LAW AND MOTION TENTATIVE RULINGS
DATE: JANUARY 10, 2023 TIME: 8:30 A.M.

TENTATIVE RULINGS ARE NOT POSTED IN UNLAWFUL DETAINER CASES

No. 21CV02301

FIGLIOMENI et. al v. SELMAN

MOTION TO ENFORCE SETTLEMENT

The motion to enforce the Settlement Agreement and enter judgment is granted. The Court retains jurisdiction to enforce the agreement and the pending Permanent Injunction. The parties are directed to file a mutually agreeable and fully-executed Final Judgment and Permanent Injunction within 30 days of the hearing.

Based on substantial evidence in the record, the settlement agreement appears to be supported by consideration and enforceable against all parties.

The parties entered into settlement discussions in May 2022. (Mohamed Decl. ¶2; Sutton Decl. ¶9) Counsel declarations describe a lengthy process for obtaining all parties' signatures, but that appears to have been accomplished by 9/11/22. Defendants and their counsel all wet-signed the agreement on 8/31/22. (Sutton Decl. Ex. 1) On several occasions thereafter defense counsel took actions and made statements confirming the settlement: took the mediation off calendar, informed the Court that the action was settled, emailed that both sides were bound by the settlement, and circulated a stipulation for final judgment and permanent injunction. (Sutton Decl. ¶¶22-26, Exs. 18-23) Defense counsel's first effort to rescind the agreement was the 10/17/22 CMC in which he advised the Court that Defendants had revoked their agreement and were not bound by it. (Mohamed Decl. ¶13, Sutton Decl. ¶27, Ex. 24) At the time, defense counsel's legal basis for the rescission was that "the proferred settlement documents were rejected by [Plaintiffs]." (Sutton Decl. Ex. 24) Prior to this, however, Plaintiffs had circulated the agreement and were waiting on the final initials by Defendants' LLC on the Evidence Code §1542 waiver portion of the agreement. (Sutton Decl. Exs. 18, 20, 21) There is no evidence before the Court that Plaintiffs ever rejected the settlement agreement.

Defendants now argue that the Settlement Agreement is not enforceable because it lacks consideration and is incompletely executed.

"[CCP] Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809. It provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement."§ 664.6.

"It is for the trial court to determine in the first instance whether the parties have entered into an enforceable settlement. [Citation.] In making that determination, 'the trial court acts as the

trier of fact, determining whether the parties entered into a valid and binding settlement. [Citation.] . . .'" *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360; *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905 [trial court must "resolve [the] disputed issues and ultimately determine whether the parties reached a binding mutual accord as to the material terms"]. "The trial court's factual findings on a motion to enforce a settlement pursuant to section 664.6 'are subject to limited appellate review and will not be disturbed if supported by substantial evidence.' [Citation.]" *Osumi v. Sutton, supra,* 151 Cal.App.4th at 1360. Appellate review of any legal determinations is under the de novo standard. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 35; *Weddington Productions, Inc. v. Flick, supra*, 60 Cal.App.4th at 815.

Ordinarily, a party "who signs an instrument which on its face is a contract is deemed to assent to all its terms." *Marin Storage & Trucking, Inc. v. Benco Contracting & Engineering, Inc*. (2001) 89 Cal.App.4th 1042, 1049. By signing the settlement agreement, Defendants objectively manifested their assent to its terms. *Stewart v. Preston Pipeline Inc*. (2005) 134 Cal.App.4th 1565, 1587; *Money Store Investment Corp. v. Southern Cal. Bank* (2002) 98 Cal.App.4th 722, 728 [bank objectively manifested consent when its employee signed acknowledgment and accepted escrow conditions]. "'It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that [s]he failed to read the instrument before signing it.' [Citations.]" *Stewart v. Preston Pipeline Inc*., supra, 134 Cal.App.4th at 1588-1589, fn. omitted; see *C9 Ventures v. SVC-West, L.P*. (2012) 202 Cal.App.4th 1483, 1501 ["'A party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing. [Citations.]'"].

Lack of consideration:

When settlement terms are reduced to writing it furnishes "presumptive evidence of a consideration " (Civ. Code, § 1614) and casts upon Defendants, "the party seeking to invalidate or avoid it," the "burden of showing a want of consideration." Civ. Code, § 1615. (See *Estate of Brimhall* (1943) 62 Cal.App.2d 30, 34; *Estate of Baxter* (1950) 96 Cal.App.2d 493, 501.) The consideration for a promise must be an act or a return promise, bargained for and given in exchange for the promise. *Prather v. Vasquez* (1958) 162 Cal.App.2d 198, 205.

