

1 SAN BERNARDINO SUPERIOR COURT  
2 COUNTY OF SAN BERNARDINO  
247 West Third Street  
San Bernardino, California 92415-0210

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

MAY 09 2022

BY   
RAFAEL HERNANDEZ, DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO

11 JOHN RSP DOE,  
12 Plaintiff,

13 vs.

14 REDLANDS UNIFIED SCHOOL  
15 DISTRICT, et al.,  
16 Defendants.

CASE NO. CIVSB2201079

RULING ON DEMURRER AND  
MOTION TO STRIKE

Date: May 9, 2022  
Time: 9:00 A.M.  
Department: S32

17  
18 After full consideration of the written and oral submissions by the parties,  
19 the Court rules as follows:

20 **PROCEDURAL/FACTUAL BACKGROUND**

21 This litigation concerns claims of sexual abuse of a student by a teacher.  
22 On January 18, 2022, Plaintiff John RSP Doe filed his Complaint against  
23 Defendants Redlands Unified School District ("District") and Joseph Nardella.  
24 The Complaint pleads 12 causes of action:

- 25 (1) Negligence against both;  
26 (2) Negligent supervision against District;  
27 (3) Negligent hiring/retention against District;  
28 (4) Negligent failure to warn, train, or educate against District;

- (5) Intentional infliction of emotional distress (IIED) against both;
- (6) Assault against Nardella;
- (7) Sexual battery against Nardella;
- (8) Sexual harassment against both;
- (9) Gender violence against Nardella;
- (10) Sexual abuse/harassment against District;
- (11) Breach of fiduciary duty against both; and
- (12) Constructive fraud against both.

Defendant Nardella answered.

The Complaint alleges Nardella was a teacher at Clement Middle School ("Clement"). During his tenure, he would frequently invite male students to his classroom during passing periods, during lunch periods, and after school where they engage in discussions on sex and dating. This conduct was reported to Clement's administrators, including Marilyn Kemple, Robert Clarey, and John Massie. Although an investigation followed, Nardella was never reported to law enforcement or child protective services. No corrective action was taken (§§28-33 & 54-55). Then in the 2015-16 school year, RSP, a 14-year-old, was in 8<sup>th</sup> grade at Clement. Nardella was his teacher. Nardella sexually abused, harassed, and molested him (§§7, 56, & 58).

Defendant District demurs to the 5<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup>-12<sup>th</sup> causes of actions and moves to strike the prayers at §§4 and 8. Plaintiff RSP opposes.

## **DISCUSSIONS**

### **Judicial Notice<sup>1</sup>**

Defendant District and Plaintiff RSP submit requests for judicial notice of the legislative history of AB 218.

The Court will grant judicial notice per Evidence Code section 452,

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<sup>1</sup> "Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145.)

1 subdivision (c).

2 **Analysis.**

3 **1. 5<sup>th</sup> cause of action: IIED**

4 To state an IIED claim, one must plead, (1) outrageous conduct by the  
5 defendant, (2) intentional or reckless causing emotional distress, (3) severe  
6 emotional distress, and (4) causation. (*Huntingdon Life Sciences, Inc. v. Stop*  
7 *Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259.)  
8 Outrageous conduct is conduct that is beyond all possible bounds of decency  
9 and is regarded as atrocious and utterly intolerable in a civilized community.  
10 (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-51; *Cochran v. Cochran* (1998) 65  
11 Cal.App.4th 488, 496.) The intentional or reckless cause concerns conduct  
12 intended to inflict emotional injury or conduct engaged in with the realization that  
13 injury will result. (*Christensen v. Superior Court (Pasadena Crematorium of*  
14 *Altadena)* (1991) 54 Cal.3d 868, 903.) Furthermore, the intentional or reckless  
15 conduct must be directed at the plaintiff or occur in the presence of the plaintiff.  
16 (*Ibid.*)

17 Here, Defendant District *first* argues the IIED cause of action is improper  
18 because no statutory basis provided for it to be asserted against it. It is correct.  
19 When pleading a claim against a government entity, the statute or enactment  
20 that is claimed to establish the public entity's duty must be identified. (*Searcy v.*  
21 *Hemet Unified School District* (1986) 177 Cal.App.3d 792, 802.) No statute is  
22 identified here.

