Tentative Rulings for November 20, 2025
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

25CECG02521 ***Brandon v. Markum*** **(see tentative ruling below)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

21CECG03251 ***Enrique Parra v. General Motors LLC*** **is continued to Thursday, December 18, 2025 at 3:30 p.m. in Department 403.**

24CECG01421 ***Francisco Sanchez, JR v. Jim Crawford Construction Company, Inc.*** **is continued to Thursday December 18, 2025 at 3:30 p.m. in Department 403**

23CECG01529 ***Pina Ung v. Broder Bros. Co,*** **is continued to Thursday December 18, 2025 at 3:30 p.m. in Department 403**

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Tentative Rulings for Department 403

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(34)

Tentative Ruling

Re: ***Frabotta v. St. Agnes Medical Center, et al.***
Superior Court Case No. 22CECG02513

Hearing Date: November 20, 2025 (Dept. 403)

Motion: by Defendants' for Joinder of Omitted Heirs

Tentative Ruling:

To grant defendants' motion for joinder of Matthew Frabotta, Michael Frabotta, Jr., Johnathan Frabotta, and Mindy Breese as nominal defendants to the action, as they are necessary parties. (Code Civ. Proc. § 389.)

To find the motion as to Marc Frabotta moot.

Explanation:

Defendants Saint Agnes Medical Center and Sarbjot Grewal, M.D., joined by Saqib Rashid, M.D., move for compulsory joinder of Matthew Frabotta, Marc Frabotta, Michael Frabotta, Jr., Johnathan Frabotta, and Mindy Breese under Code of Civil Procedure section 389. Section 389 states,

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

(Code Civ. Proc., § 389, subd. (a).)

Here, defendants seeks to join Matthew Frabotta, Marc Frabotta, Michael Frabotta, Jr., Johnathan Frabotta, and Mindy Breese as nominal defendants in the action because they are the children and surviving heirs of decedent Michael Frabotta, and thus defendants contend that these heirs have the right to bring a wrongful death claim against them for allegedly causing decedent's death. (Code Civ. Proc. § 377.60.)

"An action by a portion only of the heirs is not the action authorized by our statute. All the heirs should, therefore, join as plaintiffs in an action by heirs, and if the consent of any one who should be so joined cannot be obtained, he may be made a defendant. It would, therefore, seem that where all the heirs are not joined, and timely objection is made on that ground by a defendant, the action should be abated, or, at least, the

other heirs should be made parties." (*Salmon v. Rathjens* (1907) 152 Cal. 290, 294–295, internal citation omitted.)

However, although the other heirs should be named as nominal defendants in the action, they are in fact plaintiffs. (*Watkins v. Nutting* (1941) 17 Cal.2d 490, 498-499.) Also, if the plaintiff in a wrongful death action fails to join a known heir as a defendant in the action, the plaintiff may be liable to the heir for the failure to do so. (*Id*. at p. 499.) On the other hand, when the defendant in a wrongful death action has actual knowledge of the existence of an omitted heir, and the defendant fails to move to add the omitted heir as a party, a settlement or dismissal of the pending action will not bar a subsequent action by the omitted heir against the defendant. (*Valdez v. Smith* (1985) 166 Cal.App.3d 723, 731.)

Here, the children of Michael Frabotta are alleged to be one of the surviving heirs of decedent. Michael Frabotta, Jr., Johnathan Frabotta, and Mindy Breese have been identified by plaintiff Debbie Frabotta as children of decedent and are represented by the same counsel as defendant but have not formally been joined in this action. (Casheros Decl., ¶¶ 5, 8-9.) Counsel for plaintiff initially indicated the complaint would be amended to name these three heirs as indispensable plaintiffs but the amended complaint has not been filed and no waiver of participation in litigation has been received for these heirs. (*Id*. at ¶ 13.) As heirs with the right to bring a wrongful death action against defendants, the court intends to grant the motion to join Michael Frabotta, Jr., Johnathan Frabotta, and Mindy Breese as necessary parties to this action.

