

**Judge Mosbarger – Law & Motion – Wednesday, December 4, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 21CV02434 KITCHEN, IVANELL ET AL V. WINDSOR CHICO CREEK CARE AND REHABILITATION CENTER, LLC ET AL

EVENT: Plaintiff's Motion to Compel Further Responses to Discovery with Requests for Sanctions Due to Discovery Misuses & Failure to Comply with Court Orders

The Court finds good cause to appoint a discovery referee in this matter pursuant to *Code of Civil Procedure* §§638-645.1, as well as the California Rules of Court 3.900-3.932, finding that such appointment is necessary to hear and determine Plaintiff's Motion to Compel Further Responses to Discovery with Requests for Sanctions Due to Discovery Misuses & Failure to Comply with Court Orders. Each party may submit up to three nominees, and the Court shall select and appoint a referee therefrom. The parties are to submit their selected nominees and file them with the Court no later than December 13, 2024 and the matter is continued to December 18, 2024 at 9:00 a.m. for selection and appointment of a discovery referee.

2-3. 22CV00643 MINOR, ROCHELL V. NPH MEDICAL SERVICES ET AL

EVENTS: (1) Status of Final Settlement

(2) Plaintiff's Motion for Final Approval of Class Action Settlement

The Motion for Final Approval of Class Action Settlement is granted, and a compliance hearing is set for June 4, 2025 at 10:30 a.m. The Court will sign the form of order submitted by counsel with the following modifications: (1) at Paragraph F on Page 2, the last sentence will be completed to include the sum "\$28,859.51"; (2) at Paragraph 6 on Page 4, the Court will insert the two individuals who opted out – Audra Jones and Gwen Kjer; and (3) at Paragraph 16 on Page 7, the Court will insert the final compliance hearing date of June 4, 2025 and a deadline for filing the Declarations attesting to compliance no later than 7 calendar days before the hearing.

4. 22CV02425 CIT BANK, A DIVISION OF FIRST CITIZENS BANK & TRUST COMPANY V. MERKEL, ANDREW ALLEN ET AL

EVENT: Order of Examination (Andrew Allen Merkel)

Pursuant to *Code of Civil Procedure* §708.110(d), not less than 30 days prior to the date set for the examination, a copy of the order shall be personally served on the Judgment Debtor. Here, there is no proof of service evidencing such notice. If Andrew Allen Merkel appears, the Court will swear him in for examination.

5-9. 23CV00614 JOHNSON, GILL ET AL V. MONSANTO COMPANY ET AL

EVENTS: (1) Application to Appear Pro Hac Vice (Jordan Walker)

(2) Application to Appear Pro Hac Vice (Kari Sutherland)

(3) Application to Appear Pro Hac Vice (Lee Mickus)

(4) Application to Appear Pro Hac Vice (Jay Schuttert)

(5) Application to Appear Pro Hac Vice (James Craig Orr, Jr.)

The applications to be admitted pro hac vice are granted. Jordan Walker, Kari Sutherland, Lee Mickus, and Jay Schuttert are permitted to appear as counsel pro hac vice on behalf of Defendant Monsanto Company in this matter, and James Craig Orr, Jr. is permitted to appear as counsel pro hac vice on behalf of Plaintiffs Gill Johnson and Denise Johnson in this matter. The Court will sign the forms of order submitted by counsel.

10. 24CV00418 NELSON, HARWOOD ET AL V. WARNER ENTERPRISES, INC ET AL

EVENT: Motion to Compel Initial Discovery Responses

The Motion is unopposed and is granted. Sanctions are awarded against Plaintiff Gary Hall in the amount of \$1,400, which are to be paid within 30 days' notice of this order. The Court will sign the form of order submitted by counsel with modification striking Paragraph 5, and as to sanctions amount in Paragraph 4.

11. 24CV00765 HATZIS, MORGAN RAE V. PRIETO, MARIA NERISSA ET AL

EVENT: Ex Parte Motion to Strike Defendant's Answer and Cross-Complaint for Untimeliness

The Court finds that the deadline to file an Answer following the Court's overruling of Defendants' Demurrer was tolled pending the Court's ruling on Defendants' subsequent Motion for Reconsideration. The time for the defendant to answer following the Court overruling a demurrer is 10 days when the order is silent. See California Rules of Court 3.1320(g). The time begins to run when the defendant is served with notice of the order or decision, unless notice is waived in open court and the waiver entered in the minutes. See, Code of Civil Procedure §472b. Here, there is no evidence in the Court's file that its September 17, 2024 Order Re Defendant's Motion for Reconsideration of Ruling on Demurrer to Complaint was ever served on the Defendants and there is nothing in the Court's Minutes regarding a waiver. As such, the 10-day deadline has yet to run and the Answer to Complaint and Verified Cross-Complaint for Damages and Equitable Relief, filed on November 4, 2024 were timely filed. The Motion is denied. Counsel for the Plaintiff shall submit a revised form of order within two weeks.

