

“Civility allows for zealous representation, reduces clients’ costs, better advances clients’ interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution.”

-- [OCBA Civility Guidelines](#)

TENTATIVE RULINGS
Judge Nathan Scott, Dept. W2

- The court encourages remote appearances to save time and reduce costs: <https://www.occourts.org/media-relations/civil.html>. Click on the yellow box.
- All hearings are open to the public. The courtroom doors are open.
- You must [provide](#) your own court reporter (unless you have a [fee waiver](#) and request one in advance).
- **Call the other side** and ask if they will submit to the tentative ruling.

If **everyone** submits, then call the clerk. The tentative ruling will become the order.

If anyone does not submit, there is no need to call the clerk. The court will hold a hearing. The court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Hearing Date: Fri. 5/3/24 at 10 am

Posted Thu. 5/2/24 at 12 pm

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| 1 | PMH Laboratory v. Aetna Better Health of California | Margaret Saathoff’s application to appear pro hac vice for defendants is granted. Defendants shall give notice. |
| 2 | Contractors Services v. Qwest Engineering | Plaintiff Construction Services LLC’s three motions to compel are granted. Defendant Qwest Engineering Inc. shall serve complete, code-compliant, verified responses without objection to plaintiff’s form interrogatories (set one) and requests for production (set one) within 30 days. Defendant is deemed to have admitted plaintiff’s requests for admission (set one). Defendant shall pay \$1732.50 (\$495 x 3.5) to plaintiff. Plaintiff shall give notice. |

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| 4 | Balboa Capital v. Jayachandra | <p><u>Motion to Continue</u> Defendants Paul D. Jayachandra M.D. P.A. and Paul D. Jayachandra’s motion to continue trial [ROA #235] is granted.</p> <p>Trial is continued from 5/10/24 to 10/18/24 at 11:30 am. The new trial date governs all deadlines.</p> <p><u>Motion for Leave</u> Defendants’ motion for leave to file a 6th amended cross-complaint is denied.</p> <p>Defendants seek to add a new cross-defendant – MMP Capital Inc. – and modify certain allegations against plaintiff to reflect its relationship and interaction with MMP. (See Mot. at pp. 1-2.)</p> <p>“A greater showing of ‘interest of justice’ is required to obtain leave to file a cross-complaint against a co-defendant or some third person not yet a party to the action.” (Weil & Brown, Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2023) ¶ 6:565.)</p> <p>Here, plaintiff shows it disclosed MMP in discovery in 2022 and defendants propounded discovery concerning MMP in 2023. (See Opp. at p. 4; Coffman decl. at ¶¶ 5-6 & Exs. B-D.) While defendants claim plaintiff’s disclosures were incomplete, they have not adequately explained their delay in following up.</p> <p>Defendants shall give notice.</p> |
| 5 | Habashi v. Khella | <p><u>Motion to Vacate</u> Plaintiff Yvette Habashi’s motion to vacate is granted. (See Code Civ. Proc., § 473, subd. (b); see also Fairchild decl. ¶¶ 3-5.)</p> <p>The 3/5/24 dismissal of defendant Magdy Halim Khella is vacated.</p> <p><u>Trial Setting Conference</u> An OSC re dismissal (failure to serve) is set for Thu. 8/8/24 at 2 pm in Dept. W2. Plaintiff is ordered to file proof of service of the summons and complaint on unserved defendant Magdy Halim Khella before the hearing. If plaintiff fails to do so, the court will dismiss the action against any unserved defendant at the hearing unless plaintiff appears and shows good cause otherwise. (See Cal Rules of Court, rule 3.110(f); Local Rule 381.)</p> <p>Plaintiff shall file and serve a status report no later than 8/1/24.</p> |

