaintiffs and Appellants.

Acker & Whipple, Stephen Acker and Leslie Anne Burnet for Defendant and Respondent Los Angeles Unified School District.

Lewis Brisbois Bisgaard & Smith, Raul L. Martinez and Esther P. Holm for Defendant and Respondent First Student, Inc.

Plaintiff and appellant K.F., a three-year-old special needs student, through her guardian ad litem, Eloisa Gomez, alleged that a school bus driver, Robert Allen Brown (Brown), physically and sexually assaulted her on a school bus on October 12, 2010. Brown was employed by defendant and respondent First Student, Inc. (First Student), which had been hired by defendant and respondent Los Angeles Unified School District (LAUSD) to transport students. After a month-long trial, the jury found that Brown did not abuse appellant.

In her appeal from the judgment, appellant contends (1) the trial court abused its discretion by allowing evidence that Brown was not criminally prosecuted, (2) counsel for First Student engaged in misconduct warranting a new trial, (3) three jurors engaged in misconduct warranting a new trial, and (4) the trial court abused its discretion by denying a continuance of appellant's new trial motion. We disagree and affirm the judgment.

In her second consolidated appeal from the trial court's postjudgment order denying her motion to tax costs, appellant contends the offer to compromise served by LAUSD was invalid. We agree and reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On October 12, 2010, appellant was three years old and attending a special-needs preschool class in Los Angeles. Brown was driving the school bus taking appellant and other children home from school. Appellant's mother was not at home at the appointed drop off time of approximately 1:30 p.m. Brown contacted his dispatcher, who instructed him to continue on his

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[1] Because appellant does not make a substantial evidence challenge, we set forth only the basic facts.

route and then attempt a second pass at appellant's residence. Brown continued on his route. After speaking twice more with his dispatcher, Brown drove appellant back to school, arriving between 2:30 p.m. and 2:53 p.m. When appellant saw her mother at school, after not having been dropped off according to her routine, she began to cry. Appellant's mother took her to the school office and asked her why she was crying and "what did they do to you?" Appellant pointed to her "private part." Appellant's mother called the police. A criminal investigation was conducted by the Los Angeles Police Department; no charges were filed against Brown.

Through her guardian and mother, appellant sued Brown, LAUSD and First Student. The operative second amended complaint alleged causes of action for negligence, "negligence/statutory liability," violation of Civil Code sections 51.7, 51.9 and 52, battery and assault. Appellant subsequently dismissed Brown from the lawsuit.

Trial commenced against LAUSD and First Student on February 10, 2016, when appellant was eight years old. Numerous witnesses testified, including appellant, Brown, experts, and a woman named Ana P., who claimed that Brown molested her in 2002, when he was her school bus driver. On March 24, 2016, nine of 12 jurors returned a verdict in favor of LAUSD and First Student, answering the first question on the special verdict form—"Did Robert Brown physically or sexually abuse K.F.?"—with "No." The trial court denied appellant's motion for a new trial, and subsequently denied her motion to tax costs.

These appeals followed.

DISCUSSION
APPEAL FROM THE JUDGMENT

I. Admission of Evidence

Appellant contends the trial court abused its discretion by allowing evidence that Brown was not criminally prosecuted following the police investigation. We conclude that appellant did not preserve this issue on appeal.

Without setting forth the law governing admission of evidence, appellant argues that the trial court erred in allowing "[Detective Howard] Jackson's testimony [that] Brown was not prosecuted for lack of evidence." Appellant cites to a single portion of the reporter's transcript during questioning by counsel for First Student: "And you presented your case to the district attorney, who did not believe there was enough evidence to prosecute Mr. Brown; is that correct?" Appellant's counsel then objected, stating: "Calls for speculation, lacks foundation as to the district attorney." The court overruled the objection, and Detective Jackson continued: "The reason I was given is that they didn't feel comfortable putting a three year old on the stand."

