

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Rafael Sivilla-Jones, Presiding

191 North First Street, San Jose, CA 95113

Telephone: (408) 882-2160

March 24, 2026

9:00 and 9:01 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

ORAL ARGUMENT

Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted. (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

REMOTE APPEARANCES

Phone only appearances are PROHIBITED. In-person appearances are preferred.

For necessary virtual appearances, you **must use video** and follow **Civil Local Rule 5.**

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Department 6: <https://santaclara.courts.ca.gov/online-services/remote-hearings>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
9:00 1	22CV402462	Jessuca Shinneman vs. Kaiser Foundation Hospitals	See Line Item 1 below for ruling.
9:00 2	25CV422369	Gabriella Schuhe vs Zuy Phan, et. al.	See Line Item 2 below for ruling
9:00 3	25CV465110	US National Bank vs. Susan Anne Edgar	Plaintiff moves this court to grant summary judgment. Defendant failed to pay a credit card amount as agreed upon by Plaintiff and Defendant. Plaintiff's motion is GRANTED. Defendant is ordered to pay the principal sum of \$4,765.00 as well as costs in the amount of \$297.61.
9:00 4	24CV44932	Feng Wang et. al. vs Jiang Lewis et. al.	Defendant moves this court to compel further responses from Plaintiff. Plaintiff filed answers to Defendant's form interrogatories. Although Plaintiff's responses were filed late, Defendant does concede that responses were provided. Defendant's petition to compel is DENIED.
9:00 5	25CV467190	Benjamin Cruz Solorio et.al. vs Ping Cao et. al.	Defendant petitions this court to compel Plaintiff to respond to form interrogatories. Defendant filed form interrogatories on Plaintiff's counsel but received no response. Plaintiff's counsel has not been able to communicate with his client. Defendant's petition is GRANTED. Plaintiff's counsel has diligently attempted to communicate with client. Defendant's motion for sanctions is DENIED.
9:00 6	23CV410483	Rudolph Silverberg vs Raul Castro	MCK Services, a defendant in a traffic accident, moves this court for leave to file a cross-complaint against defendant Mercado Transportation. In this case, defendant Raul Castro was driving a truck for co-defendant Mercado Transportation which had entered into a trucking agreement with MCK Services. The agreement contains an indemnity obligation on the part of Mercado Transportation to MCK Services. Claims are transactionally related as they are all arising out of the accident that occurred between Plaintiff Silverberg and Defendant Raul Castro. MCK Services motion for leave to file cross-complaint is GRANTED.
9:00 7	25CV410483	Justin Kirkwood vs. Robert Bishop	Case is off calendar.
9:00 8	26CV475312	Re: In the Matter of the Petition of Red Horse Freight, inc., to Perpetuate Testimony and Evidence Before Commencement of Action.	Petitioner requests order for pre-commencement discovery. Petitioner is seeking an independent examination of injured party who has retained counsel and notified petitioner of injury. Pursuant to CCP 2035.010, Petitioner's request is GRANTED.
9:00 9 ,	25CV435775	Jennifer Khu vs. Saul Flores, et.al.	See Line Item 9 below
10	25CV458975	Yin Labson vs. FCA US LLC,	See Line Item 10 below

11	24CV 439334	Lovette Mitchell vs. Guard Force, Inc.	Plaintiff moves this court to grant leave to amend complaint. No reason is cited explaining why Plaintiff did not add other individuals allegedly involved sooner even though plaintiff could have ascertained individuals involved through bankruptcy court filings. Motion for leave to amend is DENIED.
12	23CV428303	John Doe RVR vs Robert Crose	See Line Item 12 below

Line 1

Defendants Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., the Permanente Medical Group, Inc., and Deborah Pierson’s motion for summary judgment, or in the alternative, summary adjudication came on for hearing before the Court on March 24, 2026. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on March 23, 2026.

I. Alleged Facts and Procedural History¹

This is an employment discrimination and retaliation action by plaintiff Jessica Shinneman (“Plaintiff”) against defendants Kaiser Foundation Hospitals (“KFH”), Kaiser Foundation Health Plan, Inc. (“KFHP”), the Permanente Medical Group (“TPMG”), and Deborah Pierson (“Pierson”; collectively, the “Defendants”). Plaintiff was employed by KFH, KFHP, and TPMG (the “Employer Defendants”) as a registered nurse in the labor and delivery department of Kaiser Permanente Santa Clara Medical Center and was wrongfully terminated on September 1, 2021. (FAC, ¶ 10.) Pierson was Plaintiff’s supervisor and held the position of nurse manager. (*Id.* at ¶ 9.)

On March 10, 2020, Plaintiff was assigned to a patient who had originally planned a home birth (“Patient 1”). (First Amended Complaint [“FAC”], ¶ 14.) Patient 1 had a birth plan that specifically stated Patient 1’s desire not to be offered a dilation check before pushing. (*Id.* at ¶ 15.) During the birth, Patient 1 and her husband refused certain care or treatment that Employer Defendants wanted to provide. (*Id.* at ¶¶ 16, 19.) In particular, Patient 1 and her husband refused to allow anyone else other than Patient 1’s husband to “catch the baby.” (*Id.* at ¶ 16.) Patient 1 and her husband’s refusal—and Plaintiff’s actions in accordance with their consent and limitations—angered Employer Defendants. (*Id.* at ¶ 19.) Following the successful birth, Pierson told Plaintiff that once patients enter the hospital and sign admission paperwork, they sign away their rights. (*Id.* at ¶ 20.) Plaintiff

¹ The Court takes judicial notice of the record in this action on its own motion. (Evid. Code, § 452, subd. (d).)

disagreed with Pierson and maintained that a patient has the right to refuse treatment and that treatment cannot be provided without consent. (*Ibid.*)

On March 13, 2020, Plaintiff was summoned to a discovery meeting with Pierson, the assistant nursing manager, the human resources consultant, and two members of Employer Defendants' Compliance Team. (FAC, ¶ 21.) Plaintiff was questioned about Patient 1's treatment and told that the hospital decides how a patient delivers their baby and Plaintiff should have had the family "dragged out of the hospital" upon their refusal to consent to treatment and care the hospital wanted to provide. (*Ibid.*)

On March 16, 2020, Pierson informed Plaintiff she would be on administrative leave pending further investigation. (*Id.* at ¶ 22.) During the subsequent investigative meetings, Plaintiff continued to maintain no wrongdoing and complained to Employer Defendants that she was being disciplined for not performing medical care to which Patient 1 had refused consent and not forcing Patient 1 and her husband to leave the hospital. (*Id.* at ¶¶ 23-24.) Plaintiff was placed on leave for six months, during which she was required to be available for calls or meetings at any time. (*Id.* at ¶ 25.)

On September 8, 2020, Plaintiff was called to another meeting, during which Pierson informed her she would be suspended for one day and placed on a corrective action plan and threatened Plaintiff with termination. (FAC, ¶ 26.) The suspension notice stated Plaintiff "failed to clearly communicate and follow proper escalation practices in the Labor and Delivery department" and "to escalate issues with the family member and guest to the manager on duty or the charge nurse." (*Ibid.*) The notice also identified Plaintiff's failure to consistently document Patient 1 and the newborn's vitals during delivery, which would have required Plaintiff to force care and treatment to which Patient 1 did not consent. (*Ibid.*) Plaintiff disputes the contents of the notice and asserts she escalated Patient 1's birth to the charge nurse, who was present for the delivery. (*Ibid.*)

On October 21, 2020, Plaintiff was assigned to Patient 2, who requested as few checks and interventions as possible. (FAC, ¶ 33.) Patient 2 was in the shower while involuntarily pushing, and Plaintiff called the midwife and charge nurse and helped Patient 2 get comfortable. (*Ibid.*) The midwife asked Plaintiff about Patient 2's dilation, and Plaintiff explained she could not perform a dilation check while Patient 2 was standing in the shower. (*Ibid.*) On November 9, 2020, after the successful birth of Patient 2's baby, Plaintiff was placed on administrative leave without explanation.

On November 12, 2020, Plaintiff was summoned to another discovery meeting, where she was questioned about her general nursing practices and accused of doing things like guessing patient assessments and refusing to do cervical exams. (*Id.* at ¶ 35.) Employer Defendants inquired about the care of Patient 2 and implied Plaintiff's care was inadequate. (*Ibid.*) Plaintiff was placed on administrative, and in August 2021, Employer Defendants terminated her health insurance and delayed payment of her paycheck. (*Id.* at ¶ 37.)

On September 1, 2021, Plaintiff was terminated, and the Memorandum of Termination claimed, *inter alia*, Plaintiff was previously suspended and placed on a corrective action plan for failing to follow department procedures workflow, failing to complete the corrective action plan, mishandling patient labor care, and failing to follow the standard of care. (FAC, ¶ 39.) Specifically, Plaintiff was charged with violating the standard of care by: (1) failing to examine patient for delivery readiness; (2) failing to confirm or have confirmed that the cervix was dilated to 10 cm; (3) urging patient to push without confirming her body was ready; (4) preparing the patient and room for delivery without confirming through examination that patient was ready to deliver; and (5) calling for the delivery team under the assumption that the patient was ready due to her urge to push. (*Ibid.*) Plaintiff maintains that the statements in the Memorandum of Termination were defamatory and published to third parties. (*Id.* at ¶¶ 40-41.)

On December 5, 2022, Plaintiff filed the FAC alleging four causes of action: (1) violation of Labor Code section 1102.5; (2) violation of Health and Safety Code section 1278.5; (3) wrongful discharge in violation of public policy; and (4) defamation. The first three causes of action are alleged against the Employer Defendants only, and the fourth cause of action for defamation is alleged against all Defendants. Plaintiff alleges that she was subject to adverse employment action for refusing to engage in illegal activity, complaining about Employer Defendants' request to engage in said activity, and presenting complaints about unsafe patient care and conditions. (FAC, ¶¶ 27, 31.)

On July 28, 2025, the Defendants filed the present motion for summary judgment, or in the alternative, summary adjudication. The motion was originally set to be heard on October 28, 2025, but the parties agreed to continue the hearing to February 26, 2026. On February 26, 2026, the Court (Hon. Panteha Saban) continued the hearing to March 5, 2026. Plaintiffs filed a timely opposition, and Defendants

filed a timely reply. The Court subsequently continued the hearing to March 24, 2026, pending receipt of Defendants' unredacted Compendium of Evidence.

II. Preliminary Matters

A. Defendants' Evidentiary Objections

With their reply, Defendants raised 157 numbered objections to Plaintiff's declaration—all of which included multiple grounds for the objection. The voluminous objections approach has been routinely disapproved by courts. (See *Reid v. Google* (2010) 50 Cal.4th 512, 532-533 [discussing the "disturbing trend" of litigants "flood[ing] the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical," and "encourag[ing] parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the" motion at issue]; see also *Demps v. San Francisco Housing Authority* (2007) 149 Cal.App.4th 578-579, fn. 6 [noting "blunderbuss objections" is "hardly good advocacy"].) Defendants are urged to raise only pertinent, meritorious objections in the future.

The Court SUSTAINS Objection Nos. 30 and 113 on the grounds of lack of authentication and hearsay. The Court SUSTAINS Objection Nos. 147-154 on the grounds of lack of personal knowledge and speculation.

The Court need not rule on the remaining objections, which are preserved, because they are not material to the disposition of the motion. (Code Civ. Proc., § 437c, subd. (q).)

B. Plaintiff's Evidentiary Objections

On February 18, 2026, Plaintiff filed objections to the Declaration of Candace Bertoldi and Defendants' reply separate statement, contending that consideration of the new evidence would violate Plaintiff's due process rights and no legal authority authorizes the filing of a reply separate statement.

