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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

ADRIENNE MCCOLL, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B286998 Los Angeles County Super. Ct. No. BC610002

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Vicencia, Judge. Affirmed in part, reversed in part.

Esner, Chang & Boyer, Shea S. Murphy, Steffi A. Jose; Taylor & Ring and Brendan P. Gilbert for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Gabriel S. Dermer, Assistant City Attorney, and Benjamin Chapman, Deputy City Attorney, for Defendants and Respondents.

Plaintiff appeals a summary judgment entered in favor of defendants Cabrillo Marine Aquarium (Cabrillo), the City of Los Angeles Department of Recreation and Parks, and the City of Los Angeles (collectively, the City).[1] Plaintiff sued the City, alleging its adult employee sexually abused her while she was a 16-year-old intern at Cabrillo. She asserted causes of action against the City for (1) vicarious liability based on the employee's sexual abuse of a minor; (2) vicarious liability for the employee's intentional infliction of emotional distress; (3) negligence for the City's negligent hiring and supervision of the employee and failure to protect plaintiff from abuse; and (4) violation of the Child Abuse and Neglect Reporting Act (CANRA, Pen. Code, § 11166 et seq.) based on the failure to report suspected child abuse.

The trial court granted summary judgment. With respect to the first two causes of action, the court concluded the City could not be held vicariously liable because the employee was not acting within the course and scope of her employment. As for the third and fourth causes of action, the court held the evidence was insufficient to raise a triable issue of fact as to whether the City breached its duty to plaintiff or violated CANRA.

Plaintiff does not challenge the court's rulings on her first and second causes of action, which we affirm. As for her third and fourth claims, plaintiff argues she presented sufficient evidence to raise a triable issue of fact as to whether the City breached its affirmative duty to protect her from foreseeable harm at the hands of its employee, and whether mandated

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[1] Cabrillo is owned and operated by the City of Los Angeles and the City of Los Angeles Department of Recreation and Parks.

reporters at Cabrillo should have had a " 'reasonable suspicion' " of child abuse as defined in CANRA. (See Pen. Code, § 11166, subd. (a)(1).) We agree with plaintiff on these counts, and reverse the summary adjudication of her negligence and CANRA claims.

FACTS AND PROCEDURAL BACKGROUND

Consistent with the applicable standard of review, we state the facts established by the parties' evidence in the light most favorable to plaintiff as the nonmoving party, drawing all reasonable inference and resolving all evidentiary conflicts, doubts or ambiguities in plaintiff's favor. (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618 (*Regents*).)

Cabrillo is an aquarium in San Pedro focusing on marine science education and aquaculture research. An important component of the aquarium is its aquatic nursery, which is a functioning research laboratory open to the public. Dr. Kiersten Darrow has run and supervised the aquatic nursery since September 2004.

Cabrillo typically employed about 10 museum guides in the aquatic nursery. These guides worked as part of a team of researchers to maintain the aquaculture facilities, conduct basic research, develop curricula for school children, and assist with public education programs by conducting public tours and informal science teaching. During the summer of 2009 through June 2011, Cabrillo employed Cora Webber as one of the museum guides in the aquatic nursery. Plaintiff's sister, Kelly McColl, also worked at the aquarium during this time period.

Cabrillo hosted various programs for middle and high school students at the aquarium. These included a summer

internship program, a nursery docent program, and Cabrillo's Young Scientist program.

For its summer internship program, Cabrillo recruited students from local high schools by sending out advertisements and informational materials. Darrow had also developed relationships with teachers and faculty at the local high schools, and she periodically gave talks to their classrooms to announce opportunities at the aquatic nursery. Once a student was accepted into the program, Darrow paired the student with an aquatic nursery staff member, who acted as the student's mentor for a summer research project. Webber was very involved in the internship program, as were Cabrillo staff members Eden Rivera, Ben Higgins, and Andres Carrillo.

After the summer, interns had the opportunity to continue working in the aquatic nursery as part of Cabrillo's Young Scientists program. Students from middle school, high school, and junior college participated in the program and worked with adult staff members on projects anywhere from twice a month to almost daily. Although students completed the majority of their projects at the aquarium, they sometimes performed work either behind the aquarium or off-site.

Cabrillo's nursery docent program also offered middle and high school students the opportunity to work at the aquarium by guiding tours of the aquatic nursery with adult staff members. Cabrillo staff members took students in the docent program on field trips.

As a supervisor, Darrow was essentially "absent" from the aquatic nursery floor, spending most of her time in her office writing grants and doing paperwork. She was largely unaware of the dynamics in the nursery, which plaintiff's sister described as

a "toxic" and "unprofessional" environment where numerous staff members had personal and romantic histories with one another that regularly erupted into "volatile arguments." Despite its youth programs, Cabrillo did not have specific written policies related to the supervision of minors, and staff members did not receive training related to CANRA's directives on reporting suspected child abuse. Although Darrow recalled seeing a document concerning mandatory reporting obligations, she did not know whether she was a mandated reporter.

In the summer of 2009, plaintiff was 16 years old and had just completed her sophomore year of high school. She applied and was accepted into Cabrillo's internship program, and Darrow assigned Webber to be her mentor. Webber was in her mid-20's at the time. After her internship ended, plaintiff participated in the nursery docent and Young Scientist programs, until she left the aquarium in August 2011.

In August 2009, Webber began sexually abusing plaintiff as often as several times a week. From their first sexual encounter, until the abuse ended in February 2011, Webber routinely displayed physical affection, including hugging and putting her arms around plaintiff, in public and in front of other Cabrillo staff members. Plaintiff also spent time on Webber's boat with other aquatic nursery staff members, including Eden Rivera, Ben Higgins, Andres Carrillo, Alice Nash, and the nursery supervisor, Kiersten Darrow. The staff members, including plaintiff, typically consumed alcohol during these gatherings. On most of these occasions, plaintiff was the last one on the boat with Webber when all the other staff members left. Webber often engaged plaintiff in sexual acts on the boat after these gatherings. Plaintiff regularly stayed the night on Webber's boat,

and the two of them showed up to work together the next morning.

Webber also took plaintiff on private trips to Carmel Valley, Crowley Lake, and Paradise, California, which they regularly discussed in the aquatic nursery with other staff members present. In late 2010, Webber expressed concern to plaintiff that people were "catching on" to their inappropriate relationship, after Andres Carrillo and Ben Higgins confronted Webber about the private trips with plaintiff.[2] Carrillo had also overheard plaintiff and Webber discuss social events they attended together, including concerts and house parties.