23 Per the Opposition, Plaintiff seeks to impose IIED liability under a  
24 vicarious liability theory.

25 Per Government Code section 815.2, subdivision (a), a government  
26 employer may be vicariously liable for the acts and omissions of its employees  
27 who acted in the course and scope of his employment. (*C.A. v. William S. Hart*  
28 *Union School Dist.* (2012) 53 Cal.4th 861, 868 ["C.A."].) However, a teacher

1 engaging in sexual harassment or abuse of a student is not a matter falling in  
2 the teacher's scope of employment to hold the employer vicariously liable for the  
3 teacher's misconduct. (*John R. v. Oakland Unified School Dist.* (1989) 48  
4 Cal.3d 438, 447-53 [*John R.*]; *Steven F. v. Anaheim Union High School Dist.*  
5 (2003) 112 Cal.App.4th 904, 908-09 [*Steven F.*].) Nonetheless, a school  
6 district can be vicariously liable for the acts of supervisory and administrative  
7 employees who negligently hired, retained, and/or supervised another  
8 teacher/employee. (*C.A., supra*, 53 Cal.4th at pp. 865-66, 868-71.)

9 Accordingly, Defendant District cannot be held vicariously liable for any  
10 emotional distress damages allegedly caused by Nardella sexually abusing  
11 RSP.

12 Yet, arguably, it could be liable for any intentional, outrageous conduct  
13 directed toward RSP by a supervisory or administrative employee.

14 However, in this case, the Complaint's allegations only plead intentional  
15 and outrageous conduct by Nardella. The purported intentional and outrageous  
16 conduct by District supervisors or administrators is **not directed** toward RSP,  
17 but to purportedly other victims, or in engaging in a cover-up activity that is not  
18 demonstrated to have been done in RSP's presence (§162). Thus, no factual  
19 predicate basis of intentional and outrageous conduct is pled by a supervisor or  
20 administrative District employee.

21 Since this is the first review, Plaintiff will be given time to cure.

22 Therefore, the Court will sustain the Demurrer with 20 days leave to  
23 amend as to the 5<sup>th</sup> cause of action.

24 **2. 8<sup>th</sup> cause of action: Sexual Harassment (Civ. Code, §51.9)**

25 Under the 8<sup>th</sup> cause of action, Plaintiff RSP seeks to impose liability  
26 against Defendant District under Civil Code section 51.9. Civil Code section  
27 51.9, subdivision (a) provides for a person being liable for sexual harassment  
28 when (1) there is a business, service or professional relationship between the

1 plaintiff and defendant or the defendant holds himself out as being able to help  
2 the plaintiff establish a business, service, or professional relationship with the  
3 defendant or third party, (2) the defendant has made sexual advances,  
4 solicitations, sexual requests, demands for sexual compliance, or engaged in  
5 other verbal, visual, or physical conduct of a sexual or hostile nature based on  
6 gender, that were unwelcome and pervasive and severe, and (3) the plaintiff has  
7 suffered or will suffer economic loss or disadvantage or personal injury,  
8 including emotional distress, or the violation of a statutory or constitutional right,  
9 because of the harassing conduct. In the statute, it defines covered relationship,  
10 and includes a relationship with a teacher. (Civ. Code, §51.9, subd. (a)(1)(E).)

11 *First*, Plaintiff contends Defendant District can be directly liable under this  
12 provision per Education Code section 201 and Government Code section 815.6.

13 Education Code section 201 provides the statement that a student has a  
14 right to participate in the education process free from discrimination and  
15 harassment.

16 And Government Code section 815.6 provides a public entity can be liable  
17 for failure to comply with a mandatory duty.

18 But neither of these provisions bear on the standard imposed for being  
19 liable under Civil Code section 51.9. By the statute, liability flows against a  
20 person who engages in conduct of a sexual nature. Those acts are allegedly  
21 committed by Nardella, not the District.

22 *Second*, Plaintiff contends Defendant District can be vicariously liable for  
23 the acts of Nardella.

