

**Judge Benson – Law & Motion – Wednesday, March 27, 2024 @ 9:00 AM  
TENTATIVE RULINGS**

**\*\*For this week only, to request oral argument for Judge Benson’s Law & Motion Calendar, please call: (530) 532-7125\*\***

**1. 23CV00698 Cream of the Crop Ag Service, Inc. v. Petersen Pistachio Development, Inc.**

*EVENT: OEX of David and Barbara Petersen*

The Court is in receipt of the Notice of Bankruptcy which indicates that both David and Barbara Petersen have filed for bankruptcy. As a result, the case is hereby stayed and the debtor’s examination is vacated.

**2. 23CV03193 Murphy, Paige v. Chico Unified School District et al.**

*EVENT: Demurrer to Plaintiff’s Complaint*

Demurrer to Plaintiff’s Complaint is sustained in its entirety with leave to amend. Regarding Plaintiff’s meet and confer argument, CCP § 431.41(a)(4) provides that the Court has no authority to overrule a demurrer for failure to meet and confer. Thus, the statute provides no penalty for failing to meet and confer, see *Olson v. Hornbrook Community Services Dist.*, (2019) 33 Cal. App. 5th 502, 515.

Consequently, even if we were to accept Plaintiff’s technical argument that Defendants’ meet and confer efforts did not comply with the statute, the issue is moot.

*Negligent Supervision of Students*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

While case law indicates a public school may be sued under a theory of negligent supervision of students (see *M.W. v. Panama Buena Vista Union School District* (2003) 110 Cal.App.4th 508, 518-520) the Complaint makes very general allegations that Plaintiff was receiving threats (¶ 57 of the Complaint). The allegations are so general that the Court finds they do not put Defendants on notice as to which students allegedly caused her harm, when the alleged incidents took place, and when Plaintiff notified the school of her safety concerns in relation to when the alleged incidents took place.

*Negligent Hiring*

The demurrer is SUSTAINED WITH LEAVE TO AMEND.

A cause of action against a public school may be based on the negligence of its employees who were responsible for the hiring and/or supervision of an employee if [the school] knew or should have known of the employee’s history of misconduct with students. (*Virginia G. v. ABC Unified School District* (1993) 15 Cal.App.4th 1848, 1856) The complaint alleges that Mr. Gallaty made false allegations,

intimidated plaintiff, etc., but the complaint does not allege facts that the school knew of those alleged propensities.

### *Negligence*

The demurrer is SUSTAINED WITH LEAVE TO AMEND.

Preliminarily, there are some duplicative allegations regarding negligent supervision and perhaps negligent hiring of Mr. Gallaty. To the extent the allegations within the negligence cause of action are duplicative, the demurrer is sustained. To the extent the cause of action alleges Defendants were negligent the demurrer is sustained on the basis of discretionary immunity.

### *False Imprisonment*

The demurrer is SUSTAINED WITH LEAVE TO AMEND. The Complaint fails to allege that Plaintiff's detention was "arbitrary, capricious, or for the purpose of harassment." (*In re Randy G.* (2001) 26 Cal.4th 556, 567).

### *Vicarious Liability*

The demurrer is SUSTAINED WITH LEAVE TO AMEND. The vicarious liability cause of action is duplicative of the negligence cause of action.

### *Intentional Infliction of Emotional Distress*

Regarding Defendant Chico Unified School District, the Demurrer is SUSTAINED WITH LEAVE TO AMEND. The Complaint fails to allege a statutory basis supporting the IIED claim. As to Defendant Joe Gattaly, as the Court noted, the allegations concerning false imprisonment are too general. The remainder of the allegations do not rise to the level of outrageous conduct.

### *Negligent Infliction of Emotional Distress*

In light of the Court's ruling sustaining the negligence causes of action, the Demurrer is necessarily sustained as to NIED with leave to amend.

### *Fraud*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND

As Defendants have noted, it is well settled that fraud must be plead with specificity. The allegations concerning reliance do not allege facts and are conclusory.

### *Punitive Damages*

The Demurrer is OVERRULED. A demurrer is not the proper procedural mechanism to challenge punitive damages.

Plaintiff shall amend her complaint within 20 days of notice of this order.

Defendants shall prepare and submit the form of order.