Appellant did not preserve her contention on appeal for two reasons. First, appellant objected at trial on the grounds of speculation and lack of foundation. On appeal, however, she argues this testimony was inadmissible as "hearsay, irrelevant, and unduly prejudicial." Appellant's failure to raise these specific grounds below is fatal to her claim. "When inadmissible evidence is offered, the opposing party must object and specifically state the grounds of his objection in such a manner that it clearly informs the court of the point on which a ruling is desired and the proponent of the defect to be corrected. An objection specifying

the wrong grounds, or a general objection, amounts to a waiver of all grounds not urged." (*Rupp v. Summerfield* (1958) 161 Cal.App.2d 657, 662; *People v. Clark* (1992) 3 Cal.4th 41, 125–126 ["In the absence of a timely and specific objection on the ground sought to be urged on appeal, the trial court's rulings on admissibility of evidence will not be reviewed"]; Evid. Code, § 353, subd. (a) [a verdict shall not be set aside unless the objection stated "make[s] clear the specific ground of the objection"].)

Second, appellant ignores the remaining portion of Detective Jackson's testimony:

"Ms. Holm [First Student's Counsel]: I'd like to read from the witness's deposition at page 139, line[s] 4 to 7. I'll have to start at page 138, line 25, to 139, line 7, your Honor.

"The Court: No objection?

"Mr. Homampour [Appellant's Counsel]: No. That's okay.

"Ms. Holm: Okay.

"(Reading)

"Q: Now, you didn't conclude that the sexual assault didn't happen, correct?

"A: I conducted my investigation and presented the case to the district attorney, who did not believe there was enough evidence to prosecute him for a lewd act on a child."

Despite the trial court's specific invitation to object, appellant did not do so. Nor did appellant later object when Brown himself testified that he was not charged with abuse of appellant. In the absence of contemporaneous objections below, appellant cannot be heard to complain on appeal. (*People v. Townsel* (2016) 63 Cal.4th 25, 45.)

II. Attorney Misconduct

Appellant contends First Student's counsel "engaged in multiple acts of misconduct by repeatedly bringing up the lack of prosecution, including in her opening statement, without a ruling from the Court or providing the requested case law and instruction," which resulted in a miscarriage of justice.

There are two foundational problems with this contention. First, appellant claims that she sought to preclude evidence that Brown was not criminally charged regarding appellant's allegations in her "Motion in Limine No. 3 to Exclude Stonewalled Discovery and Discovery Based on Speculation, Conjecture, and Lack of Foundation." A review of this motion, however, does not support appellant's claim. With respect to the incident in question, which took place in 2010, the motion seeks exclusion of evidence that "Defendant Brown was Absolved of Wrongdoing in 1991, 1996, twice in 1999, 2002, and 2010." The motion then states: "Defendant cannot introduce the argument that Defendant Brown was absolved of the 2010 incident as evidence because it lack[s] foundation[] and is untrue. If Defendant Brown was absolved, then Defendants must answer the question why he is still suspended (he was never terminated even with the felony perjury conviction) and not allowed to return to work." The motion, however, makes no mention of criminal charges regarding the alleged 2010 incident at issue here. Rather, the motion argues for the preclusion of evidence that Brown was not criminally prosecuted for incidents in 2002 relating to Ana P. To preserve an issue for appeal, a motion in limine must be directed to "a particular, identifiable body of evidence." (*People v. Morris* (1991) 53 Cal.3d 152, 190, overruled on another ground by *People v. Stansbury* (1995) 9 Cal.4th 824;

People v. Letner and Tobin (2010) 50 Cal.4th 99, 160.) Appellant's motion in limine No. 3 was not sufficiently specific regarding the evidence to be excluded.

Second, it does not appear from the record that the trial court ever made a final ruling on the motion. Appellant cites to what appears to be a tentative ruling by the court, which states: "**Motion No. 3: Motion to Exclude Evidence**: Defer until Defense counsel is ordered to provide special jury instructions for each item of evidence. No mention should be made in voir dire, opening statement, or examination until these matters have been ruled on." Indeed, appellant admits in her opening brief that "[t]he trial court never gave a definitive ruling." "[A] trial court's tentative ruling is not binding on the court," because "[a] court may change its ruling until such time as the ruling is reduced to writing and becomes the [final] order of the court." (*Silverado Modjeska Recreation & Parks Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300; *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 608 ["A ruling on a pretrial motion in limine is necessarily tentative because subsequent evidentiary developments may change the context"].)

