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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL

10
11 JANE DOE,

12 Plaintiff,

13 vs.

14 GROSSMONT UNION HIGH SCHOOL
15 DISTRICT, and DOES 1 to 20, inclusive,

16 Defendant.

CASE NO. 37-2022-00046947-CU-PO-CTL
ACTION DATE: 10/28/2022

I/C JUDGE: Hon. Richard S. Whitney
Dept. C-68

**DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION FOR
DISCLOSURE OF EDUCATION
RECORDS PURSUANT TO
EDUCATION CODE §§ 49076 AND
49077**

Date: Feburary 2, 2023
Time: 10:30 a.m.
Dept: C-68

**[Defendant and its employees are exempt
from filing fees pursuant to Government
Code § 6103]**

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23 Defendant Grossmont Union High School District (District) hereby submits the following
24 memorandum of points and authorities in support of its opposition to Plaintiff's Motion for
25 Disclosure of Education Records Pursuant to Education Code §§ 49076 and 49077.¹

26
27 ¹ Plaintiff did not file a motion to compel further responses to discovery within 45 days of
28 service of the District's responses and Plaintiff withdrew its subpoena to the District, so there
technically are no pending discovery request outstanding. However, the District appreciates that
this is an issue which will need to be resolved in order to proceed with other discovery.

I.

INTRODUCTION

This action arises out of allegations that former Grossmont Union High School District U.S. Government/Economics teacher John Neill, sexually harassed student Jane Doe during her sixth period class on October 27, 2021. Jane Doe contends that the District knew or should have known that Mr. Neill posed a risk of harm to her or other students because the District had received previous complaints that Mr. Neill had engaged in sexual misconduct. While the District acknowledges that Mr. Neill was an individual who was at times controversial or raised controversial topics in his class (and which at times lead to student or parent complaints), these complaints are not reasonably calculated to lead to the discovery of admissible evidence because they are not relevant to the issues in this case (they do not pertain to sexual misconduct) and would be unduly prejudicial and unnecessarily violate third party student privacy rights.

The District contends that there were no prior complaints of sexual misconduct against Mr. Neill. In discovery, Plaintiff issued broad requests for complaints of any "inappropriate behavior." The District objected to these requests as they went beyond what would be reasonably calculated to lead to discovery of admissible evidence, and implicated student privacy rights. However, the District acknowledged that Mr. Neill had been the subject of prior complaints of "inappropriate" conduct for a teacher.

Other discovery asked for complaints regarding Mr. Neill on a broad number of topics after Plaintiff's complaint. The District produced documents prepared by staff, (not student records), which consisted of complaints made after the fact. However, Mr. Neill was also the subject of student complaints and protests after the fact. The District has refused to produce the prior non-sexual harassment/misconduct student complaints (because they are not relevant and the third party student privacy rights outweigh Plaintiff's need for discovery) or the subsequent student complaints (because they are not relevant to establishing whether the District knew or should have known that Mr. Neill posed a risk of harm and the third party student privacy rights outweigh Plaintiff's need for discovery) without a court order.

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II.

SUMMARY OF ARGUMENT

Plaintiff's motion alleges that the District is aware of past complaints of sexual misconduct against its former employee John Neill. This is not correct. The District has documents consisting of complaints against John Neill which were withheld in discovery based upon relevance, third party privacy rights, California Education Code § 49076 and FERPA. However, Defendant did not state that any of the Complaints are related to sexual misconduct.

Plaintiff's motion is predicated on the theory that if John Neill had been accused of sexual misconduct before Plaintiff was allegedly assaulted, those complaints would be highly relevant and establish notice. Defendant does not disagree with this premise. However, that is not the case here. Plaintiff's discovery asked the District to admit that it had received complaints of "inappropriate behavior" - not "sexual misconduct" which are very different issues. Further, Plaintiff asked for documents consisting of complaints made both before and after the allegations of Plaintiff. While complaints of sexual misconduct made before Plaintiff's allegations would be relevant to notice, complaints made against Mr. Neill after the fact would not.

If the District had received complaints that John Neill used profane language in class, wore politically objectionable t-shirts at school, or made a racist comment in class, these complaints would be responsive to Plaintiff's discovery requests but would be neither relevant or reasonably calculated to lead to admissible evidence and the third party student privacy rights would override Plaintiff's desire for this information. None of the complaints rose to the level of a finding of misconduct under Marken v. Santa Monica-Malibu Unified School District (2012) 202 Cal.App. 4th 1250, and none of them involved complaints of sexual misconduct. As a result, the District contends that the records are not germane to this action and should not be discoverable.

Further, Plaintiff's allegations were made public by Plaintiff (through posts on Instagram or other social media) and other students, which lead to significant controversy regarding Mr. Neill after the allegations had been made. To the extent that this "publicity" prompted students to come out of the woodwork and lodge complaints against Mr. Neill for any number of non-related issues, they are (1) confidential irrelevant student records protected under Education Code § 49076; (2)

1 unduly prejudicial; and (3) will confuse and mislead the jury. Evidence Code § 352. The Court
2 should not require that the District produce (1) complaints made against John Neill before the
3 allegations of Plaintiff which do not involve sexual misconduct; or (2) complaints made against
4 John Neill after the allegations of Plaintiff.

5 **III.**

6 **NON-PARTY STUDENT RECORDS ARE CONFIDENTIAL**

7 **A. Prohibition by State Law - Education Code § 49076**

8 California Education Code § 49076 prohibits the District from providing non-party student
9 records to counsel for Plaintiff absent parental consent or a court order. Here, student privacy
10 rights in their (or their parents') communications with District staff and/or administration
11 pertaining to Mr. Neill regarding any issue not involving sexual harassment or sexual misconduct
12 override Plaintiff's need for the complaints. Any unrelated complaints implicate the third party
13 students' privacy rights, involve their own personal educational issues, do not pertain to Jane Doe,
14 and do not involve sexual misconduct or allegations of sexual misconduct. Here, there are no
15 complaints of sexual misconduct or sexual harassment against Mr. Neill prior to Plaintiff's
16 allegations. The only student records at issue are ones which either pertain to unrelated issues or
17 which were made after Plaintiff's complaint.