"The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . ." (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) "While additional evidentiary matter submitted with the reply ordinarily should not be allowed, the court has discretion to consider it when it poses no prejudice to the opposing party." (*Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1193.)

The Declaration of Candace Bertoldi includes four exhibits. Exhibit A consists of excerpts from the

deposition of defendant Pierson, taken on January 26, 2026. Exhibit B consists of Patient 1's March 10, 2020 medical records, produced pursuant to the Court's Order Regarding Motion to Compel dated September 9, 2025. Exhibit C consists of November 4, 2020 emails between Human Resources Consultant John Cabalu and defendant Pierson produced in discovery. Exhibit D consists of responses by registered nurses in Plaintiff's department to a Substitution Test concerning escalation practices and standards of care produced in discovery. Plaintiff's objections are SUSTAINED as to Exhibits C and D of the Bertoldi Declaration as the evidence appears to have been available at the time Defendants filed their motion. Plaintiff's objections are OVERRULED as to Exhibits A and B. While Plaintiff includes part of Pierson's deposition testimony in her opposition, Defendants offer as Exhibit A Pierson's additional portions of Pierson's deposition testimony for further context. Similarly, Plaintiff includes a two-page excerpt of Patient 1's medical record and Defendants offer as Exhibit B Patient 1's full medical record to respond to Plaintiff's argument. The court has discretion to consider supplemental evidence submitted with the reply if the evidence merely explains the initially submitted evidence or fills gaps in evidence created by the opposition. (See *Savea v. YRC Inc.* (2019) 34 Cal.App.5th 173, 182 (trial court did not abuse discretion in considering supplemental request for judicial notice).)

Defendants' separate statement responds to Plaintiff's additional material facts and does not introduce additional material facts. Some of the responses do, however, rely on new evidence that the Court will not consider. (See *Nazir v. United Airlines* (2009) 178 Cal.App.4th 243, 249 (*Nazir*) [noting the defendants properly included responses to plaintiff's additional disputed facts, but improperly included a reply separate statement with exhibits and evidence in support].) Plaintiff's objection to the separate statement is SUSTAINED IN PART to the extent it introduces new evidence or facts. (See e.g., Defendants' Response to Plaintiff's Additional Material Facts, Nos. 32, 78.) The Court further notes that several of Defendants' responses to Plaintiff's separate statement are not in compliance with California Rules of Court, rule 3.1354(b) as the responses restate evidentiary objections rather than indicating whether the additional material fact is disputed or undisputed.

III. Legal Standards

Any party may move for summary judgment. (Code Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) The motion "shall be granted if all the papers

submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 843.) The object of the summary judgment procedure is “to cut through the parties’ pleadings” to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, 25 Cal.4th at p. 843.) Similarly, “[a] party may seek summary adjudication on whether a cause of action, affirmative defense, or punitive damages claim has merit or whether a defendant owed a duty to a plaintiff. [Citation.] ‘A motion for summary adjudication...shall proceed in all procedural respects as a motion for summary judgment.’ [Citation.]” (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630.)

A triable issue of material fact exists “if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar, supra*, 25 Cal.4th at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id.* at p. 856.)

Throughout the process, the trial court “must consider all of the evidence and all of the inferences drawn therefrom.” (*Aguilar, supra*, 25 Cal.4th at p. 856.) The moving party’s evidence is strictly construed, while the opponent’s is liberally construed. (*Id.* at p. 843.)

IV. Analysis

Defendants move for summary judgment on the ground that there is no triable issue as to any material fact, and seek in the alternative, summary adjudication of each of the four causes of action and Plaintiff’s request for punitive damages. Defendants also assert that defendants KFHP and TPMG are entitled to summary judgment because neither Plaintiff nor any of the alleged wrongdoers had an employment relationship with KFHP and TPMG.

A. KFHP and TPMG

Defendants seek summary judgment on behalf of KFHP and TPMG on the grounds that (1) the Plaintiff’s claims may only be alleged her employer; and (2) KFHP and TPMG were not her employers. Plaintiff does not dispute that her claims against KFHP and TPMG hinge on the Court’s finding that KFHP and TPMG were her employers. Accordingly, the Court will only address Defendant’s second argument.

The FAC alleges that “Employer Defendants constituted an ‘integrated enterprise’ and ‘integrated employers’ with interrelated operations, common management, centralized, control of labor relations, and common ownership and/or financial control and/or were, at all relevant times, the alter egos and/or the agents of each other, such that maintaining the fiction of a separate existence would work an injustice on Plaintiff.” (FAC, ¶ 8.)

Defendants maintain that KFHP and TPMG did not operate as an integrated enterprise with KFHP and Plaintiff has no evidence to support any of the factors of the integrated enterprise test.

The federal courts have developed a test, derived from federal labor case law, to determine whether two corporations should be considered a single employer for title VII purposes. Commonly called the ‘integrated enterprise’ test, it has four factors: interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control.” [Citation.] The test was “designed to further Congress’s intent that title VII be construed liberally, including its definition of the term ‘employer.’” [Citation.] Common ownership or control alone is never enough to establish single employer liability, and courts “often deem centralized control of labor relations the important” factor. [Citation.] “The critical question is, “[w]hat entity made the final decisions regarding employment matters related to the person claiming discrimination?”” [Citation.]

(Mathews v. Happy Valley Conference Center, Inc. (2019) 43 Cal.App.5th 236, 248 (Mathews) [citing Laird v. Capital Cities/ABC (1998) 68 Cal.App.4th 727, 737-738 (Laird)].)

Two conditions are generally required for the application of joint enterprise liability: (1) such a unity of interest and ownership that the separate corporate personalities are merged, so that one corporation is a mere adjunct of another or the two companies form a single enterprise, and (2) an inequitable result if the acts in question are treated as those of one corporation alone. [Citation.]

(Gopal v. Kaiser Foundation Health Plan, Inc. (2016) 248 Cal.App.4th 425, 432.)

It is undisputed that KFHP is a nonprofit public and charitable benefit corporation that owns and operates hospitals and outpatient facilities in eight states. (Defendants’ Undisputed Material Fact [“UMF”], No. 2.) KFHP is a nonprofit public and charitable benefit corporation that provides health care service plans to its members and is not licensed to operate hospitals or health facilities in California. (UMF, Nos. 9, 11.) TPMG is a multi-specialty medical practice group in Northern California

that operates over 200 medical offices with 10,000 physicians and more than 44,000 non-physician staff members. (UMF, Nos. 13-14.) KFH is neither a parent nor subsidiary of KFHP or TPMG, and KFH hired Plaintiff in May 2013 as a staff registered nurse. (UMF, Nos. 8, 16.)

First, Defendants assert that because it is undisputed that KFH is neither a parent nor subsidiary of KFHP or TPMG, Plaintiff's integrated enterprise theory must fail. This is because the integrated enterprise test is used to "hold a parent corporation liable for the acts or omissions of its subsidiary on the theory that the two corporate entities constitute a single employer..." (*Laird, supra*, 68 Cal.App.4th at 737.) Defendants effectively argue that the absence of a parent-subsidiary relationship between the entities necessarily means that the integrated enterprise test cannot apply. This is sufficient for Defendants to meet their initial burden, and Plaintiff does not respond to this argument.

Defendants argue that even if the integrated enterprise test applied, Plaintiff still cannot establish any of the four factors because KFH maintains separate finances and had control over its own personnel decisions. Defendants offer the declaration of James W. Washecka, who is employed by KFHP as the Vice President, Financial Planning & Performance of the Norther California region in support.

Washecka declares, "KFH maintains its own governing body, workforce, operating budget, and tax returns. KFH is neither a parent nor subsidiary of KFHP or TPMG." (Defendants' Compendium of Evidence ["COE"], Tab 2, ¶ 6.) He further declares that KFH has exclusive decisional authority over its operating budgets, policies, and procedures for its personnel, as well as hiring and firing of KFH personnel. (*Id.* at ¶¶ 7-8.) KFH also pays all salaries and wages for its personnel and all applicable business and employer taxes from its own revenue and assets, while also maintaining formal, separate financial books and records. (*Id.* at ¶¶ 8-9.) Defendants also offer the declaration of defendant Deborah Pierson, who is employed at KFH as a Nurse Manager in the Labor and Delivery Department at Santa Clara Medical Center. (COE, Tab 1, ¶ 3.) Pierson declares that she decided to issue a one-day suspension and place Plaintiff on a 90-day Corrective Action Plan after considering KFHP Human Resources Consultant, John Cabalu's recommendation. (*Id.* at ¶ 17.) The Court finds these declarations sufficient to meet Defendants' initial burden to show that they were not Plaintiff's employer.

In opposition, Plaintiff maintains that because (1) KFH and KFHP share the same exact officers and

principal place of business; (2) Defendants have committees that provide global policies to all staff employed by Defendants; and (3) Defendants do not dispute that John Cabalu was employed by all Defendants that the distinction between the entities are a smokescreen. (Opposition, pp. 18:24-19:2.) Plaintiff relies on KFH's Principles of Responsibility and KFH's internal policies for Chain of Command and Patient Care: Labor in support. (COE, Ex. L [Principles of Responsibility], Ex. M [Chain of Command Policy], Ex. N [Patient Care: Labor].) The fact that the entities may have these shared policies and principles, however, does not establish that KFHP and TPMG had control over Plaintiff's employment. (See *Laird, supra*, 68 Cal.App.4th at p. 738 ["broad general policy statements regarding employment matters are not enough to satisfy this prong. [Citation.] To satisfy the control prong, a parent must control the day-to-day employment decisions of the subsidiary. [Citations.]; see also *Mathews, supra*, 43 Cal.App.5th at p. 248 ["The critical question is, "[w]hat entity made the final decisions regarding employment matters related to the person claiming discrimination?""].) Similarly, that KFH and KFHP share the same officers and principal place of business, without more, does not establish that KFHP (or TPMG) exercised day-to-day control over KFH's employment decisions, including the decision with respect to Plaintiff. (See *Laird, supra*, 68 Cal.App.4th at pp. 738-739.) Finally, Plaintiff claims that John Cabalu was employed by all Defendants but provides no evidence in support of this assertion. In fact, it is undisputed that, "On March 13, 2020, Pierson, *KFH Human Resource Consultant*, John Cabalu ("Cabalu"), a *KFH senior compliance officer*, and Plaintiff's union representative met with Plaintiff to discuss the March Birth Incident (discovery meeting)." (UMF, No. 27, emphasis added.)

Given the foregoing, the Court GRANTS summary judgment as to KFHP and TPMG as Plaintiff has not met her corresponding burden to establish a triable issue of material fact that KFHP and TPMG were her employers, and therefore, cannot allege retaliation claims against them. Furthermore summary judgment is appropriate as to Plaintiff's defamation claim, which is dependent on Pierson being an employee of KFH, rather than KFHP and TPMG. (FAC, ¶ 78 ["Employer Defendants, through PIERSON, defamed Plaintiff"].)

B. First Cause of Action: Violation of Labor Code Section 1102.5

Defendants seek summary adjudication of the first cause of action for violation of Labor Code section 1102.5 on the grounds that (1) Plaintiff did not engage in protected activity for purposes of Labor Code

section 1102.5, subdivision (b); (2) Plaintiff did not engage in protected activity for purposes of Labor Code section 1102.5, subdivision (c); (3) Plaintiff cannot establish any proscribed activity that was a contributing factor in any adverse employment action; and (4) a legitimate, independent reason exists for Plaintiff's adverse employment action.

