

TENTATIVE RULINGS

LAW & MOTION CALENDAR

Wednesday, October 7, 2026, 3:00 p.m.

Courtroom 16 – Various for Hon. Patrick M. Broderick

3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN “ZOOM” ONLINE,

Courtroom 16

Meeting ID: 161-460-6380

Passcode: 840359

<https://sonomacourt-org.zoomgov.com/j/1614606380>

TO JOIN “ZOOM” BY PHONE,

By Phone (same meeting ID and password as listed above):

(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.

Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 25CV05714, Garcia Contreras v. Hyundai Motor America

(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19’S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

I. Introduction

Defendant Hyundai Motor America (“HMA”) moves to compel Plaintiff Roland Garcia Contreras (“Plaintiff”) to comply with Code of Civil Procedure section 871.26, including to appear for deposition and provide the information and documents required by section 871.26, and for monetary sanctions against Plaintiff’s counsel of record pursuant to subsection (j)(2) of section 871.26.

II. Deposition

In opposition, Plaintiff indicates he has now offered HMA a concrete date for the deposition. On September 23, 2026, Plaintiff’s counsel’s office advised HMA’s counsel in writing that Plaintiff is available for his deposition on October 9, 2026, at 10:00 a.m., asked HMA to advise whether that date works, and noted that Plaintiff will require a Spanish-language interpreter. (Declaration of Camilo Fernandez in Support of Plaintiff’s Opposition (“Fernandez Decl.”) ¶8, Ex. 1.)

1. Request for Documents

HMA's motion also requests this court order Plaintiff to provide the documents requested in HMA's deposition notice. HMA's Notice of Taking of Deposition contained seven requests for production of documents. (Suard decl., Exhibit A.) Plaintiff objected to those seven requests, plus 37 additional requests for production of documents. (*Id.*, Exhibit B.) It is not clear when HMA served the additional requests for production. Plaintiff has provided a separate statement identifying all seven (7) of the original document requests made in the deposition notice.

HMA has not filed timely reply. Therefore, this court assumes HMA does not object to the proposed date and time for deposition and the original document requests.

2. Sanctions

HMA requests sanctions pursuant to CCP section 871.26. That section applies to civil actions such as this one, seeking restitution or replacement of a motor vehicle. It provides that all parties have a right within 120 days from the filing of the answer or responsive pleading to conduct initial depositions. Section 871.28 requires this court to impose sanctions unless the party failing to comply with this section shows good cause.

HMA's answer was filed on February 2, 2026. June 18, 2026, is 120 days after February 2, 2026. Plaintiff argues sanctions are not warranted because he was not refusing to sit for deposition and because HMA's counsel did not meet and confer in compliance with CCP section 2016.040.

HMA's counsel called Plaintiff's counsel's office once and emailed four times requesting a date for deposition. (Suard decl., Exhibit C.) Plaintiff's counsel did not provide a deposition date until September 23, 2026. (Fernandez decl., ¶8, Exhibit 1.) This is far past the 120-day deadline. Plaintiff has not explained why he did not sit for deposition prior to the 120-day deadline. Therefore, he has not shown good cause to deny HMA's request for sanctions.

Subsection (j)(2) of CCP section 871.26 requires a one-thousand-five-hundred-dollar (\$1,500) sanction against the plaintiff's attorney paid within 15 business days for failure to comply with the provisions relating to depositions as prescribed in subdivision (c).

III. Conclusion

The motion is GRANTED. Plaintiff Roland Garcia Contreras is directed to appear for deposition on October 9, 2026, at 10:00 a.m. Plaintiff is also ordered to provide all responsive documents pertaining to the seven (7) document categories identified in the original deposition notice. Sanctions are granted in the amount of one-thousand-five-hundred-dollar (\$1,500) against Plaintiff's attorney to be paid within 15 business days.

HMA's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

2. 25CV08797, Mendoza Rivera v. Hsu

(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

I. Introduction

Plaintiffs Miguel Eduardo Mendoza Rivera, Edith Pallarco Solano, Luciana Sare Mendoza Pallarco, and Miguel Leonardo Mendoza Pallarco (“Plaintiffs”) move pursuant to Cal. Corp. Code section 1702, et seq., to served Defendant JD Management Group, Inc. (“Defendant”) with summons and complaint through the California Secretary of State.

