PROPOSED TENTATIVE

On May 5, 2023, plaintiff Paulina Cordero, a minor by and through her guardian ad litem Rufino Cordero (hereafter, plaintiff), filed a complaint against defendants Lompoc Unified School District (hereafter defendant Lompoc), Lompoc High School,[1] Miguel Tovar (a minor) (hereafter, defendant Tovar), "Devon Doe" (a minor) (hereafter, defendant Devon Doe), and Lorrie Tobias (a teacher) (hereafter, defendant Tobias), for assault (naming defendants Tovar, Devon Doe, and Tobias); battery (naming defendants Tovar, Devon Doe, and Tobias); violations of Civil Code sections 1708.5 (naming defendants Tovar and Devon Doe) and 52.4 (naming defendants Tovar and Devon Doe); willful misconduct (naming defendants Tovar and Devon Doe); intentional infliction of emotional distress (naming defendants Tovar and Devon Doe); negligent failure to warn (naming generic Doe defendants, and not any named defendants above); a violation of Government Code section 815, et seq., (naming defendant Lompoc and Does 41 to 50); and injunctive relief (naming defendant Lompoc and Does 41 to 50). ***Only*** the eighth and ninth causes of action names defendant Lompoc as a party.

Briefly, according to the operative pleading, plaintiff is a special needs student, and on August 15, 2022, while on the Lompoc High School campus, defendant Tovar struck her and "placed his hand down Plaintiff's pants, making digital contact with Plaintiff's sexual organ . . . ." Defendant Tovar on October 27, 2022, again approached plaintiff, grabbed her buttocks, and "placed his hand down Plaintiff's pants, making digital contact with Plaintiff's sexual organ . . . ." In late August 2022, defendant Devon Doe, also on the Lompoc High School campus, "threatened to kill Plaintiff and struck her in the head . . . ." Between February 1 and February 14, 2023, again on Lompoc High School campus, defendant Tobias (at teacher) and general Doe defendants "assaulted Plaintiff (3) three separate times whereby [Tobias and Doe defendants] grabbed [Plaintiff] by her clothing, pulled Plaintiff around the classroom, and then forced Plaintiff to stand alone in the corner of the classroom as punishment for kicking her heels apart . . . ." As relevant for our purposes, the eighth cause of action, based on a violation of Government Code section 815, et seq. names defendant Lompoc as a party and claims it is liable based on the acts committed by defendant Tovar (both incidents), the single incident involving defendant Devon Doe, and the incidents involving defendant Tobias. That is, plaintiff alleges that defendant Lompoc "through their employees and agents, knew or reasonably should have known, of the dangerous habits and propensities for assault and battery" of defendant Tovar, defendant Devon Doe, and defendant Tobias, "and "that as a special needs classmate and student, Plaintiff was imperiled by same." "In connection with the [the incidents], [defendants Lompoc] through the acts and omissions of their employees and agents . . . , negligently failed to warn Plaintiff of the dangerous habits and propensities for assault and battery" involving the incidents from all three individually named defendants (Tovar, Devon Doe, and Tobias), and "negligently failed to warn Plaintiff of the dangerous habits and propensities for assault and battery . . . despite having actual and/or constructive knowledge of same in sufficient time to have avoided the harm . . . ." Defendant Lompoc answered on December 27, 2023, and filed a cross-complaint against the other individual defendants. It appears no other defendants have answered as of this writing.

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[1] Lompoc High School was dismissed as a party on December 19, 2023.

Defendant Lompoc has filed a motion to bifurcate for all purposes (including discovery and trial), pursuant to Code of Civil Procedure[2] sections 598 and 1048, subdivision (b). Specifically, Lompoc wants to bifurcate the claims/causes of action involving the Tobias defendant, on one hand, from the alleged sexual and physical abuse claims/causes of action involving the remaining two students defendants on the other hand. Defendant Lompoc advances the following justifications for the request: 1) the Tobias incident is "fully unrelated"(factually speaking) to the two other student defendants' alleged incidents; 2) defendant Tobias, as a teacher, has a different legal relationship with Lompoc than the two student defendants, meaning the elements of assault and battery will be different for each; 3) Lompoc's defenses will therefore be different for claims involving Tobias as opposed to claims involving defendants Tovar and Devon Doe; 4) defendant Lompoc's liability for the acts of the student defendants are different than liability for the acts of the teacher defendant, and thus the "alleged acts" of Tobias "have absolutely no relevancy to [Lompoc's] liability." and yet "trying them together has a high likelihood of confusing the jury and causing prejudice to the parties"; 5) "the witnesses and evidence supporting the allegations of assault and battery [by the student defendants] and those supporting the allegations against [the teacher defendant] are entirely unrelated," having occurred at different times and different locations. No other party joins the request for bifurcation.