Even putting these foundational issues aside, appellant does not identify "multiple" or "repeated" acts of misconduct by First Student's counsel. Instead, she relies on two acts during trial. The first is counsel's question of Detective Jackson, which was followed immediately by the reading of his deposition testimony, discussed above. As previously noted, appellant's counsel asserted the wrong objections to the question and she did not object to the reading of the deposition testimony. When an in limine motion to exclude evidence is brought, the moving party is still required to renew her objections at trial, when the trial court

has the opportunity to evaluate the objections in light of the actual evidence presented. (*People v. Letner and Tobin, supra*, 50 Cal.4th at p. 159; see also *People v. Maciel* (2013) 57 Cal.4th 482, 528 [a party "cannot simply remain silent while evidence he believes is prejudicial and has been excluded is presented to the jury"; finding forfeiture of attorney misconduct claim].)

The second claimed act of misconduct is First Student's counsel's statement during her opening statement that "the evidence will show, that after—after this complete investigation by the L.A.P.D., no charges were filed." Appellant's counsel immediately objected, moved to strike, and asked for an admonishment of counsel and a mistrial. After much discussion with the parties' counsel, the trial court sustained the objection and denied the motion for mistrial. The court stated: "Maybe this whole issue will come up or be raised or even asked by a question of a juror. So I think right now it would be best to just sustain the objection and . . . deal with that later." The court clarified that it was "sustaining it as argument."

Even assuming, without concluding, this statement by counsel constituted attorney misconduct, appellant still has the burden of demonstrating prejudicial error. This means appellant must show it is reasonably probable she would have achieved a more favorable result in the absence of the challenged conduct. (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 296.) In determining prejudice, a reviewing court will generally consider "'(1) the nature and seriousness of the misconduct; (2) the general atmosphere, including the judge's control of the trial; (3) the likelihood of actual prejudice on the jury; and (4) the efficacy of objections or admonitions under all the circumstances.'" (*Ibid.*)

Considering counsel's statement in light of these factors and the entire record, we conclude it was not prejudicial. The statement was brief and immediately objected to, and the trial court sustained the objection. The trial court had firm control of the trial and often made rulings in appellant's favor. Finally, the likelihood of actual prejudice on the jury was nonexistent because appellant's counsel effectively erased any prejudice. When cross-examining Detective Jackson, appellant's counsel elicited the following:

"Q And the fact that charges aren't filed doesn't mean a crime didn't happen, correct?

"A That's true.

"Q You have many times where you have crimes where the D.A. declines to prosecute and you don't really understand why they're not prosecuting?

"A That's correct.

"Q And there was no finding that Mr. Brown was innocent, correct?

"A No.

"Q Is that correct?

"A Yes.

"Q And just because a person is not criminally prosecuted doesn't mean the event didn't happen; is that correct?

"A That's correct."

This same testimony was elicited from other witnesses:

"Q And L.A.U.S.D. recognized back into 2002/2003 even if the prosecutor declines to prosecute someone, that doesn't mean the driver is innocent, correct?

"A Correct."

Later, with another witness, "Q And you think that if they had enough evidence they would have gone ahead with criminal prosecution?

"A Not necessarily. But what I would say is the fact that they're not going ahead with criminal prosecution does not mean that the incident didn't happen."

Appellant's counsel also emphasized the point during closing argument: "In a criminal case, you may get away with it because of whatever; the prosecutor has other cases, they're too busy, they don't think they can meet the higher burden of proof, they're not a good attorney, they're afraid—I don't know what motivation they have, and you're not to speculate. But the point is, the fact that they don't prosecute Mr. Brown for molestation of Ana P. or they don't prosecute him here doesn't mean anything. [¶] You didn't hear any D.A., anyone come in here and say, 'he is innocent.' In fact, you heard the opposite with Borunda, Preciado, Beck, Avelar, everyone. Jackson came in here and said, 'you know, I didn't think this girl was coached. She was consistent. I believed her. I don't know why they didn't pursue charges.'"

Additionally, the jury was instructed with the difference in the burdens of proof between criminal and civil actions. The jury was also instructed that statements made by attorneys during trial are not evidence and that "[y]ou should not think that something is true just because an attorney's question suggested it was true." We presume that a jury properly understands and follows instructions given by the court. (*People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17.)

In sum, the jury instructions, the testimony of witnesses and the statements in closing argument defused any potential prejudice.

III. Juror Misconduct

Appellant contends that three jurors (Nos. 2, 5, 9) engaged in misconduct which resulted in a miscarriage of justice. We disagree.