II. Governing Law

Cal. Corps Code section 1702(a) provides: “If an agent for the purpose of service of process has resigned and has not been replaced or if the agent designated cannot with reasonable diligence be found at the address designated for personally delivering the process, or if no agent has been designated, and it is shown by affidavit to the satisfaction of the court that process against a domestic corporation cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20 or subdivision (a) of Section 415.30 of the Code of Civil Procedure or upon the corporation in the manner provided in subdivision (a), (b), or (c) of Section 416.10 or subdivision (a) of Section 416.20 of the Code of Civil Procedure, the court may make an order that the service be made upon the corporation by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.”

Cal. Corp. Code section 1702(a) first requires this court find either that the agent for the purpose of service of process has resigned and has not been replaced, the agent designated cannot with reasonable diligence be found at the address designated for personally delivering the process, or no agent has been designated.

III. Analysis

Plaintiffs argue that they were unable to complete service at the registered agent’s address. Jonathan Davis is listed as Defendant’s agent for service of process. (Martirosyan decl., ¶3, Exhibit 2.) The address listed for service of process is 1301 S. 4th Street, RFS – Bldg. 478, Richmond, CA 94804. (*Ibid.*)

On January 20, 2026, process server, Michael Bliss, went to the location listed for service of process. (*Id.*, 2nd Exhibit 2.) Mr. Bliss’s Declaration of Reasonable Diligence states that the building is inside a gated compound, there is no guard or call box, and that the intercom rang and disconnected. (*Ibid.*) A posted sign instructed to call a specific number, which Mr. Bliss did. The number connected to a UC Berkeley phone tree. (*Ibid.*) Mr. Bliss searched and found a number for Defendant and called that number. (*Ibid.*) He states he spoke with a man who refused to give his name. (*Ibid.*) The man asked if the documents were legal and requested the Plaintiffs’ names and then stated no one was available to allow access. (*Ibid.*) Mr. Bliss then asked for a good time to return and was told the attorney would have to work that out. (*Ibid.*)

After that call, Mr. Bliss returned four additional times to the address listed for service of process and found the gate closed. (*Ibid.*) Each time there was no answer via the call box. (*Ibid.*)

While it appears that Defendant's agent for service of process may not with reasonable diligence be able to be found at the location for process of service, Plaintiffs have shown that they only once attempted to call the number listed at that service address. Using the call box, which disconnects, does not appear to be a true attempt at service. Therefore, this court will require Plaintiffs' process server to attempt to contact the agent for service of process by using the phone number listed at the building site. If possible, the process server is directed to explain that if service of process cannot be made through the agent, then this court will order service via the California Secretary of State. At least two additional attempts should be made to reach the agent by phone. If service of process cannot be made after reaching someone by using the phone number provided at the address listed for service of process, then the process server is directed to provide this court with a detailed declaration describing his service attempts, including whether any attorney contact information is provided by any individual instructing the process server.

The hearing on this motion is CONTINUED to Friday, December 18, 2026, at 3:00 p.m., in Department 16. If Plaintiffs are able to serve the Defendant prior to the hearing on this motion, Plaintiffs' counsel is directed to contact the judicial assistant for Department 16 so that the matter can be taken off calendar. If the hearing on the motion goes forward, Plaintiffs are directed to file the process server's additional declaration by December 4, 2026.

3. SCV-267244, A.A. Fahden LLC v. Fahden

(TENTATIVE ISSUED BY HON. JANE GASKELL)

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 17. PLEASE USE DEPT. 17'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

Plaintiff A.A. Fahden LLC ("Plaintiff") moves for an order compelling Defendants and Cross-Plaintiffs Lyall Fahden, Karen Fahden, Hans Fahden Vineyards LLC, and Fahden Farms GP (collectively, "Defendants") to provide code-compliant responses to Plaintiff's Special Interrogatories Nos. 13, 14, 16, 18, 19, 20, 21, and 25, as well as to produce all documents responsive to Requests for Production Nos. 1, 26, 27, 28, 33, 46, 47, 59, 60, 82, 83, 84, and 91.

I. Omnibus Motions

Plaintiff has filed a compound motion. Plaintiffs move under different statutes requesting relief as to different propounded discovery modalities. The motion should have been filed as two motions and filing fees paid for each. An omnibus discovery motion hinders the court's ability to allocate sufficient time to review the issues, and it circumvents the requirement to pay separate filing fees for each motion. In the future, Plaintiff's counsel is directed to file separate motions for each type of discovery request (e.g., interrogatories, requests for admission, request for production of documents).