24 However, a school district cannot be held vicariously liable for the sexual  
25 harassment of a student by a teacher because a teacher's authority does not  
26 include indulging in sexual harassment and misconduct. (*John R.*, *supra*, 48  
27 Cal.3d at pp. 447-52; *Steven F.*, *supra*, 112 Cal. App.4th at pp. 908-09.)

28 *Third*, Plaintiff contends Defendant can be liable for the sexual

1 harassment of Nardella because they ratified his conduct.

2 A school district may be liable for a teacher's tortious conduct if the district  
3 authorized or ratified the conduct. (Civ. Code, §2339; *C.R. v. Tenet Healthcare*  
4 *Corp.* (2009) 169 Cal.App.4th 1094, 1110 ["C.R."]; *Delfino v. Agilent*  
5 *Technologies, Inc.* (2006) 145 Cal.App.4th 790, 810 ["*Delfino*".]) This principle  
6 applies to a Civil Code section 51.9 cause of action. (*C.R., supra*, 169  
7 Cal.App.4th at p. 1111.)

8 To establish ratification, a plaintiff must show that the agent purported to  
9 act on the defendant's behalf, the defendant learned of the agent's unauthorized  
10 conduct and all the material facts involved in the unauthorized conduct after it  
11 occurred, and the defendant then approved the agent's conduct. (CACI 3710).

12 Evidence of ratification includes the employer's failure to discharge the  
13 employee after learning of the misconduct [*C.R., supra*, 169 Cal.App.4th at pp.  
14 1110-11; *Delfino, supra*, 145 Cal.App.4th at p. 810], the employer's failure to  
15 investigate or respond to charges that an employee committed an intentional tort  
16 [*C.R., supra*, 169 Cal.App.4th at p. 1110], or the employer voluntarily elects to  
17 adopt the employee's conduct as its own [*Delfino, supra*, 145 Cal.App.4th at p.  
18 810].

19 In this case, without any facts, Plaintiff alleges Defendant District knew or  
20 should have known of Nardella's activities but failed to investigate, supervise, or  
21 monitor Nardella to ensure the safety of minor students. Instead, it ratified his  
22 conduct by retaining him (§§194-95).

23 Plaintiff does factually allege the District through Kemple, Clarey, and  
24 Massie was aware of Nardella frequently inviting male minors into his classroom  
25 for discussions on sexual matters and dating.

26 An investigation occurred with no action taken against Nardella (§§28-33).

27 But missing is when this information was known and investigated in  
28 conjunction with RSP's abuse. And, also, the allegations concern discussions

1 about sex, not that Nardella was engaging in sex with the minor students coming  
2 to his classroom.

3 Lastly, for ratification, the District needed to know of Nardella's sexual  
4 abuse of RSP. (*Fireman's Fund Ins. Co. v. City of Trulock* (1985) 170  
5 Cal.App.3d 988, 1002, overruled on other grounds in *Vandenberg v. Superior*  
6 *Court (Centennial Ins. Company)* (1999) 21 Cal.4th 815, 841, fn. 13 ["A principal  
7 ratifies an agent's acts when *he knows of the acts* and accepts the benefits that  
8 flow from them."].) That is never alleged.

9 Although ratification is a means by which the District could be held liable  
10 for Nardella's sexual harassment, RSP needs to factually plead the District's  
11 knowledge of Nardella's sexual harassment of RSP and then it approved it.

12 Such is not yet pled.

13 At this stage, Plaintiff will be allowed to cure the deficiencies.

14 Therefore, the Court will sustain the Demurrer with 20 days leave to  
15 amend as to the 8<sup>th</sup> cause of action.

16 **3. 10<sup>th</sup> cause of action: Sexual Abuse/Harassment (Educ. Code,**  
17 **§220)**

18 Education Code section 220 prohibits a student from being subjected to  
19 discrimination based on various protective classifications, including gender, in  
20 any program conducted by an educational institution that receives or benefits  
21 from state financial assistance or enrolls students who receive state financial  
22 aid.