Opposition was filed on November 8, 2024. Plaintiff filed a reply on November 19, 2024, along with two evidentiary objections. All briefing has been reviewed.

The court will address defendant Lompoc's request for judicial notice, and then the merits of plaintiff's two evidentiary objections. The court will then outline the legal principles that frame the inquiry before addressing the merits of the motion itself. The court will conclude with a summary of its conclusions.

A) Judicial Notice

Defendant Lompoc asks the court to take judicial notice of the operative pleading filed by plaintiff in this matter. As the request is unopposed, it is granted.

B) Plaintiff's Evidentiary Objections

Plaintiff advances two evidentiary objections to statements made in the declaration of attorney Victory Bernhardt. Plaintiff initially objects to the following statement on page 2, lines 4-7 of Ms. Bernhardt's declaration, to the extent Ms. Bernhardt observes, after a review of the record, that "the claims arise out of two entirely unrelated fact patterns against different individual defendants and in two separate ways." The court overrules the objection; while it is her opinion based on the evidence provided (and the allegations in the complaint), the court finds the opinion useful in resolving the issues at play. The court overrules plaintiff's first objection.

Plaintiff also objects to the following statement contained on page 2, lines 7 to 10, for Ms. Bernhardt's declaration: "Allowing bifurcation of the claims/causes of action would be in the interest of judgment as it will avoid jury confusion on liability and damages, will avoid

[2] All further statutory references to the Code of Civil Procedure unless otherwise indicated.

prejudice to the parties, and will allow for efficiency and streamlining of evidence at trial and during discovery." The court sustains plaintiff's objections to this statement; it contains a legal argument that is inappropriately advanced via declaration. The court sustains plaintiff's second objection.

C) Legal Background

Trial courts are empowered pursuant to fundamental rules of civil procedure to "order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, *or of any separate issue* or of any number of causes of action or issues." (§ 1048, subd. (b), italics added.) The authority to separately try issues and even sub-issues is not limited to the traditional bifurcation of liability and damages issues. And section 598 provides trial court judges with truly broad authorization to sever for separate trial "any other issue *or part thereof*" from other issues in the case. (§ 598, italics added; see e.g., *Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318, 321 [bifurcating the trial of a discreet but potentially dispositive agency issue from the trial of the remaining liability issues presented by the pleadings and damages]; *Grappo v. Coventry Financial Corp*. (1991) 235 Cal.app.3d 496, 504 [§ 598 gives the trial court power to order "that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses," not at issue here, "when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby"]; see also Evid. Code, § 320 [except as otherwise provided by law, the court in its discretion shall regulate the order of proof]; see generally *Rutherford v. Owens-Illinois, Inc*. (1997) 16 Cal.4th 953, 967 ["The Legislature has also recognized the authority of courts to manage their proceedings and to adopt suitable methods of practice."].) Whether severance is judicially economical is a decision entrusted to the trial court's broad discretion. (*Pilliod v. Monsanto Co.* (2021) 67 Cal.App.5th 591, 625–626.)

D) Merits

The court agrees with Lompoc that arguably, at least as a factual matter, and at least as pleaded,[3] the causes of action for assault and battery, involving the two student defendants, on one hand, and the teacher defendant Tobias, on the other hand, occurred at different times and at different places on the high school campus. But contrary to defendant Lompoc's contentions, the legal standards for its liability based on negligent supervision involving acts by a teacher (i.e., defendant Tobias) are not fundamentally different from the standards for establishing its liability