II. Special Interrogatories

Plaintiff seeks further responses to its Special Interrogatories Nos. 13, 14, 16, 18, 19, 20, 21, and 25.

If a timely motion to compel has been filed, the burden is on the responding party to justify any

objection or failure fully to answer the interrogatories. (*Coy v. Sup.Ct. (Wolcher)* (1962) 58 Cal. 2d 210, 220-221.)

Defendants only provided objections to Special Interrogatories Nos. 13, 14, 18, 20, 21, and 25. As Defendants did not file opposition, they have not justified their objections. Accordingly, the motion as to these interrogatories is granted.

Defendants both objected and provided a substantive response to Special Interrogatories Nos. 16, and 19. Number 16 seeks to have Defendants: “IDENTIFY and describe in detail, since April of 2017, why YOU purchased oxygen for use on the PROPERTY.”

Defendants responded: “Oxygen was periodically purchased for welding and related maintenance activities performed on the property for the benefit of the property itself and the various operations conducted on it, including maintenance, repairs, and improvements.”

Plaintiff argues that this response is too general; that it fails to provide specific details as to the time and circumstances around which Defendants purchased oxygen for use on the subject property. Plaintiff argues this information is relevant to its accounting claim and defense of the cross-complaint, which seeks partition in kind, accounting, reimbursement, and determination of commingling.

The court will grant the motion as to this interrogatory. Plaintiff cannot ascertain from Defendants’ response whether the oxygen purchased was used for the benefit of Sonoma Vinegar Works.

Special Interrogatory number 19 asks Defendants to “IDENTIFY in detail, since April of 2017, all bank, merchant, and payroll accounts, including account numbers, RELATED TO HANS FAHDEN VINEYARDS, LLC and FAHDEN FARMS, GP.”

Defendants’ substantive response was: “Pursuant to Code of Civil Procedure sections 2030.210(1)(2) and 2030.230, Responding Party refers Propounding party to copies of the bank accounts, merchant accounts, and payroll accounts that have been produced, or will be produced.”

If a question does require the responding party to make reference to a pleading or document, the pleading or document should be identified and summarized so the answer is fully responsive to the question. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 784.)

The motion as to this request is granted.

III. Requests for Production of Documents

Plaintiff seeks further responses to its Requests for Production Nos. 1, 26, 27, 28, 33, 46, 47, 59, 60, 82, 83, 84, and 91.

Plaintiff’s requests seek relevant information pertaining to this action. Defendants responded that they will produce responsive, non-privileged documents that relate to the underlying dispute.

Plaintiff argues that, in their review of Defendants’ document production, Defendants have not produced all responsive documents, even those referred to in their cross-complaint.

This court cannot order Defendants to produce documents if they do not actually have those documents. However, this court will order Defendants to produce all responsive documents or be barred from using them at trial. Documents that should exist which are not produced will be presumed to support Plaintiff's case. Defendants are directed to provide a privilege log for any documents not produced based upon a privilege.

IV. Sanctions

Plaintiff requests sanctions in the amount of \$14,836.50 for having to make this motion. Plaintiff's attorney, Sushila Chanana, states two senior attorneys primarily worked on this motion: Linda Gilleran and Christopher Brown. Ms. Chanana states that Ms. Gilleran's hourly rate is \$927 and that Ms. Gilleran spent at least 5 hours working on this motion. Ms. Chanana states that Mr. Brown's hourly rate is \$783 and that he spent at least 13 hours working on the motion.

First, this is not the type of motion that requires two senior attorneys. Generally, discovery motions are more suited to paralegals or law clerks. If senior attorneys are charging the hourly rates stated above, they should not require a combined 18 hours to draft the motion. Moreover, the hourly rates stated above are far outside the norm of what is considered a reasonable hourly rate in this county—particularly for the type of work performed for this motion. Sanctions on this motion will be granted in the amount of \$1,260.