18 Education Code § 49076 was enacted to protect the privacy of students of public schools.
19 Specifically, the first sentence of § 49076 provides "A school district is not authorized to permit
20 access to pupil records to any person without written parental consent or under judicial order..."
21 (identifying several exceptions, none of which is the type at issue in this case). Education Code §
22 49076 was enacted to protect the privacy of public school records of students. The irrelevant
23 student complaints are student records of third party students not involved in this case. While
24 Plaintiff seeks all complaints against Mr. Neill about any subject, by any third party, at any time,
25 unless the content of the complaint pertains to an issue in this case, third party students' privacy
26 rights should trump Plaintiff's desire for this information. Third party student harm could result
27 from dissemination of their private records to Plaintiff, her counsel, the court, and/or possibly the
28 public through a trial. Accordingly, the District cannot release these confidential student

1 documents without a judicial order after a finding that Plaintiff's need to know overrides their
2 privacy rights.

3 **B. The Non-Party Student's Right to Privacy Far Outweighs Plaintiff's Request**
4 **to Obtain Non-Party Student Information**

5 On a noticed motion brought by the party seeking discovery of the student record
6 information, the court can order production of the non-party students' school records, but only after
7 weighing the need for production against the non-party students' privacy interests. In this case, the
8 privacy of the non-party students' information outweighs the probative value in the case and are
9 protected by state and federal statutes and the Constitution.

10 When a third person seeks to invade a person's right to privacy, the court must carefully
11 balance the right of privacy against the need for disclosure. Britt v. Superior Court (1978) 20
12 Cal.App.3d 844, 855. In balancing the diverging interests, the court must consider the purpose of
13 the information sought, the effect that disclosure will have on the affected persons, the nature of
14 the objections urged by the party resisting disclosure, and less obtrusive means of obtaining the
15 requested information. Hooser v. Superior Court (2000) 84 Cal.App.4th 997, 1005. When
16 Grossmont objected to Plaintiff's discovery requests, it was because Plaintiff sought records
17 pertaining to any complaint that Mr. Neill had engaged in any type of "inappropriate" conduct and
18 because Plaintiff sought complaints made after Plaintiff's allegations. The discovery was not
19 limited to "sexual misconduct" which preceded Plaintiff's allegations as suggested here. In this
20 motion, Plaintiff appears to limit the request to "sexual misconduct." If that is the case, there are
21 no responsive documents and the inquiry should end. The District can provide a verification that
22 John Neill had never been accused of sexual misconduct before the allegations by Jane Doe.

23 However, to the extent that Plaintiff seeks copies of any documents of any type of
24 complaint that Mr. Neill did *anything* inappropriate, there are potentially responsive documents.
25 However, Grossmont contends that the documents are not relevant or reasonably calculated to lead
26 to the discovery of admissible evidence since they pertain to conduct unrelated to sexual
27 misconduct and allegations made after the fact. Allowing discovery of these complaints will only
28 potentially harm third party students and are unduly prejudicial.

1 In Poway Unified Sch. Dist. v. Sup. Ct. (1998) 62 Cal.App.4th 1496, the 4th District Court
2 of Appeal, Division One, discussed these privacy issues. In the Poway case, the San Diego Union
3 Tribune sought access to a number of government tort claims filed against the school district. The
4 court concluded that tort claims submitted by minors to a public School District were required to
5 be produced (in redacted form) to the Union Tribune because they were not "educational records"
6 or "pupil records." A pages 1506-1507 of the decision, the Court of Appeal discussed the issues of
7 student records and their privacy. Specifically, the court noted that Education Code § 49061(b)
8 broadly defined pupil records to include any item of information directly related to an identifiable
9 pupil, and prohibited release of any such information except as otherwise specified in the
10 Education Code. Likewise, in Porten v. University of San Francisco (1976) 64 Cal.App.3d 825,
11 the court recognized a right of privacy in student records not only in federal and state statutes, but
12 also in the California Constitution. Id., at page 832. The Court concluded that neither § 49076 or
13 FERPA were implicated because the tort claims were not student records.

14 In contrast, the documents which are potentially responsive to Plaintiff's requests are not
15 claim forms or lawsuits against Mr. Neill. They are private communications between students
16 and/or their parents and staff members pertaining to their educational experiences, grades,
17 emotional concerns, mental health etc. as well as their experiences with Mr. Neill. None of these
18 documents pertain to Plaintiff, and none of them suggest that Mr. Neill engaged in sexual
19 misconduct. They are clearly protected under § 49076 and FERPA.

20 The privacy rights of the students and the students' parents currently outweigh the
21 Plaintiff's need to obtain their information. First, Plaintiff's request was for any documents in
22 unredacted form concerning any type of complaint that Mr. Neill had done anything inappropriate.
23 As phrased, this request is so broad that it reaches to include records outside the subject matter of
24 this lawsuit, including possibly sensitive, humiliating, and irrelevant information. Such disclosure
25 would unfairly infringe on the privacy rights of the students without providing any relevance to the
26 investigation of Plaintiff's claim.

27 Plaintiff requests all documents relating to complaints about Mr. Neill, and does not limit
28 the request to sexual misconduct prior to Plaintiff's allegations as suggested in this motion. If the

1 requests had been limited to complaints of sexual misconduct, the District would have verified that
2 there were none and this motion would not have been brought. However, since the discovery
3 requests were so broad that they sought documents that would compromise students' sensitive
4 information without having any relevancy to the subject matter of this lawsuit, the District does
5 not believe it is appropriate to produce them. Such complaints involve unrelated students,
6 pertaining to issues other than sexual misconduct, and the disclosure of which would expose
7 students' private information without any benefit to Plaintiff.