[3] In opposition, plaintiff makes much of the fact that in her tort claim submission to the public entity she observed that the Tobias defendant assaults, etc., may have been done in retaliation for plaintiff's tort claim filed with regard to the two student defendants. The complaint, however, does not make this allegation or connection, claiming simply that the alleged Tobias defendant assault/battery occurred after the alleged other assaults/batteries, and was committed "as punishment after kicking her heels apart . . . ." (¶18, emphasis added; see also ¶¶ 19, 29.) In any event, it seems clear that all three events occurred at different times and at different places on the Lompoc High School campus, by different defendants, and the court will assume as much for purposes of this order without deciding the issue.

for acts committed by the two student defendants (even if the acts are factually unrelated), as both involve claims of negligent supervision. (See p. 7 of Motion; compare *Z.V. County of Riverside* (2015) 238 Cal.App.4th 889, 902 [to establish negligent supervision of an employee a plaintiff must show that a person in a supervisorial position over the actor had prior knowledge of the actor's propensity to do the bad act, citing *CA. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 867[4]]; with *Victor Valley Union High School District v. Superior Court of San Bernardino* (2023) 91 Cal.App.5th 1121, 1154 [a school district has a duty to supervise children, and it may be held liable if its negligent breach of that duty results in student-on-student assault[5]].) The standards for students and the standards for teachers are not so different as to suggest inherent confusion or abject jury prejudice without bifurcation.

Further, the court is not convinced that the benefits of bifurcation are outweighed by its clear and obvious drawbacks. The court acknowledges the assault and battery causes of action involve different factual predicates. But, in reality, the assault and battery causes of action (which are the fuel for this lawsuit) involve three different time frames for each individual defendant. Lompoc seemingly has no quarrel with the different factual predicates between defendant Tovar and defendant Devon Doe should there be a joint trial,[6] and seems to concede that it will not be prejudiced and the jury will not be confused should those events be tried together. Given this, defendant Lompoc has failed to explain why the same tools at the court's disposal (such as special verdict forms, jury instructions, judicial admonitions, etc.), which can

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[4] As noted in *Roe v. Hesperia Unified School District* (2022) 85 Cal.App.5th 13, this "negligence standard" for negligent supervision involving employees "imposes liability on the basis of supervisory personnel's constructive knowledge that an employee is prone to harm students." It does ***not*** require actual knowledge of an employee's propensity to harm students. (*Id*. at p. 26.) That is, school districts have a duty to protect students from abuse by school employees even if the school does not have actual knowledge of a particular employee's history of committing, or propensity to commit, such abuse. (*Ibid.*, citing *Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 124.) In determining whether plaintiff has stated a claim for negligent supervision, courts ask whether there are sufficient facts demonstrating whether defendant's personnel know, or should have known, or had reason to know, of the foreseeable risk to students of abuse by an employee and nevertheless inadequately hired, retained, and or inadequately supervised that employee. (*Roes, supra,* at p. 29, citing *D.Z. v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 223.)

[5] In *J.H. v. Los Angeles Unified School Dist*. (2010) 183 Cal.App.4th 123, the appellate court made it clear that in situations involving negligent supervision when a special relationship is involved (such as that between a school district and its minor students), negligence is "established if a reasonable prudent person would foresee that injuries of the same general type would be likely to happen in the absence of such supervision; foreseeability is determined in light of all circumstances and does not require prior identical events or injuries," citing *M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 518.) The *M.W.* court in turn *rejected* the notion that a school district must have actual knowledge that a student who sexually assaulted plaintiff student had propensity to commit sexual assaults. (*See J.H., supra,* at pp. 146-147, fn. 11; see *C.A. v. William S. Hart Union High School, supra*, 53 Cal.4th at p. 870 [citing *J.H.* and *M.W.* favorably, and observing that because of the special relationship between a school district and its pupils, the same standards establishing liability for negligent supervision apply when foreseeable injuries occur involving student-on-student violence and foreseeable injuries resulting from employee-on-student violence].)