V. Conclusion

The motion is GRANTED. Defendants and Cross-Plaintiffs Lyall Fahden, Karen Fahden, Hans Fahden Vineyards LLC, and Fahden Farms GP are ordered to provide code-compliant responses to Plaintiff's Special Interrogatories Nos. 13, 14, 16, 18, 19, 20, 21, and 25; to provide all responsive documents to Plaintiff's Requests for Production Nos. 1, 26, 27, 28, 33, 46, 47, 59, 60, 82, 83, 84, and 91; and to pay sanctions in the amount of \$1,260 all within 30 days of the service of this order.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

4. **SCV-270405, Creditors Adjustment Bureau, Inc. v. Bathe**

(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

I. Introduction

Defendant and Cross-Complainant David Loyd Bathe ("Bathe") moves for an order compelling Plaintiff and Cross-Defendant Creditors Adjustment Bureau ("CAB") to provide a supplemental response to Bathe's Second Set of Requests for Production.

II. Procedural Chronology - Complaint and Cross-Complaint

On March 17, 2022, CAB filed this lawsuit based upon a written agreement wherein CAB's assignor, State Compensation Insurance Fund ("SCIF"), and Bathe entered into a written agreement wherein SCIF agreed to provide a policy of workers compensation insurance covering March 3, 2019, through March 3, 2020, and Bathe agreed to pay policy premiums. CAB alleged Bathe breached the agreement.

On August 20, 2025, Bathe filed a Class Action Cross-Complaint for injunctive and declaratory relief to stop unlawful, deceptive, and unfair business practices. Bathe alleges that CAB regularly serves as an assignee for collections for SCIF, filing hundreds of virtually identical collection complaints against SCIF's policyholders. Bathe alleges in these lawsuits, CAB seeks attorney fees pursuant to CCP section 1717.5, to which it is not entitled.

Bathe's cross-complaint seeks judicial determination that under its standard form insurance policy, Policy L, CAB is not entitled to recover section 1717.5 fees, or to obtain default judgments awarding such fees against SCIF policyholders; for a preliminary and permanent injunction against CAB prohibiting seeking such fees in these cases; and for attorney fees and costs.

III. Legal Standards

The motion for order compelling further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (CCP § 2031.310(b)(1).)

1. Requests for Production

- Request number 13 seeks: "All complaints that YOU have filed since April 1, 2018, as assignee of State Compensation Insurance Fund which allege that YOU are entitled to attorneys' fees under Civil Code Section 1717.5."
- Request number 14 seeks: "Copies of all default judgments that YOU obtained in actions that YOU have brought since April 1, 2018, as assignee of State Compensation Insurance Fund which awarded YOU attorneys' fees."
- Request number 15 seeks: "All declarations, requests for default and any other DOCUMENTS that YOU filed since April 1, 2018 in any actions that YOU brought as assignee of State Compensation Insurance Fund which refer to Civil Code Section 1717.5."

CAB objected on various grounds, including that the requests are irrelevant, immaterial, unduly burdensome, oppressive and harassing, would require a compilation and/or summary of information, and that the documents are equally available to the propounding party.

Bathe argues that his requests are necessary to establish numerosity and that it is CAB's practice to seek these fees. Bathe argues that CAB does not need to review the complaints that it has filed, it only needs to produce them. Bathe also argues that he would have to search court websites and download and pay for copies of the complaints; therefore, he argues, the complaints are not *equally* available to him.

CAB, too, would have to expend time and resources to search for, gather, and collect the requested complaints, default judgments, and other court documents. Bathe is requesting these documents; he is equally able to obtain them. In addition, Bathe has not explained why he needs eight years of

documentation. These requests appear designed to burden and harass.

IV. Conclusion

The motion is DENIED.

Due to the lack of opposition, this court's minute order shall constitute the order of this court.

5. SCV-272344, Doe v. Sonoma Academy

(TENTATIVE ISSUED BY HON. JANE GASKELL)

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 17. PLEASE USE DEPT. 17'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

I. Demurrer

Cross-Defendants Sonoma Academy and Carolyn McAleavy ("Cross-Defendants") demur to the first through fifth causes of action in the First Amended Cross-Complaint ("FACC") filed by Cross-Complainant Marco Morrone ("Morrone") on the grounds of failure to state facts sufficient to constitute a cause of action.

A. Request for Dismissal

On April 17, 2026, Morrone filed a request to dismiss his first, third, and fourth causes of action in the FACC. Therefore, as to these causes of action, the demurrer is moot.