8 For example, if a student emailed staff to complain that Mr. Neill made a racist comment,
9 and that it made her upset because she was an individual of that race, it would be responsive to
10 Plaintiff's discovery request because it would be a complaint of inappropriate conduct by Mr.
11 Neill. However, Plaintiff should not be allowed to argue that the District was "on notice" that Mr.
12 Neill posed a risk of sexually assaulting Plaintiff because he was a racist or had made a racist
13 comment. Production of this hypothetical record would cause undue prejudice against Mr. Neill,
14 (who is deceased and cannot explain any arguably racist comment he may have made), and
15 embarrass the individual who complained. Plaintiff cannot argue that because a teacher was a
16 racist that the teacher was a sexual predator. Further, it would unnecessarily release one of the
17 students' private educational records. Inclusion of those records would unfairly expose student
18 private information without legitimate purpose.

19 As drafted, Plaintiff and her counsel would be provided with every complaint against Mr.
20 Neill for any type of inappropriate comment, or action which someone perceived as inappropriate,
21 including extraneous and irrelevant information pertaining to that student and/or their parents,
22 regardless of whether the information can provide any utility to Plaintiff's case. The Court has to
23 weigh the privacy rights of all of the students involved against Plaintiff's desire for the
24 information. In a civil case, the plaintiff's need for private information will not easily override a
25 third party's privacy rights. Olympic Club v. Superior Court (1991) 229 Cal.App.3d 358, 363.

26 **C. Prohibition by Federal Law Federal - FERPA**

27 The Family Educational Rights and Privacy Act (FERPA) guarantees parents' access to
28 student records and also the privacy of these records. See 20 U.S. Code § 1232g; Owasso

1 Independent School District Number I-011 v. Falvo (2002) 534 US 426, 434; 7, Witkin, Summary
2 of California Law, Constitutional Law Chapter X, Chapter X, § 607. In the U. S. Supreme Court
3 case of Falvo, the Supreme Court stated that under FERPA, educational institutions are required to
4 keep educational records confidential and access shall be available only to parents and to school
5 officials who are responsible for the custody of such records. Id., at page 434; 20 U.S. Code §
6 1232g(b)(4)(A).

7 In recognizing that any state statute authorizing the disclosure of educational records is
8 preempted by FERPA, the court in Rim of the World Unified School District v. Superior Court
9 (2002) 104 Cal.App.4th 1393, 1397 held that FERPA preempts California law and the reasons that
10 United States Congress enacted FERPA was "to assure parents of students . . . access to their
11 educational records and to protect such individuals' rights to privacy by limiting the transferability
12 of their records without their consent." Production of the requested student records without a court
13 order exposes Grossmont to loss of federal funding.

14 **D. The Records and Information Requested are Overbroad; Plaintiff has No**
15 **Particularized Need for the Records Sought; and Third Party Privacy Rights**
16 **Supersede Plaintiff's Desire for the Records**

17 The documents sought are protected by Education Code § 49076 and FERPA. The
18 requests are overbroad because they are not limited to sexual misconduct as suggested in the
19 moving papers, Plaintiff has no particularized need for the records sought, and any potential
20 relevancy of the records is outweighed by third party student privacy rights. In order for the Court
21 to order production of the records, the Court must determine that the Plaintiff has a need to see the
22 confidential record, inquire of District staff regarding the record, potentially question the third
23 party student about the content of the record, etc.

24 If one of the students made a complaint that something Mr. Neill did or said caused that
25 individual to suffer anxiety or depression because the student found it inappropriate (but it did not
26 involve sexual harassment or abuse of the complainant) Plaintiff's counsel should not be entitled to
27 review records of that. If a student in one of Mr. Neill's classes heard about the allegations made
28 by Plaintiff and then complained that he or she no longer wanted to be in Mr. Neill's class, this

1 confidential student record should not be discoverable. However, as phrased, the requests reach
2 far outside the subject matter of this lawsuit, including possibly sensitive, humiliating, and
3 irrelevant information. Such disclosure would unfairly infringe on the privacy rights of the
4 students without providing any relevance to the investigation of Plaintiff's claim. Further, any
5 complaint received after Jane Doe's alleged assault is not relevant to any claim or defense here.

6 In ruling on this motion, the Court has to weigh the privacy rights of all of the students
7 involved against Plaintiff's need to know. Far more is sought in this motion than could ever be
8 relevant in this case. Under Britt and Thompson, the majority of the information sought should
9 remain confidential. Plaintiff contends the records are discoverable in order to establish the
10 District had notice that John Neill was a threat to the school population including Plaintiff and
11 failed to mitigate that threat. The claims would necessarily depend on whether or not John Neill
12 had sexually harassed or assaulted a student prior to the date of the subject incident. As a result,
13 any issues of "notice" to the District or alleged proper "action" by the District would be limited to
14 evidence specifically related to sexual misconduct, which took place within a reasonable period of
15 time prior to the incident with Plaintiff. Further, any complaint pertaining to Mr. Neill after the
16 incident with Plaintiff would be irrelevant and inadmissible.

17 As drafted, the District contends that the motion should be denied. However, in the
18 interest of judicial economy, in the event the Court is inclined to partially grant the motion, the
19 District contends that only the following information and/or documents be discoverable:

- 20 • Any complaint received by the District concerning an allegation of sexual
21 misconduct by John Neill which occurred before the incident with Plaintiff. Third
22 party student, medical or psychological information is to be redacted by the District.
- 23 • To the extent that there are no such records, the District shall provide a verification
24 to that effect.

25 In the event the Court orders production of any records or information, the District requests
26 that counsel for Plaintiff be ordered to enter into a protective order with regard to use of the
27 records and information that complies with FERPA.

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IV.

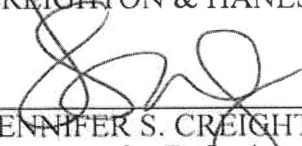
CONCLUSION

Public school pupil records and the information contained therein are confidential absent parental consent or a Court order. The law is clear in this regard. Any complaining non-party students have not consented to release of their confidential information and the information and documents sought would significantly compromise their privacy rights.