In the spring of 2011, plaintiff's sister, Kelly, confronted plaintiff about whether anything had "gone on" with Webber. Kelly had grown suspicious of their relationship when plaintiff became unusually upset and emotional after learning that Webber and another Cabrillo employee, Alice Nash, were involved in a romantic relationship. Kelly also observed that Nash had a somewhat "funky" reaction to what Kelly believed was plaintiff's and Webber's "friendship," noting that Nash

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[2] Plaintiff offered this evidence in her declaration, in which she recounted her conversation with Webber about the confrontation with Carrillo and Higgins. The City objected to the evidence, arguing it constituted inadmissible hearsay. (Evid. Code, § 1200.) The trial court overruled the objection, and we agree with the court's ruling. Because the statement related to Webber's liability for abusing plaintiff, and the City's liability is based upon its failure to protect plaintiff from Webber's abuse, the trial court reasonably determined the evidence was a statement of a declarant whose liability is in issue under Evidence Code section 1224.

regularly expressed "jealousy" at work about how "close" plaintiff and Webber were. Plaintiff denied that she and Webber were anything more than friends.

Notwithstanding plaintiff's denial, on another occasion in spring 2011, Kelly confronted Webber and plaintiff again about whether anything had "gone on" between them. They both denied anything inappropriate and Kelly did not raise the issue again.

Around this same time, in April 2011, Webber broke off her relationship with Nash and told Nash that she had been "involved" with plaintiff. Nash knew plaintiff was still in high school at the time, but she did not ask Webber to elaborate on what she meant by "involved," and Nash did not take Webber's statement to mean she had been "sexually involved" with plaintiff.

Plaintiff turned 18 in May 2011. Sometime after that, plaintiff began a relationship with Eden Rivera. In August, plaintiff left Cabrillo and, in September, she moved to Seattle.

In December 2011 or January 2012, plaintiff disclosed to Rivera, who had also left Cabrillo around the same time, that she had an "inappropriate relationship" with Webber when they worked together during her high school internship. Rivera said she was "shocked" to learn of the relationship, as she had thought of plaintiff and Webber "more like sisters," given all the time they spent together.

Sometime in the spring of 2012, Rivera told Darrow about a "relationship" that Webber had with plaintiff. Darrow called plaintiff to ask "if she was okay," but did not report the matter to law enforcement.

In 2015, plaintiff reported Webber's sexual abuse to the Los Angeles Police Department, resulting in Webber's arrest on charges of committing unlawful oral copulation with a person under the age of 18.

On February 11, 2016, plaintiff filed this action against Webber, the City, and the County of Los Angeles, asserting causes of action for (1) sexual abuse of a minor; (2) intentional infliction of emotional distress; (3) negligent hiring, supervision, and retention; and (4) breach of mandatory duty for failure to report suspected child abuse.[3]

The City moved for summary judgment of all claims. With respect to the third cause of action for negligent supervision, the City argued plaintiff could not establish a breach of the duty of care because she had no evidence of an "explicitly sexual" incident that was "called to the attention of the Cabrillo supervisors at the time it occurred." As for the fourth cause of action, the City argued it could not be held liable because, as an entity, it was not a "mandated reporter" under CANRA, no Cabrillo employee knew about the alleged abuse "until after it was over," and no employee learned about the abuse in his or her "professional capacity."

Plaintiff opposed the City's motion with respect to only the third and fourth causes of action. Regarding the negligence claim, plaintiff argued the City's contention ignored the "special relationship" between the City and its minor interns, and the City's attendant "affirmative duty" to take reasonable steps to protect plaintiff from foreseeable harm by its adult employees.

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[3] The complaint asserts a fifth cause of action for negligence against fictitiously named doe defendants.

As for the CANRA claim, plaintiff argued the City's employees at Cabrillo were mandated reporters and the City could be held vicariously liable for their failure to report abuse they should have "reasonably suspected."

The trial court granted summary judgment, largely agreeing with the City's arguments. Plaintiff timely appealed.

DISCUSSION

1. *Standard of Review*

" 'On review of an order granting or denying summary judgment, we examine the facts presented to the trial court and determine their effect as a matter of law.' [Citation.] We review the entire record, 'considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained.' [Citation.] Evidence presented in opposition to summary judgment is liberally construed, with any doubts about the evidence resolved in favor of the party opposing the motion." (*Regents, supra,* 4 Cal.5th at p. 618.)

"Summary judgment is appropriate only 'where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.' [Citation.] A defendant seeking summary judgment must show that the plaintiff cannot establish at least one element of the cause of action." (*Regents, supra,* 4 Cal.5th at p. 618; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.)

2. *Statutory Framework for Public Entity Vicarious Liability*

Government Code section 815 establishes that public entity tort liability is exclusively statutory: "Except as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of

the public entity or a public employee or any other person."[4] Section 815.2, in turn, provides the statutory basis for a public entity's vicarious liability under the respondeat superior doctrine: "(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Finally, section 820 delineates the liability of public employees themselves: "(a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person. [¶] (b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person." In other words, "the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§ 815, subd. (b))." (*Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 463; *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 868 (*C.A.*).)

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[4] Statutory references are to the Government Code unless otherwise indicated.

3. *Because the City Stood in a Special Relationship to Plaintiff and It Was Foreseeable She Could Be Abused by an Adult Mentor, the City Had an Affirmative Duty to Take Reasonable Measures to Protect Plaintiff*

To succeed on an action for negligence, plaintiff must establish the City owed her a legal duty, the City breached that duty, and the breach proximately caused plaintiff's injuries.[5] (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1142; *Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1128 (*Youth Soccer*).) In moving for summary judgment, the City focused exclusively on the breach element of plaintiff's negligence claim, disregarding the causation element and arguing, as it still maintains on appeal, the duty element was "irrelevant" because the City had "never argued that [it] did not owe Plaintiff a duty."

The City's position on duty is untenable. Because the scope of an alleged tortfeasor's duty necessarily defines whether its actions (or failure to act) constitute a breach of *that duty*, a factfinder cannot assess breach until the court has delineated the scope of the duty at issue. (See *Wattenbarger v. Cincinnati*

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[5] Because plaintiff asserts her claim against the City under section 815.2 (imposing vicarious liability on a public entity for the negligent conduct of its employees), the claim more specifically charges the City's *personnel* with a legal duty, breach of that duty, and resulting harm. Nevertheless, for brevity we will at times refer to "the City's duty" and "the City's breach" in this opinion, because the City acts through its personnel and is vicariously liable for their negligence. (§ 815.2, subd. (a); see, e.g., *C.A., supra,* 53 Cal.4th at pp. 869–870 [discussing the "duty of care owed by school personnel . . . to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally"].)