A. Background and Law

In support of her motion for new trial, based in part on alleged juror misconduct, appellant relied on the declaration of Juror No. 7, one of the three dissenting jurors, who described conduct by three other jurors, which appellant claims amounts to misconduct. In opposing the new trial motion, respondents submitted declarations from the three accused jurors, who each denied the allegations in Juror No. 7's declaration.[2]

In reviewing the denial of a new trial motion based on alleged juror misconduct, we accept the trial court's credibility determinations and findings on questions of historical fact if supported by substantial evidence, but independently review the trial court's determination of whether the juror misconduct resulted in prejudice. (*People v. Gamache* (2010) 48 Cal.4th 347, 396; *People v. Nesler* (1997) 16 Cal.4th 561, 582.)

However, pursuant to Evidence Code section 1150, subdivision (a), "No evidence is admissible to show the effect of

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[2] Each of these responsive declarations stated that Juror No. 7 had difficulty getting along with other jurors.

Appellant's counsel informed the trial court that more than a month after Juror No. 7 signed his declaration, he asked that it not be used because he "was having anxiety that Defendants would retaliate against him."

[any] statement, conduct, condition, or event upon a juror either in influencing him to assent or to dissent from the verdict or concerning the mental processes by which it was determined." Thus, a verdict may not be impeached by inquiry into a juror's mental or subjective reasoning processes or evidence of how a juror felt. (*People v. Steele* (2002) 27 Cal.4th 1230, 1261.)

B. Juror No. 5

In a note to the trial court, Juror No. 5, the foreperson, stated that he had observed an attorney on appellant's side (Mr. Hutting) coaching witness Ana P. while she was testifying. Outside the presence of the other jurors, the trial court told Juror No. 5: "We just had a little hearing over it. And . . . [Mr. Hutting] basically said that—to the court, to the lawyers, that he didn't like the question; that he shook his head; that he wasn't trying to influence the witness; and that he's sorry. [¶] And I accepted it." The court then asked Juror No. 5: "Can you still be fair and listen to all the evidence and give all sides a fair shake?" Juror No. 5 replied, "I can do it." The court told Juror No. 5 that he "100 percent did the right thing" in reporting the incident and asked if he had mentioned it to the other jurors. Juror No. 5 responded, "They don't know anything about that." After Juror No. 5 left the courtroom, appellant's counsel asked the court to dismiss Juror No. 5, arguing that he could not be fair. The court responded: "I'm satisfied that he can be fair. . . . And he just kept it to himself, which shows that he was trying to just communicate to the court, wasn't trying to poison the jury. I thought he seemed very reasonable."

In support of her new trial motion, appellant relied on the declaration of Juror No. 7, who declared that Juror No. 5 stated during deliberations that Ana P. was getting cues and signals

from her attorney, and that Juror No. 5 told the other jurors that he discussed what he saw with the court and the attorneys outside the presence of the other jurors.

In his responsive declaration filed in opposition to appellant's new trial motion, Juror No. 5 declared that at the beginning of deliberations he informed the other jurors that he had observed Ana P.'s attorney make nonverbal responses to questions being posed and that she happened to answer in accordance, and that he informed the jurors he wrote a note to this effect to the court. He also declared that he never discussed the issue with anyone prior to deliberations and that he and the other jurors agreed to "just focus on the evidence and stayed away from the entire issue."

Appellant argues that Juror No. 5 engaged in misconduct because he told the jury what he saw "in direct conflict with the wishes of the court" and he did not tell the jury "the court was satisfied" there was no coaching. But appellant points to no place in the reporter's transcript where the court instructed Juror No. 5 not to say anything to the other jurors about what he observed in the courtroom. The court merely asked him whether—at that point in the trial before deliberations had begun—he had mentioned the issue to any other jurors. Nor does appellant cite any authority for the proposition that Juror No. 5 was obligated to report to the other jurors what the court said to him.

Appellant's additional argument that Juror No. 5 engaged in misconduct because he communicated to the other jurors "information from sources outside the evidence in the case" is nonsensical. Juror No. 5 simply reported what he observed taking place in open court in the presence of all the jurors during trial. Indeed, in determining the credibility of a witness, a juror

is permitted to consider "any matter that has any tendency in reason to prove or disprove the truthfulness" of the witness, including the witness's "demeanor while testifying and the manner in which [the witness] testifies." (Evid. Code, § 780, subd. (a).) To the extent there was any misconduct, it was by Mr. Hutting, an attorney appellant acknowledges was "on Plaintiff's side."