In her deposition, plaintiff also identified Matthew Frabotta and Marc Frabotta as children of decedent. (Casheros Decl. ¶ 6.) Defense counsel attempted to contact both heirs regarding their participation in this action. (*Id*. at ¶ 10.) Marc Frabotta has agreed to waive his participation in this action. (Suppl. Casheros Decl., ¶ 5, Ex. 2.) Efforts to contact Matthew Frabotta have been unsuccessful. (Casheros Decl., ¶¶ 11-12.) Although it appears there may be difficulties serving Matthew Frabotta, the court intends to grant the motion to join him as a necessary party. In light of the waiver signed by Marc Frabotta, the motion is moot as to his joinder to this action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 11-19-25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Diaz v. Guynes***
Superior Court Case No. 25CECG01655

Hearing Date: November 20, 2025 (Dept. 403)

Motion: Defendant J.S. Towing's Demurrer

Tentative Ruling:

To overrule the demurrer, with defendant J.S. Towing granted 10 days' leave to file its answer to the complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

Explanation:

Defendant J.S. Towing demurs to the third cause of action for negligence alleged against it. The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

There are two distinct common law "negligent infliction" theories, either one of which may support liability in an appropriate case. A "direct victim" claim alleges emotional distress suffered as a proximate result of defendant's conduct directed at plaintiff. (*Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 923; *Burgess* v. *Superior Court* (1992) 2 Cal.4th 1064, 1071-1072; *Huggins* v. *Longs Drug Stores Calif.* (1993) 6 Cal.4th 124, 129-130.) A "bystander" ("percipient witness") claim alleges emotional distress as a proximate result of witnessing defendant's negligently-inflicted injury upon a person "closely related" to the plaintiff "bystander." (*Thing* v. *La Chusa* (1989) 48 Cal.3d 644, 647; *Dillon* v. *Legg* (1968) 68 Cal.2d 728, 740-741.)

Negligent causing of emotional distress is not an independent tort but, rather, rests on the tort of negligence. Thus, whether proceeding on a "direct victim" or a "bystander" theory, plaintiff must state a prima facie negligence action--i.e., the usual duty, breach, causation and damages elements apply. (*Marlene F.* v. *Affiliated Psychiatric Med. Clinic, Inc.* (1989) 48 Cal.3d 583, 588; *Thing* v. *La Chusa, supra,* 48 Cal.3d at p. 647; *Burgess* v. *Superior Court, supra,* 2 Cal.4th at p. 1072.)

A "direct victim" negligent infliction claim is one where the plaintiff is alleging emotional distress proximately caused by defendant's conduct directed at plaintiff. (*Marlene F.* v. *Affiliated Psychiatric Med. Clinic, Inc., supra,* 48 Cal.3d at p. 590; *Molien* v. *Kaiser Foundation Hospitals, supra,* 27 Cal.3d at pp. 922-923; *Burgess* v. *Superior Court, supra,* 2 Cal.4th at p. 1073; *Huggins* v. *Longs Drug Stores Calif., supra,* 6 Cal.4th at pp. 129-130.) A direct victim claim exists only where plaintiff's mental distress damages result from the breach of a duty owed plaintiff that is assumed by defendant or imposed on defendant as a matter of law, or that arises out of a relationship between plaintiff and defendant. (*Marlene F.* v. *Affiliated Psychiatric Med. Clinic, Inc., supra,* 48 Cal.3d at p. 590; *Molien* v. *Kaiser Foundation Hospitals, supra,* 27 Cal.3d at pp. 922-923; *Burgess* v. *Superior Court, supra,* 2 Cal.4th at p. 1073; *Huggins* v. *Longs Drug Stores Calif., supra,* 6 Cal.4th at pp. 129-130.)

Whether a duty of due care is owed to a "bystander" mental distress plaintiff is tested objectively by a three-part test. It must be shown that: (1) plaintiff was "closely related" to the injured victim; (2) plaintiff was present at the scene of the injury-producing event when it occurred and was then aware the event caused the victim injury; and (3) as a result, plaintiff suffered "serious" emotional distress. (*Thing* v. *LaChusa, supra,* 48 Cal.3d at pp. 667-668.)