12. 24CV00889 CLIFTON, ANGELA V. SAYALATH, PAUL

EVENT: Defendant Paul Sayalath's Motion to Set Aside Default and Leave to File a Demurrer

While the Court questions the relevance of the majority of the documents Plaintiff requests the Court judicially notice, the Court grants Nos. 5, 9-10; and grants in part Nos. 1, 2, 2 (duplicate), 3, 4, 6, 7, and 8 only as to the existence of the Court records and not the proffered interpretation or conclusions drawn therefrom, which are not the proper subject of a Request for Judicial Notice. The Court finds that Defendant has satisfied the statutory requirements for relief under the discretionary relief provisions of *Code of Civil Procedure* §473(b) and the Motion to Set Aside Default and Leave to File a Demurrer is granted. The Default entered on July 23, 2024 is set aside and Defendant shall file and serve his responsive pleading within 10 days' notice of this ruling. Defendant shall submit a form of order consistent with this ruling within two weeks.

13. 24CV01325 PEGGY BOONE-HOMAN BY AND THROUGH HER SUCCESSOR IN INTEREST, KIM BOCAST ET AL. V. GLAD INVESTMENTS, INC.

EVENT: Motion to Compel Arbitration and Stay Proceedings

The Court finds that Plaintiffs have failed to sufficiently establish their inability to pay their share of arbitration expenses, and therefore the Court concludes that Plaintiffs' alleged lack of resources to pay for arbitration does not invalidate the obligation to arbitrate Plaintiffs' claims.

Both procedural and substantive elements of unconscionability must be present for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability, and the Court finds that neither procedural nor substantive unconscionability have been established by Plaintiffs here.

To establish a claim of fraud in the inception, or execution, of a purported agreement, a plaintiff must show their purported signature is negated by circumstances such that they were deceived as to the basic character of the documents they signed and had no reasonable opportunity to learn the truth. See, e.g. *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 425. Here, the Court finds that Plaintiff did, in fact, have a reasonable opportunity to learn the truth and Plaintiff's failure to read the contract is not fraud, nor grounds for waiving enforcement of the Arbitration Agreement here.

The discovery limitations set forth in the agreement at Paragraphs 3.4 and 3.5 are not so one-sided so as to "shock the conscience", nor do they "impose harsh or oppressive terms" sufficient to render the Arbitration Agreement unenforceable.

Further, the Court finds that the voluntary execution of the Arbitration Agreement by Kim Bocast, as the Durable Power of Attorney for Decedent Peggy J. Boone-Homan, and pursuant to Paragraphs 1.4 and 2.2 of the Arbitration Agreement, all claims—including those of Plaintiffs [Decedent's heirs] shall be compelled to arbitration.

Finally, the Court finds that there has been no violation of the statutory requirements in either *Health & Safety Code* §1599.81(c) or *Code of Civil Procedure* §1295.

The Motion is GRANTED, and this matter is stayed pending resolution of arbitration. The Case Management Conference on February 5, 2025 is vacated, and the matter is set for a Review Hearing for status of arbitration on June 4, 2025 at 10:30 a.m. The Court will sign the form of order submitted by counsel.

14-18. 24CV02514 JANE CDE DOE ET AL V. CHICO UNIFIED SCHOOL DISTRICT ET AL

EVENTS: (1) Plaintiff's Motion for Trial Preference Under CCP 36(b)

(2) Defendant Chico Unified School District's Demurer to Plaintiff's Complaint

(3) Defendant Chico Unified School District's Motion to Strike Portions of Plaintiff's Complaint

(4) Defendant Felix Deluna's Motion to Strike Portions of Plaintiff's Complaint

(5) Defendant Felix Deluna's Demurrer to Plaintiff's Complaint

Plaintiffs' Motion for Trial Preference

The Court finds that Plaintiffs are entitled to trial preference under Code of Civil Procedure §36(b), and the Motion is granted. The Case Management Conference on January 22, 2025 is vacated, and the Court sets the following dates: Mandatory Settlement Conference on February 28, 2025 at 1:30 p.m. with Judge Benson (via Zoom); Trial Readiness Conference on March 20, 2025 at 1:30 p.m.; and jury trial on March 24, 2025 at 8:00 a.m. with a seven day estimate. The Court will utilize the form of order submitted by counsel.