Still, appellant argues that Juror No. 5 was biased and that the "alleged coaching was foremost on his mind when deliberations began." But any evidence pertaining to Juror No. 5's mental processes is inadmissible. (Evid. Code, § 1150, subd. (a).) Nor does appellant point to anything in the record to support her argument. To the contrary, when the trial court specifically asked Juror No. 5 whether he could be fair and consider the evidence, he responded that he could. His declaration also stated that he and the other jurors focused on the evidence and stayed away from the issue.

We find no error in the trial court's refusal to dismiss Juror No. 5 or in its denial of appellant's new trial motion on the basis of any conduct by Juror No. 5.

C. Juror No. 2

Relying on the declaration of Juror No. 7, appellant argues that Juror No. 2 engaged in four instances of misconduct and was biased.

First, Juror No. 7 declared that during deliberations Juror No. 2 stated that she saw appellant with "someone associated with [appellant's] attorneys" in the courthouse hallway and that appellant "did not seem injured." In her own responsive declaration, Juror No. 2 specifically denied making this statement, and Jurors No. 5 and 9 also denied hearing her or

anyone else make this statement. The trial court resolved this conflict in favor of respondents and we defer to this finding. (See *Tillery v. Richland* (1984) 158 Cal.App.3d 957, 976–977 [motion for new trial properly denied where affidavits describing statements amounting to juror misconduct and concealed bias were rebutted by affidavits submitted by the accused jurors].) In any event, a juror's observation of a party or witness in a courthouse hallway, and her recounting of this observation, does not constitute misconduct. Moreover, to the extent this statement is being used to show the effect of this observation on Juror No. 2's mental processes, it is inadmissible. (Evid. Code, § 1150, subd. (a).)

Second, Juror No. 7 declared that during deliberations Juror No. 2 stated that she was a nurse experienced with sexual abuse victims and that appellant "should have been sore" if she had been abused. But, again, in her own declaration, Juror No. 2 specifically denied making this statement, and Jurors No. 5 and 9 also denied hearing her or anyone else make this statement. In any event, it does not constitute juror misconduct. It is well established that jurors are not required to leave their background and experience at the courthouse steps. "'[I]f we allow jurors with specialized knowledge to sit on a jury, and we do, we must allow those jurors to use their experience in evaluating and interpreting that evidence. Moreover, during the give and take of deliberations, it is virtually impossible to divorce completely one's background from one's analysis of the evidence.'" (*People v. Steele, supra,* 27 Cal.4th at p. 1266; *People v. Loker* (2008) 44 Cal.4th 691, 753.) Appellant points out her expert testified that sexual abuse sometimes does not leave physical signs and cannot be detected, and therefore argues that Juror No. 2's statement

devalued this evidence. But appellant ignores her own theory of the incident—that Brown slapped her, removed her clothes, and put his hand all the way inside her up "to her heart." Juror No. 2 simply offered her commonsense view that if appellant had been abused, she would have been sore. There was no misconduct. (*People v. Engstrom* (2011) 201 Cal.App.4th 174, 185 ["'Jurors' views of the evidence, moreover, are necessarily informed by their life experiences, including their education and professional work.' . . . Jurors "'must be given enough latitude in their deliberations to permit them to use common experiences and illustrations in reaching their verdicts" [Citation.]' [Citation.]"].)

Third, Juror No. 7 declared that during deliberations Juror No. 2 stated that she did not believe Ana P. because Ana P. was going to be paid for her testimony by appellant's attorneys. Once again, in her own declaration, Juror No. 2 specifically denied making this statement, and Jurors No. 5 and 9 also denied hearing her or anyone else make this statement. In any event, this statement is inadmissible to show Juror No. 2's mental processes. (Evid. Code, § 1150, subd. (a).)

Fourth, Juror No. 7 declared that during deliberations Juror No. 2 stated that she did not like appellant describing Brown as having a "'burnt face'" and that she did not appreciate it. Once again, Juror No. 2 denied making this statement. And Jurors No. 5 and 9 declared that Juror No. 7 himself brought up the matter, but it was not a significant issue during deliberations. Again, this statement is inadmissible to show Juror No. 2's mental processes. (Evid. Code, § 1150, subd. (a).)

In sum, we find there was no misconduct by Juror No. 2 and no admissible evidence showing she was biased.