Grossmont Union High School District respectfully requests the Court deny Plaintiff's Motion in its entirety as currently drafted. Plaintiff has not provided the Court with sufficient evidence to override the students' privacy rights. The Court must balance the competing interests of the Plaintiff's actual need (rather than desire) for the student records and information, versus the third party students' Constitutional, state and federal privacy rights. The Court must prohibit disclosure of documents that implicate serious privacy rights and which do not pertain to or have any bearing on this lawsuit. In the alternative, Grossmont Union High School District asks that the Court issue an order requiring the District to release *only* those student records which directly pertain to the subject matter of this litigation and subject to a FERPA protective order.

Dated: 1/24/2024

WINET PATRICK GAYER
CREIGHTON & HANES

By: 

JENNIFER S. CREIGHTON
Attorneys for Defendant
Grossmont Union High School District

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 01, 2024

EVENT DATE: 02/02/2024

EVENT TIME: 10:30:00 AM

DEPT.: C-68

JUDICIAL OFFICER: Richard S. Whitney

CASE NO.: 37-2022-00046947-CU-PO-CTL

CASE TITLE: DOE VS GROSSMONT UNION HIGH SCHOOL DISTRICT [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Discovery Hearing

CAUSAL DOCUMENT/DATE FILED:

TENTATIVE RULING: PLAINTIFF'S MOTION FOR DISCLOSURE OF EDUCATION RECORDS PURSUANT TO EDUCATION CODE § 49076 and 49077 is MOOT.

Plaintiff Jane Doe ("Plaintiff") seeks an order compelling Defendant Grossmont Union High School District ("Defendant") to disclose pupil records. Defendant asserts the information sought is not relevant and far outweighed by the privacy interests of the students. It is undisputed that there is currently no outstanding discovery to compel, but the parties agree the Court should address the issue. While the Court finds the discovery dispute is moot, given the withdrawal of the subpoena to Defendant, the Court elects to address the issue to prevent future motion work on the issue.

"A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except..." under circumstances not relevant here. (Ed. Code, § 49076(a).) "Information concerning a pupil shall be furnished in compliance with a court order or a lawfully issued subpoena." (Ed. Code, § 49077(a).) The California Supreme Court has described the manner to address privacy concerns in the context of discovery disputes as follows:

The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. [Citation] The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations.

(*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.) "The burden is on the party seeking the constitutionally protected information to establish direct relevance." (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017.)

The Court finds Plaintiff has sufficiently demonstrated that requests for records related to inappropriate behavior by John Neill are reasonably calculated to lead to the discovery of admissible evidence as they could reveal whether Defendant was aware that Defendant needed closer supervision or training. While the complaints by students may not relate directly to sexual misconduct, the complaints may lead to evidence as to Defendant's notice of John Neill's need for supervision and/or training. However, this conclusion does not apply to complaints made about John Neill after the incident in this case as they could not have been a "red flag" to Defendant. Therefore, the Court finds it should balance the privacy interests of the students against that of Plaintiff's interests as to complaints prior to the incident in this

case, but not as to complaints after the incident.

The Court finds that if the student records are redacted as to any identifying information of the student, the privacy concerns would be assuaged such that the Court would order disclosure by Defendant as to complaints of inappropriate conduct prior to the incident.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 02/02/2024

TIME: 10:30:00 AM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Richard S. Whitney
CLERK: Valeria Contreras, Richard Cersosimo
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: H. Whatley

CASE NO: **37-2022-00046947-CU-PO-CTL** CASE INIT.DATE: 10/28/2022
CASE TITLE: **Doe vs Grossmont Union High School District [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Civil Case Management Conference

EVENT TYPE: Discovery Hearing

APPEARANCES

Sam Clemons, counsel, present for Plaintiff(s) via remote audio conference.
Jennifer S Creighton, counsel, present for Defendant(s).

All parties submit(s) on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

PLAINTIFF'S MOTION FOR DISCLOSURE OF EDUCATION RECORDS PURSUANT TO EDUCATION CODE § 49076 and 49077 is MOOT.

Plaintiff Jane Doe ("Plaintiff") seeks an order compelling Defendant Grossmont Union High School District ("Defendant") to disclose pupil records. Defendant asserts the information sought is not relevant and far outweighed by the privacy interests of the students. It is undisputed that there is currently no outstanding discovery to compel, but the parties agree the Court should address the issue. While the Court finds the discovery dispute is moot, given the withdrawal of the subpoena to Defendant, the Court elects to address the issue to prevent future motion work on the issue.

"A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except..." under circumstances not relevant here. (Ed. Code, § 49076(a).) "Information concerning a pupil shall be furnished in compliance with a court order or a lawfully issued subpoena." (Ed. Code, § 49077(a).) The California Supreme Court has described the manner to address privacy concerns in the context of discovery disputes as follows:

DATE: 02/02/2024
DEPT: C-68

MINUTE ORDER

Page 1
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The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. [Citation] The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations.

(*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.) "The burden is on the party seeking the constitutionally protected information to establish direct relevance." (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017.)

The Court finds Plaintiff has sufficiently demonstrated that requests for records related to inappropriate behavior by John Neill are reasonably calculated to lead to the discovery of admissible evidence as they could reveal whether Defendant was aware that Defendant needed closer supervision or training. While the complaints by students may not relate directly to sexual misconduct, the complaints may lead to evidence as to Defendant's notice of John Neill's need for supervision and/or training. However, this conclusion does not apply to complaints made about John Neill after the incident in this case as they could not have been a "red flag" to Defendant. Therefore, the Court finds it should balance the privacy interests of the students against that of Plaintiff's interests as to complaints prior to the incident in this case, but not as to complaints after the incident.

The Court finds that if the student records are redacted as to any identifying information of the student, the privacy concerns would be assuaged such that the Court would order disclosure by Defendant as to complaints of inappropriate conduct prior to the incident.

The Court hears the Case Management Conference.

Pursuant to the stipulation of parties, no procedure or deadline set forth herein may be modified, extended or avoided by stipulation or agreement of the parties unless approved by the Court in advance of the date sought to be altered.

Pursuant to stipulation of the parties, no new parties may be added without leave of court and all unserved, non-appearing and fictitiously named parties are dismissed today.

Jury demanded by all parties.

