

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CENTRAL COURTHOUSE  
TENTATIVE RULING**

HEARING DATE: 5/29/2026

JUDICIAL OFFICER: CAROLYN M. CAIETTI

CASE NO.: 25CU060801C

CASE TITLE: Darwish vs Grossmont Union High School District

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Defendants Grossmont Union High School District and Robert Stirling's unopposed Demurrer to Complaint is **SUSTAINED WITHOUT LEAVE TO AMEND (as to the fifth, sixth, seventh, eighth and ninth causes of action)**.

A First Amended Complaint (FAC) was filed on May 20, 2026, five days after the opposition to demurrer was due. The FAC is late. (C.C.P., § 472(a) [a party may amend a pleading without leave of court before a demurrer is heard "if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer"].)

On the Court's own motion, the FAC is ordered stricken from the record. The Court will hear the demurrer as to the initially filed complaint.

Defendant's unopposed request for judicial notice is granted. (ROA 21.) Notice will be taken to the extent permitted.

***Statement of the Law***

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.)

The complaint must be liberally construed and given a reasonable interpretation, with a view to substantial justice between the parties. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140–141; see also, *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1111-12 [in ruling on demurrers, courts treat as being true "not only the complaint's material factual allegations, but also facts that may be implied or inferred from those expressly alleged"].)

***Plaintiff Did Not Oppose the Demurrer***

Defendants duly served the demurrer. (ROA 17, 19-20, 22, 24.) The demurrer is unopposed. Thus, Plaintiff impliedly conceded on the merits of the demurrer. (San Diego Superior Court Local Rule 2.1.19(B).) Further, at the initial Case Management Conference, Plaintiff indicated a first amended complaint would be filed.

***Notwithstanding, the Demurrer is Sustained on the Merits***

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Plaintiff failed to serve a Government Tort Claim within six months of the alleged incident as required by Government Code sections 910, 911.2 and 945.4. (Complaint, at ¶¶ 10, 12-14.) Thus, the demurrer to the fifth and sixth causes of action is sustained without leave to amend.

The fifth cause of action also fails to state sufficient facts to constitute a cause of action under Labor Code sections 1101-1102. There are no facts alleged that Defendants coerced or attempted to influence Plaintiff to do anything.

The sixth cause of action also fails to state sufficient facts to constitute a cause of action under Government Code section 815.6. The Complaint does not allege a breach of a mandatory duty, nor allegations that Defendants were required to play songs at the school.

The seventh cause of action (alleged only against Defendant Stirling) fails to state sufficient facts to constitute a cause of action under 42 USC section 1983. To the extent the cause of action is brought in his individual capacity, there are no facts alleged that he engaged in conduct which a reasonable person would believe was a violation of a Constitutional right. To the extent the cause of action is brought in connection with his official capacity, Defendant Stirling is immune pursuant to the 11<sup>th</sup> Amendment and discretionary immunity.

The eighth cause of action fails to state sufficient facts to constitute a cause of action under 42 USC section 1983 (*Monell*) because a school district is immune from suit. (*Kirchmann v. Lake Elsinore Unified School Dist.* (2000) 83 Cal.App.4th 1098, 1100 (holding a California school district enjoys the state's immunity from liability under section 1983).

The ninth cause of action for injunctive and declaratory relief is not ripe and therefore not justiciable.

### ***Leave to Amend is Denied***

Plaintiff neither requested nor substantiated a request for leave to amend. (*Ko v. Maxim Healthcare Services, Inc.* (2020) 58 Cal.App.5th 1144, 1150 [the plaintiff has the burden of proving an amendment would cure the legal defect].) Thus, the Court will not grant leave to amend.

### ***Conclusion***

For these reasons, the demurrer is **SUSTAINED WITHOUT LEAVE TO AMEND.**

### **Concluding Orders**

The fifth, sixth, seventh, eighth and ninth causes of action are dismissed from the Complaint.

Defendant Grossmont Union High School District is ordered to file an answer to the remaining causes of action by June 12, 2026.

If the tentative ruling is confirmed without modification, the minute order will be the Court's final ruling on the matter. Defendants are ordered to serve written notice of the Court's final ruling on all appearing parties by June 2, 2026.