Reds, Inc. (1994) 28 Cal.App.4th 746, 751 [the elements of a negligence claim are "interrelated, as the question whether an act or omission will be considered a breach of duty or a proximate cause of injury necessarily depends upon the scope of the duty imposed"].) Indeed, as we will discuss more fully, notwithstanding the City's stated position, the parties' opposing arguments on breach reflect their fundamental disagreement about the *scope of the duty* the City owed to plaintiff. Accordingly, we must begin by defining the scope of the City's duty before we can assess whether the evidence was sufficient to raise a triable issue of fact on the element of breach. (See, e.g., *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 387–389, 411–412 (*Juarez*) [reversing summary judgment; because youth organization had affirmative duty "to take reasonable protective measures to protect [the plaintiff] from the risk of sexual abuse by adult volunteers," evidence that organization failed to reasonably disseminate information about preventing abuse was sufficient to raise triable issue on breach]; *Federico v. Superior Court* (1997) 59 Cal.App.4th 1207, 1212–1214 (*Federico*) [issuing peremptory writ to enter summary judgment; concluding evidence that defendant was aware of employee's "history of deviant sexual conduct with young males" was insufficient to raise triable issue on breach because employer's duty was limited to taking prudent care in " ' "selecting the person for the business in hand" ' " and subject business did not entail interaction with children].)

The existence of a legal duty and the scope of that duty are questions of law for the court to decide.[6] (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213; *Juarez, supra,* 81 Cal.App.4th at p. 401; *Youth Soccer, supra,* 8 Cal.App.5th at p. 1128.) In general, "each person has a duty to use ordinary care and 'is liable for injuries caused by his failure to exercise reasonable care in the circumstances.' " (*Parsons, supra,* 15 Cal.4th at p. 472, quoting *Rowland v. Christian* (1968) 69 Cal.2d 108, 112 (*Rowland*); *Youth Soccer,* at p. 1128.) The law recognizes a distinction, however, between every person's passive duty not to engage in malfeasance, and the narrower affirmative duty to take action where it would be nonfeasance to do otherwise. (*Weirum v. RKO General Inc.* (1975) 15 Cal.3d 40, 49.) As a general matter, absent misfeasance, " ' "there is no duty to act to protect others from the conduct of third parties." ' " (*Youth Soccer,* at p. 1128.) But, " '[e]ven in the case of nonfeasance, there are "recognized exceptions to the general no-duty-to-protect rule," one of which is the special relationship doctrine. [Citations.] "A defendant may owe an affirmative duty

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[6] For this reason, although a summary judgment motion can be decided on the element of breach when no material facts are in dispute (see, e.g., *Federico, supra,* 59 Cal.App.4th at p. 1214), negligence claims are more commonly adjudicated before trial on the question of whether the defendant owed the plaintiff a legal duty to prevent the alleged injury. (See *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 465 (*Parsons*) ["Duty, being a question of law, is particularly amenable to resolution by summary judgment."]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 573, fn. 6 (*Ballard*) [describing the court's and the jury's different roles in assessing the elements of duty and breach for a negligence claim]; *Juarez, supra,* 81 Cal.App.4th at p. 401.)

to protect another from the conduct of third parties if he or she has a 'special relationship' with the other person." ' " (*Ibid.*)

Here, plaintiff's negligence claim rests upon the City's alleged nonfeasance—that is, the City's failure to protect plaintiff by taking reasonable measures to supervise and terminate Webber before she could abuse plaintiff further. The complaint alleges the City, acting through its employees and agents, "had the responsibility and duty to adequately and properly investigate, hire, train, supervise, and monitor its employees and advisors and to protect its interns from harm caused by unfit and dangerous individuals hired as employees and advisors." It alleges the City "knew or had reason to know that WEBBER was engaging in improper behavior with Plaintiff," such as "taking Plaintiff to adult house parties [and] providing her alcohol and drugs." And the complaint alleges, if the City had "conducted a proper and adequate investigation" of this behavior, "it would have learned additional facts" warranting "terminat[ion] [of] WEBBER's employment," thereby ending "her predatory conduct directed towards underage interns like Plaintiff." Because the alleged duty sounds in nonfeasance, it can be imposed on the City only if the City stood in a special relationship to plaintiff. (*Williams v. State of California* (1983) 34 Cal.3d 18, 23; *Regents, supra,* 4 Cal.5th at p. 619.)

"A special relationship exists when 'the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare.' " (*Youth Soccer, supra,* 8 Cal.App.5th at p. 1129; *Regents, supra,* 4 Cal.5th at p. 619.) *Juarez* is instructive. In *Juarez*, the plaintiff, a boy scout, brought an action against the Boy Scouts of America, Inc., and the San Francisco Bay Area Council

(collectively, the Scouts) for, among other things, negligence in failing to take reasonable measures to protect him from sexual abuse by his scoutmaster. (*Juarez, supra,* 81 Cal.App.4th at pp. 384–385.) Addressing the special relationship doctrine, the *Juarez* court observed: "Generally, a greater degree of care is owed to children because of their lack of capacity to appreciate risks and avoid danger. [Citation.] Consequently, California courts have frequently recognized special relationships between children and their adult caregivers that give rise to a duty to prevent harms caused by the intentional or criminal conduct of third parties." (*Id*. at p. 410.) In view of the " 'naivete of children, and the insidious tactics employed by child molesters,' " the *Juarez* court held there was a special relationship between the Scouts and the plaintiff imposing a duty on the Scouts to " 'exercise reasonable care to protect their members from the foreseeable conduct of third persons.' " (*Id*. at p. 411.)

In *C.A.*, our Supreme Court extended this rationale to hold a public school district could be vicariously liable under section 815.2 for its administrative staff's failure to reasonably supervise and terminate a guidance counselor who allegedly molested a student. (*C.A., supra,* 53 Cal.4th at p. 879.) The high court explained: " 'While school districts and their employees have never been considered insurers of the physical safety of students, California law has long imposed on school authorities a duty to "supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection. [Citations.]" . . . Either a total lack of supervision [citation] or ineffective supervision [citation] may constitute a lack of ordinary care on the part of those responsible for student supervision.' . . . [¶] In addition, a school district

and its employees have a *special relationship* with the district's pupils, a relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel, 'analogous in many ways to the relationship between parents and their children.' [Citations.] *Because of this special relationship*, imposing obligations beyond what each person generally owes others under Civil Code section 1714, *the duty of care* owed by school personnel *includes the duty* to use reasonable measures *to protect students from foreseeable injury at the hands of third parties* acting negligently or intentionally." [7] (*Id.* at pp. 869–870, italics added.) "Absent such a special relationship," a public entity has "no individual liability to third parties for negligent hiring, retention or supervision of a fellow employee, and hence no vicarious liability under section 815.2." (*Id.* at p. 877.)