23 For a claim of violation of Education Code section 220, a plaintiff must  
24 allege (1) he suffered severe, pervasive, and offensive harassment that  
25 effectively deprived the plaintiff of the right of equal access to educational  
26 benefits and opportunities, (2) the school district had actual knowledge of that  
27 harassment, and (3) the school district acted with deliberate indifference in the  
28 face of such knowledge. (*Donovan v. Poway Unified School Dist.* (2008) 167

1 Cal.App.4th 567, 579 [*Donovan*].)

2 In attacking the 10<sup>th</sup> cause of action, the District contends it imposes no  
3 mandatory duty on it thereby it cannot be liable under Education Code section  
4 220. But Education Code section 262.4 states Chapter 2 (Education Equity),  
5 which includes section 220, may be enforced through a civil action.

6 However, in *Donovan*, the Court of Appeal noted it is undisputed that a  
7 district receiving state education funding may be liable for harassment even if it  
8 did not engage in the harassment directly if its response was unreasonable in  
9 light of the known circumstances and subjected a student to discrimination.  
10 (*Donovan, supra*, 167 Cal.App.4th at pp. 589.) The legislature authorized a  
11 private right of action under Education Code section 220. (*Id.* at p. 607.) And if  
12 section 220 liability exists, the school district can be held for monetary damages.  
13 (*Id.* at pp. 592-96.)

14 Therefore, the Court will overrule the Demurrer to the 10<sup>th</sup> cause of action.

15 **4. 11<sup>th</sup>-12<sup>th</sup> causes of action: Breach of Fiduciary Duty & Constructive**  
16 **Fraud**

17 To state a breach of fiduciary claim, the following needs to be pled: (1)  
18 fiduciary duty, (2) breach of that duty, and (3) damages caused by the breach.  
19 (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 182; *Stanley v. Richmond*  
20 (1995) 35 Cal.App.4th 1070, 1086.) On a claim for constructive fraud, the  
21 following will need to be established: (a) fiduciary or confidential relationship, (b)  
22 breach (e.g., nondisclosure), (c) intent to deceive [may not be an element (see  
23 Civ. Code, §1573)], (d) reliance, (e) causation, and (f) damages. (*Prakashpalan*  
24 *v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4<sup>th</sup> 1105, 1131; *Stokes v.*  
25 *Henson* (1990) 217 Cal.App.3d 187, 197; *Younan v. Equifax, Inc.* (1980) 111  
26 Cal.App.3d 498, 516-17, fn. 14.)

27 Defendant District *first* challenges that a fiduciary relationship exists  
28 between it and Plaintiff RSP. Even if a special relationship exists between the



1 parties, it does not equate to a fiduciary relationship.

2 A fiduciary relationship is “any relation existing between parties to a  
3 transaction wherein one of the parties is in duty bound to act with the utmost  
4 good faith for the benefit of the other party. Such a relation ordinarily arises  
5 where a confidence is reposed by one person in the integrity of another, and in  
6 such a relation the party in whom the confidence is reposed, if he voluntarily  
7 accepts or assumes to accept the confidence, can take no advantage from his  
8 acts relating to the interest of the other party without the latter’s knowledge or  
9 consent.” (*Wolf v. Superior Court (Walt Disney Pictures and Television)* (2003)  
10 107 Cal.App.4th 25, 29 [*“Wolf”*].)

11 A fiduciary relationship is either imposed by law (e.g., trustee-beneficiary,  
12 directors-majority shareholders, business partners, attorney-client, and agent-  
13 principal [*Vai v. Bank of America, Nat’s Trust & Sav. Assoc.* (1961) 56 Cal.2d  
14 329, 338; *Wolf, supra*, 107 Cal.App.4th at p. 30] or undertaken by agreement  
15 [*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 447].

16 A confidential relationship is also one existing on trust and confidence.  
17 (*Barrett v. Bank of Am.* (1986) 183 Cal.App.3d 1362, 1369.) Although treated  
18 synonymously with fiduciary, a fiduciary relationship is technically a recognized  
19 legal relationship and a confidential relationship is one founded on a moral,  
20 social, domestic, or personal relationship, as well as on a legal relationship.  
21 (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 270-  
22 271.) And even though case law treats them synonymously, the fact remains a  
23 confidential relationship may exist even if there is no fiduciary relationship. (*Id.*  
24 at p. 271.)