Estimated length of trial: 10 days

The Trial Readiness Conference (Civil) is scheduled for 01/10/2025 at 09:15AM before Judge Richard S. Whitney.

The Civil Jury Trial is scheduled for 01/24/2025 at 09:00AM before Judge Richard S. Whitney.

All Motions and Discovery are to be completed 12/27/2024. Motion for Summary Judgment / Summary Adjudication will be heard pursuant to code. First expert exchange to be completed by 10/25/2024. Second expert exchange to be completed by 11/08/2024. Posting of jury fees is pursuant to code.

Parties waive notice.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

MINUTE ORDER

DATE: 01/07/2025

TIME: 4:37 PM

DEPT: C-68

JUDICIAL OFFICER: RICHARD S. WHITNEY

CLERK: Richard Cersosimo

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00046947-CU-PO-CTL** CASE INIT.DATE: 10/28/2022

CASE TITLE: **Doe vs Grossmont Union High School District [IMAGED]**

CASE CATEGORY: Civil CASE TYPE: (U)Other PI/PD/WD: PI/PD Other

The courtroom clerk spoke with Kathy, from Attorney Samuel Clemens' office (counsel for Plaintiff), and was informed that this case has settled.

The Court places this case on the 90-day dismissal track and vacates all future hearing dates.

Richard S. Whitney

Judge Richard S. Whitney

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4

Attorneys for Defendant Grossmont Union High School District
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL
10

11 JANE DOE,

12 Plaintiff,

13 vs.

14 GROSSMONT UNION HIGH SCHOOL
DISTRICT, and DOES 1 to 20, inclusive,

15 Defendant.
16
17
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CASE NO. 37-2022-00046947-CU-PO-CTL
ACTION DATE: 10/28/2022
I/C JUDGE: Hon. Richard S. Whitney
Dept. C-68

[IMAGED FILE]

**ANSWER TO FIRST AMENDED
COMPLAINT**

**[Defendant and its employees are exempt
from filing fees pursuant to Government
Code § 6103]**

19 COMES NOW Defendant GROSSMONT UNION HIGH SCHOOL DISTRICT, and
20 severing itself from all Co-Defendants, in answer to the First Amended Complaint on file herein,
21 as follows:

22 1. Inasmuch as the First Amended Complaint is not verified under the provisions of
23 Section 431.30 of the California Code of Civil Procedure, this answering Defendant denies
24 generally each, every and all of the allegations in said Complaint, and the whole thereof, including
25 denial of all sums and amounts alleged, to be alleged or otherwise.

26 2. Further answering said First Amended Complaint and the whole thereof, this
27 answering Defendant denies that the Plaintiff has sustained or will sustain any injury, damage or
28 loss by reason of any act, omission, or negligence, or any other conduct or absence thereof, on the

1 part of this answering Defendant, or any agent, servants, or employee of this answering Defendant,
2 and denies that Defendant was negligent, careless, reckless, acted unlawfully, or was guilty of any
3 other wrongful act or omission whatsoever.

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Fails to State Facts Sufficient to Constitute a Cause of Action)**

6 3. As and for a First, separate and affirmative defense to the First Amended Complaint
7 and to each purported cause of action contained therein, this answering Defendant alleges: That
8 the Complaint, and each purported cause of action contained therein, fails to state facts sufficient
9 to constitute a cause of action against the answering Defendant.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Offset and Civil Code § 1431.2)**

12 4. As and for a Second, separate and affirmative defense to the First Amended
13 Complaint and to each purported cause of action contained therein, this answering Defendant
14 alleges: That pursuant to Civil Code § 1431.2 (Prop. 51) and other provisions of California law
15 that this answering Defendant is entitled to appropriate set-offs, including John Neill being placed
16 on the jury verdict form and being liable for his percentage of non-economic damages, with the
17 Grossmont Union High School District entitled to all appropriate set-offs under California law.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Failure of Complaint to Correspond with Claim)**

20 5. As and for a Third, separate and affirmative defense to the First Amended
21 Complaint and to each purported cause of action contained therein, this answering Defendant
22 alleges: That the allegations in the Complaint do not correspond with the government claim, and
23 therefore Plaintiff is not entitled to recovery for those claims.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Untimely Government Claim)**

26 6. As and for a Fourth, separate and affirmative defense to the First Amended
27 Complaint and to each purported cause of action contained therein, this answering Defendant

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1 alleges: That the Plaintiff's government claims are untimely and incomplete thereby barring
2 Plaintiff's right to recovery.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Statute of Limitations)**

5 7. As and for a Fifth, separate and affirmative defense to the First Amended
6 Complaint and to each purported cause of action contained therein, this answering Defendant
7 alleges: That Plaintiff's claims are barred by the applicable statute of limitations, including
8 Government Code § 911.2 and Code of Civil Procedure § 340.1.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Damages are Denied and Unforeseeable)**

11 8. As and for a Sixth, separate and affirmative defense to the First Amended
12 Complaint and to each purported cause of action contained therein, this answering Defendant
13 alleges: That the injuries claimed by Plaintiff are denied and unforeseeable to this answering
14 Defendant.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Government Immunity)**

17 9. As and for a Seventh, separate and affirmative defense to the First Amended
18 Complaint and to each purported cause of action contained therein, this answering Defendant
19 alleges: That the claims asserted by Plaintiff against this answering Defendant are barred by the
20 doctrine of government immunity.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 **(Discretionary Acts Immunity)**

23 10. As and for an Eighth, separate and affirmative defense to the First Amended
24 Complaint and to each purported cause of action contained therein, this answering Defendant
25 alleges: That the acts and/or omissions of Defendant, if any, were discretionary acts entitling the
26 Defendant to immunity for those acts or omissions.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Failure to Exhaust All Administrative Remedies)**

3 11. As and for a Ninth, separate and affirmative defense to the First Amended
4 Complaint, and to each purported cause of action contained therein, this answering Defendant
5 alleges: That Plaintiff failed to exhaust all administrative remedies prior to filing suit, thereby
6 barring her claims.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(Failure to Mitigate)**