B. Second Cause of Action for Statutory Indemnity under Labor Code section 2802

Morrone's second cause of action for statutory indemnity alleges he was an employee of Sonoma Academy, that all of the allegations in the complaint filed by Plaintiffs occurred during the course and scope of Morrone's employment with Sonoma Academy, and that an employer must indemnify its employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or his or her obedience to the directions of the employer.

In the main body of the FACC, Morrone alleges that Sonoma Academy created an atmosphere which blended the boundaries between students and teachers, that Sonoma Academy pushed teachers to develop close emotional relationships with students and encouraged sharing of personal experiences, including through free writing exercises.

Morrone alleges that the allegations by the Plaintiffs began via a rumor mill that snowballed into a collective false memory by Sonoma Academy students. He alleges that none of the Plaintiffs can show that Morrone made any overtly sexual comments to students. He states that various students wrote in their journals during free writing exercises that they were developing feelings for Morrone, or had other inappropriate thoughts or feelings, and that Sonoma Academy failed to provide any guidance on how to deal with these students' feelings. Morrone alleges it was expressly stated and

implied that students had to be coddled, flattered, and indulged in order to keep the tuition and donations coming in. Morrone alleges Sonoma Academy asked, at least once, that he take a particular student under his wing due to some trouble that student had at other schools. He thereafter learned she had emotional problems which were too profound to treat in therapy. Morrone alleges that this student later developed feelings for him and that Sonoma Academy's administration failed to take any action. They allowed her to continue at the school, which threatened Morrone's emotional and professional wellbeing.

Morrone also alleges that cross-defendant Carolyn McAleavy was the school counselor and that he was encouraged to open up to her about his own personal life. He alleges McAleavy never raised any official warning or "red flags" about Morrone's behavior. He further alleges that McAleavy's own daughter had fallen in love with him and that, despite this, McAleavy encouraged her daughter to seek out Morrone's counsel and enroll in his classes.

Cal. Labor Code section 2802 provides, in part: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

In his cross-complaint, Morrone alleges he did not sexually harass, abuse, or molest any student. He cites *Jacobus v. Krambo Corp.* (2000) 78 Cal.App.4th 1096, arguing he is entitled to recover the costs of defending against the Plaintiffs' action. In *Jacobus*, defendant was sued for sexual harassment. He requested that his employer defend him in the action, but his employer refused. The employer settled with the plaintiff. Defendant proceeded to trial where the jury ruled in his favor. Labor Code section 2802 required his employer indemnify him for the costs he incurred.

Labor Code section 2802 requires the employer not only to pay any judgment entered against the employee for conduct arising out of his employment but also to defend an employee who is sued for such conduct. (*Jacobus, supra*, at p. 1100.) If the employer elects to run a risk and refuses to defend, the employer must indemnify the employee for his attorney fees and costs in defending the underlying action if the employee was sued for acts within the scope of his employment. (*Ibid.*)

The test for recovery under section 2802 is whether the conduct defended against was within the course and scope of employment. (*Id.*, at p. 1101.) In determining whether for purposes of indemnification an employee's acts were performed within the course and scope of employment, the courts have looked to the doctrine of respondeat superior. (*Ibid.*) Under that doctrine, an employer is vicariously liable for risks broadly incidental to the enterprise undertaken by the employer—that is, for an employee's conduct that, in the context of the employer's enterprise, is "not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Ibid.*) An employer is not vicariously liable for an employee's conduct if the employee substantially deviates from his or her course of duty so as to amount to a complete departure. (*Id.*, at p. 1101-1102.)

The cases have consistently held that under the doctrine of respondeat superior, sexual misconduct falls outside the course and scope of employment. (*Id.*, at p. 1102.) However, in *Jacobus*, the defendant was sued for acts which were determined at trial not to amount to sexual harassment. (*Id.*, at p. 1103.) Therefore, those acts fell within the scope of the defendant's employment. (*Ibid.*)

The question of whether an employee's acts are within the scope of employment is ordinarily a question of fact, but the issue may be determined as a question of law when the material facts are undisputed and no conflicting inferences are possible. (*Ibid.*)

In *Jacobus*, two employees were engaged in exchanging sexual materials. It was determined that the plaintiff only developed her theory of sexual harassment immediately after she incurred a poor performance review in order to gain an advantage in her employment.

