

**Judge Benson – Law & Motion – Wednesday, June 12, 2024 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 20CV00578 Holman, Ryan v. County of Butte et al.**

*EVENT: Defendant County of Butte’s (Sued as County of Butte and County of Butte Health and Human Services) Motion for Summary Judgment (Continued from 5/8/24)*

Defendant County of Butte’s (Sued as County of Butte and County of Butte Health and Human Services) Motion for Summary Judgment is GRANTED.

As was the case several years ago when this Court ruled on the demurrer to the Fourth Amended Complaint, the critical issue presented is whether the social worker, Mr. Lee, fulfilled his ministerial duties and was exercising his discretion when he decided to “evaluate out” the mandated report he received from the mandated reporter concerning Plaintiff Ryan Holman. We find Defendant has met its burden demonstrating no triable issue of fact exists that Mr. Lee fulfilled his ministerial duties and the evidence and argument presented in the opposition fail to create a triable issue of fact. Likewise, the Court finds Defendant has met its initial burden demonstrating Mr. Lee exercised his discretion and therefore the decision is immune pursuant to Government Code § 820.2.

Government Code § 820.2. Exercise of discretion

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

The fact that an employee normally engages in 'discretionary activity' is irrelevant if, in a given case, the employee did not render a considered decision. *Caldwell v. Montoya*, (1995) 10 Cal. 4th 972, 981. [Emphasis Added] The common theme from case law is whether the person engaged in the deliberative process.

Plaintiff has framed the issue as Defendant’s failure to completely perform ministerial obligations. The California Department of Social Services has promulgated regulations to guide and direct social workers in analyzing these reports. These regulations provide the Court with a road map in determining whether the social worker has fulfilled his or her ministerial obligations with respect to a report concerning abuse.

CDSS 31-105 sets forth the information the social worker is required to consider in making the assessment. Defendant has presented evidence of the forms used by Mr. Lee in making his assessment, which include the SDM “Hotline Tools”, SDM Path Decision, the “Emergency Response Referral Information”, and Ms. Chandler’s mandated report.

The forms demonstrate that Mr. Lee considered the information required by CDSS 31-105 et seq. Plaintiff appears to contend that Mr. Lee left many boxes unchecked on the

form, including the boxes related to physical abuse, emotional abuse, etc., thus suggesting that Mr. Lee did not complete his ministerial duties.

Mr. Lee testified that he intentionally did not check those boxes because he determined “the allegations did not meet those definitions.” Thus, there is undisputed evidence that Mr. Lee did in fact consider these issues, but because he believed the allegations did not warrant any of those boxes being checked, he intentionally did not check them. Further, it should be noted the form provides an option to evaluate out when no criteria is marked.

## CDSS 31-105

.21 The Emergency Response Protocol form, or approved substitute, is complete when the social worker has recorded enough information as specified in Section 31- 105.1 to document the decision as to whether or not to make an in-person investigation and shall include:

...

.212 The rationale for evaluating out the referral

Plaintiff contends that Defendant’s supporting documents do not demonstrate a rationale for Mr. Lee’s decision to evaluate out the referral. The Court disagrees. Under Section 3: Comments, the SDM form provides:

Staff Person Comments:

R/P states the parents are very appropriate. Dad may have tried to protect himself when child starts swinging at dad as he has in the past.

Further, the Emergency Response Referral Information made by Mr. Lee notes, “Ryan is in psychiatric care. Numerous diagnosis, bi-polar and OCD are the big ones and Child was out of control ... Child has serious problems...” Whether Plaintiff disagrees with these assessments is not the issue. Rather, this evidence demonstrates Mr. Lee documented his rationale.

This same evidence also demonstrates Mr. Lee’s decision falls under the discretionary immunity category because it shows he undertook a deliberative process in reaching his decision. Plaintiff proceeds to criticize Mr. Lee’s assessment based on the fact there was evidence that Dad had in the past struck the child in self-defense, arguing the Emergency Response Referral Information indicates abuse as defined by the Welfare and Institutions Code.

However, in this regard Plaintiff is essentially challenging the decision-making process or evaluation of the social worker.

*Caldwell*, supra at p. 983-984

But Johnson does not require a strictly careful, thorough, formal, or correct evaluation. Such a standard would swallow an immunity designed to protect

against claims of carelessness, malice, bad judgment, or abuse of discretion in the formulation of policy.

On the contrary, it asserts that Board members did purposefully employ standards they deemed relevant, but that the standards employed were wrong and impermissible. For reasons already stated, claims of improper evaluation cannot divest a discretionary policy decision of its immunity.

[Emphasis Added]

Even assuming Mr. Lee erred in his application of the law in light of the allegations concerning father, such an improper evaluation does not negate discretionary immunity.

Plaintiff proceeds to argue Defendant improperly delegated its responsibility to the mandated reporter. However, Plaintiff cites no authority, nor is the Court aware of any, that prevents a social worker from relying on a mandated report in making his or her decision. Nor is the Court aware of any authority that requires Defendant to conduct an investigation beyond what is received from the mandated reporter.