D. Juror No. 9

Relying on Juror No. 7's declaration, appellant claims that Juror No. 9, like Juror No. 2, both of whom are African-American, was offended by appellant's use of the term "burnt" to describe Brown. But Juror No. 9 declared that Juror No. 7 raised the issue and that "it was not a significant issue discussed during deliberations." Additionally, Juror No. 9, like Juror No. 2, denied stating that she saw appellant interacting with attorneys in the courthouse hallway and that appellant seemed fine.

Appellant also relies on the statement in Juror No. 7's declaration that he "believe[d]" Juror No. 9 "had a fixed opinion that the incident did not occur," that she looked down at her lap and played games on her tablet, and that she "expressed a fixed conclusion at the beginning of deliberations and refused to consider other points of view." In her responsive declaration, Juror No. 9 denied this statement in its entirety and stated that she "never expressed a fixed conclusion at the beginning of deliberations that the incident did not occur," nor did she refuse to listen or speak with other jurors. Jurors No. 2 and 5 also denied hearing such a statement from Juror No. 9 or anyone else, and both jurors declared that everyone participated in deliberations. Appellant nevertheless claims that Juror No. 9 separated herself "mentally" from the other jurors by playing games on her tablet. But Juror No. 5, the foreperson, declared that he asked Juror No. 9 to refrain from using her tablet during deliberations and she complied. Based on the juror declarations submitted by respondents, we find no misconduct by Juror No. 9. In any event, evidence of Juror No. 9's supposed beliefs or refusal to consider differing points of view are inadmissible. (Evid. Code, § 1150, subd. (a).)

In sum, we find there was no misconduct by Juror No. 9 and no admissible evidence showing she was biased.

IV. New Trial Motion

Appellant contends the trial court abused its discretion by denying her request to extend the deadline for filing her new trial motion. Specifically, she claims that she should have been allowed an extra 10 days to contact jurors. There is no merit to this contention.

Although not at all clear from appellant's opening brief, the record shows the following procedural history: The jury rendered its verdict on March 24, 2016. In the courthouse hallway after the verdict was read, counsel for the parties approached jurors. Appellant's counsel apparently handed jurors self-addressed, stamped envelopes with counsel's address. Counsel for First Student passed around a notepad and obtained juror's names and contact information.

On March 29, 2016, appellant moved ex parte for an order releasing juror information. The court denied the ex parte application, finding no exigent circumstances, and set the matter as a regularly noticed motion for April 28, 2016. Appellant later represented to the trial court that "[d]uring this time, Plaintiff worked diligently in tracking down and finding jurors."

At the hearing on April 28, 2016, the trial court discussed with the parties' counsel the fact that an investigator for First Student had been in touch with at least two jurors, and took the matter under submission. On May 16, 2016, the court granted appellant's motion for the release of juror information, but apparently did not issue a minute order to this effect. Instead, the parties entered into a handwritten, messily drafted "Statement of the Parties [and] Order."

Appellant represented to the trial court that from May 17 through 22, 2016, she tried to obtain juror information but could not do so because Jury Services did not have a minute order from the court. On May 26, 2016, appellant moved ex parte for an order to be sent to Jury Services. An order was sent. Meanwhile, on May 23, 2016, First Student mailed notice of entry of judgment.

Appellant filed and served her notice of intent to move for a new trial on June 6, 2016. On June 15, 2016, appellant moved ex parte for an order extending the deadline for her to file her new trial motion. The trial court denied the ex parte application, finding the following: "Much of the delay in receiving the juror information was based on the fact that counsel mistakenly believed that a handwritten stipulation by counsel could have the same force and effect as an order to Jury Services to release the information. Despite having this information, plaintiff's counsel has not provided the Court with any information from any of those jurors that they have relevant information for the motion for new trial or are even willing to speak with plaintiff's counsel." Appellant then filed her new trial motion the following day on June 16, 2016.

With the foregoing in mind, we conclude the trial court did not abuse its discretion in denying appellant's request to continue the deadline for filing her new trial motion for two reasons. First, appellant had two and one-half months between the jury's verdict and the deadline for filing her new trial motion, yet she points to nothing in the record showing what steps, if any, she took to contact jurors or why she was unsuccessful in contacting more jurors throughout this entire period. Instead, she represented to the court that she was diligently tracking down

and finding jurors, even before the court issued an order for the release of juror information. By the time of the hearing on April 28, 2016—one month after the verdict was rendered—at least two jurors had informed the court that they had been contacted by an investigator for First Student, which begs the question why appellant or her own investigator (who located witness Ana P.) had not similarly been able to contact jurors. Appellant's need to quickly reach jurors is the same challenge faced by any party moving for a new trial based on juror misconduct, but the deadline for filing such a motion is strict and jurisdictional. (Civ. Proc. Code, § 660 ["the power of the court to rule on a motion for a new trial shall expire 60 days from" the mailing of notice of entry of judgment by the clerk or party or 60 days from the first filing of the notice of intent to move for a new trial].)