In this action, the material facts are disputed. Plaintiffs allege that Morrone engaged in grooming, sexual harassment, sexual abuse, and molestation of minors. If it is found that Morrone did not engage in any inappropriate sexual misconduct, then he would have been acting within the course and scope of his employment because the allegations are based upon conduct that occurred as a teacher for Sonoma Academy. As such, if Morrone is determined not to have engaged in conduct outside the scope of his employment, then he would be entitled to recover his defense costs from Sonoma Academy. (See also *Daza v. Los Angeles Community College Dist.* (2016) 247 Cal.App.4th 260, 273.)

In reply, Cross-Defendants argue that section 2802 only allows recovery for an employee who already holds a valid claim to recover reasonable costs. Cross-Defendants argue section 2802 does not require an employee to fund the employee's own suit against it.

Section 2802 is not so narrow. It requires the employer to indemnify the employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." (Labor Code section 2802.) Necessity is by nature a question of fact. (*Grissom v. Vons Companies, Inc.* (1991) 1 Cal.App.4th 52, 57.) Cross-Defendants have not shown section 2802 does not pertain to this action wherein Morrone was sued as a result of actions that occurred while employed with Sonoma Academy and during his work hours. Whether those actions were legally "within the course and scope of his employment" is a factual determination which is disputed.

Cross-Defendants have failed to meet their burden that Morrone's second cause of action is subject to demurrer.

C. Fifth Cause of Action for Declaratory Relief

Morrone seeks declaratory relief that he did not engage in any of the conduct alleged by the Plaintiffs and, therefore, whether the conduct gives rise to Cross-Defendants' liability to Morrone. This is a disputed material issue requiring judicial determination. (See *Moore v. Wells Fargo Bank, N.A.* (2019) 39 Cal.App.5th 280, 296.)

D. Conclusion

The demurrer to the first, second, and fourth causes of action is MOOT. The demurrer to the third and fifth causes of action is OVERRULED.

Morrone is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

II. Motion to Strike

Cross-Defendants Sonoma Academy and Carolyn McAleavy (“Cross-Defendants”) move to strike portions of the First Amended Cross-Complaint (“FACC”) filed by Cross-Complainant Marco Morrone (“Morrone”) as listed in the Notice of Motion.

A. Legal Standards

“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.” (CCP section 436.)

An immaterial allegation, aka an irrelevant matter, in a pleading is one which is not essential to the claim or defense and which could be stricken from the pleading while still leaving it sufficient as to that claim or defense. (CCP section 431.10.)

B. The Entirety of Paragraph 1 of the FACC

Cross-Defendants argue this paragraph presents a partisan narrative designed to cast Marrone in a favorable light while disparaging Cross-Defendants and the underlying Plaintiffs. They argue the allegations are both immaterial and prejudicial.

While the allegations do attempt to cast Marrone in a positive light and lay blame with Sonoma Academy, the allegations support Marrone’s theory of his case—that he did nothing wrong and was scapegoated by Sonoma Academy to placate the school’s students, families, and donors. This court declines to strike this paragraph.

C. The Entirety of Paragraph 14 of the FACC

Cross-Defendants argue this paragraph contains conclusory denials, argumentative assertions, improper commentary, and a defamation narrative which are not pleaded as ultimate facts but rather as self-serving conclusions and advocacy concerning the merits of the underlying claims. They argue none of these allegations bear on the elements of any cause of action asserted. They argue paragraph 14 improperly attempts to litigate the truth or falsity of the underlying accusations and to exonerate Morrone through conclusory statements that are neither necessary nor appropriate at the pleading stage.

This paragraph states that Morrone did not engage in the behavior alleged by the plaintiffs in this case and seeks to explain, in part, the source of the misinformation. This court declines to strike this paragraph.

D. The Entirety of Paragraph 16 of the FACC

Cross-Defendants argue that paragraph 16 is immaterial, attacks Cross-Defendants’ motives, and disputes the merits of the underlying claim.

This paragraph does shift the blame to Sonoma Academy. It seeks to explain how Morrone came to

be accused of sexual misconduct with students and supports his theory of his case. This court declines to strike this paragraph.

- E. The Following Matter in Paragraph 25 at 12:24 – 13:1 of the FACC: One of the Plaintiffs, whose mother, Carolyn McAleavy, was the school counselor and whose godmother, Ms. Dwight, was the Dean of Students, was routinely known to brag to other students that she could “do whatever [she] wanted because [her] mom and Ellie basically run the school.”