3. **23CV00827 Binion, Steven v. Pacific Gas & Electric Company**

*EVENT: Defendant's Motion to Compel Responses to Interrogatories and For Sanctions*

Defendant's Motion to Compel Responses to Interrogatories and For Sanctions is GRANTED. Sanctions are awarded in the amount of \$1,750.00. The Court will sign the Proposed Order modifying the sanction award.

4. **20CV02213 Doe, John et al v. Oroville Christian School et al.**

*EVENT: Petition to Approve Minor's Compromise*

Petition to Approve Minor's Compromise is continued to May 29, 2024 at 9:00am. The Court notes there has been no application to appoint a guardian ad litem. An application for appointment of guardian ad litem using mandatory Judicial Council Form CIV-010/FL-935 is required prior to an approval of a minor's compromise unless the parties demonstrate an applicable exception applies.

Additionally, the Court notes that no. 19 in the Petition to Approve Minor's Compromise has been left blank. No. 19 must be completed.

5. **23CV00649 TD Bank USA, NA v. Moreno, Maritza**

*EVENT: Motion for Order That Matters in Request for Admission of Truth of Facts Be Admitted*

Motion for Order That Matters in Request for Admission of Truth of Facts Be Admitted is GRANTED. The Court will sign the proposed order.

6. **23CV01203 Oriana Cosina, as Personal Representative of the Estate of Jesus Zacarias v. Zacarias, Catalina**

*EVENT: Motion to Vacate Sister State Judgment*

Motion to Vacate Sister State Judgment is DENIED. The motion is untimely.

CCP § 1710.40(b) requires a motion to vacate a motion be filed Not later than 30 days after service of notice of entry of judgment.

Here, a notice of entry of judgment on sister state judgment was filed on May 1, 2023. The opposition states that Defendant was personally served notice on June 20, 2023. There is a proof of service on file concerning the same.

Because Defendant was served on June 20, 2023, the 30-day period under section 1710.30 has long expired. CCP § 473(b) does not assist Defendant because it requires a motion be filed no later than 6 months, which in this case would be December 20, 2023. This motion was filed on March 4, 2024.

There is an exception to the six-month rule when a party has demonstrated extrinsic fraud. (See *Manson, Iver & York v. Black*, (2009) 176 Cal. App. 4th 36, 48) Defendant has provided no evidence indicating extrinsic fraud. Defendant has not, for example, presented evidence that the proof of service demonstrating she was served on June 20, 2023 is a fraudulent document, or any other evidence that she was not, in fact personally served on June 20, 2023.

As a result, the motion is untimely for failing to comply with the requirements of CCP § 1710.40(b).

Defendant suggests the amended judgment recently entered that updated Defendant's name re-starts the clock for purposes of CCP § 1710.40. Defendant cites no authority supporting this argument. The Court might agree with her if the Amended Judgment modified the substance of the May 1, 2023 Judgment, but the Amended Judgment did not alter the substance of the May 1 Judgment. Nor did it alter the parties to the Judgment – Defendant is the same person regardless which name she goes by or how many times she changes her legal name. Additionally, the Court notes that Petitioner has presented no evidence that the name in the Notice of Entry of Judgment on Sister State Judgment personally served on June 20, 2023 was not her legal name at the time she was served. In fact, Petitioner signed her March 15, 2024 declaration as “Catalina Zacharias”, which is exactly the same name in the Notice of Entry of Sister State Judgment personally served on June 20, 2023.

In the Motion to Amend the Judgment, Plaintiff noted that pursuant to the CCP § 187 the Court has the power to adopt a suitable procedure for the purpose of determining the identity and character of the defendant upon which the judgment was binding. (*Thomson v. L.C. Roney & Co.* (1952) 112 Cal.App.2d 420, 427) Again, updating the Judgment to reflect the current legal name of Defendant is not a substantive change.

As to the substantive issue of whether Defendant did not, in fact, receive notice of the trial date in the Washington case, the Court finds Defendant's testimony not credible considering she was an active participant in the case.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.

#### **7. 22CV02975 LL Jane Doe DJ et al v. Doe Religious Organization 1 et al.**

*EVENT: Motion for an In Camera Review And Order to Keep Confidential Certificates of Merit; Approving Certificates of Merit; And Granting Permission to Serve the Complaint on Defendant Doe Religious Organization 3*

Motion for an In Camera Review And Order to Keep Confidential Certificates of Merit; Approving Certificates of Merit; And Granting Permission to Serve the Complaint on Defendant Doe Religious Organization 3 is GRANTED. The Court will sign the Proposed Order.