Here, the FAC alleges violations of Labor Code section 1102.5 subdivisions (a), (b), and (c). As Plaintiff points out, Defendants do not address whether a triable issue of material fact exists with respect to Plaintiff's conduct and any adverse employment action under Labor Code section 1102.5, subdivision (a). (Opposition, p. 12:3, fn. 4.) Defendants, therefore, have not met their initial burden for purposes of summary adjudication. (See *Nazir, supra*, 178 Cal.App.4th at p. 251 ["Summary adjudication must completely dispose of the cause of action to which it is directed."].)

Accordingly, the motion for summary adjudication of the first cause of action is DENIED as to KFH.

C. Second Cause of Action: Violation of Health and Safety Code Section 1278.5

Defendants seek summary adjudication of the second cause of action for violation of Health and Safety Code section 1278.5 on the ground that there is no evidence that the legitimate business reason for Plaintiff's write-ups or termination was pretextual.

In her second cause of action, Plaintiff invokes the whistleblower protections afforded pursuant to Health and Safety Code section 1278.5.²

"California courts have applied the *McDonnell Douglas* framework to a cause of action alleging a violation of Health and Safety Code section 1278.5." (*Scheer v. Regents of University of California* (2022) 76 Cal.App.5th 904, 916 (*Scheer*); see *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792.)

² (1) A health facility shall not discriminate or retaliate, in any manner, against a patient, employee, member of the medical staff, or other health care worker of the health facility because that person has done either of the following:

(A) Presented a grievance, complaint, or report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any other governmental entity.

(B) Has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility that is carried out by an entity or agency responsible for accrediting or evaluating the facility or its medical staff, or governmental entity.

(2) An entity that owns or operates a health facility, or that owns or operates any other health facility, shall not discriminate or retaliate against a person because that person has taken any actions pursuant to this subdivision.

(Health & Saf. Code, § 1278.5, subd. (b).)

Accordingly, Plaintiff must first establish a prima facie case of retaliation, Defendants must then articulate a legitimate reason for the adverse employment action, and Plaintiff must then demonstrate the offered legitimate reason is pretext. (*Scheer, supra*, 76 Cal.App.5th at p. 910.)

Here, Defendants assume for the purposes of this motion that Plaintiff can establish a prima facie case of retaliation but nonetheless maintain legitimate, nonretaliatory reasons for the employment action exist.

1. Defendants' Burden: Legitimate, Nonretaliatory Reason

Defendants assert that Plaintiff's write-ups and termination had legitimate, nonretaliatory reasons. It is undisputed that KFH investigated Plaintiff's involvement in the March Birth Incident, the results of which culminated in Plaintiff's one-day suspension and placement on a corrective action plan. (UMF, Nos. 31, 36.) Defendants contend that the following factors underlay that decision: (1) as the primary nurse, Plaintiff failed to clarify the family's birth plan and communicate it to certified nurse midwife Amy Meier ("Meier") and the physician Dr. Julie Livingston ("Livingston"); (2) Plaintiff's failure to clarify rendered her incapable of escalating the matter to appropriate staff, resulting in an interference with hospital staff's ability to do their jobs; and (3) Plaintiff's later disclosure that she had been exploring employment with the same doula who accompanied Patient 1, requested Plaintiff to serve as primary nurse, and interfered with hospital staff's efforts to assist the patient during delivery constituted a potential conflict of interest. (Motion, pp. 12:27-13:15; see COE, Ex. E [Suspension Notice]; see also UMF Nos. 22-29, 32, 35.)

The day after the March Birth Incident, Meier reported concerns about Patient 1's doula via email, and the email prompted an investigation into Plaintiff's undisclosed conflict of interest with the doula and "siding with the patient/husband rather than following [Kaiser Permanente] protocol." (COE, Ex. P [March 11, 2020 email exchange], p. 3.) On March 19, 2020, Neo-Natal Registered Nurse Courtney Miller documented the events of the March Birth Incident in an email, noting that Patient 1's husband repeatedly pushed away Meier's hands and slapped Livingston's hands away when she tried to reduce the umbilical cord that was around the baby's neck. (COE, Ex. S [Miller email].) Miller also noted that Plaintiff "thought there had been a miscommunication with the patient's birth plan" and Miller "felt like Plaintiff was just as surprised and unaware of what was going on." (*Ibid.*; COE, Ex. A [Shinneman

Dep. Vol. 1], p. 269:3-5 [“And since we didn’t ask clarifying questions, we agreed to a [birth] plan not fully understanding what [Patient 1’s husband’s] plan actually was.”) In April 2020, KFH staff exchanged emails about the investigation, noting that Plaintiff was not honest about her lack of communication with the family and/or doula prior to the birth. (COE, Ex. Q [April 2020 email exchange], p. 3.) In particular, Pierson noted, “Jessica does not understand that she is obligated to follow Kaiser policy and procedure in the care of all patient [sic] during Labor & Delivery.” (*Ibid.*) Defendants also maintain that Plaintiff was terminated only after she was involved in the October Birth Incident, while still on a corrective action plan for the March Birth Incident, and after she refused to agree to the Last Chance Agreement (LCA). (Motion, p. 13:16-18.) With respect to the October Birth Incident, Plaintiff failed to check if Patient 2 was fully dilated before encouraging her to push and failed to follow Labor and Delivery Department-specific policies, workflow, and procedures. (*Id.* at p. 13:18-28.) On October 22, 2020, Certified Nurse Midwife, Lisa Vincenti (“Vincenti”) reported to KFH that Plaintiff had been involved in a birth incident that Vincenti reported as unsafe, prompting an investigation that placed Plaintiff on a second paid administrative leave. (UMF, Nos. 40-41.) Specifically, Vincenti noted that Plaintiff had failed to check Patient 2’s dilation before she began to push and Plaintiff later told Vincenti that she thought “there was no issue with what happened.” (COE, Ex. V [Vincenti Statement], Ex. K [Vincenti-Plaintiff text message].) Vincenti further noted that “the patient was allowed to push in an unsafe situation, and the patient trusted Jessica’s expert advice and that Jessica put the patient at risk but did not see that pushing at 5cm was risky.” (COE, Ex. V [Vincenti Statement].) In deposition, Plaintiff confirmed that it would be against Lippincott Procedures and KFH’s policies to encourage a patient who was not fully dilated to 10 cm to push. (COE, Ex. A at p. 216:6-16; see *id.* at p. 217 [“Q: And as a nurse you wouldn’t -- you were not supposed to encourage them to be pushing when they’re not fully dilated? A. No.”]) This was further corroborated by an internal survey of five Labor & Delivery nurses to help determine if Plaintiff’s actions were aligned with the standard Labor & Delivery nursing practice. (COE, Ex. W [Survey Findings].) Given the foregoing, the record contains enough evidence to establish that KFH’s employment actions were for legitimate, nonretaliatory reasons. (See *Loggins v. Kaiser Permanente Internat.* (2007) 151 Cal.App.4th 1102, 1111 [finding evidence of preliminary review and interviews to corroborate

allegations sufficient to demonstrate a legitimate, nonretaliatory reason for termination].) The burden now shifts to Plaintiff to demonstrate pretext.

2. Plaintiff's Burden: Pretext

If the employer meets its initial burden on summary judgment to show that the adverse employment action was based upon legitimate, nondiscriminatory factors, “the burden shifts to the employee to ‘demonstrate a triable issue by producing substantial evidence that the employer's stated reasons were untrue or pretextual, or that the employer acted with a discriminatory *animus*, such that a reasonable trier of fact could conclude that the employer engaged in intentional discrimination or other unlawful action.’” [Citation.] Both “direct and circumstantial evidence can be used to show an employer's intent to retaliate. ‘Direct evidence of retaliation may consist of remarks made by decisionmakers displaying a retaliatory motive. [Citation.]’ [Citation.] Circumstantial evidence typically relates to such factors as the plaintiff's job performance, the timing of events, and how the plaintiff was treated in comparison to other workers.” [Citations.]

(*Scheer, supra*, 76 Cal.App.5th at p. 917, emphasis in original.)

[E]vidence that the employer's claimed reason is *false*—such as that it conflicts with other evidence, or appears to have been contrived after the fact—will tend to suggest that the employer seeks to conceal the real reason for its actions, and this in turn may support an inference that the real reason was unlawful.

(*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 715 (*Mamou*).)

Here, Plaintiff first offers the Suspension Notice as evidence that she suffered direct retaliation solely because she refused to take vitals of Patient 1. (Opposition, p. 14:2-24.) Plaintiff's argument is unpersuasive considering the other reasons for her suspension. (See COE, Ex. E [Suspension Notice] [noting a failure to clearly communicate and follow the proper escalation practices]; see also Declaration of Jeremy D. Scherwin [“Scherwin Decl.”], Ex. A [Pierson Dep.], p. 55.)³

Plaintiff next persuasively argues that there is evidence of indirect retaliation as she had received two

³ Because the deposition transcripts appended to Mr. Scherwin's declaration are missing the page and line numbers, all references to page numbers are to the page numbers of the declaration itself as opposed to the internal pagination of the deposition transcript.

positive performance reviews prior to the March Birth Incident and it is undisputed that she was never disciplined prior to the March Birth Incident. (Plaintiff's Additional Material Facts ["AMF"], No. 4-6; see *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 140 (*Mokler*) ["Evidence supporting pretext included the fact Mokler had never been reprimanded or received a negative performance review during her County employment before she complained about the accounting department reassignment."])

Plaintiff also relies on the inconsistent deposition testimony of Pierson as proof of pretext. Pierson testified that Plaintiff had been suspended and terminated because of her failure to follow the department's escalation policy (Chain of Command Policy), when no written policy existed at the time. (Scherwin Decl., Ex. A [Pierson Dep.], p. 48; COE, Ex. E [Suspension Notice].) Specifically, Pierson confirmed that the Chain of Command Policy had not been approved until December 2, 2022—well after the March 10, 2020 birth—and the document was not in existence at the time of the March Birth Incident. (Scherwin Decl., Ex. A [Pierson Dep.], pp. 48-49.) Pierson, however, also asserted that initiating the chain of command was within Plaintiff's duty as a nurse, and that "She doesn't need a policy to know how to initiate the chain of command." (*Id.* at p. 48.) Pierson concedes that there should have been a policy, but the absence of the policy "doesn't dictate her knowing how to activate or when to activate the chain of command." (*Id.* at pp. 48-49.) Furthermore, while Pierson testified that Plaintiff and Meier should have known to activate the chain of command and both failed to do so, only Plaintiff had been disciplined because she was the primary nurse. (*Id.* at pp. 17-18.) Nothing in the protocols required only the primary nurse to follow the protocols. (*Id.* at p. 18.) Pierson also testified that Plaintiff was disciplined partially for her failure to communicate Patient 1's desire not to be touched to Meier and Livingston but later testified that that was not one of the reasons for Plaintiff's disciplinary action. (Compare *id.* at p. 51 with *id.* at p. 59.) Plaintiff was also reprimanded for her failure to follow the Principles of Responsibility, but Pierson could not identify the section or provision that had been violated. (*Id.* at pp. 30-31.) While Pierson testified that Plaintiff violated the "Escalation" section of the Principles of Responsibility, that section does not exist. (COE, Ex. L [Principles of Responsibility].)

Given the foregoing, a jury could reasonably infer pretext in the Defendants' purportedly legitimate,

nonretaliatory reason for employment action. (See *Mokler, supra*, 157 Cal.App.4th at p. 140.)

Accordingly, the motion for summary adjudication of the second cause of action is DENIED as to KFH.

D. Third Cause of Action: Wrongful Termination in Violation of Public Policy

Defendants seek summary adjudication of the third cause of action for wrongful termination in violation of public policy on the ground that it is duplicative and derivative of Plaintiff's retaliation claims under Labor Code section 1102.5 and Health and Safety Code section 1278.5, and therefore, fails for the same reasons.