Cross-Defendants argue this statement is immaterial. They also argue that because the allegation identifies a person using a pseudonym by naming her mother, it circumvents the allowance of pseudonymity.

Morrone argues that this allegation supports the theory of his case that students were effectively running the school, blurring the lines between students and faculty, and creating the atmosphere of blurred interpersonal boundaries, which led to the unfounded rumors about him.

That one of the underlying plaintiffs in this action is related to cross-defendant McAleavy is meant to support Morrone’s theory of his case. When coupled with additional allegations, discussed below, it is meant to support Morrone’s claim that McAleavy did not have any actual concern about his behavior. While the evidentiary facts used to support claims do not need to be alleged—only the ultimate facts—Cross-Defendants have not moved to seal this information and, even if this court were to grant Cross-Defendants’ motion on this issue, it would not remove the material from the court’s file. However, the allegations could be phrased directly without disclosing personal relationships and destroying the protections of using a pseudonym. Therefore, this court will strike those allegations that disclose the identity of one of the plaintiffs by disclosing her relationship to McAleavy. In addition, this court will order the allegations in the FACC redacted such that they will no longer be part of the public record.

- F. The Following Matter in Paragraph 29 at 13:25 – 14:15 of the FACC:...in 2004, Ms. Dwight pulled Mr. Morrone aside and requested that he take a particular student “under his wing,” ... Mr. Morrone later learned that this student had in fact been removed from other schools for her erratic behavior and that both of Sonoma Academy’s school counselors ... judged that this student’s emotional issues were “too profound” for them to treat in therapy themselves...The decision was then reached...to allow this student to continue at the school...this former student eventually sued the school in a separate case anyway. All of this provides an example of how Sonoma Academy handles uncomfortable truths: prioritizing financial compensation in return for silence and a suppression of evidence in the service of a narrative that benefits the school and continues to sacrifice...Mr. Morrone’s personal and professional reputation in the eyes of the community...and of course on the Internet, where such baseless accusations will live forever, regardless of the outcome of any legal process.... the school’s attempt to hide its purported settlements with the Plaintiffs in this case by entering into confidentiality agreements violates public policy.

Cross-Defendants argue that the allegations are not pleaded as ultimate facts but rather are an anecdotal narrative regarding an alleged incident from 2004 with a non-party student, coupled with sweeping and inflammatory conclusions about Sonoma Academy’s purported institutional practices

which attempt to state a reputational harm narrative without leading any cognizable claim for defamation.

Morrone argues that this is an example of a specific instance of institutional failure to guide and train, which supports his claim that Sonoma Academy's actions created the atmosphere which led to the allegations against Morrone. While evidentiary facts need not be alleged, the boundary between ultimate facts and evidentiary facts is not always straight-forward—particularly when pleading a Labor Code section 2802 claim. These allegations support Morrone's claim that he was wrongfully swept up in false allegations due to Sonoma Academy's failure to properly train staff and operate the school. However, with respect to the allegations that hinder one of the plaintiff's use of a pseudonym, this court will grant the motion and order the allegations redacted.

- G. The Following Matter in Paragraph 30 at 14:19 – 15:8 of the FACC: Morrone...was completely ignorant of the obvious conflict of interest that existed by having his therapist's daughter in his class. Nonetheless...even after her daughter made accusations against Mr. Morrone in 2008, Ms. McAleavy never raised any official warnings or "red flags" about Mr. Morrone's behavior. In fact, as it turns out, Ms. McAleavy is the mother of one of the Plaintiffs in this case (filing under a pseudonym) ... Ms. McAleavy, after encouraging her daughter to seek out Mr. Morrone as a supervisor for an independent project...allowed her daughter to personally interrupt several of Mr. Morrone's therapy sessions for obviously fabricated reasons...after her daughter made these spurious claims, Ms. McAleavy allowed and encouraged her younger daughter to enroll in several of Mr. Morrone's classes...when Mr. Morrone confronted Ms. McAleavy in 2008 and asked her point blank if she thought her daughter had actually experienced any sexual harassment or any harassment at all by Mr. Morrone, Ms. McAleavy answered, in regard to her daughter's accusations, words to the effect of: "She has her truth, and I am trying to respect that."