Here, Plaintiffs allege that Defendant J.S. Towing's personnel directed Plaintiff Anastasio Carmona Diaz to go to a vehicle and retrieve any uncharred belongings of his daughter, without first informing Plaintiff that his daughter's charred remains were still in the vehicle. (Complaint, ¶ 28.) Plaintiff asserts he would not have approached the vehicle if he had known that his daughter's remains were still in the vehicle. (Complaint, ¶ 29.) Plaintiff alleges that Defendant was entrusted with the care and disposition of the vehicle and had a duty to ensure others, especially family members, did not approach and view the inside of the vehicle. (Complaint, ¶ 31.) Plaintiffs argue that while Defendant's primary responsibility was to address the vehicles involved in the crash, Defendant's employee affirmatively directed Plaintiff to the vehicle, knowing it would likely cause severe emotional distress to see his daughter's charred remains. They argue this conduct created a duty of care to prevent foreseeable emotional harm to Plaintiff.

The question of duty typically is a question of law. (*Burgess v. Superior Court, supra*, 2 Cal.4th at p. 1072.) Duty can be "imposed by law, assumed by the defendant, or exist by virtue of a special relationship." (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 985.) However, Defendant argues that direct victim negligent infliction of emotional distress claims have only been recognized in claims involving near miss circumstances where the Plaintiff was personally at risk, claims against health care providers, claims against environmental polluters, and claims against mortuaries for mishandling human remains. While there are cases which find these circumstances can be used to allege a direct victim claim in the context of negligent infliction of emotional distress, Defendant has not cited to any legal authority to support the position that these are the *only* ways direct victim claims can be made.

Plaintiffs have alleged that Defendant had a duty of care directly owed to Plaintiff and that Defendant breached this duty to Plaintiff. To the extent that Defendant asserts it did not have a duty to Plaintiff, Defendant's authorities do not support this position and

the arguments go to the merits of Plaintiffs' claims. As such, these are not the appropriate subject of demurrer. The Court overrules the demurrer.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 11-19-25.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Ten-West Towing, Inc. v Melvin Marbinec***
Superior Court Case No. 25CECG02662

Hearing Date: November 20, 2025 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation:

The court denies the request for default judgment without prejudice for the following reasons:

a) Improper Filing:

Plaintiff has not filed the required "Request for Court Judgment" form (Judicial Council Form CIV-100). This is a dual-purpose form, used for requesting both entry of default and court judgment.

Plaintiff used the form, on August 5, 2025 for "Entry of Default." As such, Plaintiff still needs to file a "Request for Court Judgment."

Plaintiff should also complete Section 2 of the Judicial Council Form CIV-100.

b) Failure to Dismiss All Parties:

Plaintiff fails to dismiss the Doe defendants, as required prior to seeking default judgment. (Cal. Rules of Court, rule 3.1800(a)(7) [requiring dismissal of all parties against whom judgment not sought].)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 11-19-25.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Brandon v. Markum***
Superior Court Case No. 25CECG02521

Hearing Date: November 20, 2025 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

Counsel is ordered to appear and be prepared to address the issues set forth below. Petitioner and claimant are excused from appearing.

Explanation:

Item 17.f. of the petition is marked, providing that counsel does not expect to receive any fees or compensation beyond what is requested it the petition. As set forth in this court's last order, it is inappropriate for all of counsel's fees to come from the minor's settlement. Claimant should be paying a prorated share of the attorney's fees, based on petitioner also being a plaintiff in this matter and being represented by the same attorney. It is unclear why, under the circumstances, counsel does not expect to receive fees from petitioner. It is also unclear why item 17.e. is marked, as it provides that counsel is not representing or employed by any other party involved in the matter.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 11-19-25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***John Doe v. Clovis Unified School District***
Superior Court Case No. 25CECG00472

Hearing Date: November 20, 2025 (Dept. 403)

Motion: Demurrer and Motion to Strike

Tentative Ruling:

To grant defendants' requests for judicial notice.