The argument is premised on the Court granting summary adjudication as to both the first and second causes of action—which the Court did not do. Accordingly, the motion for summary adjudication of the third cause of action is DENIED as to KFH.

E. Fourth Cause of Action: Defamation

Defendants seek summary adjudication of the fourth cause of action for defamation on the grounds that (1) the statements are privileged pursuant to the common interest privilege codified in Civil Code section 47, subdivision (c); and (2) the statements were not published to any third party.⁴

Here, the FAC alleges that the Employer Defendants, through Pierson, defamed Plaintiff by publishing false statements in the Memorandum of Termination dated September 1, 2021 to third parties. (FAC, ¶¶ 78, 80.)

1. Common Interest Privilege

The common interest privilege is codified in Civil Code section 47, subdivision (c) and protects statements made:

In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person

⁴ In a footnote within their moving papers, Defendants assert that Plaintiff cannot establish that the allegedly defamatory statements were false. (Motion, p. 16:15, fn. 10.) The Court rejects this argument as Defendants have not met their initial burden on this issue. (See *Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1382 ["In defamation actions generally, factual truth is a defense which it is the defendant's burden to prove."]) While Defendants cite *Nygaard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1048 in support of their assertion that Plaintiff has the burden of proof, *Nygaard* concerns an anti-SLAPP motion, in which the plaintiff needed to demonstrate the probability of prevailing on the defamation claim in order to defeat the motion.

interested to give the information.

The privilege “is recognized where the communicator and the recipient have a common interest and the communication is of a kind reasonably calculated to protect or further that interest.” (*Deaile v. General Telephone Co. of Calif.* (1974) 40 Cal.App.3d 841, 846.) The common interest privilege is defeated if the author of the subject communication acted with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1196 (*Lundquist*)). Malice, for purposes of section 47, subdivision (c), is “a state of mind arising from hatred or ill will, evidencing a willingness to vex, annoy, or injure another person.” (*Id.* at p. 1204.)

A defendant has the initial burden to show that the allegedly defamatory publication was made in a situation in which the common interest privilege applies, before the burden shifts to the plaintiff to show malice. (See *Lundquist, supra*, 7 Cal.4th at pp. 1202-1203; *Dignity Health v. Mounts* (2024) 105 Cal.App.5th 113, 121.)

Defendants have met their initial burden to show that the common interest privilege applies to Plaintiff’s write-ups, investigation, and termination by citing *Cuenca v. Safeway San Francisco Employees Fed. Credit Union* (1986) 180 Cal.App.3d 985, 995 in support. There, the court observed, “Communications made in a commercial setting relating to the conduct of an employee have been held to fall squarely within the qualified privilege for communications to interested persons.” (*Ibid.*) As Defendants have met their initial burden, Plaintiff must demonstrate the publication was made with malice.

As noted above, the only way for a plaintiff to defeat the common interest privilege is to establish the existence of a triable issue with regards to whether the speakers of the alleged defamatory statements acted with actual malice, *i.e.*, a statement of mind arising from hatred or ill will, evidencing a willingness to vex, annoy, or injure another person. (*Agrawal v. Johnson* (1979) 25 Cal.3d 932, 944, disapproved on other grounds by *White v. Ultramar* (1999) 21 Cal.4th 563, 574, fn. 4.)

To establish malice, Plaintiff reasserts the same evidence of pretext and bad faith. Plaintiff broadly claims there is “overwhelming evidence of malice” because Pierson hated her for complaining about unlawful conduct, refusing to engage in illegal conduct, and raising serious safety concerns.

(Opposition, p. 18:5-7.) Consequently, Pierson and other Kaiser agents would do anything to discipline

her, and the issue with Chain of Command Policy was “emblematic” of Pierson’s malice. (*Id.* at p. 18:7-9.) While Defendants dispute Plaintiff’s theory that Pierson manufactured the Chain of Command Policy as a mis-recollection, the record still reflects that Pierson chose to discipline only Plaintiff for violating the unspoken chain of command protocol in the March Birth Incident—despite acknowledging that Meier was also required to follow the protocol. The Court finds that given the Defendants’ pretextual reasons for their employment actions constitutes, a triable issue of material fact exists as to whether Defendants acted with actual malice.

2. Publications to a Third Party

One of the elements of the tort of defamation is “publication.” In general, each time the defamatory statement is communicated to a third person who understands its defamatory meaning as applied to the plaintiff, the statement is said to have been “published,” although a written dissemination, as suggested by the common meaning of that term, is not required.

(*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242.)

Defendants argue that because the September 9, 2020 Termination Letter was placed in her file and only published to other KFH employees, the statements were not published to any third party. As Plaintiff points out, however, such an argument is “without merit as publication occurs when a statement is communicated to any person other than the party defamed. [Citation.]” (*Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 284 (*Kelly*); see *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 293 [citing *Kelly* with approval].) Defendants abandon this argument on reply. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is “equivalent to a concession”].)

Accordingly, the motion for summary adjudication of the fourth cause of action is DENIED as to KFH and Pierson.

F. Punitive Damages

Defendants seek summary adjudication of Plaintiff’s request for punitive damages on the grounds that (1) Plaintiff cannot present clear and convincing evidence that an officer, director, or managing agent of KFH, KFHP, or TPMG acted with oppression, fraud, or malice; and (2) the undisputed facts do not amount to malice, oppression, or fraud. The Court need not address the first argument as Plaintiff

asserts she will not seek punitive damages against KFH, KFHP, and TPMG, contending that she solely seeks punitive damages against Pierson. (See Opposition, p. 19:5-6.)

The prayer for punitive damages is a proper subject for summary adjudication. (Code Civ. Proc., § 437c, subd. (f)(1).) An award of punitive damages requires “clear and convincing” evidence that the defendant has been guilty of “oppression, fraud, or malice” in the commission of a tort. (*Basich v. Allstate Ins. Co.* (2001) 87 Cal.App.4th 1112, 1121; Civ. Code, § 3294, subd. (a).) “Where the ... ‘clear and convincing’ evidence requirement applies, the trial judge’s summary judgment inquiry as to whether a genuine issue exists will be whether the evidence presented is such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant.” (*Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 60, citing *Anderson v. Liberty Lobby, Inc.* (1986) 477 U.S. 242, 254–255; and citing *Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 252 [in defamation case requiring clear and convincing proof of actual malice, summary judgment to be granted unless it appears plaintiff may be able to meet that standard at trial].)

As noted above, the Court has found that a jury could reasonably find that Pierson acted with malice.

Accordingly, the motion for summary adjudication of the punitive damages is DENIED as to KFH and Pierson.

V. Disposition

Defendants KFHP and TPMG’s motion for summary judgment is GRANTED.

Defendants KFH and Pierson’s motion for summary judgment is DENIED.

Defendants KFH and Pierson’s motion for summary adjudication of the first through fourth causes of action and punitive damages is DENIED.

LINE ITEM 2

Defendants’, Tien Quang Phan, Tien Quang Phan trustee of the Phan Living Trust, and Kashmira Jane Carey (erroneously sued as Jane Kashmira Carey) (collectively, “Moving Defendants”) motion for summary judgment against Plaintiff’s complaint came on for hearing before the Court on March 24, 2026. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on March 23,

2026.

I. Undisputed Facts

On August 25, 2023, Plaintiff was walking along the public sidewalk abutting Dillon Avenue when she was bitten by a dog. Plaintiff saw co-defendant, Michelle Lofano, walking two dogs on the sidewalk near the residence located at 183 Dillon Avenue in Campbell. (“Premises”) As Plaintiff walked by the dogs, one named Rasta bit her on her right leg causing Plaintiff to fall to the ground.

Rasta was owned by Duy Phan (erroneously sued as Zuy Phan) and Carmen Villegas, who were leasing the Premises from the owners, Phan Living Trust and non-party Zetoun Carey. Defendant Tien Quang Phan is the sole trustee of the Phan Living Trust and Defendant Kashmira Jane Carey is his spouse. Duy Phan is Tien Quang Phan’s and Kashmira Jane Carey’s son.

Plaintiff initiated this action on September 7, 2023, alleging causes of action for (1) negligence, (2) negligence per se, (3) common law strict liability, and (4) statutory strict liability.

II. Legal Standard

In evaluating a motion for summary judgment or summary adjudication the court engages in a three-step process. The Court first identifies the issues framed by the pleadings. The pleadings define the scope of the issues on a motion for summary judgment or summary adjudication. (*FPI Dev. Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 381-382). Because a motion for summary judgment or summary adjudication is limited to the issues raised by the pleadings (*Lewis v. Chevron* (2004) 119 Cal. App. 4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. An issue that is "within the general area of issues framed by the pleadings" is properly before the court on a summary judgment or summary adjudication motion. (*Lennar Northeast Partners v. Buice* (1996) 49 Cal. App. 4th 1576, 1582-1583.) The Court cannot consider an unpleaded issue in ruling on motion for summary judgment or adjudication. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541.) The papers filed in response to a defendant's motion for summary judgment may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings. (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.)

Second, the Court is required to determine whether the moving party has met its burden. A defendant

moving for summary judgment bears the burden of persuasion that one or more elements of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal 4th 826, 850, quoting Code. Civ. Proc. §437c(p)(2)). A defendant is not required to conclusively negate one or more elements of the plaintiff's cause of action; (*Saelzer v Advance, Group 400* (2001) 25 C4th 763, 780-781). Rather, to meet its burden, the defendant is required only to show that the plaintiff cannot prove an element of its cause of action, i.e., that the plaintiff does not possess and cannot reasonably obtain evidence necessary to show this element. (*Aguilar, supra*, at pp. 853-855).

Once the moving party has met its burden, the burden shifts to the opposing party to show that a material factual issue exists as to the cause of action alleged or a defense to it. (Code. Civ. Proc. § 437c(p); see, generally *Bush v. Parents Without Partners* (1993) 17 Cal. App. 4th 322, 326-327). In ruling on the motion, the court must consider the evidence and inferences reasonably drawn from the evidence in the light most favorable to the party opposing the motion. (*Aguilar, supra*, at p. 843.)

III. Preliminary Consideration

Plaintiff asserts Moving Defendants' motion must be denied on procedural grounds because their separate statement of facts fails to adhere to formatting requirements of California Rule of Court, rule 3.1350(d)(1)(A) and their notice of motion fails to identify specific causes of action at issue in violation of rule 3.1350(b). The Court rejects Plaintiff's assertion.

California Rules of Court, rule 3.1350(b) pertains to the required content of a notice when summary adjudication is sought. Moving Defendants' motion seeks summary judgment only and not summary adjudication. Relatedly, since Moving Defendants' motion does not seek summary adjudication of a sub-issue, their statement meets the requirements of rule 3.1350 without the necessity of separately listing sub-issues as to which summary adjudication is applied. (See, *Truong v. Glasser*, (2009) 181 Cal. App. 4th 102, 118.) Even if some additional headings were required, the Court's power to deny summary judgment based on failure to comply with California Rules of Court, rule 3.1350 is discretionary, not mandatory. (*Ibid*; See also *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 315–316.)

Here, the facts critical to the ruling were adequately identified and Plaintiff has not explained how any alleged deficiency in the Moving Defendants' separate statement of material facts impaired her ability to demonstrate material facts are in dispute. Consequently, the Court proceeds with addressing the merits of the motion.

