Tentative Rulings for October 20, 2021
Department 502

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

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Tentative Rulings for Department 502

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(34)

Tentative Ruling

Re: ***Almaraz v. Brant, et al.***
Superior Court Case No. 20CECG03430

Hearing Date: October 20, 2021 (Dept. 502)

Motion: (1) Cross-Defendant Eric Almaraz's Demurrer to Cross-Complaint

(2) Cross-Defendants Chris Reta and Monica Reta's Demurrer to Cross-Complaint

(3) Cross Defendants Xavier Becerra, et al. Demurrer to Cross-Complaint

Tentative Ruling:

To continue the hearing to December 22, 2021 at 3:30 p.m. in Dept. 502.

Explanation:

In light of the notice filed regarding the passing of defendant/cross-complainant Steven Brant, the hearing on the demurrers is continued to December 22, 2021 to allow the parties to substitute the personal representative of Steven Brant's estate as defendant and cross-complainant. (Code Civ. Proc. §§ 377.40, 377.41.) The parties may proceed with the substitutions by stipulation and order in lieu of noticed motion.

This action has not been stayed nor has jurisdiction of this action been transferred to the probate court while the parties comply with the procedures of Probate Code sections 9000 et seq. and 9100 et seq.

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: RTM (Judge's initials) on 10/15/21 (Date).

(27)

Tentative Ruling

Re: ***J.R. v. Clovis Unified School District***
Superior Court Case No. 20CECG03347

Hearing Date: October 20, 2021 (Dept. 502)

Motion: Defendants Clovis Unified School District and Monica Castillo's demurrer to the first, fifth, sixth, seventh, and eighth causes of action and motion to strike portions of the complaint

Tentative Ruling:

To overrule the demurrer to the seventh cause of action. To sustain the demurrer to the first, fifth, sixth, and eighth causes of action, with leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) To grant the motion to strike, with leave to amend. (Code Civ. Proc., §§ 435 and 431.10, subd. (b).) Should plaintiff desire to amend, the first amended complaint shall be filed within ten (10) days from the date of this order. The new amendments shall be in **bold print**. Should plaintiff elect not to amend, defendant shall file a responsive pleading within thirty (30) days from the date of this order.

Explanation:

Demurrer

Legal Standard

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; *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1076 ["We treat the demurrer as admitting all material facts properly pleaded but not contentions, deductions or conclusions of fact or law."].) The court "may also consider matters subject to judicial notice." (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 29.)

First Cause of Action: Sexual Battery (Civ. Code, § 1708.5)

"A person commits a sexual battery who does any of the following: [¶] (1) Acts with the *intent* to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results. [¶] (2) Acts with the *intent* to cause a harmful or offensive contact with another by use of his or her intimate part, and a sexually offensive contact with that person directly or indirectly results. [¶] (3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or (2), and a sexually offensive contact with that person directly or indirectly results." (Code Civ. Proc., § 1708.5, subd. (a), emphasis added.)

Although plaintiff alleges the perpetrator "committed the act of civil sexual battery in violation of California Civil Code § 1708.5 when he willfully, maliciously, intentionally, and without [plaintiff]'s consent subjected her to the acts mentioned above" (Comp. ¶ 84), no such violation is alleged to have been committed or intended by the defendants actually named in the complaint. Rather, plaintiff only alleges that without intervention and "adequate" supervision, prohibition, control, regulation, and/or other penalization, defendants effectively encouraged, ratified, condoned, exacerbated, increased, and worsened the assailant's conduct and acts. (Comp. ¶86.) Nevertheless, the provisions of Code of Civil Procedure, section 1708.5 specifically require *intentional* conduct, which, at least as it relates to the named defendants, is not alleged in plaintiff's complaint.

Finally, plaintiff's opposition devotes several pages toward advancing her negligence theories and cites authorities affirming negligence claims against school districts for particular acts of student on student sexual assault. (See e.g., *M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 515 [judgment affirmed the plaintiff's one cause of action for negligence directed, in part, at the school district].) Defendants, however, do not demur to the negligence based causes of action and admit that the alleged conduct rises "no higher than a standard of negligence…." (Dem. Points & Authorities, pg. 8:12.) Therefore, the demurrer to the first cause of action is sustained.

Fifth Cause of Action: Violation of the Bane Act (Civ. Code, § 52.1)

A cause of action under Civil Code, section 52.1 requires the plaintiff show "(1) intentional interference or attempted interference with a state or federal constitutional or legal right, and (2) the interference or attempted interference was by threats, intimidation or coercion." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 67.) Liability under Civil Code section 52.1 is limited to interference of constitutional or statutory rights. (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 843.) Furthermore, "in pursuing relief for those constitutional violations under section 52.1, plaintiffs need not allege that defendants acted with discriminatory animus or intent, so long as those acts were accompanied by the requisite threats, intimidation, or coercion." (*Ibid*.) In essence, "[t]he statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence." (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 959.)