Plaintiff's evidence in opposition to summary judgment established a special relationship between the City and plaintiff giving rise to a duty to protect plaintiff from foreseeable injury at the hands of Cabrillo's adult employees. The evidence showed the City, acting through its employees (specifically Dr. Darrow), recruited local high school students to intern at Cabrillo and to work with assigned adult staff members in the aquatic nursery. These adult staff members acted as mentors to the high school student interns. After their summer internships ended, some

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[7] Civil Code section 1714, subdivision (a) states: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person."

students, like plaintiff, continued to work at Cabrillo in its Young Scientist and docent programs. The City invited these high school students to work on projects at the aquarium with their adult mentors anywhere from twice a month to almost daily. Like other voluntary youth programs for which courts have recognized a special relationship, the City's recruitment of high school students to participate in its youth programs at Cabrillo gave rise to a duty to protect these students from foreseeable harm caused by its adult employees' negligent or criminal conduct. (See, e.g., *Doe v. Superior Court* (2015) 237 Cal.App.4th 239, 247 [concluding church's youth summer day camp gave rise to special relationship, explaining "mandatory attendance is merely one of multiple bases for the special relationship in a school context," which also is "based on 'the expectation and reliance of parents and students on schools for safe buildings and grounds,' " and is "equally present when parents entrust their children to a day care provider like [the day camp], which stood in loco parentis while minor was at the camp"]; *Youth Soccer, supra,* 8 Cal.App.5th at p. 1130 [mandatory attendance not required to find youth soccer organization stood in special relationship with youth players where "parents entrusted their children to [organization] with the expectation that they would be kept physically safe and protected from sexual predators while they participated in soccer activities"].)

The City does not dispute that it stood in a special relationship to plaintiff by virtue of Cabrillo's summer internship, Young Scientist, and docent programs.[8] Instead,

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[8] Without disputing the existence of a special relationship, the City contends the complaint does not implicate its relationship to plaintiff (and, therefore, it had no obligation

it argues the "entire 'special relationship' discussion—and the evidence cited in support—is irrelevant," because "a special relationship merely establishes a duty," and the City has "never argued that [it] did not owe Plaintiff a duty." (Citations omitted.) However, while the City may never have disputed the existence

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to address the issue in its summary judgment motion), because she did not allege the City was liable for "negligently supervis[ing] Plaintiff." The City's argument reads too much into an isolated statement in plaintiff's opening brief, while ignoring the substance of her primary contention—namely, that as a consequence of "this special relationship, the City owed an *affirmative* duty of care to supervise Plaintiff and take *all reasonable steps to protect her from foreseeable harm*." (Italics added.) Consistent with the duty recognized in *C.A.* and other special relationship cases, plaintiff's claim plainly rests on the affirmative duty to protect her from foreseeable harm by third parties. (See *C.A., supra,* 53 Cal.4th at pp. 869–870.) And, contrary to the City's assertion, plaintiff expressly alleged this duty in her complaint: "Defendants . . . had the responsibility and duty to adequately and properly investigate, hire, train, supervise, and monitor its employees and advisors and *to protect its interns from harm caused by unfit and dangerous individuals hired as employees and advisors*." (Italics added.) Although the negligence cause of action is labeled "Negligent Hiring, Supervision & Retention" (capitalization omitted), its allegations make clear that the claim is also based upon the City's alleged failure to protect plaintiff. (Cf. *Juarez, supra,* 81 Cal.App.4th at pp. 397, 411–412 [affirming summary adjudication of negligent hiring, supervision, and retention claim, but reversing summary adjudication of negligence claim based on failure to take reasonable protective measures]; see *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908 [to determine the nature of plaintiff's claim, the court looks at the facts alleged, not the claim's label].)

of a duty, its argument on breach implicitly urges a more narrow *scope of that duty* than our authorities considering the special relationship doctrine have imposed.

Relying on *Federico*, a case that expressly disclaimed the existence of a duty based on " ' "the relation of the parties" ' " (*Federico, supra,* 59 Cal.App.4th at p. 1214), the City argues plaintiff cannot establish a breach of duty without evidence showing an " 'explicitly sexual' " incident that was " 'called to defendant's attention at the time [it] occurred.' " Although framed in terms of breach, the City's argument is better understood as a contention about the limited scope of the duty it owed to plaintiff. Considered in light of the City's admission that it stood in a special relationship to plaintiff, what the City actually maintains is that plaintiff's injury was not *foreseeable* at the time plaintiff worked with Webber at Cabrillo, and therefore the City had no duty to intervene to protect plaintiff, unless someone called an explicitly sexual incident to the attention of Cabrillo's supervisorial personnel at the time the incident occurred. (See *C.A., supra,* 53 Cal.4th at p. 870 ["the duty of care owed by school personnel includes the duty to use reasonable measures to protect students from *foreseeable injury* at the hands of third parties acting negligently or intentionally" (italics added)].) That contention, which the City's breach of duty argument necessarily rests upon, is fundamentally inconsistent with the sort of foreseeability required to establish an affirmative duty to protect a minor in the context of a special relationship between children and their adult caregivers.

"A court's task in determining whether there should be a duty, *vel non*, '. . . is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular*

defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party.' " (*Jennifer C. v. Los Angeles Unified School Dist*. (2008) 168 Cal.App.4th 1320, 1329 (*Jennifer C.*), quoting *Ballard, supra,* 41 Cal.3d at p. 573, fn. 6.) As this court has explained, in assessing foreseeability to determine whether a defendant owes a legal duty, " 'sufficiently likely' means [that which] is ' "likely enough in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical conduct." ' " (*Martinez v. Bank of America* (2000) 82 Cal.App.4th 883, 895 (*Martinez*), quoting *Bigbee v. Pacific Tel. & Tel. Co*. (1983) 34 Cal.3d 49, 57.) In this case, abuse of a high school intern by an adult mentor was sufficiently likely that the City should have taken account of it in administering and supervising the Cabrillo youth programs, even if the City had no actual knowledge of explicit sexual misconduct or of Webber's propensity to sexually abuse a minor.

M.W. v. Panama Buena Vista Union School Dist. (2003) 110 Cal.App.4th 508 (*M.W.*) is instructive. There, a minor special needs student sued his school district for negligent supervision after he was raped by another junior high school student in a restroom during a period before school when students were allowed on campus despite the presence of only minimal adult supervision. (*Id.* at pp. 511–512.) On appeal from a jury verdict in the minor's favor, the district argued it had no duty to protect the minor from an "unforeseeable sexual assault" because it had "no prior actual knowledge of [the assailant's] propensity to commit the assault." (*Id.* at pp. 515–516.) In rejecting that argument, the *M.W.* court acknowledged the "existence of a duty

of care . . . depends, in part, on whether the particular harm to the [plaintiff] is reasonably foreseeable," but the court explained "[f]oreseeability," for purposes of determining the existence and scope of duty, "is determined in light of all the circumstances and *does not require prior identical events or injuries*." (*Id.* at pp. 518–519, italics added.) Nor is it " 'necessary to prove that the very injury which occurred must have been foreseeable.' " (*Id.* at p. 519.) Rather, " 'negligence is established if a reasonably prudent person would foresee that injuries of the same general type would be likely to happen in the absence of [adequate] safeguards.' " (*Ibid.*, quoting *Taylor v. Oakland Scavenger Co.* (1941) 17 Cal.2d 594, 600.) In view of the "unique vulnerabilities" of special needs students, the *M.W.* court held it was "reasonably foreseeable that, given the lack of direct supervision in the early morning hours, a special education student, such as the minor, was at risk for a sexual or other physical assault," even if the district lacked prior knowledge of the assailant's propensity to commit a sexual assault. (*M.W.,* at p. 520.)