Defendants argue without legal authority that the only alleged consideration in the agreement are the recitals, agreements, representations, warranties and covenants contained in the agreement, but that a review of those reveals that Plaintiffs confer no benefit on Defendants, and that even if those were sufficient, Plaintiffs have failed to deliver the fully executed agreement despite requests for it. First, the agreement provides that Defendants will not block the Road or interfere with Plaintiffs' rights to use it, they will not challenge or contest the physical location of the deeded easements, Plaintiffs may place a Road sign and Defendants will not remove it, that the settlement agreement and permanent injunction will bind successive owners of Defendants' property, each party will bear their own attorneys' fees and costs, and each party released the other parties from any and all known and unknown claims. (Sutton Decl. Ex. 1) From these promises Defendants gain the benefits of full and final resolution of the action,

paying only their own fees and costs, and being released by Plaintiffs for any claims Plaintiffs may later discover. Even if the only element in Defendants' favor was a mutual release, there would be sufficient consideration. *Remondino v. Remondino* (1940) 41 Cal.App.2d 208, 213-214; see also *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 742; *Property California SCJLW One Corp. v. Leamy* (2018) 25 Cal.App.5th 1155, 1165 [agreement to settle bona fide dispute is presumed to be supported by adequate consideration].

Finally, the fully executed agreement at a minimum was provided to Defendants via this motion filed 11/4/22, very close in time to the parties' dispute as to its enforceability. (Sutton Decl. Ex. 24) Defense counsel also understood that there was a single initial stalling the distribution of the fully endorsed agreement. (Sutton Decl. Exs. 18, 20, 21)

Incompletely executed:

Defendants next argue that Plaintiffs rejected the agreement as incompletely executed and so the agreement is not effective. As noted above, there is no evidence that Plaintiffs rejected the agreement; instead, they opted for wet signatures following issues with electronic versions not satisfying legal requirements. (Sutton Decl. ¶17-21, Exs. 1, 9-16, 25-26)

The Court declines to award Plaintiffs attorneys' fees and costs in pursuing this motion.

MOTION TO AMEND ANSWER

Based upon the Court's granting of Plaintiffs' Motion to Enforce the Settlement Agreement and Enter Judgment pursuant to CCP §664.6, Defendants' motion to amend their answer to the First Amended Complaint is moot ["The issuance of the permanent injunction shall be considered a final judgment of the Court in case number 21CV02301." (Motion to Enforce Settlement, Sutton Decl., Ex. 1)].

No. 22CV01828

H.N. v. SCOTTS VALLEY UNIFIED SCHOOL DISTRICT et al.

DEMURRER

The demurrer is sustained, in part with leave to amend and in part without leave to amend. Plaintiff is directed to conform the amended complaint to Cal. Rule of Court 2.112: "Each separately stated cause of action, count, or defense must specifically state: (1) Its number […], (2) Its nature […], (3) […]; and (4) The party or parties to whom it is directed […]."

As to the first cause of action for false imprisonment, based on the immunities afforded public entities pursuant to Government Code §815, and since no statutory basis for liability is plead, Defendant District is immune from liability for false imprisonment as a matter of law. *Tilton v. Reclamation Dist. No. 800* (2006) 142 Cal.App.4th 848, 863-864. The demurrer as to District is sustained without leave to amend.

District employees are entitled to immunity pursuant to Government Code section 820.2, which provides: "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 immunity is conferred for policy decisions and not the ministerial action taken in implementing those policies. *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 392.

At the pleading stage in this action, it is difficult to determine if the district employee acts of separating H.N. were ministerial based on school policy or were due to the exercise of judgment. Therefore, the demurrer is sustained with leave to amend so that Plaintiff can identify the applicable defendants and the specific acts supporting his cause of action for false imprisonment.

As to the third cause of action for intentional infliction of emotional distress (IIED), based on the immunities afforded public entities pursuant to Government Code §815, and since no statutory basis for liability is plead, Defendant District is immune from liability for IIED as a matter of law. *Tilton, supra*, 142 Cal.App.4th at 863-864. The demurrer as to District is sustained without leave to amend. As for district employees, the facts alleged do not describe extreme and outrageous conduct. Rather, they describe school employees separating an unvaccinated child who refused to test for COVID-19 from his peers, but also providing him with a 1:1 teacher, in a classroom, with access to recess time by himself, and with direction to exercise during that recess. The demurrer is sustained with leave to amend.

As to the fourth cause of action for Bane Act violations, Plaintiff's Complaint alleges District and its employees took actions that confined H.N., bullied him, and attempted to coerce him to receive the COVID-19 vaccination "under threat of violence *by way of intimidation, pressure and coercion*". (Complaint ¶85, emphasis added.) However, these allegations are insufficient to state a Bane Act claim because these are not threats of violence. The demurrer is sustained with leave to amend.