Cross-Defendants argue these allegations consist of a series of speculative, inflammatory, and unsupported assertions regarding Ms. McAlvey's children – one of whom is alleged to be a plaintiff proceeding under a pseudonym. They argue these allegations are not pled as ultimate facts, but rather as a narrative designed to impugn the credibility and character of a plaintiff and her family. Cross-Defendants again argue the allegations circumvent pseudonymity, are argumentative, and prejudicial.

With respect to the allegations that hinder one of the plaintiff's use of a pseudonym, this court will grant the motion and order the allegations redacted.

- H. The Following Matter in Paragraph 31 at 15:12 – 26 of the FACC:... a clear conflict of interest considering the nexus of personal and familial relationships maintained by Ms. McAleavy...But at no time when he was under her professional care was Mr. Morrone advised by Ms. McAleavy that by providing psychotherapeutic services to him that she was putting him into a professionally compromised position not only in regard to her daughter (the Plaintiff) and her ongoing obsession with Mr. Morrone—which she never informed him of—but with his supervisors also. Nor did she offer him any verbal or written explanation of the nature and limits of her confidentiality as both his therapist and an employee of the school, as well as a parent, if any such limits did in fact exist. Because of her unique relationship to the Administration (Ellie Dwight being her child's

godmother and her own lifelong friend and confidante), Ms. McAleavy was in a unique position to pass on intimate details of Mr. Morrone's personal life to his superiors, as well as to her own family members, both of which Cross-Complainant has strong reason to suspect happened numerous times from 2005-2007, as corroborated by several other faculty members and students, one of whom pointedly advised that Mr. Morrone "should not trust Carolyn to keep his confidential stuff confidential" from other members of the community.

With respect to the allegations that hinder one of the plaintiff's use of a pseudonym, this court will grant the motion and order the allegations redacted.

- I. The Following Matter in Paragraph 33 at 16:11 – 12 of the FACC: Cross-Complainant Morrone will vehemently oppose any attempt to make any settlement reached with any of the plaintiffs in this case confidential.

Cross-Defendants argue that this is an advocacy statement which has no bearing on the elements of any cause of action.

Morrone argues this allegation is relevant to his statutory immunity claim because it supports his position that Sonoma Academy settled without admitting liability in order to insulate it from later claims.

From this court's perspective, the allegation has no bearing on any cause of action. Morrone has already alleged that he was a scapegoat and that Sonoma Academy's actions were intended to protect its own reputation. Paragraph 33 at 16:11 – 12 is superfluous. The motion as to this allegation is granted.

- J. The Following Matter in Paragraph 35 at 17:2 – 4 of the FACC: Sonoma Academy has once again chosen to pacify and coddle their entitled alumni, paying them for their silence as they once rewarded them for their adolescent temper tantrums and melodrama.

This language is needlessly inflammatory. The motion as to paragraph 35 at 17:2 – 4 is granted.

- K. The Following Matter in Paragraph 41 at 17:26 – 27 of the FACC: Cross-Complainant opposes any confidential settlement with the plaintiffs, as it violates the public policy of this state.

The causes of action remaining in the FACC seek to recover expenses incurred to defend against plaintiffs' allegations. Public policy is not an element or factor in the claim. And confidential settlements are not against public policy. The motion is granted as to this allegation.

- L. The Following Matter in Paragraph 47 at 18:20 – 22 of the FACC: These expenditures or losses include Mr. Morrone's attorneys' fees incurred in this action, in an amount to be proven at trial.

Attorney fees may be recovered under Labor Code section 2802. The motion is denied as to this allegation.

M. The Entirety of Paragraph 54 of the FACC

This paragraph lays out the bases for which Morrone seeks declaratory relief.

Cross-Defendants argue that the list does not include proper subjects for declaratory relief. However, as the entirety of the paragraph is not irrelevant, false, or improper, the motion as to this paragraph is denied.

N. Conclusion

The motion is granted, in part, and denied, in part, as stated above. Allegations in the FACC which disclose the identify of one of the underlying plaintiffs, by disclosing her relationship to McAlevy are hereby stricken. The court orders them redacted.

Cross-Defendants are directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312. Cross-Defendants are also directed to provide an order identifying each allegation in the FACC which pertains to the identity of McAlevy's daughter so that the court clerk may locate and redact those allegations.

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