9 12. As and for a Tenth, separate and affirmative defense to the First Amended
10 Complaint and to each purported cause of action contained therein, this answering Defendant
11 alleges: That Plaintiff's conduct rather than conduct of the Defendant proximately caused the
12 losses alleged as Plaintiff failed to exercise reasonable care and diligence to avoid loss and avoid
13 damages incurred, if any, as a result of the events alleged in Plaintiff's First Amended Complaint,
14 and Plaintiff cannot recover for losses which might have been prevented by exercise of reasonable
15 efforts and expenditures to avoid such loss.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 **(Government Code § 985)**

18 13. As and for an Eleventh, separate and affirmative defense to the First Amended
19 Complaint and to each purported cause of action contained therein, this answering Defendant
20 alleges: That Defendant denies liability for any of Plaintiff's claims, but if Plaintiff is successful at
21 obtaining any type of damage award against Defendant Grossmont Union High School District,
22 the Defendant requests the court order damages be paid pursuant to the provisions of Government
23 Code §985.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(No Legal Cause)**

26 14. As and for a Twelfth, separate and affirmative defense to the First Amended
27 Complaint and to each purported cause of action contained therein, this answering Defendant
28 alleges: That this answering Defendant was not the legal cause of Plaintiff's injuries and damages.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(No Statutory Liability)**

3 15. As and for a Thirteenth, separate and affirmative defense to the First Amended
4 Complaint and to each purported cause of action contained therein, this answering Defendant
5 alleges: That the Complaint does not state a proper statutory basis for liability against this
6 answering Defendant.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 **(School District is not Vicariously Liable)**

9 16. As and for a Fourteenth, separate and affirmative defense to the First Amended
10 Complaint and to each purported cause of action contained therein, this answering Defendant
11 alleges: That the School District is not vicariously liable for the intentional acts of John Neill.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 **(Outside Scope of Employment/No Vicarious Liability)**

14 17. As and for a Fifteenth, separate and affirmative defense to the First Amended
15 Complaint and to each purported cause of action contained therein, this answering Defendant
16 alleges: That the acts alleged against John Neill were intentional acts by him, outside the course
17 and scope of his employment, and do not subject this answering Defendant to vicarious liability.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Establish Individual Knowledge by District Employee)**

20 18. As and for a Sixteenth, separate and affirmative defense to the First Amended
21 Complaint and to each purported cause of action contained therein, this answering Defendant
22 alleges: That Plaintiffs cannot establish knowledge of actions by John Neill by any individual
23 employee of the District other than John Neill.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 **(Apportionment of Fault)**

26 19. As and for a Seventeenth, separate and affirmative defense to the First Amended
27 Complaint and to each purported cause of action contained therein, this answering Defendant
28 alleges: This answering Defendant denies that Defendant was negligent in any fashion with

1 respect to the damages, losses, injuries and debts claimed by the Plaintiff in the First Amended
2 Complaint on file herein; however, if this answering Defendant is found to be negligent (which
3 supposition is denied and merely stated for the purpose of this affirmative defense), then this
4 answering Defendant provisionally alleges that Defendant's negligence is not the sole and
5 proximate cause of the resultant damages, losses and injuries alleged by Plaintiff in that the
6 damages awarded to Plaintiff, if any, to be apportioned according to the respective fault of the
7 parties, persons, and entities, or their agents, servants, and employees who contributed to and/or
8 caused said resultant damages as alleged, according to the proof presented at the time of trial. That
9 to assess any greater percentage of fault and damages against this answering Defendant in excess
10 of Defendant's percentage of fault would be a denial of California equal protection and due process
11 and Federal equal protection and due process, all guaranteed by the respective constitutions.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 **(No Claim for Breach of Mandatory Duty or Negligence Per Se)**

14 20. As and for an Eighteenth, separate and affirmative defense to the First Amended
15 Complaint and to each purported cause of action contained therein, this answering Defendant
16 alleges: That the First Amended Complaint does not allege a cause of action for breach of
17 mandatory duty, no such cause of action has been pled, and the statutes and regulations relied upon
18 by Plaintiff do not constitute mandatory/obligatory duties, or were not enacted for the type of
19 injuries for which Plaintiff claims, and are not causally related to the claims of Plaintiff. Further,
20 such statutes and regulations do not constitute negligence per se and are subject to a motion to
21 strike/summary adjudication.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 **(No Cause of Action for Negligent Supervision of Students)**

24 21. As and for a Nineteenth, separate and affirmative defense to the First Amended
25 Complaint and to each purported cause of action contained therein, this answering Defendant
26 alleges: That Plaintiff has not and cannot allege that Plaintiff's damages were caused based upon
27 the negligent supervision of any student, including Plaintiff.

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TWENTIETH AFFIRMATIVE DEFENSE

(No Reasonable Suspicion of Child Abuse by Employees of GUHSD)

22. As and for a Twentieth, separate and affirmative defense to the First Amended Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That none of the employees of Grossmont Union High School District had reasonable suspicion that Plaintiff was subject to child abuse or had suffered any injury or incident which would trigger their mandated reporting obligations.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Criminal Activity of John Neill)

23. As and for a Twenty-First, separate and affirmative defense to the First Amended Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That Plaintiff's claims are barred against this answering Defendant because Plaintiff's injuries and damages, if any, were caused by the criminal acts of John Neill.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Reasonable Precautions Taken)

24. As and for a Twenty-Second, separate and affirmative defense to the First Amended Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That this answering Defendant and its employees took reasonable precautions against any risk of injury or damage prior to the subject incident.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Intervening, Superseding Actions of Others)

25. As and for a Twenty-Third, separate and affirmative defense to the First Amended Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That Plaintiff's claims are barred due to the intervening, superseding actions of third parties.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Notice of Unfitness of Employees)

26. As and for a Twenty-Fourth, separate and affirmative defense to the First Amended Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That this answering Defendant had no notice of any employees involved in the alleged incidents at issue in the Complaint were unfit for employment with the School District.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Acts of Third Parties)

27. As and for a Twenty-Fifth, separate and affirmative defense to the First Amended Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That Plaintiff's damages, if any, were proximately caused by the negligent, reckless, or intentional acts of third parties as to whom this answering Defendant has neither the right, duty, nor the opportunity to exercise control over and who acted without the knowledge, participation, ratification, or approval of this answering Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Government Code § 815)

28. As and for a Twenty-Sixth, separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That this answering Defendant is not liable to Plaintiff for the injuries and damages claimed pursuant to Government Code § 815(a) and (b).