IV. Judicial Notice

In declaration of her counsel, Plaintiff seeks judicial notice of excerpts from Defendants' opposition to her motion for sanctions. Moving Defendants, in their reply, object to admissibility of this evidence. Neither party has complied with California Rules of Court for their request and objection. Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306 (c). (Cal Rules of Court, rule 3.1113.) Furthermore, "[a]ll written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion." (Cal. Rules of Court, rule 3.1354(b).) Rule 3.1354(c) requires filing evidentiary objections with a separate proposed order on the objections. The Court is not required to rule on request for judicial notice and objections that are not fully compliant. (See e.g. *Hodjat v. State Farm Mutual Automobile Ins. Co* (2012) 211 Cal.App.4th 1, 8-9) Even if Plaintiff's request was duly formatted, judicial notice of the opposition is at best limited to its existence without regard to its contents. (see, e.g. *Professional Engineers v. Dept. of Transp.* (1997) 15 Cal.4th 543, 590; *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.) Accordingly, Plaintiff's request for judicial notice is GRANTED, IN PART.

V. Analysis

1. Strict Liability Claims

Plaintiff's third and fourth causes of action are based on common law and violation of Civil Code section 3342. "A common law strict liability cause of action may ... be maintained if the owner of a domestic animal that ... injures another person knew or had reason to know of the animal's vicious propensities." (*Swigart v. Bruno* (2017) 13 Cal.App.5th 529, 543, quoting *Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1115.) The dog bite statute or Civil Code section 3342 provides in pertinent part: "The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of

the former viciousness of the dog or the owner's knowledge of such viciousness." (Civ. Code, § 3342; See also, *Buffington v. Nicholson* (1947) 78 Cal.App.2d 37, 41 ["the owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place"].)

Moving Defendants submit their declarations attesting (1) Duy Phan and Carmen Villegas were Rasta's owners at the time of the incident, (2) neither Tien Quang Phan nor Kashmira Jane Carey ever owned Rasta, (3) neither Tien Quang Phan nor Kashmira Jane Carey were Rasta's keepers at the time of the alleged incident, and (4) the Phan Living Trust has never owned Rasta. Defendants' testimonies is further supported by Duy Phan's and Carmen Villegas' (Co-Defendants) discovery responses in which they verify Duy Phan's ownership of Rasta at the time of the incident. (Plaintiff's Exhibits B, D) As the foregoing authorities demonstrate, strict liability attaches to the dog owner only. On this record, Moving Defendants cannot be held strictly liable for Rasta's attack.

However, Plaintiff contends the Moving Defendants fail to meet their burden because they fail to submit any evidence regarding knowledge and conduct of an unknown manager of the Premises. Plaintiff emphasizes a triable issue of fact exists as to whether (1) a property manager existed at the time of the incident and if so whether he/she had knowledge of Rasta's dangerous propensities, and (2) whether the manager, as agent of the Moving Defendants, was harboring and keeping Rasta at the time of the incident

Plaintiff bases her argument on excerpts from Duy Phan's and Carmen Villegas' opposition to Plaintiff's motion for sanctions and their misleading interrogatory responses regarding the existence of a property manager. However, arguments of Defendants' counsel in opposition to motion for sanctions are not evidence (*Villacorta v. Cemex Cement, Inc.* (2013) 221 Cal.App.4th 1425, 1423.) and "[t]he answers of one party . . . elicited in response to interrogatories . . . cannot be used as evidence against [another] party . . ." (*Rimmele v. Northridge Hosp. Foundation*, (1975) 46 Cal. App. 3d 123, 129 quoting *Petersen v. City of Vallejo*, (1968) 259 Cal.App.2d 757, 776.) Similarly, Code. Civ. Proc. § 2030.410 provides: "At the trial or any other hearing in the action, so far as admissible under the rules of evidence, the propounding party or any party other than the responding party may use any answer or part of an answer to an interrogatory only against the responding party." (Code. Civ. Proc. §

2030.410) Therefore, Duy Phan's and Carmen Villegas' interrogatory responses cannot be used against the Moving Defendants irrespective of their ambiguity.

Even if the Court was to consider Duy Phan's and Carmen Villegas' interrogatory responses and assume a property manager existed at the time of the incident – which the Court certainly is not – Plaintiff still fails to meet her burden of showing the illusory manager harbored Rasta and/or had actual notice of Rasta's dangerous propensity.

2. Negligence Claims.

Plaintiff's first cause of action for negligence and second cause of action for negligence per se are based on allegations that the Moving Defendants failed to confine/control Rasta and their violation of Civil Code § 3342 presumes they failed to exercise due care.

Moving Defendants contend they did not owe Plaintiff a duty of care because they had no actual knowledge of the dog's dangerous propensities and no ability to control or prevent the harm since the Premises was not involved in the incident.

First, as stated above, Plaintiff's claim against the Moving Defendants for violation of Civil Code § 3342 is not viable since the evidence before the Court establishes they did not own Rasta. Consequently, Moving Defendants cannot be held liable for negligence per se based on violation of this statute.

Second, under California law, "a landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person.... Without knowledge of a dog's propensities a landlord will not be able to foresee the animal poses a danger and thus will not have a duty to take measures to prevent the attack." (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838; see also *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 513-514; *Lundy v. California Realty* (1985) 170 Cal.App.3d 813, 821.) This "actual knowledge rule" can be satisfied "by circumstantial evidence the landlord must have known about the dog's dangerousness as well as direct evidence he actually knew." (*Donchin, supra*, 34 Cal.App.4th at p. 1838.) While the landlord's knowledge of vicious propensities of a tenant's dogs may be proven by circumstantial evidence, the inference must reflect landlord's actual knowledge, and not merely constructive knowledge or notice. (*Ibid.*) "Only where the circumstances are such that the defendant 'must have known and not 'should have known' will an inference of actual knowledge be permitted." (*Uccello, supra*, 44 Cal.App.3d 504, 514, fn. 4;

accord *Yuzon v. Collins* (2004) 116 Cal.App.4th 149,163-164.)

There is a two-step approach to the inquiry into a landlord's duty regarding injuries sustained by a tenant's dog. (*Donchin, supra*, 34 Cal.App.4th at p. 1838.) The first step is to determine whether the landlord knew about the dog's vicious nature. The second step is to assess whether the landlord had the ability to prevent the foreseeable harm that could be caused by the vicious dog. (*Ibid.*) "[T]he injuries the dogs cause must be ones which would not have occurred if the landlord had taken actions which were within his power. In the cases of dangerous dogs, that potential power is found in whatever rights the landlord may have to insist the tenant remove the dogs from the leased premises or to insure the property is so secure the dogs cannot escape to harm persons on or off the property." (*Ibid.*)

Here, Moving Defendants offer evidence showing they were not aware of Rasta's dangerous propensities not only through their interactions with him but also given lack of any prior incidents or complaints involving Rasta. Moreover, there is no evidence before the Court that Rasta escaped the Premises because of defects in the property. Indeed, undisputed facts establish the incident occurred on the public sidewalk near the Premises when co-defendant, Michelle Lofano, was walking Rasta and another dog. (Plaintiff's Response to Defendant's Separate Statement No. 1-5) "If the dog is taken on a leash by its owner, off the premises, prevention of an attack by the dog may be beyond the landlord's control." (*Donchin, supra*, 34 Cal.App.4th at p. 1846.)

On this record, Moving Defendants have met their initial burden, shifting the burden to Plaintiff to demonstrate existence of triable issues of material facts with this regard. Plaintiff fails to do so. Plaintiff's only argument in opposition to the motion is that the possible existence of a property manager creates a triable issue of material facts as to whether he/she had knowledge of Rasta's dangerous propensities. As stated in the previous section, the Court finds Plaintiff's argument and evidence insufficient to meet her burden and to defeat the motion.

Based on the foregoing, Moving Defendants' motion for summary judgment is GRANTED.

LINE ITEM 9

Defendants' demurrer to Plaintiff's second amended complaint ("SAC") came on for hearing before the

Court on March 10, 2026. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on March 9, 2026.

I. Alleged Facts

On February 3, 2020, Plaintiff entered into a commercial lease agreement with Defendants for a property located at 2331 South 7th Street, Suite 04, in San Jose, California. All the conditions required for Defendants' performance were met. However, from June 1, 2020, through May 1, 2024, Defendants failed to pay base rent and NNN charges, totaling \$369,308.00, in violation of their agreement. (PLD-C-001(1), Ex. A)

Plaintiff initiated this action on April 16, 2024, and amended her complaint on September 17, 2024, and August 20, 2025, alleging a single cause of action for breach of contract.

II. Legal Standard

"The party against whom complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: (e) The pleading does not state sufficient facts to constitute cause of action, (f) The pleading is uncertain." (Code Civ. Proc., 430.10, subds. (e) (f).) A demurrer may be utilized by "[t]he party against whom complaint has been filed" to object to the legal sufficiency of the pleading as whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In ruling on demurrers, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

"Liberality in permitting amendment is the rule, if fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id.*)

III. Analysis

Defendants assert the SAC fails to plead a viable claim for breach of the commercial lease agreement because (1) MFA Construction Inc. is not a signatory party to the lease agreement, (2) there is no showing that the individual signatories had capacity to bind MFA to the agreement, and (3) the personal guarantee provision of the lease is unenforceable when there is no underlying obligation for the guarantee.

Defendants fail to support their assertions with any legal authority. The Court may treat an argument as waived where no legal authority supporting the argument is cited. (*Hood v. Gonzales* (2019) 43 Cal.App.5th 57, 73-74.) Equally, when a point is asserted without any authority for the proposition, it is deemed to be without foundation and requires no discussion by the Court. (See, *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

Accordingly, Defendants demurrer to Plaintiff's SAC is OVERRULED.

LINE 10

Defendants' demurrer to Plaintiff's first amended complaint ("FAC") and motion to strike portions of the FAC came on for hearing before the Court on March 24, 2026. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on March 23, 2026.

I. Alleged Facts

On August 20, 2016, Plaintiff entered a warranty contract with FCA US, LLC ("FCA") for a 2017 Chrysler Pacifica, vehicle identification number 2C4RC1DGXHR510028 ("Subject Vehicle"), which was

manufactured and/or distributed by FCA and sold by Stevens Creek Chrysler Jeep Dodge (“Stevens”). The contract warranted the Subject Vehicle “bumper-to-bumper”, including but not limited to powertrain, emission, etc.

Prior to Plaintiff’s purchase FCA knew that vehicles equipped with the same 9-speed automatic transmission, as installed in the Subject Vehicle, suffered from one or more defects that could cause hesitation or delayed acceleration, harsh or hard shifting, jerking, or loss of power. (“Transmission Defect”) FCA acquired this knowledge through various sources of information, including but not limited to pre-production testing, pre-production design failure mode and analysis data, production failure mode and analysis data, early consumer complaints made exclusively to FCA and its network of dealers, aggregate warranty data compiled from FCA’s network of dealers, testing conducted by FCA in response to consumer complaints, and repair order and parts data received by FCA from its network of dealers. Had Plaintiff known the Subject Vehicle and its transmission were defective at the time of sale, they would not have purchased it.

Plaintiff initiated this action on February 14, 2025, and amended his complaint on August 20, 2025, alleging causes of action for (1) Violation of Civil Code section 1793.2, subdivision (d); (2) Violation of Civil Code section 1793.2, subdivision (b); (3) Violation of Civil Code section 1793.2, subdivision (a)(3); (4) Breach of the Implied Warranty of Merchantability; and (5) Negligent Repair, and (6) Fraudulent Inducement – Concealment.

II. Legal Standards

"The party against whom complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: (e) The pleading does not state sufficient facts to constitute cause of action, (f) The pleading is uncertain." (Code Civ. Proc., 430.10, subds. (e) (f).) A demurrer may be utilized by "[t]he party against whom complaint has been filed" to object to the legal sufficiency of the pleading as whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226

Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In ruling on demurrers, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

"Liberality in permitting amendment is the rule, if fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id.*)

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof...." (Code Civ. Proc. § 435.) "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading; (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc. § 436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc. § 437, subd. (a).)