Second, appellant's ex parte application for additional time to contact jurors to support her new trial motion was based upon the speculation that jurors would actually possess information which could assist appellant, and upon the further speculation that any such jurors would actually be willing to cooperate with appellant. When a party's showing of good cause for what amounts to a motion for continuance rests completely on speculation, denial of relief is not an abuse of discretion. (*People v. Riccardi* (2012) 54 Cal.4th 758, 834, overruled on other grounds by *People v. Rangel* (2016) 62 Cal.4th 1192.)[3]

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[3] Appellant also contends that "[i]f the judgment is reversed," she should be allowed to amend the second amended complaint. Because we are not reversing the judgment, we do not address this contention.

APPEAL FROM POSTJUDGMENT ORDER

Appellant contends the trial court's postjudgment order denying her motion to tax costs should be reversed because the terms of the release in LAUSD's offer to compromise were undisclosed and uncertain, rendering the offer invalid. We agree.

A. Factual Background

On March 11, 2014, LAUSD served appellant with an offer to compromise in the amount of $50,000, pursuant to Code of Civil Procedure section 998 (section 998). The offer stated that in exchange for the payment of $50,000, (1) "plaintiff's counsel will execute and deliver to counsel for defendant, a Request for Dismissal of the entire action, with prejudice," (2) each party would "bear their own attorney fees and costs," and (3) "Plaintiff and her counsel will deliver to counsel for defendant a Full and Final Release of all Claims, which Release will include a waiver of Civil Code section 1542." The offer specifically cited section 998, as well as *Goodstein v. Bank of San Pedro* (1994) 27 Cal.App.4th 899 (*Goodstein*).

No documents were attached to the offer. Appellant did not accept the offer and the case proceeded to trial. Two years later on March 24, 2016, the jury rendered its verdict in favor of respondents, finding appellant was not abused.

On June 7, 2016, LAUSD submitted a memorandum of costs, seeking to recover from appellant costs in the amount of $118,271.74, which included $30,301.64 in expert witness fees. Appellant moved to tax the expert witness fees on the grounds that the offer was invalid and not made in good faith. LAUSD opposed the motion to tax costs, which the trial court ultimately denied.

B. Section 998 and Standard of Review

Section 998 provides that a party "may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award. . . . If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, . . . the court or arbitrator, in its discretion, may require the plaintiff to pay [the defendant's costs from the date of filing of the complaint and] a reasonable sum to cover postoffer costs of the services of expert witnesses, ..." (§ 998, subds. (b), (c)(1).)

It is well established that to be valid a section 998 offer "must not dispose of any claims beyond the claims at issue in the pending lawsuit." (*Chen v. Interinsurance Exchange of the Automobile Club* (2008) 164 Cal.App.4th 117, 121 (*Chen*); *McKenzie v. Ford Motor Co*. (2015) 238 Cal.App.4th 695, 706 (*McKenzie*) ["a section 998 offer requiring the release of claims and parties not involved in the litigation is invalid as a means of shifting litigation expenses"]; *Valentino v. Elliott Sav-On Gas, Inc*. (1988) 201 Cal.App.3d 692, 700–701 (*Valentino*) [same].) "That limitation exists because of the difficulty in calculating whether a jury award is more or less favorable than a settlement offer when the jury's award encompasses claims that are not one and the same with those the offer covers." (*Chen, supra*, at p. 121.)

"We independently review whether a section 998 settlement offer was valid. In our review, we interpret any ambiguity in the offer against its proponent. [Citation.] The burden is on the offering party to demonstrate that the offer is valid under section 998. [Citation.] The offer must be strictly construed in favor of the party sought to be bound by it. [Citation.]" (*Ignacio v. Caracciolo* (2016) 2 Cal.App.5th 81, 86 (*Ignacio*).)

C. Analysis

We agree with appellant that LAUSD's section 998 offer to compromise was invalid.