We likewise conclude it was reasonably foreseeable that plaintiff would be abused by her adult mentor if Cabrillo's supervisory personnel did not adequately supervise its staff, even if the supervisors were not made aware of an explicitly sexual incident at the time the incident occurred. (See *Jennifer C., supra,* 168 Cal.App.4th at p. 1329; *M.W., supra,* 110 Cal.App.4th at pp. 519–520.) As the authorities considering the special relationship between children and their adult caregivers uniformly recognize, "a greater degree of care is owed to children because of their lack of capacity to appreciate risks and avoid danger." (*Juarez, supra,* 81 Cal.App.4th at p. 410; *M.W., supra,*

110 Cal.App.4th at pp. 519–520.) That lack of capacity was (or should have been) apparent to the City when it recruited high school students to work with adult mentors at Cabrillo.

Furthermore, in view of this lack of capacity, the abuse plaintiff experienced was " 'sufficiently likely' . . . ' "in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical conduct" ' " related to the supervision of the adult mentors who worked with high school students at Cabrillo. (*Martinez, supra,* 82 Cal.App.4th at p. 895.) As the *Juarez* court grimly recounted, quoting from *Wallace v. Der–Ohanian* (1962) 199 Cal.App.2d 141 at page 146:
" 'It is certain that there exists in our civilization the constant possibility that persons suffering from a lack of proper mental balance or normal decency might subject young people to sexual molestation. This fact is illustrated by frequent newspaper accounts of crimes against children, the many litigated criminal cases, accounts of which find their way into the reports, and the concerns of the Legislature evidenced by the enactment of many laws for the protection of children. . . . The general feeling of the public that this problem does exist in a threatening way lead[s] to the conclusion that people charged with the care of children should guard against it . . . .' [Citation.] [¶] . . . Unfortunately, in the almost 40 years since these words were written, the scourge of sexual molestation of children has not abated; and the danger that a child who participates in organized youth activities will encounter a sexual predator certainly is at least as foreseeable now as it was then." (*Juarez, supra,* 81 Cal.App.4th at p. 404.)[9]

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[9] We recognize "foreseeability is not coterminous with duty" and a " 'court may find that no duty exists, despite foreseeability of harm, because of other factors and considerations of public

In view of the City's admitted special relationship to plaintiff and the recognized vulnerability of minors to sexual assault by adults entrusted with their care, the City had an affirmative duty to use reasonable measures to protect plaintiff

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policy' [citation], including 'the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach.' " (*Juarez, supra,* 81 Cal.App.4th at pp. 404–405, citing *Rowland, supra,* 69 Cal.2d at pp. 112–113.) Nevertheless, in addition to foreseeability, the *Rowland* factors support the imposition of a duty to protect plaintiff in this case. Plaintiff's claim implicates a minimal burden on the City, amounting to little more than the demand that Cabrillo's supervisory staff do the job they were charged to do—namely, supervise the conduct of their employees to prevent abusive behavior when it is apparent. While there are questions of fact as to how apparent Webber's abusive behavior was and whether it could have been identified under adequate supervision, those disputed issues do not diminish the closeness of the City's alleged nonfeasance to plaintiff's injury or the moral blame that would exist if, as plaintiff contends, supervisory staff utterly failed to recognize and investigate numerous red flags. (Cf. *Juarez, supra,* 81 Cal.App.4th at p. 406 [finding duty despite no moral blame, observing "Scouts [were] to be commended for being in the vanguard in fighting child sexual abuse with their educational program," even if plaintiff could prove Scouts acted negligently in failing to communicate education to plaintiff's particular troop].) Finally, there is no question that plaintiff suffered injury and that the public has a paramount interest in preventing the sexual abuse of minors. (See *Youth Soccer, supra,* 8 Cal.App.5th at p. 1138.)

from this foreseeable injury.[10] (*C.A., supra,* 53 Cal.4th at p. 870; *Juarez, supra,* 81 Cal.App.4th at p. 411.) We turn now to whether there was sufficient evidence to raise a triable issue of fact as to whether the City breached that duty.

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[10] We note the Supreme Court recently granted review in *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077 to decide the following issue: "What is the appropriate test that minor plaintiffs must satisfy to establish a duty by defendants to protect them from sexual abuse by third parties?" (Review granted Jan. 2, 2020, S259216.) In *Brown*, our colleagues in Division Seven held USA Taekwondo (USAT), the governing body for the Olympic sport of taekwondo, had a duty to protect the minor plaintiffs from a coach's sexual abuse because the allegations established USAT had a special relationship with the coach and the *Rowland* factors supported imposition of a duty. (*Brown,* at pp. 1082–1084, 1094–1101.) However, the *Brown* court held the United States Olympic Committee (USOC), the committee with exclusive authority to certify or decertify national governing bodies for Olympic sports, did not owe such a duty because the plaintiffs had not alleged sufficient facts to establish a special relationship with the coach or the plaintiffs. (*Id.* at pp. 1082–1084, 1101–1103.) The *Brown* court further held it did not need to consider the *Rowland* factors with respect to USOC, because, absent a special relationship, there could be no duty to protect a plaintiff from a third party's misconduct, as a matter of law. (*Brown,* at p. 1103.) Unlike *Brown*, we hold the scope of the City's duty is established by its special relationship to *plaintiff*—not the tortfeasor—coupled with the foreseeability of the injury and other *Rowland* factors. And, because we conclude there was a special relationship, we need not address whether the absence of such a relationship precludes the imposition of a duty to protect as a matter of law.

4. *The Evidence Was Sufficient to Raise a Triable Issue Regarding the City's Alleged Breach of Its Affirmative Duty to Protect Plaintiff*

Breach of duty is usually a fact issue for the jury. (*Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1687.) A court will decide breach of duty as a question of law only when, on the undisputed facts, "no reasonable jury could find the defendant failed to act with reasonable prudence under the circumstances." (*Cabral v. Ralphs Grocery Co*. (2011) 51 Cal.4th 764, 773; *Federico, supra,* 59 Cal.App.4th at p. 1214.) "If the circumstances permit a reasonable doubt whether the defendant's conduct violates the standard of due care, the doubt must be resolved by the jury as an issue of fact rather than of law by the court." (*Nichols,* at p. 1687.)

The City argues there are "two requirements" that plaintiff must meet before a reasonable jury could find the City negligently supervised Webber. First, the City maintains plaintiff was required to present evidence of incidents that were " 'explicitly sexual' " and not " 'ambiguous' " indications of Webber's sexual interest in plaintiff or other minors. Second, the City contends plaintiff must show these explicitly sexual incidents were " 'called to [a supervisor's] attention at the time they occurred.' " As we noted above, the City draws these supposed "requirements" from a collection of inapposite cases that did not find a special relationship and, hence, did not consider the affirmative duty, present in this case, *to protect* the plaintiff from third party misconduct.