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(District Not Liable For Employee Intentional Act)

29. As and for an Twenty-Seventh, separate and affirmative defense to the Complaint and to each purported cause of action contained therein, this answering Defendant alleges: That the actions of John Neill were not foreseeable, and that his actions were outside the course and scope of his employment with the Grossmont Union High School District.

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1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 **(No Claim for Common Law Negligence)**

3 30. As for a Twenty-Eighth, separate and affirmative defense to the Complaint and
4 each purported cause of action contained therein, this answering Defendant alleges: that the claim
5 for general negligence against this answering Defendant is not permissible under California law
6 and Government Code § 815.

7 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

8 **(School District Liability Must be Based on Evidence of Negligent Hiring**
9 **Supervision or Retention)**

10 31. As for a Twenty-Ninth, separate and affirmative defense to the Complaint and each
11 purported cause of action contained therein, this answering Defendant alleges: that the School
12 District's liability must be based on evidence of negligent hiring, supervision or retention, not on
13 assumptions or speculation. C.A. v. William S. Hart Union High School District (2012) 53
14 Cal.4th 861, 878.

15 **THIRTIETH AFFIRMATIVE DEFENSE**

16 **(No Per Se Presumptions of Liability of School District Based Upon Sexual**
17 **Assault Act by School District Employee)**

18 32. As for a Thirtieth, separate and affirmative defense to the Complaint and each
19 purported cause of action contained therein, this answering Defendant alleges: that the fact that a
20 School District employee committed sexual misconduct with a student does not of itself establish
21 or raise any presumption that the employing district bears liability for the resulting injuries. C.A.
22 v. William S. Hart Union High School District (2012) 53 Cal.4th 861, 878.

23 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

24 **(No Liability for Criminal Act of Third Parties Without Actual Notice of Dangerous**
25 **Propensities)**

26 33. As and for a Thirty-First, separate and affirmative defense to the Complaint and
27 to each purported cause of action contained therein, this answering Defendant alleges: That
28 Defendant cannot be liable for the criminal acts of third parties even when that party is under

1 defendant's supervision, when the defendant had no actual knowledge of the third party's
2 dangerous or assaultive propensities. Romero v. Superior Court (2001) 89 Cal.App.4th 1068.

3 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

4 **(Reserved Affirmative Defense)**

5 34. As and for a Thirty-Second, separate and affirmative defense to the First Amended
6 Complaint and to each purported cause of action contained therein, this answering Defendant
7 alleges: That Defendant presently has insufficient knowledge or insufficient information upon
8 which to form a belief as to whether it may have additional, yet unasserted, affirmative defenses.
9 Defendant therefore reserves the right to assert additional affirmative defenses in the event
10 discovery indicates it would be appropriate.

11 WHEREFORE, this answering Defendant prays for judgment as follows:

- 12 1. That Plaintiff take nothing by virtue of Plaintiff's First Amended Complaint;
- 13 2. For costs of suit incurred herein; and
- 14 3. For such other and further relief as the court may deem just and proper.

15 Dated: 3-30-03

WINET PATRICK GAYER
CREIGHTON & HANES

16
17 By: 

18 JENNIFER S. CREIGHTON
19 Attorneys for Defendant
Grossmont Union High School District

From: Randy Montesanto [REDACTED]
Sent: Friday, May 6, 2022 11:15 AM
To: Laura Whitaker
Subject: Re: Reports of Harassment from Students

That's my little pot stirrer. I have never talked to her about Neill. Most of this I have heard before. I am concerned that he has the Nazi flag back up. Thank god we have an exit form on him.

Sent from my iPhone

On May 6, 2022, at 10:41 AM, Laura Whitaker [REDACTED] wrote:

FYI...your school.
If you need to interview Kaylee, let me know, as it would probably be better if I did it.
Thanks,
L

----- Forwarded message -----

From: Laura Whitaker [REDACTED]
Date: Fri, May 6, 2022 at 10:40 AM
Subject: Re: Reports of Harassment from Students
To: Kaylee Montesanto [REDACTED]
Cc: Daniel Barne [REDACTED]

Hi Kaylee,
Thank you for your report. We will look into this matter.
Please feel free to continue to send us anything you hear, and if we need to ask you any further questions, we'll let you know.
Thanks again,
Laura

On Fri, May 6, 2022 at 10:37 AM Kaylee Montesanto <kmontesanto@guhsd.net> wrote:
Additionally, students have continued to approach me and told me the following:

Allegedly, Mr. Neill has said that he has carried a knife on him at school. He has always said things such as, "If a boy brings my daughter home one minute late, I'm grabbing my gun." Another student pulled me aside to say that she had been the first student in the class one day, and saw a website projected on the board where Mr. Neill was actively gun shopping. I do not know the extent to which this information is true, and I do not have evidence of this. I did my best not to provoke the students, however I felt the responsibility to report this to you out of concern.

Thank you for your time.

Kaylee Montesanto

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On Fri, May 6, 2022 at 10:08 AM Kaylee Montesanto [REDACTED] wrote:
Hi there Dan and Laura,

My name is Kaylee Montesanto, and I am a substitute teacher for the Grossmont Union High School District, I have been working with the district for over 2 years. Currently, I am filling in for a Teacher Vacancy at Grossmont High School. While substituting today for John Neill, I received some disturbing reports from the students in 3rd period.