As to the fifth cause of action for civil rights violations, Defendants argue that the district is not a person subject to 42 U.S.C. §1983 liability and its employees are shielded by sovereign immunity. Plaintiff's Opposition states his claim is not based on §1983 despite references to the statute in the header of the claim and littered throughout (Complaint ¶93, footnote 10 referencing the First Amendment; ¶94, "First and Fourteenth Amendments of the United States Constitution"; and ¶¶96, 97, 99, 100, 101,103).

Defendants are correct that the district is shielded by Eleventh Amendment immunity. In *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal.App.4th 1098, 1115. The demurrer is sustained with leave to amend provided that no claim for 42 U.S.C. §1983 by District is made and to clarify what basis and facts support constitutional or Education Code violations by specified defendants.

MOTION TO STRIKE

The motion is granted in part and denied in part.

As for declaratory relief, the motion is granted. Based on there being no current mask mandate in place for students at Brook Knoll Elementary, there does not appear to be any present controversy before the Court. Therefore, the motion to strike the declaratory relief prayer is granted.

As for exemplary damages against as to the school district, punitive damages are not available and the motion is granted. Gov. Code §818. As against district employees, the motion to strike is granted but Plaintiff should have an opportunity to amend to specify the personnel and their conduct that allegedly justifies punitive damages.

As for attorneys' fees, the motion to strike is granted with leave to amend in light of the Court's ruling on the demurrer to Plaintiff's Bane Act claim.

No. 22CV02266

KITTLE v. CABRILLO COLLEGE

(UNOPPOSED) MOTION FOR PRELIMINARY INJUNCTION

The motion for preliminary prohibitory injunction is granted.

The Public Records Act (Act) (Gov. Code §6250 et seq.) typically exempts from disclosure "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Gov. Code §6254(c). "These statutory exemptions from mandatory disclosure under the CPRA must be narrowly construed. [Citations.] Moreover, the exemptions from disclosure provided by section 6254 are permissive, not mandatory: They allow nondisclosure but do not prohibit disclosure. [Citations.] Indeed, the penultimate sentence of section 6254 provides, 'Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.' [Citation.]" *Marken v. Santa Monica-Malibu Unified School Dist. (2012)*, 202 Cal.App.4th 1250, 1261–1262, fns. omitted.

In the case of public employees, courts have permitted the disclosure of personnel information (terminations and their preceding investigations) if the public's right to know outweighs the employee's privacy interests because of the employee's position of authority as a public official and the public nature of the allegations. *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 759.

"Courts apply a three-step analysis in determining whether [either of these exemptions] applies. As a threshold matter, the court must determine whether the records sought constitute a

personnel file, … or other similar file. If so, the court must determine whether disclosure of the information would 'compromise substantial privacy interests; if privacy interests in given information are *de minimis* disclosure would not amount to a "clearly unwarranted invasion of personal privacy," [citation] … .' [Citation.] Lastly, the court must determine whether the potential harm to privacy interests from disclosure outweighs the public interest in disclosure. [Citations.]" *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 818. In weighing these competing interests, "we must determine 'the extent to which disclosure of the requested item of information will shed light on the public agency's performance of its duty.' [Citation.]" *Id.* at p. 820.

Here, the requested records are personnel records since they directly relate to Plaintiff's separation from employment. Next, the records would likely compromise substantial privacy interests; Plaintiff, after all, took the necessary steps to file this action and maintain it to keep these records private. Finally, Plaintiff argues for this preliminary injunction that if no injunction is granted keeping the status quo – keeping these documents private for now – the harm to his privacy interests is much greater than the public's interest in disclosure.

There is no information in the record as to Plaintiff's current status as a public employee elsewhere. All we know is that he was terminated, filed to be on the ballot to run for a Cabrillo Trustee spot, and then withdrew his candidacy when these information requests were made. He is not now employed by Cabrillo and is not a candidate for office. The public has a significant interest in the conduct of public school coaches and in knowing how schools handle allegations of their misconduct. *Associated Chino Teachers v. Chino Valley Unif. School Dist*. (2018) 30 Cal.App.5th 530, 542. However, without more information as to the seriousness of the allegations, the Court is unable to determine that the public has any interest in their disclosure. Therefore, the Court finds that the privacy interests at stake in these personnel records outweigh any interest in the public for disclosure and grants the motion for preliminary injunction.

No. 22CV02276

TANZ v. BROWN

APPLICATION FOR ORDER OF SALE OF DWELLLING

The Parties are ordered to appear so that the Court may determine whether or not the Property is exempt. Based on that determination the Court will proceed accordingly. (CA CCP §§ 704.730 et seq.)