Defendant Chico Unified School District's Demurer to Plaintiff's Complaint

Defendant Chico Unified School District's Demurer to Plaintiff's Complaint is overruled in part and sustained in part. Defendant Chico Unified School District's Request for Judicial Notice is denied as to Request Nos. 1 and 2 and granted as to Request Nos. 3 and 4. It is error for a trial court to sustain a demurrer when Plaintiff has stated a cause of action under any possible legal theory. See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966. Here, Plaintiffs have sufficiently stated a cause of action for negligence as it relates to Defendant Chico Unified School District. [Complaint at ¶¶49-77]. As such, the Court finds that Plaintiffs have sufficiently plead a cause of action for negligence against Defendant Chico Unified School District and the demurrer is overruled as to the First Cause of Action for Negligence. Additionally, the Court finds that Plaintiffs have sufficiently stated a cause of action for negligent supervision [Complaint at ¶¶ 76-89], negligent retention [Complaint at ¶¶ 90-103], and intentional infliction of emotional distress [Complaint at ¶¶24, 31, 32, 97-101, 122, 124]. As such, the demurrer to the Second Cause of Action for Negligent Supervision, Third Cause of Action for Negligent Retention, and Fifth Cause of Action for Intentional Infliction of Emotional Distress, are overruled. As to the negligent failure to warn, train or educate cause of action, the Court

finds that, different from the aforementioned causes of action, the only liability alleged by Plaintiff in the Fourth Cause of Action is direct liability against Defendant Chico Unified School District, and is precluded by *Government Code* §815(a) absent allegations of a statutory violation. Plaintiff has failed to so allege, and the demurrer is therefore sustained as to Fourth Cause of Action – Negligent Failure to Warn, Train or Educate. Plaintiff is granted leave to amend. An *Education Code* §220 cause of action requires demonstration of exhaustion of administrative remedies requiring a report to a Local Educational Agency be submitted, investigated and decided prior to resorting to the courts for intervention or money damages. *Donovan v. Poway Unified School District* (2008) 167 Cal.App.4th 567, 603-604. The Court finds that Plaintiffs have failed to so allege, therefore the demurrer is sustained as to the Sixth Cause of Action. – Sexual Abuse and Harassment in the Educational Environment (*Education Code* §220) without leave to amend. Counsel for Defendant Chico Unified School District shall submit a revised form of order within two weeks and Plaintiff shall file any amended Complaint within 20 days' notice of this Order.

Defendant Chico Unified School District's Motion to Strike Portions of Plaintiff's Complaint

Defendant Chico Unified School District's Motion to Strike Portions of Plaintiff's Complaint is granted in part and denied in part. Plaintiffs agree to strike Plaintiffs' allegations of Negligence Per Se Pursuant to *Education Code* §§32228, 32228.5, and 35294.10-35294.15 on Page 18, ¶65, line 19 through Page 20, ¶75, line 18. As such, the Motion is granted in this regard without leave to amend. Additionally, the Court finds that although Plaintiffs argue that a "special relationship" is tantamount to a fiduciary relationship, Plaintiffs have failed to provide any case law or authority to support their claim. The Court disagrees with Plaintiffs and finds that the legal relationship between Defendant Chico Unified School District and Plaintiffs was that of a public school district and students attending the public school district, and that such a relationship is inconsistent with fiduciary obligations. As such the Motion is granted as to Page 7, ¶23, line 16 ("fiduciary relationship"); Page 7, ¶24, line 28 ("fiduciary"); and Page 15, ¶51, line 22 ("fiduciary relationship"), which are ordered stricken without leave to amend. In regard to the Prayer for Relief #7 on Page 35, line 18, the Court finds that punitive damages pursuant to *Civil Code* §3294 are expressly precluded against Defendant Chico Unified School District pursuant to *Government Code* §818. Therefore, the Motion is granted as to Prayer for Relief #7 on Page 35, line 18, which are ordered stricken without leave to amend. The remainder of the Motion is denied, the Court finding that the remaining portions requested by Defendant Chico Unified School District to be stricken from the Complaint are relevant and sufficiently supported. Counsel for Defendant Chico Unified School District shall submit a revised form of order consistent with this ruling within two weeks.