Students, nearly 20 of them, were telling me of the inappropriate comments that Mr. Neill has made towards both male and female students. To female students, he has reportedly said things such as, "Your hair looks very attractive today," and "You're a pretty girl," and "You look really good today." Towards the whole class he has made comments such as "I have videos of my old students twerking," and "I have a very attractive class." Female students have reported him sliding his hands down their shoulders when they had asked to go to the bathroom, saying "Of course you can go any time.." To male students, he was reported as saying, "If you cheat on your test, you'll cheat on your wife... never date this guy!"

He has also been reported as making racist comments such as "The coronavirus came from the Chinese." Students also mentioned the significance of the Nazi flag that he has hanging in his classroom, which makes them very uncomfortable. The entire class said that he also has told them that he has a hidden camera in the classroom, and will not tell them where it is. He has told them that he watches it back to "review his performance."

As a mandated reporter, I find all of these claims very disturbing. The students also mentioned an incident which I assume you are aware of, where he placed his hand on the behind of a female student. I hope that this is helpful information, and I am happy to complete a formal document if necessary. I found the desperation of the students disturbing as well, given that this information was provided to me without my asking. The students said that they are always happy when they have a sub, because Mr. Neill makes them so uncomfortable. This leads me to believe that the students do not feel safe, and I believe that this is something of which the administration should be aware.

Thank you in advance for your time and consideration of our students.

Best,
Kaylee Montesanto

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Laura Whitaker
Director, Human Resources
Grossmont Union High School District
(619) 644-8023
<https://twitter.com/GrossmonthHR>

GUHSD Human Resources...Keeping People First

--

Laura Whitaker
Director, Human Resources
Grossmont Union High School District
(619) 644-8023
<https://twitter.com/GrossmonthHR>

GUHSD Human Resources...Keeping People First

EXHIBIT 3

1 JENNIFER S. CREIGHTON (State Bar No. 202799)
2 WINET PATRICK GAYER CREIGHTON & HANES
3 1215 WEST VISTA WAY
4 VISTA, CALIFORNIA 92083-6227
5 Telephone: (760) 758-4261
6 Email: jcreighton@wpgch.com

7 Attorneys for Defendant Grossmont Union High School District

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL

10
11 JANE DOE,

12 Plaintiff,

13 vs.

14 GROSSMONT UNION HIGH SCHOOL
15 DISTRICT, and DOES 1 to 20, inclusive,

16 Defendant.

CASE NO. 37-2022-00046947-CU-PO-CTL
ACTION DATE: 10/28/2022

I/C JUDGE: Hon. Richard S. Whitney
Dept. C-68

[IMAGED]

**RESPONSE TO FORM
INTERROGATORIES**

**[Defendant and its employees are exempt
from filing fees pursuant to Government
Code § 6103]**

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19 **PROPOUNDING PARTY: PLAINTIFF, JANE DOE**

20 **RESPONDING PARTY: DEFENDANT, GROSSMONT UNION HIGH SCHOOL**
21 **DISTRICT**

22 **SET NUMBER: ONE**

23 **TO: PLAINTIFF AND TO HER ATTORNEYS OF RECORD:**

24 **PRELIMINARY STATEMENT**

25 These responses are made solely for the purpose of and in relation to this action. Each
26 answer is given subject to all appropriate objections (including but not limited to objections
27 covering competency, relevancy, materiality, propriety and admissibility) which would require the
28 exclusion of any statement contained herein if it was made by a witness present and testifying in

1 court. All such objections and grounds therefore are reserved and may be interpreted at the time of
2 trial.

3 The party on whose behalf the answers and responses are given has not yet completed its
4 investigation of the facts relating to this action, has not completed its discovery in this action, and
5 has not yet completed its preparation for trial. Consequently, the following answers are given
6 without prejudice to the answering parties' right to produce at the time of trial subsequently
7 discovered evidence, relating to the proof of facts subsequently discovered to be material.

8 **RESPONSES TO FORM INTERROGATORIES**

9 **FORM INTERROGATORY NO. 1.1:**

10 State the name, ADDRESS, telephone number, and relationship to you of each PERSON
11 who prepared or assisted in the preparation of the responses to these interrogatories. (Do not
12 identify anyone who simply typed or reproduced the responses.)

13 **RESPONSE TO FORM INTERROGATORY NO. 1.1:**

14 Defendant's attorneys at Winet Patrick Gayer Creighton & Hanes, 1215 West Vista Way,
15 Vista, California 92083.

16 **FORM INTERROGATORY NO. 3.1:**

17 Are you a corporation? If so, state:

- 18 (a) The name stated in the current articles of incorporation;
19 (b) all other names used by the corporation during the past ten years and the dates each
20 was used;
21 (c) the date and place of the incorporation;
22 (d) the ADDRESS of the principal place of business; and
23 (e) whether you are qualified to do business in California.

24 **RESPONSE TO FORM INTERROGATORY NO. 3.1:**

25 No.

26 **FORM INTERROGATORY NO. 3.2:**

27 Are you a partnership? If so, state:

- 28 (a) the current partnership name;

- 1 (b) all other names used by the partnership during the past ten years and the dates each
2 was used;
- 3 (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
- 4 (d) the name and ADDRESS of each general partner; and
- 5 (e) the ADDRESS of the principal place of business.

6 **RESPONSE TO FORM INTERROGATORY NO. 3.2:**

7 No.

8 **FORM INTERROGATORY NO. 3.3:**

9 Are you a limited liability company? If so, state:

- 10 (a) the name stated in the current articles of organization;
- 11 (b) All other names used by the company during the past ten years and the date each
12 was used;
- 13 (c) the date and place of filing of the articles of organization;
- 14 (d) the ADDRESS of the principal place of business; and
- 15 (e) whether you are qualified to do business in California.

16 **RESPONSE TO FORM INTERROGATORY NO. 3.3:**

17 No.

18 **FORM INTERROGATORY NO. 3.4:**

19 Are you a joint venture? If so, state:

- 20 (a) the current joint venture name;
- 21 (b) all other names used by the joint venture during the past ten years and the dates
22 each was used;
- 23 (c) the name and ADDRESS of each joint venturer; and
- 24 (d) the ADDRESS of the principal place of business.

25 **RESPONSE TO FORM INTERROGATORY NO. 3.4:**

26 No.

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