III. Judicial Notice

Defendants' request judicial notice of the following:

1. California Assembly Journal, 2023-2024 Rec. No. 28,
2. California Legislative Counsel's Digest, December 2, 2025
3. California Department of Consumer Affairs List of Manufacturers That Opted In To New Lemon Law Procedures from https://dca.ca.gov/acp/accepted_manufacturers.shtml,

4. August 26, 2024, Senate Judiciary Analysis of AB 1755

Defendants' request is GRANTED pursuant to Evidence Code sections 451 and 452.

IV. Analysis

A. Demurrer

1. First Through Fourth Causes of Action: Violation of the Song-Beverly Consumer Warranty Act & Breach of Implied Warranty of Merchantability -Against FCA

FCA cites the statute of repose under Code of Civil Procedure section 871.21 in support of their contention that Plaintiff's first through fourth causes of action are time-barred. Code of Civil Procedure section 871.21 provides, in pertinent part:

"(b)... [A]n action covered by Section 871.20 shall not be brought later than six years after the date of original delivery of the motor vehicle.

(c) The time periods prescribed in subdivision[] ... (b) shall be tolled as follows:

(1) As provided by tolling requirements prescribed in subdivision (c) of Section 1793.22 of the Civil Code, as applicable.

(2) For the time the motor vehicle is out of service by reason of repair for any nonconformity.

(3) For the time period after a pre-suit notice is provided to the manufacturer in accordance with Section 871.24, which time period shall not exceed 60 days."

(Code. Civ. Proc. § 871.21)

Code of Civil Procedure section 871.20 provides:

"(a) Notwithstanding any other law, this chapter applies to an action, brought against a manufacturer who has elected under Section 871.29 to proceed under this chapter, seeking restitution or replacement of a motor vehicle pursuant to subdivision (b) or (d) of Section 1793.2, Section 1793.22, or Section 1794 of the Civil Code, or for civil penalties pursuant to subdivision (c) of Section 1794 of the Civil Code, where the request for restitution or replacement is based on noncompliance with the applicable express warranty.

(b) This chapter does not apply to service contract claims under Section 1794 of the Civil Code or any action seeking remedies that are not restitution or replacement of a motor vehicle."

(Code. Civ. Proc. § 871.20)

Code of Civil Procedure section 871.20 was added by AB 1755 with an effective date of January 1, 2025, and later amended by Senate Bill ("SB") No. 26 with an effective date of April 2, 2025. SB 26's revision to Section 871.20 added an opt-in provision to the new procedures by allowing car manufacturers to opt in by May 2, 2025, for the procedures to apply, otherwise the pre-amendment procedures would continue to apply. Judicially noticed documents establish FCA has elected to opt-in to these procedures.

Here, the FAC alleges plaintiff purchased the vehicle on August 20, 2016. Although not explicitly stated, the reasonable implication is that the vehicle was delivered to Plaintiff on that same date. On demurrer, the court "assume[s] the truth of all properly pleaded facts, as well as all facts that may be implied or reasonably inferred from those expressly alleged...." (*Sonoma Luxury Resort LLC v, California Regional Water Quality Control Bd.* (2023) 96 Cal.App.5th 935, 940.) As the instant action did not commence until February 14, 2025, more than six years after delivery of the vehicle, FCA contends the first through fourth causes of action are time barred on their face.

Plaintiff contends Code. Civ. Proc. § 871.21 does not apply to implied warranty claims under Civil Code section 1792 or 1793.2(a)(3), nor does it exclude tolling for Covid or equitable tolling for delayed discovery. Plaintiff adds that retroactive application of the Code section violates his due process rights, since the " 'opt-in' provision means that Plaintiff was unaware of whether her claims would be subject to the time limits in Code of Civil Procedure section 871.21 until after she filed suit." (Opposition 4:9-13)

There is a presumption against retroactive application unless the Legislature plainly provides express language that is a clear and unavoidable implication" of retroactivity. (*Quarry v. Doe I* (2012) 53 Cal. 4th 945, 955.) A law has a retroactive effect when it changes the legal consequences of past conduct by imposing new or different liabilities upon such conduct - in other words, when it substantially affects existing rights and obligations. (*Id.* at 956.) "'In general, application of a law is retroactive only if it attaches new legal consequences to, or increases a party's liability for, an event, transaction, or conduct that was completed before the law's effective date.'" (*Ibid.*) "Ordinarily, considerations of basic fairness militate against such retroactive changes. [Citations.]" (*Ibid.*)

FCA's emphasis on the timing of Plaintiff's filing (February 14, 2025, after the statute's January 1, 2025, effective date) overlooks that the statute's applicability depends on the substance of Plaintiff's claims. Plaintiff alleges he entered into a warranty contract with FCA on August 20, 2016, regarding the Subject Vehicle. If Section 871.21 applied here, it would have required Plaintiff to file suit no later than August 20, 2022. It is neither reasonable nor feasible to conclude that Plaintiff was required to comply with a deadline completed two and half years prior to the law's effective date.

Moreover, the Court finds no clear or express indication that the Legislature intended Section 871.21 to apply retroactively, nor does FCA identify any such language. (See *Landgraf v. USI Film Prods.* (1994) 511 U.S. 244, 270 [recognizing the presumption against retroactivity based on the unfairness of imposing new burdens after the fact].)

Based on the foregoing, the Court finds Plaintiff's first through fourth causes of action are not time-barred under Section 871.21. As such, the Court finds it unnecessary to further analyze and address the parties' tolling arguments.

Accordingly, Defendants' demurrer to the Plaintiff's first through fourth cause of action is OVERRULED.

2. Fraudulent Concealment – Against FCA

The elements of fraudulent concealment are: (1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff sustained damage. (*Burch v. CertainTeed Corp.* (2019) 34 Cal.App.5th 341, 348.)

"A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as the plaintiff's fiduciary or is in some other confidential relationship with the plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to the defendant, and the defendant knows those facts are not known or reasonably discoverable by the plaintiff (*i.e.*, exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (*i.e.* partial concealment); or (5) the defendant actively conceals discovery of material fact from the plaintiff (*i.e.*,

active concealment). Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as “between seller and buyer, ..., or parties entering into any kind of contractual agreement. All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances. Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.” (*Rattagan v. Uber Techs., Inc.* (2024) 17 Cal. 5th 1, 40, internal citations and quotes are omitted.)

FCA contends Plaintiff’s claim for fraudulent concealment is not viable since the FAC fails to allege (1) a direct transactional relationship that would give rise to a duty to disclose, and (2) facts with the requisite specificity.

“A relationship between the parties is present if there is some sort of transaction between the parties.” (*Hoffman v. 162 N. Wolfe LLC*, (2014) 228 Cal. App. 4th 1178, 1187, internal citation and quotes omitted) Plaintiff alleges he entered into an express warranty agreement with FCA on August 20, 2016. The Court is obligated to construe all inferences in the FAC in the light most favorable to Plaintiff. As such, Plaintiff has sufficiently alleged a transactional relationship with FCA that gives rise to a duty to disclose. Plaintiff has also alleged sufficient facts showing FCA’s exclusive knowledge of the Transmission Defect, which were not reasonably discoverable by Plaintiff. Consequently, FCA’s argument for lack of duty to disclose fails on either basis.

Nevertheless, Plaintiff’s claim is subject to demurrer for lack of specificity. Plaintiff fails to allege facts showing (1) specific affirmative or intentional acts FCA took in hiding or concealing the Transmission Defects, and (2) FCA’s intent to defraud the Plaintiff. Even under the more relaxed pleading standard that applies to omission-based fraud claims (*Alfaro v. Community Housing Improvement System & Planning Association, Inc.* (2009) 171 Cal.App.4th 1356, 1384.), conclusory allegations that FCA concealed transmission safety defects are insufficient to defeat demurrer. Accordingly, FCA’s demurrer to Plaintiff’s sixth cause of action is SUSTAINED WITH LEAVE TO AMEND.

3. Negligent Repair – Against Stevens Creek Chrysler Jeep Dodge

Stevens contends this claim fails because (1) it is barred by the economic loss rule, and (2) it is conclusory and unsupported by factual allegations.

The economic loss rule provides that, "[i]n general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." (*Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922.) However, there is a "recognized exception to the economic loss rule for consumers who contract for certain kinds of professional services." (*Id.*, at p. 933.) "In that context, ... a cause of action for negligence ensures that the consumer receives the services the professional agreed to provide. In such settings, professionals generally agree to provide 'careful efforts' in rendering contracted for services, but 'most clients do not know enough to protect themselves by inspecting the professional's work or by other independent means.'" (*Ibid.*; citations omitted.) "Given this disparity, a claim for professional negligence can serve the important purpose of ensuring that professionals render the 'careful efforts' they have contracted to provide." (*Ibid.*; citations omitted.) In a negligent performance case, a "plaintiff will be entitled to recover economic loss damages without the need to allege and prove personal injury or property damage" based on a consideration of the following factors: "(1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct, and (6) the policy of preventing future harm." (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 782, 786.) "[T]he foreseeability of the economic harm to the plaintiff from the defendant's negligent conduct [is] the critical factor." (*Id.* at 782.)

Therefore, if sufficiently pled, Plaintiff may set forth a negligent repair claim because the economic loss rule does not apply in cases involving the negligent performance of services that can result in foreseeable injury. However, the FAC is bereft of factual allegations in support of the cause of action, particularly as to damages. Instead, the FAC alleges in a conclusory manner that: "Defendant STEVENS owed a duty to Plaintiff to use ordinary care and skill in storage, preparation and repair of the Subject Vehicle in accordance with industry standards. Defendant STEVENS breached its duty to Plaintiff to use ordinary care and skill by failing to properly store, prepare and repair the Subject Vehicle in accordance with industry standards. Defendant STEVENS' negligent breach of its duties owed to Plaintiff was a proximate cause of Plaintiff's." (FAC, ¶¶ 91-93.) Plaintiff does not state what damages he suffered—for

example, non-functionality of the Subject Vehicle, need for continued repairs, etc.—or how Stevens’ repairs led to this damage.

Accordingly, Defendant’s demurrer to the fifth cause of action is SUSTAINED WITH LEAVE TO AMEND.

B. Motion to Strike Punitive Damages

Defendants seek to strike Plaintiff’s prayer for punitive damages as it pertains to his claim for fraudulent inducement. Defendants contend the FAC fails to allege facts establishing (1) fraud, oppression, or malice, and (2) Defendants’ advanced knowledge and ratification of the fraud. As stated above, the Court sustains Defendants’ demurrer to Plaintiff’s claim for fraudulent inducement. Therefore, the Court DENIES Defendants’ motion to strike as moot.

LINE 12

Defendant County of Santa Clara’s (“County”) demurrer to plaintiff John Doe R.V.R’s (“Plaintiff”) third amended complaint (“TAC”) came on for hearing before the Court on March 24, 2026. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on March 23, 2026.

VI. Alleged Facts and Procedural History

This is a sexual abuse case filed 23 years after the alleged abuse ended. In January 2000, when Plaintiff was 13 years old, the County assumed his legal custody, care, and control, placing him in a group home operated by defendant Redwood Trails (“Redwood”) in January 2000. (TAC, ¶¶ 38, 65.) Prior to his placement, the County knew (1) Plaintiff had been a victim of sexual assault and prone to being revictimized; and (2) of the prevalence of sexual assault within the foster care system and group homes but failed to take reasonable measures to keep Plaintiff safe from foreseeable danger of further sexual abuse. (*Id.* at ¶¶ 39-40, 77-78.) The County and Redwood roomed Plaintiff with an older resident (the “Redwood Perpetrator”) with a history of inappropriate sexual activity and subsequently failed to: recognize the red flags of sexual harassment and abuse, investigate and address issues between residents, and supervise the residents and facility. (*Id.* at ¶ 41.) The County failed to visit Plaintiff after his placement at Redwood, and the older resident sexually

assaulted Plaintiff on numerous occasions. (*Id.* at ¶¶ 42-43.) A month after his placement at Redwood, Plaintiff spoke with this County social worker on the phone who noticed that Plaintiff seemed extremely guarded and untrusting. (*Id.* at ¶ 74.) Plaintiff exhibited signs of being sexually abused, but no one from Redwood or the County investigated the suitability or safety of his placement or the older resident. (*Id.* at ¶¶ 90-91.) Plaintiff did not report the assaults to the County and Redwood staff because his prior pleas for protection to Redwood staff were ignored. (*Id.* at ¶ 88.) He reported the abuse to his family on their visit, who notified law enforcement and prosecution ensued. (*Id.* at ¶¶ 92-93.)