The City principally relies upon *Federico, supra,* 59 Cal.App.4th 1207. The plaintiff in *Federico*, a minor who was sexually molested by the defendant's employee, sued his mother's

hairstyling college, alleging the college negligently hired the employee to supervise its students' training, even though it "knew, or should have known," the employee had prior convictions for sexually molesting juvenile males. (*Id.* at p. 1210.) The *Federico* court acknowledged the evidence was sufficient to "raise[ ] triable issues as to defendant's knowledge of [its employee's] past misconduct, and whether [the employee's] duties at the [college] would foreseeably bring him into contact with minors." (*Id.* at p. 1213.) The court nevertheless concluded the college was entitled to summary judgment, because "hiring [the employee] did not constitute a breach of defendant's *limited duty* to exercise reasonable care in [its] selection of employees." (*Ibid.*, italics added.)

Critically, the *Federico* court drew the boundaries of this "limited duty" from the rule of direct employer liability set forth in the Restatement Second of Agency section 213—*not* from the special relationship doctrine that applies to entities, like the City, that have assumed a duty to protect minors in their care. As the *Federico* court explained, under the Restatement, an employer is liable for negligent hiring if " ' "the employer has not taken the care which a prudent man would take in selecting the person *for the business in hand*." ' " (*Federico, supra,* 59 Cal.App.4th at pp. 1213–1214, italics added.) Liability results under this limited duty " ' "*not because of the relation of the parties* but because the employer antecedently had reason to believe that an undue risk of harm would exist because of the employment." ' " (*Id.* at p. 1214, italics added, original italics omitted.) Because the employee's position "required him only to supervise adult students and perform administrative tasks for the hairstyling college," and "his prior convictions did not involve students or

customers of the hairdressing establishments in which he was employed at the time the offenses were committed," the *Federico* court concluded the college's knowledge of the employee's past convictions "did not, as a matter of law, render the decision to hire or thereafter retain [the employee] unreasonable." (*Id.* at pp. 1214–1215.) That conclusion, while sound under the limited duty implicated, is plainly inconsistent with authorities that have imposed an affirmative duty to protect based on a defendant's special relationship to the minors in its care. (See, e.g., *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1855 [school district could be liable for failing to protect student if "employees responsible for hiring and/or supervising teachers knew or should have known of [teacher's] prior sexual misconduct toward students, and thus, that he posed a reasonably foreseeable risk of harm to students under his supervision"]; *Youth Soccer, supra,* 8 Cal.App.5th at pp. 1129–1138 [youth soccer organization's failure to conduct criminal background check that would have uncovered coach's prior domestic violence conviction sufficient to establish negligent failure to protect minor player].)

The City seizes on a portion of *Federico*, wherein the reviewing court rejected the plaintiff's claim that the college knew, or should have known, the employee "did actually 'molest and fondle' children during working hours at the school," to support its negligent supervision argument. (*Federico, supra,* 59 Cal.App.4th at p. 1216.) The *Federico* court found the plaintiff's evidence amounted to little more than witness statements, "made after the offenses against plaintiff occurred and had become known," identifying incidents that "in hindsight [the witnesses] interpreted as inappropriate or indicative of

[the employee's] deviant sexual proclivities." (*Ibid.*) The court concluded this evidence was insufficient to support a negligent supervision claim, observing the incidents "were not *explicitly sexual*, consisting of . . . an unusually prolonged handshake, an overly friendly pat on the shoulder, or, on one occasion, [the employee] having a younger child sit in his lap," there was "no showing that any of these incidents was *called to defendant's attention at the time they occurred*," and the defendant "expressly denied having any knowledge that [the employee] acted inappropriately at work until after the charges involving plaintiff became known." (*Ibid.*, italics added.) Because the "limited duty" at issue necessarily informed the *Federico* court's assessment of the evidence on breach (*id.* at p. 1213), this analysis is not relevant to plaintiff's claim based on the City's affirmative duty to protect under the special relationship doctrine.[11]

The City's reliance on *Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889 (*Z.V.*) is also misplaced. In *Z.V.*, a dependent minor sued the county after a social worker sexually assaulted him, claiming the county was liable for negligently

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[11] *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708 is similarly inapposite. *Santillan* addressed what evidence is necessary to revive the statute of limitations on a childhood sex abuse claim under Code of Civil Procedure section 340.1, subdivisions (b)(2) and (c). Applying the reason-to-know standard set forth in *Federico*, the *Santillan* court "merely h[eld] that where the only evidence concerning whether the Diocese had notice under section 340.1 is based on its knowledge of conduct by the priest, . . . the conduct must be unambiguous as to whether the priest committed unlawful sexual conduct." (*Santillan,* at pp. 720, 723.) Like *Federico*, *Santillan* did not concern or consider the special relationship doctrine.

hiring or supervising the social worker. (*Id.* at p. 902.) Consistent with *C.A.*, the minor argued the county's conduct demonstrated " 'a total lack of supervision or ineffective supervision,' " but the only evidence the minor cited to support the assertion was the social worker's use of "a county van" to transport him to the social worker's apartment. (*Id.* at p. 903; see *C.A., supra,* 53 Cal.4th at p. 869.) The *Z.V.* court rejected the claim, reasoning there was "nothing about the fact a licensed social worker employed by a county was driving a van owned by that county that shows any *propensity* for sexual misbehavior." (*Z.V.*, at p. 903.)

Z.V. is inapposite. Although the *Z.V.* court acknowledged that *C.A.* had recognized a claim for public entity liability based on the negligent hiring of an employee with a known propensity to do a bad act (see *Z.V., supra,* 238 Cal.App.4th at p. 902 & fn. 11), in focusing exclusively on propensity, the *Z.V.* court overlooked our Supreme Court's directive that, for a negligent supervision claim, " '[e]ither a total lack of supervision [citation] or ineffective supervision [citation] may constitute a lack of ordinary care.' " (*C.A., supra,* 53 Cal.4th at p. 869.) More importantly, the *Z.V.* court did not consider the high court's principal holding that, in the context of a special relationship, a public entity can be held vicariously liable for its supervisory personnel's breach of "the duty to use reasonable measures *to protect* students from foreseeable injury at the hands of third parties acting negligently or intentionally." (*C.A.,* at p. 870, italics added.)

In any event, *Z.V.* is distinguishable. Here, plaintiff presented much more evidence of negligent supervision than the mere fact that her abuser used an "inanimate instrument"

furnished by the City to facilitate the abuse. (*Z.V., supra,* 238 Cal.App.4th at p. 903 [reasoning employee's use of county van failed to support negligence claim because "propensity is a function of human psychology, not an inanimate instrument which might help facilitate an attack"].)