Foremost, the offer was invalid because it required appellant to sign a release when the terms of the release were undisclosed and uncertain. LAUSD's offer stated that appellant would execute and deliver "a Full and Final Release of all Claims, which Release will include a waiver of Civil Code section 1542." The terms "Full," "Final," "Release" or "all Claims" were not defined. Nor was any "Release" attached to the offer. Thus, appellant was being asked to blindly agree to terms in a separate document that she had never seen. Appellant was not required to do so.

In *Chen, supra,* 164 Cal.App.4th 117, the appellants sued their insurance company over bathroom water and wind damage to their insured residences. It was undisputed the appellants later filed an additional claim for insurance coverage over kitchen flooding that was not part of the pending lawsuit. (*Id*. at p. 120.) The insurance company served a section 998 offer that was conditioned on the appellants executing a "general release of all claims," but no release was attached to the offer. (*Ibid.*) Appellants argued on appeal, and the reviewing court agreed,

that the phrase "all claims" was ambiguous, particularly in light of the pending claim for the kitchen flooding. Construing the ambiguity against the offeror, the appellate court held the ambiguity rendered the offer invalid. (*Id*. at p. 122 & fn. 5 ["ambiguity in the section 998 offer is good enough to let appellants escape the offer's cost-shifting consequences"].)

In *Sanford v. Rasnick* (2016) 246 Cal.App.4th 1121, the appellate court found invalid a section 998 offer conditioned on the offeree executing a settlement agreement that was not attached to the offer. The court's analysis was based largely on the fact that the required settlement agreement "was not described or revealed" and the offeree was being asked to accept or reject an offer without knowing the terms. (*Id*. at p. 1131.)

The same is true here. No copy of the release to be executed was provided. The terms of the offer itself did not make clear who would prepare the release or what terms the release would include. There was no indication of who specifically was to be released or what specific claims would be released. Appellant was not required to guess what she would be signing.

Moreover, the offer required appellant to execute a release that contained a waiver of Civil Code section 1542. This statute provides that "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." (Civ. Code, § 1542.) While it is true that "a release of unknown claims arising only from the claim underlying the litigation itself does not invalidate the offer," (*Ignacio, supra*, 2 Cal.App.5th at p. 89), it is also true that "an unlimited release

[which] goes well beyond the scope of the litigation . . . renders the offer invalid under section 998" (*ibid*.).

LAUSD urges us to construe its offer to include only those claims arising out of the instant lawsuit. But LAUSD points to no language in its offer that limits the release in this manner. Instead, LAUSD relies on *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 272, where the reviewing court found valid a settlement offer containing the language that "each side to bear [its] own costs and fees, with a mutual release of all *current claims* against one another." (Italics added.)

LAUSD also relies on *Goodstein, supra*, 27 Cal.App.4th at p. 907, where the offer provided that it was "in full settlement of this action" and required a "General Release." (*Id*. at p. 905.) However, *Goodstein* held that substantial evidence supported the finding that the "General Release" did not reach beyond the pending claims. The instant case is different insofar as LAUSD asked for a waiver of appellant's rights under Civil Code section 1542. If LAUSD's offer was limited only to the causes of action actually filed in the trial court, why the requirement for a Civil Code section 1542 waiver? No language in this statute limits unknown claims only to those arising from the lawsuit at issue. LAUSD points out that its offer specifically cites *Goodstein,* arguing that its offer should similarly be interpreted in a manner so as to be valid. But "[t]he rule to be taken from *Goodstein* is not that a 'general release' does not invalidate a section 998 offer; the rule is that a release of unknown claims arising only from the claim underlying the litigation itself does not invalidate the offer." (*Ignacio, supra*, 2 Cal.App.5th at p. 89, citing *Linthicum v. Butterfield, supra*, 175 Cal.App.4th at p. 272.)

At a minimum, LAUSD's offer, by its terms, is ambiguous. "Indeed, because the proponent of the offer has the burden of establishing its validity, *ambiguity* as to whether the offer encompasses claims beyond the current litigation is sufficient to render the offer invalid under section 998." (*Ignacio, supra*, 2 Cal.App.5th at pp. 87–88, citing *Chen, supra*, 164 Cal.App.4th at p. 122, fn. 5.)[4]

DISPOSITION

The judgment is affirmed. The order denying appellant's motion to tax LAUSD's costs is reversed. Each side to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT

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[4] We need not address appellant's other contentions that the offer was unreasonable and not in good faith.