In May 2000, the County placed Plaintiff in a group home operated by defendant Kings View. (TAC, ¶ 100.) After a few months, Plaintiff was admitted into Kings View's 90-day program at the Treatment Center, where he was assigned a room in the Treatment Center's hall and met a female counselor (the "Kings View Perpetrator") who began to groom and make sexual advances toward Plaintiff while he was in lockdown in his room under her supervision. (*Id.* at ¶¶ 102-105.) The Kings View counselor continued the abuse, which escalated to penetrative sex. (*Id.* at ¶ 107.) Even after Plaintiff left Kings View, the counselor continued to pursue him romantically for years. (*Id.* at ¶ 115.)

Plaintiff initiated this action on December 20, 2023 and subsequently amended his complaint on September 17, 2024, January 30, 2025, and July 25, 2025. The operative TAC alleges the following causes of action: (1) negligence; (2) negligence per se; (3) negligent retention & supervision of unfit employees; (4) negligent supervision of minors; (5) negligent failure to warn, train, and educate; (6) intentional infliction of emotional distress (IIED); and (7) sexual battery.

The County filed the present demurrer on August 29, 2025 on the ground that the pleading does not state facts sufficient to constitute a cause of action. Plaintiff alleges the following claims against the County: the first cause of action for negligence and the second cause of action for negligence per se. Plaintiff filed a timely opposition, and Defendant filed a timely reply.

The demurrer was originally set to be heard on March 12, 2026, but the Court continued the hearing to March 24, 2026.

VII. Legal Standard

“The party against whom complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: (e) The pleading does not state sufficient facts to constitute cause of action.” (Code Civ. Proc., 430.10, subd. (e).)

The court treats a demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688 (*Piccinini*) [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee*).) “A complaint’s allegations are construed liberally in favor of the pleader. [Citations.]” (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

“Liberality in permitting amendment is the rule, if fair opportunity to correct any defect has not been given.” (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

VIII. Analysis

A. First Cause of Action: Negligence

The County insists that the first cause of action should be dismissed because the TAC fails to plead sufficient facts: (1) to establish that the County owed Plaintiff a duty to protect him from third-party criminal conduct; (2) to establish proximate causation; (3) to negate

social worker immunity; and (4) to establish liability under Government Code Section 815.4. (Demurrer, p. 11:10-14.)

1. The County's Duty to Protect Against Third-Party Criminal Conduct

“To succeed in a negligence action, the plaintiff must show that (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the duty, and (3) the breach proximately or legally caused (4) the plaintiff’s damages or injuries.” [Citation.] As a general matter, there is no duty to protect against the criminal conduct of a third party, but an important exception exists when there is a special relationship between the plaintiff and defendant. [Citation.]... There is no dispute that a foster child is in a special relationship with the agency that provides his or her care. [Citations.]

Once a special relationship is established, the trial court must look to the factors set forth in *Rowland v. Christian* (1968) 69 Cal.2d 108, to decide whether they require creating an exception to the duty of care at issue. [Citation.]

(*D.G. v. Orange County Social Services Agency* (2025) 108 Cal.App.5th 465, 471 (*D.G.*)) The *Rowland* factors, involve balancing a number of considerations such as:

[T]he foreseeability of harm to the plaintiff, 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, and the availability, cost, and prevalence of insurance for the risk involved.

(*Rowland v. Christian* (1968) 69 Cal.2d 108, 112 (*Rowland*)). “In examining foreseeability, the court’s task ...is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant’s conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed ...” (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 629 (*Regents*), emphasis in original.) “Three factors—foreseeability, certainty, and the connection between the plaintiff and the defendant—address the foreseeability of the relevant injury.” (*Hassaine v. Club Demonstration Services, Inc.* (2022) 77 Cal.App.5th 843, 857 [quoting *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1145].)

The County claims that the TAC lacks sufficient allegations of foreseeability to give rise to a duty to protect against third-party criminal conduct. While the Court originally noted in the May 19, 2025 Order that the relevant question on foreseeability was “whether the category of negligent conduct alleged, i.e., social workers [*sic*] failure to visit Plaintiff at either placement home, was likely to result in Plaintiff’s sexual abuse”, the Court also noted that Plaintiff insisted the negligent conduct was the more general negligence in care for Plaintiff. (May 19, 2025 Order, p. 7:13-16.) Plaintiff’s position is supported by the TAC, which alleges the County and its agents were negligent in (1) placing Plaintiff in the care, custody, and control of facilities that it knew or reasonably should have known failed to take reasonable steps to protect Plaintiff from sexual abuse; and (2) failing to perform onsite visitations at Redwood and Kings View. (TAC, ¶¶ 180, 189, 191.)

The Court also concluded that regardless of how the negligence was characterized, the second amended complaint (“SAC”) lacked allegations of “contemporaneous knowledge of potential based on contemporaneous reports and complaints.” (May 19, 2025 Order, p. 7:21-22.) The TAC now alleges several pre-2000 studies, reports, and legislation that demonstrated child sexual abuse survivors were at a greater risk of revictimization and that the County knew from decades of research, internal reports, and legislation that foster youth in congregate care group home settings are at an increased risk of suffering childhood sexual abuse. (TAC, ¶¶ 130-132.) The TAC further alleges that the County regularly received complaints from foster youth regarding abuse or sexual misconduct in the foster care system and knew that foster children were frequently the target of sexual abuse by their foster parents, siblings, or staff in out-of-home placements. (*Id.* at ¶¶ 133-135.) These allegations, which must be taken as true on demurrer, are sufficient to establish that the County and its agents reasonably could foresee that survivors of child sexual abuse, would likely face the risk of revictimization in a group home, which itself had an increased risk of childhood sexual abuse. (*Committee, supra*, 35 Cal.3d at pp. 213-214; see *Doe v. Roman Catholic Archbishop of Los Angeles* (2021) 70 Cal.App.5th 657, 676-677 (*Archbishop*) [finding it reasonably foreseeable that minors attending catechism classes in 1988 might be sexually molested by

a priest because the plaintiff presented evidence that the Archdiocese was well aware in the late 1980s that priests had been accused of sexually abusing minors in the Archdiocese and around the country].)

The County also argues that the TAC does not adequately allege the County's duty to prevent third-party criminal conduct because the TAC (1) only alleges the County was responsible for only periodic monitoring of Plaintiff; and (2) does not allege the County had sufficient control over Redwood and Kings View. (Demurrer, p. 14:17-20.) In *A.L. v. Harbor Developmental Disabilities Foundation* (2024) 102 Cal.App.5th 477, 494 (*A.L.*), the appellate court ultimately held "regional centers do not owe a duty to protect consumers from sexual assault by vendors' employees premised solely on the center's failure to adequately vet and monitor vendor." In reaching this decision, the *A.L.* court first concluded a regional center has a special relationship with its consumer giving rise to protect against sexual abuse "[b]ecause regional centers are tasked with coordinating vendors to provide consumers services and support as well as engaging in 'limited' monitoring to ensure compliance with the consumer's plan and the vendor's contracts, and because these statutorily imposed tasks ostensibly give regional centers at least some measure of control over the means of protecting the consumers." (*Id.* at p. 488.) The *A.L.* court subsequently applied the *Rowland* factors to limit that duty to circumstances where a regional center had actual knowledge of the propensity of a vendor's employee. Specifically, the *A.L.* court noted the connection between the conduct and injury was weak because the third-party vendor was hiring the employees, the regional center had no control over the vendors' premises, and it would be impractical to place the burden of vetting employees on the regional center. (*Id.* at pp. 490-492; see *Regents, supra*, 4 Cal.5th at pp. 630-631 ["where the injury suffered is connected only distantly and indirectly to the defendant's negligent act, the risk of that type of injury from the category of negligent conduct at issue is likely to be deemed unforeseeable."])

Here, just as in *A.L.*, the Court found that the County owed Plaintiff an affirmative duty to protect given their special relationship. (May 19, 2025 Order, p. 7:5-7.) The TAC does not allege that the County had any control over the rooming or staffing decisions made by

Redwood and Kings View, nor does it allege that the County was responsible for anything beyond periodic monitoring of Plaintiff. (See TAC, ¶¶ 167 [alleging that had Redwood and Kings View better supervised the perpetrators, the sexual abuse could have been discovered or deterred]; see also *id.* at ¶ 119.) This contrasts with the cases Plaintiff cites, *Archbishop, supra*, 70 Cal.App.5th 657 and *Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, “which ground their duties to protect on the defendant’s control over the sexual offender and the premises—which are important facts missing from the duty question presented in this case.” (*A.L., supra*, 102 Cal.App.5th at p. 497, fn. 14.) Thus, the County persuasively contends, the TAC does not allege the County’s duty to protect against third-party criminal conduct.

In opposition, Plaintiff asserts that control is not part of the foreseeability analysis, but an element of the special relationship assessment outlined in *Regents*. (See *Regents, supra*, 4 Cal.5th at p. 621 [“The corollary of dependence in a special relationship is control.”].) Plaintiff’s assertion, however, disregards the *Rowland* foreseeability analysis conducted in *A.L.*, where the court found a weak connection between the injury and conduct because the regional center had no control over the hiring decisions of its vendor. (*A.L., supra*, 102 Cal.App.4th at pp. 490-402; see *Regents, supra*, 4 Cal.5th at pp. 630-631 [applying the third *Rowland* factor].) Accordingly, the TAC does not sufficiently allege facts giving rise to the County’s duty to protect Plaintiff from third-party criminal conduct. Given the foregoing, the Court declines to reach the merits of the County’s remaining argument that the TAC must also allege the County’s actual knowledge of perpetrator’s sexually assaultive tendencies.

2. Proximate Causation

“Ordinarily, proximate cause is a question of fact which cannot be decided as a matter of law from the allegations of a complaint. ... Nevertheless, where the facts are such that the only reasonable conclusion is an absence of causation, the question is one of law, not of fact.” (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 353 [quoting *Weissich v. County of Marin* (1990) 224 Cal. App. 3d 1069, 1084].) In the Court’s May 19, 2025 order sustaining the demurrer to the first cause of action for negligence, the Court found that “[t]he

SAC's allegations that visits from social workers would have provided indicators of Plaintiff's victimization and an earlier opportunity to report the crimes are speculative and insufficient." (May 19, 2025 Order, p. 8:2-4.) The Court went on to note that the demurrer was sustainable on the second cause of action for negligence because "[v]ague allegations that such visits would have fostered a closer relationship with Plaintiff and alerted the case worker of 'red flag signs', *without stating the nature of these signs* are speculative and insufficient." (*Id.* at p. 9:1-6, emphasis added.) Similarly, in *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 347, the Court found allegations that "most sexual predators who reoffend exhibit 'tell-tale signs', and that a full evaluation would likely have detected such signs in [defendant]" insufficient to allege proximate causation.