Defendants contend that plaintiff has not asserted a right infringed upon. Plaintiff's complaint, however, identifies a series of statutes and constitutional provisions establishing and guaranteeing the right of students to be free from physical violence or threats of violence at school, especially California Constitution, Art. I § 28(f)(1) which states that "All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful." (See also *In re Joseph F.* (2000) 85 Cal.App.4th 975, 987 [school visitor registration reasonable in light of constitutional inalienable right of students to attend safe campuses].) Accordingly, plaintiff has identified a constitutional right.

Nevertheless, although plaintiff alleges that on "multiple occasions defendants threatened, intimidated, and coerced her into acquiescing to the allegedly false narrative that *she* was the offending party and not the victim" (Comp. ¶ 126), she does not allege what actions allegedly constituted threat, intimidation or coercion. For example, despite plaintiff's allegation that learning director Monica Castillo ("Castillo") engaged in a "rapid line of questioning" (Comp. ¶ 56), there is neither a description of the questions Castillo asked nor an explanation of how those questions coerced plaintiff's acquiescence. Consequently, the allegations of plaintiff's complaint are insufficient to satisfy the second element to allege liability under Civil Code section 52.1. Therefore, the demurrer to the fifth cause of action is sustained.

Sixth Cause of Action: Gender Violence (Civ. Code, § 52.4)

"Any person who has been subjected to gender violence may bring a civil action for damages against any responsible party." (Civ. Code § 52.4, subd. (a).) Subdivision (e) of section 52.4 specifically exempts employers and provides "this section does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence." (Civ. Code § 52.4, subd. (e).)

Defendants cite federal authorities that have held that subdivision (e) of Civil Code section 52.4 does not impose vicarious liability to employers (see *Doe v. Pasadena Hospital Association, Ltd,* (N.D. Cal. 2020) 2020 WL 1244357), and contend that vicarious liability is similarly inapplicable in other situations, like the one alleged here. Nevertheless, although the legislature expressly exempted employers from liability under some circumstances, the legislature did not provide for any other exceptions. (See *Gikas v. Zolin* (1993) 6 Cal.4th 841, 862 "[A] statute cannot be interpreted to include what was specifically excluded in the drafting process."].)

As mentioned above, however, plaintiff does not allege the named defendants were the actual perpetrators of the alleged assaults, and she does not allege how Castillo's handling of the investigation was coercive or intimidating. Consequently, plaintiff's allegations are insufficient to show that defendants are "responsible parties" for purposes of liability for gender violence under Civil Code, section 52.4. Therefore, the demurrer to the sixth cause of action is sustained.

Seventh Cause of Action: Violation of Unruh Civil Rights Act (Civ. Code, §§ 51, 52)

"The general policy embodied in [Civil Code] section 51 can be traced to the early common law doctrine that required a few, particularly vital, public enterprises—such as privately owned toll bridges, ferryboats, and inns—to serve all members of the public without arbitrary discrimination." (*Brennon B. v. Superior Court of Contra Costa County* (2020) 57 Cal.App.5th 367, 370, rev. granted Feb. 24, 2021, S266254 (*Brennon B.*).) Because the California Supreme Court has repeatedly held that public school districts do not possess the "economic value" and the "attributes and activities" typical of places of public accommodation, the Court of Appeal in *Brennan B.* held that public school districts lack the private character necessary to constitute a business establishment under Civil Code, section 51. (*Brennon B., supra,* 57 Cal.App.5th at p. 389.) The *Brennon B.* court

also held that the Unruh Act does not encompass violations of the Americans with Disabilities Act ("ADA"). (*Id*. at p. 400.)

The Court of Appeal's decision in *Brennon B*., however, did not recite any unique facts, and limited the discussion to whether public school districts constituted "business establishments," and if they did not, whether the Unruh Act nevertheless encompassed ADA violations. Furthermore, the California Supreme Court has granted review in *Brennon B*., and "[p]ending review and filing of the Supreme Court's opinion … a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only." (Cal. Rules of Court, rule 8.1115(e)(1).)

In addition, existing controlling California Supreme Court precedent requires that the Unruh Act be interpreted in "the broadest sense reasonably possible" (*Isbister v. Boys' Club of Santa Cruz* (1985) 40 Cal.3d 72, 76), and several federal courts have interpreted this authority to find that school districts constitute business establishments under the Unruh Act. (See e.g., *Walsh v. Tehachapi Unified School Dist.* (E.D.Cal. 2011) 827 F.Supp.2d 1107, 1011; *Davidson v. Santa Barbara High Sch. Dist.* (C.D.Cal. 1998) 48 F.Supp.2d 1225, 1232-1233.) Given these federal authorities, and the limited persuasive value of *Brennon B*. while under review, public school districts such as Clovis Unified School District ("CUSD") are subject to liability under the Unruh Act. (See Cal. Rules of Court, rule 8.1115(e)(1); see also *Ortega Rock Quarry v. Golden Eagle Ins. Corp*. (2006) 141 Cal.App.4th 969, 989 [the court has the discretion to consider federal decisions for persuasive value].) Therefore, the demurrer to the seventh cause of action is overruled.