25 The Supreme Court recognizes a school district holds a special  
26 relationship with its students: “In addition, a school district and its employees  
27 have a special relationship with the district’s pupils, a relationship arising from  
28 the mandatory character of school attendance and the comprehensive control

1 over students exercised by school personnel, 'analogous in many ways to the  
2 relationship between parents and their children." (C.A., *supra*, 53 Cal.4th at p.  
3 869.) But holding a special relationship does not necessarily equate to holding a  
4 fiduciary or confidential relationship.

5 The law holds a close/familial relationship does not itself create a fiduciary  
6 relationship. (*Estate of Gelonese* (1974) 36 Cal.App.3d 854, 864; *McMurray v.*  
7 *Sivertsen* (1938) 28 Cal.App.2d 541, 547 ["The mere existence of the  
8 relationship of parent and child did not alone give rise to a fiduciary  
9 relationship."].) However, the law recognizes the relationship between parent  
10 and child is naturally one of trust and confidence, even if not necessarily  
11 fiduciary. (*Pleasants v. Hanson* (1920) 48 Cal.App. 626, 630.) Thus, based on  
12 the facts of a case, a parent-child relationship could establish a confidential  
13 relationship. (*Briggs v. Nilson* (1964) 226 Cal.App.2d 342, 346.)

14 If a parent-child relationship is not legally defined as a fiduciary  
15 relationship, and the school district's special relationship with its pupils is  
16 analogous to the relationship of parent-child, then, by the same analogy, no  
17 fiduciary relationship exists between a school district and pupil.

18 If a parent-child relationship can be one of trust and confidence, then by  
19 the same analogy, a school-student relationship could be one of trust and  
20 confidence.

21 Accordingly, it is clear no fiduciary relationship exists between the District  
22 and RSP because the relationship is not one founded in law or a contract.

23 Therefore, the Court will sustain the Demurrer without leave to amend the  
24 11<sup>th</sup> cause of action.

25 But a confidential relationship may exist if the allegations sufficiently plead  
26 the relationship was one based on trust and confidence. And if a confidential  
27 relationship exists, a cause of action for constructive fraud would be allowable.

28 Defendant District makes no argument that the allegations are deficient in

1 pleading a confidential relationship exists.

2 Nonetheless, Defendant did point out that constructive fraud is not  
3 predicated upon any statute imposing a mandatory duty on a school district.

4 In the Complaint, Plaintiff cites to Civil Code section 1573. That provision  
5 defines constructive fraud but it is not imposing some mandatory duty on a  
6 public entity. As stated above, a cause of action can only lie against a public  
7 entity if predicated upon a statute. (*Searcy v. Hemet Unified School District*,  
8 *supra*, 177 Cal.App.3d at p. 802.)

9 Plaintiff may be able to rely on Government Code section 815.2 if he cites  
10 that statute and pleads the constructive fraud was committed by a supervisor or  
11 administrator of the District.

12 Therefore, the Court will sustain the Demurrer with 20 days leave to  
13 amend as to the 12<sup>th</sup> cause of action.

14 **Strike**

15 ***Analysis.***

16 **1. Treble Damages (Prayer at ¶4)**

17 The Complaint prays for treble damages against Redlands for a cover-up.  
18 (Complaint, Prayer at ¶4.) Code of Civil Procedure section 340.1, subdivision  
19 (b)(1), provides a person who is sexually assaulted and proves it was the result  
20 of a cover-up may recover treble damages against the defendant who covered  
21 up the sexual assault unless prohibited by another law.

22 Defendant *first* argues to strike the treble damages because such is  
23 precluded by Government Code section 818. Government Code section 818  
24 precludes recovery of punitive damages or other damages imposed primarily for  
25 the sake of example and by way of punishing the defendant. (*See also Los*  
26 *Angeles County Metropolitan Transportation Authority v. Superior Court (Lyons)*  
27 *(2004) 123 Cal.App.4th 261, 275* (“[T]he immunity afforded to public entities  
28 under section 818 is narrow, *extending only to damages whose purpose is*

1 simply and solely punitive or exemplary.”] {“L.A. Metropolitan”).)