[6] Plaintiff, in the operative pleading, makes it clear that the Tovar defendant incidents occurred on August 15, 2022, and October 27, 2022, respectively, while the Devon Doe defendant incidents occurred in "late August 2022." The Tobias defendant incidents occurred between February 1 and February 14, 2023. All three incidents occurred on the Lompoc High School campus.

ensure fairness in that context, will not have the same utility or impact with the Tobias defendant. Simply put, the arguments defendant Lompoc advances would require three separate trials, not two, and yet defendant Lompoc provides no real argument or explanation as to why the tools available to the court for ensuring fairness when a single jury has to distinguish liability between defendant Tovar and defendant Devon Doe, will not provide the same protections when defendant Tobias is involved. Accordingly, the court does not view a trial with all three defendants as a bridge too far.[7]

Further, Lompoc fails to acknowledge the nature and scope of the eighth cause of action, which is the lynchpin of (and the bridge to establishing) Lompoc's alleged liability based on general concepts of negligent supervision, albeit arising in and from different factual scenarios, all with a single plaintiff. Plaintiff asserts that as to all three individual defendants' actions, Lompoc's representatives know or should have known of the dangerous habits and propensities of each of the three defendants, a similar type of inquiry and conclusion. Juries are routinely asked to distinguish/calibrate liability involving different parties with different facts – and this case is no different.

In fact, the benefits of bifurcation at this time seem outweighed by any problems and potential anomalies bifurcation would create. There will be significant issues regarding witness convenience/duplication (and thus efficiency of litigation) should the court order bifurcation. Plaintiff will have to testify twice. And it seems likely that the same witnesses for Lompoc (i.e., those who have supervisory responsibilities) will have to testify twice. More troubling for the court are the following consequences of defendant Lompoc's request: 1) the jury will have to judge the credibility of the same witnesses on two different occasions; and 2) the jury will have to make the same legal determination about Lompoc's liability under the eighth cause of action on two separate occasions. The efficiency of a unitary trial, corralled, focused, and tailored by jury instructions, with appropriate guidance through well-written special verdict forms, all underscored by impactful judicial admonitions, seems the more efficient course to pursue at this time.

Nothing offered in defendant's reply alters these conclusions. Defendant Lompoc cites to *Moe v. Anderson* (2012) 207 Cal.App.4th 826; there, plaintiffs Paula and Edelmira were separately treated by one Dr. Anderson in connection with separate worker's compensation claims. Dr Anderson separately committed on plaintiffs alleged medical malpractice, battery, sexual battery, intentional infliction of emotional distress, and loss of consortium. Plaintiffs filed

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[7] For example, defendant Lompoc claims that "multiple incidents (which are otherwise unrelated) will undoubtedly engender the sympathy of the jury if these claims are combined in the same trial," and would be "extremely prejudicial" to it. But the same problem presents itself if the incidents involving defendants Tovar Devon Doe are tried jointly, as they are equally unrelated. Defendant Lompoc does not address why it suffers no prejudice in that context, but will do so if the Tobias defendants are added to the mix. Defendant Lompoc has not explained why combining two unrelated incidents in one trial is appropriate, but combining three crosses the line. Indeed, the facts involving defendant Tobias do not seem any more inflammatory or likely to prejudice the jury than the facts supporting liability based on acts involving defendants Tovar and/or Devon Doe.

a joint complaint against Dr. Anderson, as well as his two corporate employers. The appellate court found that joinder of the two lawsuits as to Dr. Anderson was improper pursuant to section 378, because Dr. Anderson's actions involved "distinct sexual assault during separate and distinct time periods," involving different plaintiffs. "Because their claims do not arise out of the same transaction, occurrence, or related series of transactions or occurrences, joiner was improper. . . ."[8] Accordingly the trial court properly sustained the demurrer for misjoinder without leave to amend. "However, the same is not true with respect" to Dr. Anderson's two corporate employers. "Plaintiffs' claims against [these two corporate employers] are predicated upon the direct negligence of hiring [the corporate employers] in hiring and supervising [Dr. Anderson]. Because these claims arise out of the same series of transactions or occurrences, i.e., the hiring and supervision of Anderson, joinder was proper under section 378."[9] The appellate court found the lawsuit against Dr. Anderson was precluded, but not against the corporate employers. (*Id*. at p. 828.)