As to defendant Clovis Unified School District Governing Board, to sustain the demurrer to the First Amended Complaint, without leave to amend.

As to defendant Clovis Unified School District, to sustain the demurrer to the fifth cause of action in the First Amended Complaint for Violation of the Bane Act, with leave to amend. To overrule the demurrer to the first, second, third, fourth, sixth, seventh, eighth, ninth, and tenth causes of action in the First Amended Complaint.

To grant defendants' objections to the Declaration of Shanon D. Trygstad.

To grant defendants' motion to strike, as requested.

Explanation:

Defendants Clovis Unified School District ("Clovis Unified") and Clovis Unified School District Governing Board ("School Board") (collectively "defendants") demurrer to the First Amended Complaint ("FAC") filed by plaintiff John Doe ("plaintiff") on the grounds that (1) the School District is not an independent legal entity that can be sued, and (2) the FAC fails to state facts sufficient to constitute a cause of action.

Legal Standard

A demurrer challenges defects apparent from the face of the complaint and matters subject to judicial notice. (*Blank v. Kirwan* (1985) 30 Cal.3d 311, 318.) A general demurrer is sustained where the pleading is insufficient to state a cause of action or is incomplete. (Code Civ. Proc., § 430.10, subd. (e); *Estate of Moss* (2012) 204 Cal.App.4th 521, 535.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) A demurrer "admit[s] all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

Ability to Sue Clovis Unified School Board

Defendants argue that the governing board of Clovis Unified School District cannot be sued because is not an independent legal entity and is not separate from Clovis Unified School District. Defendant cites to *Biggers v. Sacramento City Unified Sch. Dist.* (1972) 25 Cal.App.3d 269 ["*Biggers*"], to emphasize the previously recognized distinction that " 'The governing board of any school district is liable as such **in the name of the district** for any judgment against the district on account of injury to person or property arising because of the negligence of the district, or its officers or employees.' " (*Biggers, supra*, at p. 272, fn. 1, emphasis added.)

Plaintiff opposes, arguing that the Education Code contemplates that governing boards of school districts may be named in legal actions. However, plaintiff does not cite to any section of the Education Code that supports this assertion. Plaintiff cites to authority that provides for school districts to have governing boards with various powers, but the authority referenced does not demonstrate that a board may be separately named as a defendant. Plaintiff also points to *Biggers*, which states that "a school district **and/or** its governing board, officers and employees were [previously] liable for negligence by statute (first under the provisions of School Code section 2.801 and later by section 903 of the Education Code[.])" (*Biggers, supra,* at p. 272, emphasis added.) Plaintiff argues that this language sets the school board apart as "more than a formal entity." However, the citation as quoted by plaintiff omits the footnote, which was relied on by defendants and states "[t]he material portion of section 903 at the time read as follows: 'The governing board of any school district is liable as such **in the name of the district** for any judgment against the district[.]'" (*Biggers, supra*, at p. 272, fn. 1, emphasis added.)

Curiously, neither party cited to Education Code section 35162, which states that "In the name by which the district is designated the governing board may sue and be sued[.]" (Ed. Code, § 35162.) With this understanding, and lack of any authority to the contrary, the court is satisfied that the governing school board is not a separate legal entity that can be sued separately from the school district of which it is a part. Therefore, the court grants the demurrer as to defendant Clovis Unified School District Governing Board, without leave to amend.

Immunity

Defendants argue that a public employee is immune from liability for an injury caused by executing or enforcing laws, if done while exercising due care, citing to Government Code section 820.4. California Welfare and Institutions Code section 5150 allows law enforcement officers and various medical professionals to bring an individual to an appropriate facility for assessment, evaluation, and treatment for up to 72 hours, where there is probable cause that the individual is a danger to himself, to others, or gravely disabled as a result of a mental disorder. (Welf. & Inst. Code, § 5150.)