Eighth Cause of Action: Intentional Infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress ("IIED") 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. (*Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1009.) To be "outrageous," the conduct must be "so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Ibid*., internal citation and quotation marks omitted.) To survive demurrer, the plaintiff must allege with "great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–161, internal citations, quotation marks, and brackets omitted.)

Plaintiff alleges that Castillo only engaged in a "rapid line" of questioning and did not thoroughly investigate the November, 2018 incident. In addition, Castillo allegedly did conduct a separate interview with plaintiff after the January 2020 incident. As mentioned above, other than concluding that Castillo's handling of the incidents was negligent or otherwise inadequate, plaintiff neither offers facts of the substance of the investigations nor the tenor and content of Castillo's questioning. Furthermore, although plaintiff alleges the existence of a "ten sentence" report, there is no description of its contents. Accordingly, plaintiff's conclusion that the investigations fell to an inadequacy equivalent to a "cover up" is not reasonably inferable from the existing state of the pleadings. Therefore, the demurrer to the eighth cause of action is sustained.

Motion to Strike

A motion to strike can be used to cut out any "irrelevant, false or improper" matters or "a demand for judgment requesting relief not supported by the allegations of the complaint." (Code Civ. Proc., § 431.10, subd. (b).) A motion to strike is the proper procedure to challenge an improper request for relief, or improper remedy, within a complaint. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166-167.)

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient (and hence improper) and therefore may be stricken. However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) There must be clear and convincing evidence that the defendant is guilty of oppression, fraud or malice. (Civ. Code, § 3294, subd. (a); *Neal v. Farmers Ins. Exchange* (1978) 21 Cal. 3d 910, 922.)

"To support punitive damages, the complaint asserting one of those causes of action must allege *ultimate facts* of the defendant's oppression, fraud, or malice." (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055 (emphasis added).) Evidentiary facts are not required. "[A]bsent an intent to injure the plaintiff, 'malice' requires more than a willful and conscious disregard of the plaintiff's interests. The additional component of 'despicable conduct' must be found." (*College Hosp. Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "Despicable" conduct is defined as "conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Ibid*.) Such conduct has been described as "having the character of outrage frequently associated with crime." (*Tomaselli v. Transamerica Ins. Co*. (1994) 25 Cal.App.4th 1269, 1287; *Cloud v. Casey* (1999) 76 Cal.App.4th 895, 912.)

A claim may be supported by showing "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " '"To establish conscious disregard, the plaintiff must show 'that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.' " (*Spinks v. Equity Residential Briarwood Apartments*, *supra*, 171 Cal.App.4th at p. 1055.)

Defendant moves to strike the portions of the complaint claiming punitive and treble damages and those alleging a cover up, first contending that a public entity is not liable for damages imposed primarily for punishment. (Gov. Code, § 818.) Public *employees*, however, can be subject to punitive damages. (*McAllister v. South Coast Air Quality etc. Dist.* (1986) 183 Cal.App.3d 653, 660 ["[W]hile the public employee may be liable for punitive damages, the public entity will not indemnify the employee."].) Accordingly, the requests for punitive damages is not an improper remedy. (*Grieves v. Superior Court, supra,* 157 Cal.App.3d at pp. 166-167.)

Defendant also contends that plaintiff has failed allege to a "cover up" sufficient to support treble damages. The complaint, however, alleges that despite CUSD's own identification of plaintiff as a student susceptible to sexual abuse, Castillo found the

November 2018 incident "mutual." Because of these findings, as well as plaintiff's suspension, it is reasonable to infer that Castillo disregarded plaintiff's disheveled, confused, disoriented, and partially undressed appearance shortly after the incident (Comp. ¶37), i.e. an appearance indicative of assault rather than voluntary conduct. Furthermore, plaintiff also alleges Castillo's investigation consisted of a "rapid line of questioning" which developed into Castillo's "critici[sm]" of plaintiff. (Comp. ¶ 56.)

The alleged downplaying or minimization of the incident could reasonably be considered an attempt to hide evidence of an assault which defendants were entrusted to protect against. Nevertheless, even assuming the truth of plaintiff's allegations as required in passing on a motion to strike (*Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696, 704), plaintiff has not provided sufficient facts addressing Castillo's questioning or her handling of the investigation. (See *infra*.) Therefore, the motion to strike is granted.

Leave to Amend

"If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) "The burden is on the plaintiff, however, to demonstrate the manner in which the complaint might be amended." (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742; see also *McClintock v. West* (2013) 219 Cal.App.4th 540, 556 [demurrer properly sustained without leave to amend where plaintiff did not argue that leave to amend was warranted].)

To the extent additional facts exist to support plaintiff's causes of action, she should be granted the opportunity to do so. (*City of Stockton v. Superior Court, supra,* 42 Cal.4th at p. 747.) Therefore, leave to amend is 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: RTM on 10/18/21.
(Judge's initials) (Date)