2 The question here is whether the treble damages under Code of Civil  
3 Procedure section 340.1 are simply and solely punitive in nature. Case law has  
4 held that it is primarily and solely punitive in nature thereby subject to the  
5 immunity under Government Code section 818. (*X.M. v. Superior Court*  
6 (*Hesperia Unified School District*) (2021) 68 Cal.App.5th 1014, 1025-31, review  
7 granted December 1, 2021, S271478; *Los Angeles Unified School Dist. v.*  
8 *Superior Court (Doe)* (2021) 64 Cal.App.5th 549, 552,<sup>2</sup> 558-62 and 558-62,  
9 review granted September 1, 2021, S269608 [“LAUSD”].)

10 Although neither *Los Angeles Unified School District* nor *X.M.* has  
11 precedential value, they remain with persuasive value. (Rules of Court, rule  
12 8.1115(e)(1).) Both cases provide a detailed analysis of the statute and  
13 legislative history in concluding Code of Civil Procedure section 340.1 is solely  
14 and simply punitive.

15 The LAUSD Court of Appeal stated,

16 Moreover, while section 340.1 generally serves to ensure  
17 perpetrators of sexual assault are held accountable for the harm  
18 they inflict on their vulnerable victims, the statute’s text  
19 unambiguously demonstrates the treble damages provision’s  
20 purpose is to deter future coverups by punishing past ones in a tort  
21 action. Because treble damages under section 340.1 are primarily  
22 exemplary and punitive, a public entity ... maintains sovereign  
23 immunity from liability for such damages under section 818.

24 (*LAUSD, supra*, 64 Cal.App.5th at 552.)

25 Because the reasoning in *LAUSD* and *X.M.* remains persuasive, they

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26  
27 <sup>2</sup> “Moreover, while section 340.1 generally serves to ensure perpetrators of sexual assault are held accountable  
28 for the harm they inflict on their vulnerable victims, the statute’s text unambiguously demonstrates the treble damages  
provision’s purpose is to deter future coverups by punishing past ones in a tort action. Because treble  
damages under section 340.1 are primarily exemplary and punitive, a public entity ... maintains sovereign immunity  
from liability for such damages under section 818.”

1 support concluding Government Code section 818 precludes the recovery of  
2 treble damages under Code of Civil Procedure section 340.1 against a public  
3 entity.

4 Defendant District *next* argues the treble damage prayer cannot be  
5 applied retroactively. Code of Civil Procedure section 340.1, subdivision (b),  
6 was added in 2019 with an effective date of January 1, 2020. The alleged  
7 sexual abuse and cover-up herein occurred in or before 2015-2016, which is 4  
8 and 5 years before the treble damage statute was in effect.

9 Legislative enactments are presumed to operate prospectively unless an  
10 express language or clear and unavoidable implication negates that  
11 presumption. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828,  
12 841 [*"Myers"*]; *Evangelatos v. Superior Court (Van Waters & Rogers, Inc.)*  
13 (1988) 44 Cal.3d 1188, 1208.) A retroactive statute is either declared in the  
14 statute or by clear legislative material of the intent for it to be applied  
15 retroactively. (*Myers, supra*, 28 Cal.4th at p. 841.) If the statute is unclear and  
16 even ambiguous, it is construed as prospective. (*Ibid.*)

17 Before AB 218, the then-existing Code of Civil Procedure section 340.1  
18 provided an action for sexual abuse commences within 8 years of the date the  
19 plaintiff obtained the age of majority or 3 years of the date the plaintiff  
20 discovered or should have discovered the psychological injury or illness  
21 occurring after the age of majority was caused by sexual abuse, whichever  
22 occurs later, but such action cannot be commenced after the plaintiff's 26<sup>th</sup>  
23 birthday. (2019 Cal ALS 861, 2019 Cal AB 218, 2019 Cal Stats. ch. 861.)

24 AB 218 was intended to expand the definition of childhood sexual abuse  
25 and increase the time limit for commencing an action for recovery of damages  
26 suffered as a result of childhood sexual assault. (2019 Cal ALS 861, 2019 Cal  
27 AB 218, 2019 Cal Stats. ch. 861.) The bill was also intended to provide for the  
28 recovery of treble damages against certain defendants and would revive time-

1 lapsed claims in certain circumstances. (2019 Cal ALS 861, 2019 Cal AB 218,  
2 2019 Cal Stats. ch. 861.)