Defendants argue the school district properly exercised its authorities to call the school district police officers, and that the school district police were acting within the scope of their statutory authority in response to what appeared to have been an emergent situation. Defendants argue that all allegations in the FAC indicate that the

officers' actions were taken to protect the safety of both the plaintiff and the school community.

The court is not convinced that defendants can invoke statutory immunity as a blanket defense. While officers *may* have immunity from liability for placing someone on a 5150 hold, there are certain evaluations that must be made. They are not be limited to consideration of the danger of imminent harm. (Welf. & Inst. Code, § 5150 subd. (b).)

"When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 5150, a person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others or to themselves, or is gravely disabled." (Welf. & Inst. Code, § 5150.05 subd. (a).)

As alleged in the FAC, the school district (i.e. employees of the school, the school psychologist) was aware of plaintiff's mental health status and of plaintiff's history of making statements to the effect of wanting to die. The school district had a plan in place for how to handle those scenarios. It is not apparent that the school district acted with due care in response to plaintiff's statements on May 22, 2024 when they caused him to be taken into custody by making the call to the school district police who handcuffed the minor plaintiff and placed him on a 5150 hold. The court does not find that the school district is immune from liability.

First, Second, and Fourth Causes of Action

These causes of action are for violations of the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Discrimination under Government Code section 11135. Defendants demur to these causes of action on the basis that plaintiff failed to state facts sufficient to demonstrate defendants' conduct occurred based on his disability, and that he was denied the benefits of the school's programs, benefits, or services due to his disability.

Here, there is no question that plaintiff is a qualified individual with a disability. Defendants do not deny that the school district was aware of plaintiff's disability and had special plans and programs in place as a result of his enrollment as a special education student. The FAC contains specific factual allegations to show that defendants' actions were motivated by plaintiff's disability, including the disregard of his IEP accommodations and the failure to recognize the predictable, disability-related nature of his behavior. (FAC, ¶¶ 26–28, 36–37, 39). The FAC alleges disparate treatment based on race and disability, including that plaintiff is a Black and autistic child who was subjected to mechanical restraints and police intervention while less restrictive alternatives were available. (FAC, ¶¶ 38–40, 45–46). By the school district's conduct, plaintiff was effectively denied access to his special education program and services, as his IEP plan was not followed, he was removed from the space in which he could self-soothe, his mother was not called, and his education was disregarded; as a result, plaintiff was denied the benefits of the school programs and had to transfer schools. (FAC, ¶¶ 26-28, 31-33, 36, 39-40, 49-50.)

There are sufficient facts alleged in the FAC to overrule the demurrer to these causes of action.

Third Cause of Action

This cause of action is for violations of the Ralph Act (Civil Code sections 51.7 and 52). "Under the Ralph Act, a plaintiff must establish the defendant threatened or committed violent acts against the plaintiff or their property, and a motivating reason for doing so was a prohibited discriminatory motive, or that the defendant aided, incited, or conspired in the denial of a protected right." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1291.)

Here, the FAC alleges that plaintiff was "forcibly and violently handcuffed" when the police "responded impulsively with threats and intimidation when a young Black neurodivergent and disabled boy was in need of special attention and care." (FAC, ¶¶ 42, 44.) Plaintiff was clearly a minor, allegedly weighed less than 90 pounds, and was known to the school to have a disability with specific disability-related behavior. (FAC, ¶¶ 39, 42.) The allegation that plaintiff was reaching for a weapon or gun is denied by plaintiff, and for the purposes of demurrer the allegations of the FAC are considered to be true. The act of physically restraining a minor, handcuffing him, and sending him by transport to the hospital with the knowledge that he has a disability and specific care instructions appears to be sufficient factual allegations to overrule the demurrer to this cause of action.

Fifth Cause of Action

This cause of action is for violations of the Bane Act. "The statute was intended to address only egregious interferences with constitutional rights, not just any tort. The act of interference with a constitutional right must itself be deliberate or spiteful." (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395, internal citations omitted.)