Defendant Felix DeLuna's Demurrer to Plaintiff's Complaint

Defendant Felix DeLuna's Demurrer to Plaintiff's Complaint is overruled in part and sustained in part. Defendant Felix DeLuna's Request for Judicial Notice is denied as to Request Nos. 1 and 2 and granted as to Request Nos. 3 and 4. It is error for a trial court

to sustain a demurrer when Plaintiff has stated a cause of action under any possible legal theory. See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966. Here, Plaintiffs have sufficiently stated a cause of action for negligence as it relates to Defendant Felix DeLuna. [Complaint at ¶¶49-77]. As such, the Court finds that Plaintiffs have sufficiently plead a cause of action for negligence against Defendant Felix DeLuna and the demurrer is overruled as to the First Cause of Action for Negligence. Additionally, the Court finds that Plaintiffs have sufficiently stated a cause of action for negligent supervision [Complaint at ¶¶ 76-89], negligent retention [Complaint at ¶¶ 90-103], negligent failure to warn, train or educate [Complaint at ¶¶104-118]; and intentional infliction of emotional distress [Complaint at ¶¶24, 31, 32, 97-101, 122, 124]. As such, the demurrer to the Second Cause of Action for Negligent Supervision, Third Cause of Action for Negligent Retention, Fourth Cause of Action for Negligent Failure to Warn, Train or Educate, and Fifth Cause of Action for Intentional Infliction of Emotional Distress, are overruled. As to the Sixth Cause of Action for Sexual Abuse and Harassment in the Educational Environment (*Education Code* §220), Plaintiffs have failed to address Defendant Felix DeLuna's arguments raised in the Demurrer and the Court deems that an acknowledgment of the merit of Defendant Felix DeLuna's arguments in regard thereto. The Demurrer is therefore sustained without leave to amend as to the Sixth Cause of Action for Sexual Abuse and Harassment in the Educational Environment (*Education Code* §220). Counsel for Defendant Felix DeLuna shall submit a revised form of order within two weeks.

Defendant Felix DeLuna's Motion to Strike Portions of Plaintiff's Complaint

Defendant Felix DeLuna's Motion to Strike Portions of Plaintiff's Complaint is granted in part and denied in part. Plaintiffs agree to strike Plaintiffs' allegations of Negligence Per Se Pursuant to *Education Code* §§32228, 32228.5, and 35294.10-35294.15 on Page 18, ¶65, line 19 through Page 20, ¶75, line 18. As such, the Motion is granted in this regard without leave to amend. Additionally, the Court finds that although Plaintiffs argue that a "special relationship" is tantamount to a fiduciary relationship, Plaintiffs have failed to provide any case law or authority to support their claim. The Court disagrees with Plaintiffs and finds that the legal relationship between Defendant Felix DeLuna and Plaintiffs was that of a teacher/principal and students attending the public school district, and that such a relationship is inconsistent with fiduciary obligations. As such the Motion is granted as to Page 7, ¶23, line 16 ("fiduciary relationship"); Page 7, ¶24, line 28 ("fiduciary"); and Page 15, ¶51, line 22 ("fiduciary relationship"), which are ordered stricken without leave to amend. The remainder of the Motion is denied, the Court finding that the remaining portions requested by Defendant Felix DeLuna to be stricken from the Complaint are relevant and sufficiently supported. Counsel for Defendant Felix DeLuna shall submit a revised form of order consistent with this ruling within two weeks.

19. 24CV03355 IN RE: FARLEY, PATRICIA

EVENT: Petition for Change of Name

All documents are in order and the Petition is granted. The Court will sign the Decree submitted by the Petitioners and no appearances are required.

20. 24CV03417 IN RE: VIEIRA, ARTHUR WAYNE

EVENT: Petition for Change of Name

All documents are in order and the Petition is granted. The Court will sign the Decree submitted by the Petitioners and no appearances are required.

21. 24CV03476 IN RE: ENGDAHL, ZECHARIAH ELIJAH THOMAS

EVENT: Petition for Change of Name

The Court will hear from the Petitioner.

22. 24CV03502 IN RE: GREGORY, ISHA JAYAMAE

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

23. 24CV03541 IN RE: KOEHNLEIN, SIARAH

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.