Plaintiff's evidence showed Dr. Darrow, the City employee charged with supervising Cabrillo staff and high school interns in the aquatic nursery, provided essentially no oversight. She spent most of her time in her office, writing grants and doing paperwork, and was largely unaware of the "personal and professional" dynamics between personnel in the nursery. Moreover, the City had no specific written policies in place related to supervising its minor interns, and the staff members and mentors for the youth programs did not receive any specific training regarding the supervision of minors in their care. Nor did they receive any instruction or guidance regarding their mandatory duty to report suspected child abuse. Indeed, Darrow testified that she did not know whether she was a mandated reporter when the abuse occurred.

Plaintiff's evidence was sufficient to support a reasonable inference that, had Darrow exercised a reasonable degree of care in supervising the aquatic nursery staff and its high school interns, she would have recognized and investigated recurring warning signs in Webber's interactions with plaintiff. The evidence showed Webber repeatedly hugged and put her arms around plaintiff in front of other Cabrillo employees in the nursery. Webber and plaintiff often talked in the nursery about trips and social events, including adult house parties, they attended together. Once or twice a month, Webber hosted social gatherings on her boat, during which plaintiff and other Cabrillo

employees, including Darrow, would socialize and consume alcohol together. Plaintiff was usually the last person on the boat with Webber when everyone else left. She often spent the night on the boat with Webber, who would engage plaintiff in sexual acts. Webber and plaintiff sometimes showed up to work together the mornings after these staff gatherings. While several Cabrillo employees denied witnessing these incidents, a jury, making all credibility determinations and drawing all inferences in favor of plaintiff, could reasonably conclude based on this evidence that Darrow and other supervisory staff were negligent in failing to protect plaintiff, despite numerous warning signs that should have prompted a reasonable supervisor to investigate Webber's conduct. The City can be held vicariously liable under section 815.2 for this negligence. (*C.A., supra,* 53 Cal.4th at p. 879.)

Notwithstanding plaintiff's evidence, the City argues her sister's deposition testimony is "fatal" to her negligence claim. Because plaintiff's sister testified she did not suspect plaintiff and Webber were involved in a "sexual relationship," the City maintains there is no evidence that could prove it should "have known or suspected that Webber had a propensity to sexually abuse Plaintiff." We disagree.

Although she may not have suspected a *sexual* relationship at the time, the evidence shows plaintiff's sister was suspicious about the propriety of plaintiff's relationship with Webber. She testified she confronted plaintiff on two separate occasions—once privately and once with Webber present—about whether anything had "gone on" between them. On both occasions plaintiff denied the insinuation that she and Webber might be doing something inappropriate. While those denials satisfied

plaintiff's sister that Webber and plaintiff were not involved in a sexual relationship, her testimony nonetheless demonstrates, contrary to the City's assertion, that there were warning signs that caused her to question whether Webber had engaged her sister in something more than a platonic mentor/mentee friendship.

More importantly, the question for the jury to resolve is not whether plaintiff's sister, who might have been especially credulous of her sister's denials, should have *subjectively* suspected sexual misconduct. Rather, a jury must determine whether an *objectively reasonable supervisor*, taking reasonable measures to protect plaintiff from foreseeable abuse by third parties, would have recognized Webber's and plaintiff's conduct as warning signs that warranted further investigation to ensure no abuse was occurring. (See *C.A., supra,* 53 Cal.4th at pp. 869–870.) Because a reasonable jury could reach that conclusion based on plaintiff's evidence, the trial court erred in summarily adjudicating the negligence claim against plaintiff.

5. *The Evidence Raised a Triable Issue of Fact as to Whether the City's Employees Had a Reasonable Suspicion of Abuse under CANRA*

The intent and purpose of CANRA is to protect children from abuse and neglect. (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 174 (*B.H.*), citing Pen. Code, § 11164, subd. (b).) To carry out this purpose, Penal Code section 11166 requires a "mandated reporter" to make a report to a law enforcement agency or a county welfare department "whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the

mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect." (Pen. Code, § 11166, subd. (a); *B.H.,* at p. 186.) "An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children" is a "mandated reporter" under CANRA. (Pen. Code, § 11165.7, subd. (a)(8).)

"Child abuse or neglect" includes "sexual abuse" (Pen. Code, § 11165.6.), consisting of, among other things, statutory rape or molestation of a child under the age of 18. (Pen. Code, §§ 11165.1, 261.5, subd. (a), 647.6, subd. (a)(1).) A mandated reporter has a "reasonable suspicion" when "it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect. 'Reasonable suspicion' does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any 'reasonable suspicion' is sufficient." (Pen. Code, § 11166, subd. (a)(1); *B.H., supra,* 62 Cal.4th at p. 186.) " '[W]hen circumstances giving rise to a reasonable suspicion of abuse exist, [CANRA] does not permit a mandated reporter to investigate and determine that no abuse occurred . . . . [T]he existence of such circumstances triggers the mandatory duty to report the circumstances to a designated outside agency. It is the responsibility of the outside agency to investigate all reports of suspected abuse and to determine whether abuse occurred.' " (*B.H.,* at p. 193, italics omitted.)

In her fourth cause of action, labeled "Breach of Mandatory Duty: Failure to Report Suspected Child Abuse [¶] (Government Code section 815.6)" (capitalization omitted), plaintiff alleges the

City defendants "*acting through [their] employees and advisors*, were at all times 'mandated reporters' pursuant to the provisions of Penal Code section 11166, et seq. . . . [and] had a mandatory duty to personally report reasonably suspected incidents of child abuse to the police and/or child protective services." (Italics added.) The City does not dispute that the Cabrillo employees and supervisors who worked with plaintiff in the aquatic nursery were mandated reporters under CANRA. Nevertheless, because section 815.6 imposes only *direct* liability on a public entity "under a mandatory duty imposed by an enactment" (§ 815.6), and Penal Code section 11165.7 does not make an entity, like the City, a "mandated reporter" under CANRA (Pen. Code, § 11165.7), the City argues it cannot be held liable under section 815.6. And, because public entity liability is entirely statutory, and thus subject to the rule that statutory causes of action must be specifically pleaded (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1020 (*Zipperer*)), the City argues plaintiff's failure to identify section 815.2 in the cause of action forfeits her claim that the City is vicariously liable for its employees' alleged CANRA violations. The argument misunderstands the applicable law.

The rule that statutory causes of action must be specifically pleaded requires " 'every *element* of the statutory basis for liability [to] be alleged.' " (*Zipperer, supra,* 133 Cal.App.4th at p. 1020, italics added.) This rule has special implications for a cause of action under section 815.6 that do not extend to a claim for vicarious liability under section 815.2. To state a claim under section 815.6, "[o]ne of the essential elements that must be pled is the existence of a specific statutory *duty*." (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1458 (*Becerra*), italics

added.) And, " '[s]ince the *duty* of a governmental agency can only be created by statute or "enactment," the statute or "enactment" claimed to establish the *duty* must at the very least be identified.' " (*Ibid.*, italics added, quoting *Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802 (*Searcy*).) Thus, under the rule of specific pleading, a " ' "litigant seeking to plead the breach of a mandatory duty [under section 815.6] must specifically allege the applicable statute or regulation." ' " (*Becerra,* at p. 1458.) The reason for this rule is simple: " 'Unless the applicable enactment is alleged in specific terms, a court cannot determine whether the enactment relied upon was intended to impose an *obligatory duty* to take official action to prevent foreseeable injuries or whether it was merely advisory in character.' " (*Ibid.*, italics added; see *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854 [to state a claim under section 815.6, the enactment allegedly breached "must impose a mandatory, not discretionary, duty"].)