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| | | The clerk shall give notice. |
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| 7 | Guardian Storage Centers v. Simpson | <p>Defendant Julie Simpson’s motion for relief is granted. (See Code Civ. Proc. §§ 2030.250, subd. (a); 2031.250, subd. (a) & 2033.240, subd. (a).)</p> <p>Regardless of where defendant may have resided in August to October 2023 (see Rohani decl. Exs. A-B), defendant attests she moved to Montana in November 2023. (Simpson decl. ¶ 6.) There is no contrary evidence. Her delay in responding to discovery mailed to the Huntington Beach house in December 2023 is therefore excusable.</p> <p>Defendant shall give notice.</p> |
| 8 | Doe v. Garden Grove Unified School District | <p><u>Demurrer</u> Defendant Garden Grove Unified School District’s demurrer is sustained to the 9th cause of action and otherwise overruled.</p> <p>Plaintiff Jane Doe shall have leave to file and serve a second amended complaint within 10 days.</p> <p><u>8th cause of action, negligence.</u> The FAC states facts sufficient to constitute this cause of action. (Gov. Code, §§ 815.2 [vicarious liability], 820 [employee liability]; <i>Doe v. Lawndale Elementary School Dist.</i> (2021) 72 Cal.App.5th 113, 119, 125-126 & fn. 4 (<i>Lawndale</i>) [elements, duty, public entity vicarious liability]; <i>C.A. v. William S. Hart Union High School Dist.</i> (2012) 53 Cal.4th 861, 868 (<i>Hart</i>) [noting “the general rule ... that an employee of a public entity is liable for his torts to the same extent as a private person [citation] and the public entity is vicariously liable for any injury which its employee causes [citation] to the same extent as a private employer”]; see also FAC ¶¶ 8-15, 58, 65, 70-73.)</p> <p>“A public entity like the District may be liable for the negligence of supervisory or administrative personnel,” including the negligent failure to protect a student from predatory behavior by a school employee. (<i>Lawndale, supra</i>, 72 Cal.App.5th at pp. 119, 126, fn. 4; accord <i>Hart, supra</i>, 53 Cal.4th at p. 868.)</p> <p><u>9th cause of action, Bane Act.</u> The FAC fails to state facts sufficient to constitute this cause of action. (See Civ. Code, § 52.1 [Bane Act]; CACI No. 3066 [elements]; <i>Austin B. v. Escondido Union School Dist.</i> (2007) 149 Cal.App.4th 860, 882-883 [§ 52.1 requires the interference or attempted interference with a legal right by “threats, intimidation, or coercion”]; <i>Julian v. Mission Community Hospital</i> (2017) 11 Cal.App.5th 360, 395 [conclusory allegations insufficient to state a claim for violation of § 52.1].)</p> |

To be sure, public entities are vicariously liable for employee conduct committed within the scope of their employment, which can include a Bane Act violation. (See Gov. Code, § 815.2 [vicarious liability]; see also *K.T. v. Pittsburg Unified School District* (N.D. Cal. 2016) 219 F.Supp.3d 970, 982.)

But the FAC fails to state facts showing the statutorily required “threats, intimidation, or coercion” (Civ. Code, § 52.1) occurred “within the scope of his employment” (Gov. Code, § 815.2). (See *Austin B.*, *supra*, 149 Cal.App.4th at pp. 882-883.)

The FAC alleges the perpetrator’s “express and implied threats ... ‘not to tell[.]’” (FAC ¶ 17.) But sexually abusing a student and threatening the student “not to tell” does not fall within the scope of a school librarian’s employment. (See *Roe v. Hesperia Unified School Dist.* (2022) 85 Cal.App.5th 13, 25 [“sexually abusing a student is not within the course and scope of employment of a school district employee”]; *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1004-1005 [no vicarious liability for “malicious or tortious conduct” that “substantially deviates from the employment duties for personal purposes”]; accord *Perez v. City and County of San Francisco* (2022) 75 Cal.App.5th 826, 834; *Perry v. County of Fresno* (2013) 215 Cal.App.4th 94, 101 [respondeat superior requires some “connection” between an employee’s alleged tort and the employee’s work].)

10th cause of action, public nuisance. The FAC states facts sufficient to constitute this cause of action. (See Civ. Code, §§ 3479 [nuisance defined], 3480 [public nuisance]; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1104 [public nuisance includes interference with “public safety” that affects “an entire community, neighborhood, or any considerable number of persons”]; *Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 359 & fn. 9 [a public nuisance can be created “by a failure to act on the part of one who was under a duty to act to prevent or abate the nuisance”]; see also FAC ¶¶ 8-19, 59-61, 65-68, 73, 78, 82-85.)

Motion to Strike

Defendant’s motion to strike is denied.

There is no need to plead attorney fees, but even less need to strike them. (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 497 [“As there was no requirement they be pled at all, the trial court erred in striking [plaintiff’s] prayer for attorney fees based on a failure to adequately plead their basis”]; accord *Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160, 1169.)

Defendant shall give notice of all rulings.