Here, the pleadings have been amended to allege Plaintiff's specific red flag signs with, "Plaintiff's COUNTY social worker would have seen and heard from REDWOOD and KINGS VIEW that Plaintiff was exhibiting signs typical of victims of sexual [abuse], including openly inappropriate sexualized behaviors, acting out, and running away." (TAC, ¶ 163; see *id.* at ¶ 89.)

The County maintains that the allegation still renders the TAC speculative for three reasons. First, the TAC does not allege when Plaintiff began to exhibit the red flags relative to when the abuse occurred. Had Plaintiff exhibited the signs before he was assaulted, the County argues, then a social worker may not have concluded that he was being abused based on those signs and would not have removed him from the facility to prevent abuse. (Demurrer, p. 16:2-5.)⁵ Second, the TAC speculates that the social worker would have determined that Plaintiff was being sexually abused and would have removed Plaintiff from the group homes based on the exhibited behavior. The County asserts that a social worker may have concluded that Plaintiff's behavior resulted instead from prior abuse or was indicative of Plaintiff's desire to be reunited with his parents. (*Id.* at pp. 16:21-17:3.)

⁵ The County also argues that Plaintiff exhibited the behaviors before any abuse occurred based on a police report he produced. (Demurrer, p. 16:5-6.) The police report is extrinsic evidence because it is not part of the pleadings and the County has not requested judicial notice of the document. The Court therefore will not consider any argument based on the extrinsic evidence.

The Court finds that these arguments challenge Plaintiff's ability to prove causation, rather than Plaintiff's ability to allege causation sufficiently. (See *Committee, supra*, 35 Cal.3d at pp. 213-214 ["[on demurrer,] the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court."]) In any event, the challenges are addressed by the allegation that "the COUNTY social worker would have inquired as to Plaintiff's wellbeing, and Plaintiff would have had an earlier opportunity to report Resident and Staff Perpetrators' crimes." (TAC, ¶ 164; see *id.* at ¶¶ 12, 32 [alleging Child Protective Service workers received "specialized training in the identification of abuse, including subtle signs such as changes in behavior from visit-to-visit" and County social workers "had a responsibility to recognize and react to foster children exhibiting [red flag signs]"]; see also *id.* at ¶¶ 15-18 [alleging acting out behaviors such as running away are frequently reported signs of sexual abuse and in particular certain delinquent/criminal behaviors were unique to victims of sexual abuse].)

That said, the Court concludes that the TAC could be amended to allege with greater particularity on when Plaintiff began to exhibit the red flags. (See *Covenant Care, Inc. v. Superior Court (Inclan)* (2004) 32 Cal.4th 771, 790 (*Covenant Care*) ["statutory causes of action must be pleaded with particularity."]) While Plaintiff argues that the red flags were observable "immediately" after his arrival at each placement, the cited paragraphs do not support this assertion. (See TAC, ¶¶ 70-73 [alleging acts of abuse but no red flags]; see *id.* at ¶¶ 109-111 [same].)

Third, the County argues that proximate cause cannot be established when a defendant is immune from liability for a discretionary decision. As the argument dovetails with the County's argument on social worker immunity, the Court will address the argument below.

3. Social Worker Immunity

Government Code section 820.2 provides, "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission [that] was the result of the exercise of the discretion vested in him, whether or not such discretion be

abused.” “Under this provision, social workers are entitled to immunity for their child removal and placement decisions in dependency proceedings.” (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1381 [citing *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 466].)

Here, the TAC alleges, “the COUNTY social worker never visited Plaintiff, as mandatorily required. She further never investigated Plaintiff’s roommate placement, nor inquired as to Plaintiff’s well-being therein. Despite Plaintiff exhibiting classic signs of a victim of sexual abuse and her training to recognize them, the COUNTY social worker never discovered or followed up on them.” (TAC, ¶ 198.) The TAC further alleges, “Plaintiff’s COUNTY social worker [] never visited, inquired, or investigated his placement at KINGS VIEW where Staff Perpetrator sexually abused him.” (*Id.* at ¶ 200.)

The County asserts that the social worker’s negligent placement of Plaintiff and failure to supervise and remove him thereafter are all “cloaked in immunity.” Plaintiff asserts, however, that he does not challenge the discretionary placement or investigative decisions, but that the social worker had a ministerial duty to supervise and failed to do so in violation of mandatory duties. Plaintiff cites *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 141 (*Scott*), which stated, “Actions that are manifestly ministerial, because they amount only to obedience to orders which leave the officer no choice, plainly include actions governed by specific statutory or regulatory directives. Such actions have been found nondiscretionary, and thus not immunized, because they entail the fulfillment of enacted requirements.” Thus, the *Scott* court found a social worker who failed to make the mandatory home visits was liable for negligent supervision of a foster child. (*Id.* at p. 142.)

In rebuttal, the County points out that Plaintiff’s argument only addresses his second cause of action for breach of a mandatory duty. Indeed, Plaintiff cites to paragraphs 233 through 236, which are part of the second cause of action. The TAC, however, also alleges in the first cause of action that the County “failed to execute its mandatory duties of visitation or take other reasonable measures to ensure Plaintiff’s safety...” and had the County social worker “performed its ministerial duties provided by the Welfare & Institutions Code and

the California Department of Social Services, further harm to Plaintiff could have been avoided.” (TAC, ¶¶ 153, 161; see *id.* at ¶¶ 162, 166.) On demurrer, these allegations are taken as true. (See *Committee, supra*, 35 Cal.3d at pp. 213-214.) As a result, the County must demonstrate that the employee made a policy decision consciously balancing the risks and advantages. (See *Johnson v. State of California* (1968) 69 Cal.2d 782, 794-795, fn. 8.)

Accordingly, to the extent Plaintiff’s first cause of action is based on the social worker’s failure to fulfill the mandatory duties of visitation, Government Code section 820.2 immunity does not apply. Having rejected the argument that the immunity applies, the Court also rejects the related argument that there can be no proximate causation when the social worker is immune.

4. Liability Under Government Code Section 815.4

Government Code section 815.4 provides: “A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person.” “As a general rule, a hirer of an independent contractor is not liable for physical harm caused to others by the act or omission of the independent contractor.” (*J.L. v. Children’s Institute, Inc.* (2009) 177 Cal.App.4th 388, 400 (*J.L.*.) The general rule has a few exceptions including the doctrines of nondelegable duty, retained control, and peculiar risk. (See *SeaBright Ins. Co. v. US Airways, Inc.* (2011) 52 Cal.4th 590, 598-601 (*Seabright*.)

The County asserts that the TAC fails to allege an exception to the general rule of non-liability. Plaintiff argues that the nondelegable duty, retained control, and peculiar risk doctrines are applicable.

First, Plaintiff maintains that the nondelegable duty doctrine applies because the TAC alleges that the County placed Plaintiff in foster care and had a duty to stand *in loco parentis*. (TAC, ¶¶ 121-123, 176.) A nondelegable duty arises “[w]here the law imposes a definite, affirmative duty upon one by reason of his relationship with others, whether as an owner or proprietor of land or chattels or in some other capacity, such persons can not escape liability for a failure to perform the duty thus imposed by entrusting it to an independent contractor.”

(*Snyder v. Southern California Edison Co.* (1955) 44 Cal.2d 793, 800.) Within the foster care context, however, courts have consistently held that a special relationship does not create a nondelegable duty. (See *Jordy v. County of Humboldt* (1992) 11 Cal.App.4th 735, 741 (*Jordy*) “[A] public agency charged with the care of children removed from the care of their parents may delegate that responsibility to other individuals, whether relatives or independent contractors, without fear it will be liable for injury proximately caused by occasional negligence in the day-to-day supervision of the children.”]; see also *J.L., supra*, 177 Cal.App.4th at pp. 402-403 [citing and discussing *Jordy* with approval].)

Next, Plaintiff asserts that the doctrine of retained control applies because the TAC alleges that the County retained legal guardianship, responsibility, and ultimate control of Plaintiff’s care management and care. A hirer of an independent contractor may owe a duty to an unrelated third party where the hirer retains control or “a sufficient degree of authority over the manner of performance of the work entrusted to the contractor.” (*Sandoval v. Qualcomm Incorporated* (2021) 12 Cal.5th 256, 274, 276 (*Sandoval*).)⁶ The TAC does not allege that the County retained such control. (See e.g., TAC, ¶ 203 [alleging the County contracted Plaintiff’s daily care to Redwood and Kings.]])

Finally, Plaintiff claims that the doctrine of peculiar risk applies because the TAC sufficiently alleges the peculiar risks involved in managing children in foster care. Under the peculiar risk doctrine, liability may be imputed to the hirer for a third-party’s injury where the independent contractor was performing work with an inherent risk of injury. (See *Privette v. Superior Court* (1993) 5 Cal.4th 689, 693-696 (*Privette*).) “In this context, the phrase ‘peculiar risk’ is used to mean a risk that is particular to the situation, not a risk that is odd or weird.” (*SeaBright, supra*, 52 Cal.4th at p. 598 [citing *Privette, supra*, 5 Cal.4th at p.

⁶ The County argues that Plaintiff is required to allege that the County “affirmatively contributed to the injury.” (Reply, p. 12:5-6.) The affirmative contribution requirement arises only where the employee of the independent contractor suffers an injury. (See *Sandoval, supra*, 12 Cal.5th at p. 276 [“even if hirers may owe unrelated third parties a retained control duty based on retained control alone, hirers owe the contract workers a retained control duty only with something more. Contract workers must prove that the hirer *both* retained control *and* actually exercised that retained control in such a way as to affirmatively contribute to the injury.”])

695].) In *Jordy*, the court held that the doctrine could not apply because the foster child's offered peculiar risk of fleeing the foster residence was not a risk of physical harm and there was no direct link between the dangerous condition resulting in injury and the argued risk. (*Jordy, supra*, 11 Cal.App.4th at p. 747.) In reaching this decision, the court noted, "Whether the peculiar risk doctrine should apply in a given case is ordinarily resolved by the trier of fact in response to two questions: (1) whether the work was likely to create a special risk of harm in the absence of special precautions, and (2) whether the employer did or should have recognized such a risk." (*Id.* at pp. 746-747.) Here, the TAC alleges facts allowing an inference that childhood sexual abuse is an inherent, peculiar risk to the operation of congregate care group home settings and the County knew or should have known about the risk. (See e.g., TAC, ¶¶ 132-148.)

Given the foregoing, the County's demurrer to the first cause of action for negligence on the grounds that the TAC fails to allege duty and proximate cause with sufficient particularity is SUSTAINED with 10 DAYS' LEAVE TO AMEND.

B. Negligence Per Se

The County asserts that the second cause of action for negligence per se should be dismissed because the TAC fails to allege proximate cause. The County again complains of the speculative nature of the allegation notwithstanding paragraph 163, which provides the specific red flags that the Court found to be lacking in its May 19, 2025 Order. (See May 19, 2025 Order, p. 9:1-6 ["Vague allegations that such visits would have fostered a closer relationship with Plaintiff and alerted the case worker of 'red flag signs', *without stating the nature of these signs* are speculative and insufficient."].) In demurring to this cause of action, the County relies on the same arguments it raised on proximate cause for the first cause of action. Plaintiff, however, does not directly address this argument. In any event, as noted above, the Court concludes that the allegation of proximate cause could benefit from additional facts identifying when these red flags presented. (See *Covenant Care, supra*, 32 Cal.4th at p. 790.)

Accordingly, the County's demurrer to the second cause of action on the ground that the FAC fails to allege proximate cause with sufficient particularity is SUSTAINED with 10 DAYS' LEAVE TO AMEND.

IX. Disposition

The County's demurrer is SUSTAINED as to the first and second causes of action with 10 DAYS' LEAVE TO AMEND.