Plaintiff argues that his right to Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Education Act and state law was violated. While defendants' actions alleged in the FAC may be sufficient to support violations of the Ralph Act, the allegations are less specific as to this cause of action. The FAC alleges the actions of the school district and the school district police were discriminatory and violent, perhaps negligent, however, the FAC lacks facts to demonstrate the defendants' actions were deliberate or spiteful. The FAC briefly mentions FAPE but does not contend the school district's actions were deliberately designed to interfere with plaintiff's right to education. The demurrer to this cause of action is sustained.

Sixth, Seventh, and Eighth Causes of Action

These causes of action are for Negligence Pursuant to Education Code sections 200 and 220, Negligent Hiring, Training and Supervision, and Negligent Infliction of Emotional Distress.

As discussed above, plaintiff had an IEP in place with the school district. The FAC alleges that the school district was aware of plaintiff's disability, of his history of disability-related behaviors, and his IEP plan when it called the school police to restrain plaintiff instead of following the self-soothing instructions of his care plan. The FAC does assert that the school district had a duty to plaintiff under each cause of action, and that the school district had knowledge yet failed to comply with the plans set in place for the benefit of plaintiff. The "dangerous" statements by plaintiff were known to the school district, who had been informed that these statements may occur, that plaintiff did not intend to act on these statements, and that plaintiff should self-soothe or call his mom in the event that these statements were made. The court is satisfied that the FAC alleges sufficient facts to overrule the demurrer to these causes of action.

Ninth Cause of Action

This cause of action is for Intentional Infliction of Emotional Distress. "The elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the Defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) Plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. …" (*Christensen v. Superior Ct.* (1991) 54 Cal.3d 868, 903.) "Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Ibid*.)

This intentional tort is unique in that the element of "intent" is lessened to the option of "reckless disregard." The conduct alleged in the FAC – that a disabled minor with a documented history of disability-related behaviors and a care plan in place was handcuffed by school district police offers and transferred to the hospital on a 5150 hold without notifying his parents – does suggest conduct that is extreme and outrageous. The conduct is alleged to be so outrageous as to exceed the bounds of decency in a civilized community. It is reasonable to believe that the school, who knew plaintiff should self-soothe, recklessly disregarded the emotional distress plaintiff would endure when they called the school district police to restrain him. The court is satisfied that the FAC alleges sufficient facts to overrule the demurrer to this cause of action.

Tenth Cause of Action

This cause of action is for battery. "The essential elements of a Cause of Action for Battery are: (1) Defendant touched Plaintiff, or caused Plaintiff to be touched, with the intent to harm or offend Plaintiff; (2) Plaintiff did not consent to the touching; (3) Plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in Plaintiff's position would have been offended by the touching. (*So v. Shin* (2013) 212 Cal.App.4th 652, 668-669.)

The FAC alleges that the touching was not a reasonable exercise of authority but was instead motivated by discrimination and a reckless disregard for plaintiff's known vulnerabilities. (FAC, ¶¶ 38–39). The FAC further alleges that the restraint was unnecessary, as plaintiff was calm and cooperative after prior interventions and posed no real danger to himself or others at the time of the handcuffing. (FAC, ¶¶ 31–32). Calling the police to restrain and handcuff a minor, and to send him away from the school on a 5150 hold,

when there were proven to be other known and effective measures of care, are allegations reflecting an intent to offend plaintiff. The court is satisfied that the FAC alleges sufficient facts to overrule the demurrer to this cause of action.

Motion to Strike Reference to the Unruh Act

Plaintiff admits that he mistakenly included a reference to the Unruh Act in the claim for attorney fees. Plaintiff does not dispute this legal principle, and specifies that he does not assert any claim under the Unruh Act against the District or its Governing Board. Plaintiff does not oppose the motion to strike Item 4 of the Prayer in the FAC, nor makes any request to modify the portion to be stricken. Therefore, the motion to strike is granted as requested.

Objection to Declaration of Shanon Dawn Trygstad

Ms. Trygstad provides a declaration in which she reiterates the claims of the FAC. A restatement of the FAC in the form of a declaration is unnecessary. The defendants' objections to the declaration are granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 11-19-25.
(Judge's initials) (Date)