3 Nothing in the plain language of Code of Civil Procedure section 340.1  
4 manifests a clear intent the treble damage provision be applied retroactively.

5 The legislative committee comments discuss the revival of time-lapsed  
6 claims but not the retroactivity of the treble damage provision. Additionally, in  
7 the Key Issues section of the Assembly Committee comments from March 12,  
8 2019 [Def's RJN, Exh. 1], one of the key issues is the retroactivity of the  
9 extension of the statute of limitations. However, no reference to retroactivity is  
10 mentioned in the key issue portion addressing whether treble damages should  
11 be included in the statute. But opponents of AB 218 raised concerns about  
12 treble damages applying retroactively. (Pl's RJN, Exh. 1, p. 11.) No response  
13 to the opposition's concern is noted, other than the flip side to the cost burden is  
14 the lifetime damage done to the abused children. (Pl's RJN, Exh. 1, p. 11.)

15 Nothing in the legislative history establishes a clear manifestation that the  
16 treble damage provision is to be applied retroactively.

17 As no clear or explicit provision within Code of Civil Procedure section  
18 340.1 or the legislative history to overcome the presumption that the treble  
19 damage provision is prospective, Plaintiff cannot seek to recover treble  
20 damages against Defendant for action occurring before January 1, 2020.

21 Therefore, the Court will strike without leave to amend the treble damage  
22 prayer.

## 23 **2. Attorney Fees (Prayer at ¶8)**

24 The Complaint prays for attorney fees against the District per Civil Code  
25 section 52 and/or Title IX. Defendant asks that the attorney fee prayer be  
26 stricken because no viable Civil Code section 51.9 cause of action is pled  
27 against it to support attorney fees under Civil Code section 52, and no cause of  
28 action under Title IX is pled.

1 Although the 8<sup>th</sup> cause of action is sustained under the Demurrer, it is with  
2 20 days leave to amend. If upon amending, Plaintiff can plead the necessary  
3 facts of ratification to support continuing with the 8<sup>th</sup> cause of action against  
4 Defendant District, then he could recover his attorney fees.

5 Thus, the Court will hold as **MOOT** the striking of the prayer for attorney  
6 fees.

7 **RULING**

8 The Court SUSTAINS with 20-days leave to amend Defendant District's  
9 Demurrer to the 5<sup>th</sup> [i.e., need to plead that statutory basis & the intentional and  
10 outrageous conduct by a District supervisor or administrative employee], 8<sup>th</sup> [i.e.,  
11 need to plead ratification], and 12<sup>th</sup> [i.e., plead the statutory basis & the fraud  
12 committed by a District supervisor or administrative employee] causes of action.

13 The Court OVERRULE Defendant District's Demurrer to the 10<sup>th</sup> cause of  
14 action.

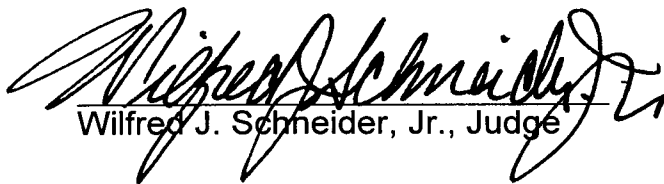
15 The Court SUSTAINS without leave to amend Defendant District's  
16 Demurrer to the 11<sup>th</sup> cause of action [i.e., no fiduciary relationship exists  
17 between Defendant District and Plaintiff RSP].

18 The Court GRANTS Defendant District's Strike Motion and STRIKE  
19 without leave to amend the Prayer at ¶4 (i.e., Government Code section 818  
20 immunizes Defendant and it is not retroactive).

21 The Court holds as MOOT Defendant District's Strike Motion as to the  
22 Prayer at ¶8 for attorney fees in light of the Demurrer ruling.

23 The Court GRANTS Defendant District's and Plaintiff RSP's requests for  
24 judicial notice.

25 Dated: May 9, 2022

26   
27 Wilfred J. Schneider, Jr., Judge  
28