Moe v. Anderson is not helpful to Lompoc (in fact, it appears to the court the opposite is true). First, that case involved a demurrer based on improper joinder pursuant to section 378, not a motion for bifurcation. In any event, it appears defendant Lompoc is similarly situated to the corporate employers rather than Dr. Anderson, contrary to defendant Lompoc's arguments advanced in reply. Plaintiff's claim for relief against defendant Lompoc arises out of a series of related transactions, with common (although not exact) factual or legal issues involving supervision of both students and faculty, in the same or at least in a similar vein as the corporate employers in *Moe v. Anderson*.[10] Notably, the court in *Moe v. Anderson* reached this conclusion

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[8] *Moe v. Anderson* observed as to Dr. Anderson as follows: ". . . [T]he events do not constitute a single transaction and nothing is alleged to indicate a related series of transactions. Two separate and distinct sets of plaintiffs . . . are suing Anderson for separate and distinct sexual assaults during separate and distinct separate periods. . . . [¶] Nor have plaintiffs alleged that the assaults against [the plaintiff] are a related series of transactions or occurrences withing the meaning of section 378 . . . Here. . ., the gravamen of plaintiff's claims against Anderson is the harmful sexual touching that was perpetrated against each victim on separate occasions." (207 Cal.App.4t at pp. 834-835.)

[9] *Moe v. Anderson* contrasted the situation for Dr. Anderson with the situation for Dr. Anderson's corporate employers. Relying on *Anaya v. Superior Court* (1984) 160 Cal.App.3d 228, which involved numerous employees suing defendant employer, alleging the defendant engaged in a course of conduct over the span of 20 to 30 years, and allowing joinder, the appellate court observed as follows: "Here, [the corporate employer] is alleged to have engaged in a series of transactions, i.e., negligent hiring and supervision of Anderson, which exposed plaintiff's to Anderson's predatory conduct. Thus, as was the case in Anaya, plaintiffs have asserted a right to relief arising out of the same series of transactions. So too are there common issues of law or fact. The same evidence with respect to [the corporate employer's] hiring and supervision of Anderson will need to be adduced in separate lawsuits if joinder is not allowed." (207 Cal.App.4th at pp. 835-836.)

[10] The court acknowledges that in *Moe v. Anderson*, Dr. Anderson committed separate acts against different plaintiffs in the same locale, while here different defendants committed separate acts of violence against the same plaintiff in the same general locale. But in the court's view the present situation involves the same "series of transactions or occurrences" language, at least as to defendant Lompoc, in the same way as the corporate employers in *Moe v. Anderson*, despite these slight factual variations, for the two situations manifest a similar "community of interest." Indeed, the case relied upon by *Moe v. Anderson* – *Anaya* v. *Superior Court* – itself was not factually on point, as the court in *Moe v. Anderson* expressly recognized. *Anaya* nevertheless was instructive to the court in *Moe v. Anderson. Moe v. Anderson,* while not on all fours with the present case, is as instructive to this court as *Anaya* was instructive to the court in *Moe v. Anderson.* Finally, the court's conclusion here is consistent with the broad

even though separate acts committed by Dr. Anderson were on different plaintiffs, not the same plaintiff, and done at different times. Defendant Lompoc's arguments advanced here have the same flavor as the arguments advanced by the corporate employers in *Moe v. Anderson*, and are rejected for the same reasons. As was true in *Moe v. Anderson*, the same or at least similar evidence with respect to defendant Lompoc's hiring and supervision of students and/or teachers will require duplication if separate trials are ordered, a point anathema to litigation efficiency and thus bifurcation.

D) *Summary*

The court grants defendant's request for judicial notice. The court overrules plaintiff's first evidentiary objection, but sustains plaintiff's second evidentiary objection. On the merits, the court denies defendant's motion for bifurcation. There is no trial date set, and as we approach trial, if events change to suggest bifurcation is more desirable, the court will allow defendant Lompoc to file another motion. Defendant Lompoc at this time has failed to present a sufficient factual basis to support bifurcation for all purposes. The court will therefore deny the motion for bifurcation without prejudice.

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interpretation appellate courts have given the terms "series of transactions or occurrences" in section 378. (*Peterson v. Bank of America Corp*. (2014) 232 Cal.App.4th 238, 251; see also *Adams v. Albany* (1954) 124 Cal.App.2d 639, 646 [joinder of 40 sets of home buyers, even though each tort was committed at a different time and place, and even though the evidence as to one house would have no probative value as to any other house buyer, proper under the "series of transactions" language in § 378].)