Because a mandatory *duty* is a necessary element of a claim under section 815.6, and a *duty* can only be imposed on a governmental entity by statute, a plaintiff must specifically identify the statute imposing the duty to state a claim under section 815.6. (*Searcy, supra,* 177 Cal.App.3d at p. 802; *Becerra, supra,* 68 Cal.App.4th at p. 1458.) In contrast, an underlying statutory duty is not a necessary element of a claim for vicarious liability under section 815.2, which requires only an "injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment" that would have "given rise to a cause of action against that employee." (§ 815.2, subd. (a).) Thus, contrary to the City's contention, plaintiff was not required to identify section 815.2 to plead

a vicarious liability claim for violation of CANRA. Having alleged the City, "acting through its employees and advisors," was a mandated reporter under CANRA, and that plaintiff suffered an "injury proximately caused" by the failure to report "reasonably suspected incidents of child abuse," plaintiff adequately pled a claim for vicarious liability against the City under section 815.2. (See *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 792 [even for claims against a public entity under section 815.2, "[i]t is well established that the allegations of a complaint must be liberally construed with a view to attaining substantial justice between the parties"].)

The City also argues plaintiff cannot establish a CANRA violation because the Cabrillo employees who learned of the relationship between plaintiff and Webber did so during "private, personal conversations, and not in their professional capacity or within the scope of their employment." (See *P.S. v. San Bernardino City Unified School Dist.* (2009) 174 Cal.App.4th 953, 965 [the duty to report under CANRA is limited to "what the [mandated reporter] was in a position to observe, or to reasonably suspect, arising from contact with the child, which resulted from professional contact or observations made within the scope of the reporter's employment"].) However, to make its case, the City focuses exclusively upon a handful of conversations in which the illicit relationship was actually disclosed (Webber's disclosure to Alice Nash, plaintiff's disclosure to Eden Rivera, and Rivera's disclosure to Kiersten Darrow) while ignoring evidence of incidents that took place at Cabrillo that, a reasonable jury could find, should have raised a "reasonable suspicion" that Webber was abusing plaintiff within the meaning of CANRA. (See Pen.

Code, § 11166, subd. (a)(1) [" '[r]easonable suspicion' does not require certainty that child abuse or neglect has occurred"].)

As we discussed with respect to her negligence claim, plaintiff presented evidence of recurring interactions between Webber and plaintiff at the Cabrillo worksite, in front of Cabrillo employees, that a jury could reasonably conclude were warning signs of an illicit and abusive relationship between an adult in her mid-20's and a 16-year-old high school student. Plaintiff's evidence showed Webber repeatedly hugged and put her arms around plaintiff in front of other Cabrillo employees in the nursery. Webber hosted social gatherings on her boat with Cabrillo employees, including Eden Rivera, Ben Higgins, Andres Carrillo, Alice Nash, and Kiersten Darrow. Plaintiff was usually the last person on the boat with Webber when all the other employees left, and Webber and plaintiff sometimes showed up to work together the mornings after these staff gatherings.[12]

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[12] While we do not consider these off-site gatherings to be within the scope of the Cabrillo staff's employment (cf. *McCarty v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 677, 681–683 [observing that if afterhours *on-site* social gatherings had become "a customary incident of the employment relationship," employees engaged in such pursuit could still be found to be acting within the scope of employment]), we conclude CANRA's reporting obligation cannot be construed so literally as to deny the practical reality that observations made at such events would necessarily inform an objectively reasonable mandated reporter's suspicions about conduct (like plaintiff and Webber showing up the next morning together) that occurred at the workplace. (See *Silver v. Brown* (1966) 63 Cal.2d 841, 845 ["t]he literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes"].)

Webber and plaintiff often talked in the nursery about trips and social events, including adult house parties, they attended together. Indeed, Carrillo and Higgins confronted Webber about the trips, causing Webber to express concern that staff members were "catching on" to her inappropriate relationship with plaintiff. Again, although several Cabrillo employees denied witnessing these incidents, a jury, making all credibility determinations and drawing all inferences in favor of plaintiff, could reasonably conclude based on this evidence that these incidents would have caused an "objectively reasonable person," in a "like position" to these Cabrillo staff members, to "suspect child abuse or neglect." (Pen. Code, § 11166, subd. (a)(1).)[13]

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[13] The City's reliance upon *Steven F. v. Anaheim Union High School Dist.* (2003) 112 Cal.App.4th 904 is misplaced. The plaintiffs in *Steven F.* sued a high school district for emotional distress they experienced upon discovering their daughter had been in a sexual relationship with her teacher. In a footnote, the *Steven F.* court rejected a claim for violation of CANRA, observing: "Here, it is enough to note that there were no specific complaints to anyone, teacher or administrator [citation]; confessions [citation]; or objective physical evidence which might give rise to a reasonable suspicion of abuse [citation]. Given the absence here of any actual knowledge of abuse or of any objective facts not also compatible with an innocent explanation . . . something more is needed for *reasonable* suspicion as the words are used in the penal statute." (*Steven F.*, at p. 913, fn. 5.) Notwithstanding this conclusion, the court also recognized, although there was "no evidence" that any teacher or supervisor "actually knew of the *sexual* relationship," there was "evidence of obliviousness—perhaps the better word would be *cluelessness*—on the part of several of the district's teachers (as distinct fromsupervisors), who, had they been inclined to be suspicious about a student who was always hanging around her teacher,

The trial court erred in granting summary adjudication against plaintiff on her CANRA claim.

DISPOSITION

The summary judgment is reversed and the matter is remanded for further proceedings on the negligence claim and the claim for violation of Penal Code section 11166. The summary adjudications of all other claims in favor of the City are affirmed. Plaintiff is awarded her costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J. LAVIN, J.

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might have put two and two together and surmised that the relationship between the student and the teacher was not platonic." (*Id.* at p. 907, second italics added.) Because CANRA's definition of "reasonable suspicion" articulates an "*objectively* reasonable" standard for judging whether a mandated reporter should have reasonably suspected abuse (Pen. Code, § 11166, subd. (a)(1), italics added), we cannot agree with the *Steven F.* court's apparent conclusion that, absent actual knowledge, a mandated reporter's subjective "cluelessness" insulates a public entity from liability for the failure to report abuse under CANRA.