Lastly, on the issue of discretionary immunity, Plaintiff argues Form 1-B evidences a failure to perform an administrative duty because certain boxes are left unchecked and because certain identifying information concerning father is incorrect. Plaintiffs' argument is essentially form over substance. The comment section of the form clearly demonstrates Mr. Bee engaged in the deliberative process and made decisions concerning the veracity or lack thereof of the claim. Thus, the fact that he may have not checked some of the boxes does not change the fact there is undisputed evidence that he rendered a "considered decision."

Regarding the cause of action relating to cross-reporting, the "reasonably suspected instance of child abuse or neglect" language of PC § 11166(j) clearly exempts reports that Defendant determines to be unfounded or "evaluated out". Further, the absence of the "reported to it" language demonstrates the legislature did not intend to require Defendant to cross-report all reports received.

The Trial Readiness Conference and Jury Trial dates are vacated.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

2. **24CV01171 In re: Yang, Andy**

*EVENT: Change of Name (Adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

3. **21CV01592 Discover Bank v. Klune-Hickman, Alyse B.**

*EVENT: Motion for Order Deeming Each Request for Admissions as Admitted*

Motion for Order Deeming Each Request for Admissions as Admitted is GRANTED. The Court will sign the proposed order.

4. **18CV01227 PMGI Financial v. Jackson, Clifton**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.

5. **23CV02751 Rocky Top Rentals, LLC v. Ramos, Andres**

*EVENT: Application for Writ of Possession (Continued from 11/29/23, 2/28/23, and 5/8/24)*

Application for Writ of Possession is GRANTED. Plaintiff shall prepare the form of order using the mandatory Judicial Council form CD-120.

**6-14.            23CV02789 Newport Federal et al v. Vina Groundwater Sustainability Agency**

*EVENT: (1) Motion to be Relieved as Counsel as to MC Horning Jr.*

*(2) Motion to be Relieved as Counsel as to Newport Federal*

*(3) Motion to be Relieved as Counsel as to Ronald R. Titus*

*(4) Motion to be Relieved as Counsel as to Vicki M. Garner, Trustee of the Garner Revocable Family Trust dated October 5, 2015*

*(5) Motion to be Relieved as Counsel as to Barbara G. Alden, Trustee of the Barbara Garner Alden Revocable Living Trust*

*(6) Motion to be Relieved as Counsel as to Roney Land and Cattle Company, Inc.*

*(7) Motion to be Relieved as Counsel as to Butte County Cattleman's Association*

*(8) Motion to be Relieved as Counsel as to Richard G. Coon, an individual*

*(9) Motion to be Relieved as Counsel as to Christine R. Hantelman, an individual*

Plaintiffs' counsel's motions to be relieved as counsel are all granted. The Court will sign the proposed orders. The orders will become effective upon the filing of the proof of service demonstrating Plaintiffs have been served with the orders.

**15.            24CV01218 In re: Boxerbaum, Rione Renee**

*EVENT: Change of name (Adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**16. 24CV01250 In re: Christensen, Carson Paul**

*EVENT: Change of Name (Adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**17. 24CV01137 In re: Vega, Steven Dominic**

*EVENT: Change of Name (Adult) (Continued from 5/29/24)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**18. 22CV02898 Dasbach, Catherine et al. v. Moore, James MD et al.**

*EVENT: Defendant James Moore, M.D.'s Demurrer to Plaintiffs' Complaint*

Defendant James Moore, M.D.'s Demurrer to Plaintiffs' Complaint is SUSTAINED WITHOUT LEAVE TO AMEND.

On the Court's motion, the Court takes judicial notice of its order after hearing dated January 31, 2024 and incorporates it into this ruling. That order addressed essentially the same legal issues and the same facts (i.e. the Complaint) which are before the Court in this demurrer.

As with the previous demurrer, Plaintiffs have abandoned their negligence and battery claims. Regarding the constructive fraud claim, as discussed in the previous ruling, a constructive fraud cause of action does not lie when the physician fails to disclose a treatment for which the physician does not recommend. (See *Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1070)

The only reasonable inference from the Complaint is that the Defendant physicians did not recommend any other treatment other than Remdesivir. As a result, the Constructive fraud cause of action necessarily fails.

Defendant James Moore M.D. shall prepare and submit the form of order within 2 weeks.

**19. 24CV01175 In re: Woods, Juanita June**

*EVENT: Change of name (Adult) (Continued from 6/5/24)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**20-21. 22CV02404 Guinn, Lisa v. Graham Solar Systems, Inc. et al.**

*EVENT: (1) Motion to be Relieved as Counsel as to Graham Solar Systems Inc.*

*(2) Motion to be Relieved as Counsel as to Nicholas Graham*

The motions are continued to July 10, 2024 at 9:00am as the motions do not comply with the notice requirements of CCP Section 1005 et seq. Plaintiffs' counsel shall give notice of the new hearing date and time.