TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, January 10, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123?pwd=eHRoZTRvaHhoR25Ec21sVVdGem1Tdz09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. SCV-271027, Pacheco v. Windsor Unified School District

Motion for Summary Judgment and/or Summary Adjudication GRANTED for summary judgment based on immunity under Education Code section 35330.

Facts

Plaintiffs complain that Plaintiff Ray Pacheco ("Ray") suffered injuries in a school wrestling match against Austin Fredrickson ("Fredrickson"), a student of Defendant Windsor Unified School District ("District"), when Fredrickson employed an illegal move during the match. Plaintiffs also name as Defendants Brian Williams, Jamie Williams, and Brian Tiewater (collectively, the "Individual Defendants") but fail to allege how they are involved.

Motion

Defendants move for summary judgment or, alternatively, summary adjudication of Plaintiffs' claims. For summary adjudication, they present five issues: 1) Plaintiffs expressly assumed the risks inherent in wrestling; 2) Plaintiffs impliedly assumed the risks inherent in wrestling; 3) Defendants are immune from liability due to the field trip immunity of Education Code ("Ed.Code") section 35330; 4) there is no evidence that any District employee was negligent; and 5) Plaintiffs cannot establish the existence of a dangerous condition of property of the District.

Plaintiffs oppose the motion. They argue that the motion is technically defective, and they argue that they state valid causes of action, with no evidence establishing assumption of risk.

Defendants have filed a reply, asserting that the motion is procedurally sufficient, reiterating their arguments, noting that Plaintiffs fail to address the argument of immunity for field trips, and asserting that Plaintiffs present no basis for denying the motion.

Note Regarding the Moving and Opposition Papers

The court finds it necessary to point out that both the moving and opposition papers are somewhat messy and contain factual assertions and arguments unrelated to this action.

The moving papers are not entirely clear about the identity of the moving parties, but these appear to be all of the named Defendants in this case, District and the Individual Defendants. More confusingly, the actual notice of motion states that the moving party is only Gravenstein Union School District, but that entity is not a party to this action and is, as far as this court is able discern, not involved in this action in any way. The remaining papers all discuss the named District and the Individual Defendants.

Plaintiffs' papers, amongst other things, incorrectly claim that arguments or grounds for relief asserted in Defendants' memorandum are not the same as those identified in the notice of motion. As discussed more below, this is clearly incorrect. Plaintiffs specifically claim that Defendants' memorandum discusses, amongst others, "the second cause of action for financial elder abuse," which the notice of motion never mentions. However, nowhere do Defendants discuss elder abuse, financial or otherwise, there is no such cause of action in the complaint, and this lawsuit clearly does not involve elder abuse.

The court finds it necessary to point out these vagaries and discrepancies because they are present, and they may affect the analysis or the understanding of the parties' arguments. However, at this point, the court feels confident that it has been able to discern those statements which are inapplicable errors in these papers, and to address both the moving and opposition arguments accurately.

Authority Governing Motions for Summary Judgment or Summary Adjudication

Any party may move for summary judgment or summary adjudication. Code of Civil Procedure ("CCP") section 437c(a), (f). A party is entitled to summary judgment if demonstrating "that the action has no merit or that there is no defense to the action or proceeding." CCP section 437c(a). For summary adjudication, the "party" may seek adjudication of one or more causes of action, affirmative defenses, claims for damages, or issues

of duty if the party contends that the cause of action has no merit or that there is no defense to the cause of action, or that an affirmative defense has no merit, or that there is no merit to a claim for damages "as specified in" Civil Code ("CC") section 3294, or that a party did or did not owe a duty. CCP section 437c(f)(1).

When a defendant moves for summary judgment, it has the burden of first making a prima facie showing that plaintiffs *cannot establish* at least one element of any cause of action for summary judgment, or there is a *complete defense* to every cause of action. CCP section 437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. For summary adjudication, the moving party has the burden of demonstrating that plaintiff cannot establish at least one element of each cause of action at issue, each claim for punitive damages, an affirmative defense, or each issue of duty addressed in the motion, or there is a complete defense to each cause of action addressed. CCP section 437c(f)(1), (o); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.

A defendant can show that an element cannot be established only if its undisputed facts negate plaintiff's allegations *as a matter of law* and would make it impossible for plaintiff to show a *prima facie* case. *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1597.

Once the moving party has met its burden, the party opposing summary judgment or summary adjudication has the burden of demonstrating that there is a triable material issue of fact. CCP section 437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The opposing party must merely make a prima facie showing that there is such a triable issue. *Ibid*.

A party bringing such a motion may also prevail by showing that the opposing party *both lacks*, *and is not reasonably likely to produce*, the requisite evidence. *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 186.

This is not the same as merely showing "an absence of evidence" supporting the other party's claims, which is insufficient to meet the burden of the party seeking summary judgment or adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855. The Supreme Court in *Aguilar* explained the distinction by stressing that a party moving for summary judgment or adjudication must not only show that the other party lacks the necessary evidence but also must demonstrate that the party cannot reasonably obtain it. Thus, a mere lack of evidence, or discovery responses lacking the evidence where the other party has not yet had an opportunity to conduct discovery, is insufficient.

Inferences from circumstantial evidence can create a triable issue, as long as they are not based on speculation or surmise. *Joseph E. DiLoreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161; *Aguilar v. Atlantic Richfield Corp.* (2000) 78 Cal.App.4th 79, 117. These inferences must be "more likely than not." *Aguilar,* 117; *Leslie G. v. Perry & Assocs.* (1996) 43 Cal.App.4th 472, 487. There is also a policy to liberally construe the opposition's evidence and strictly construe the evidence of the moving party. *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 21; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839.

A motion for summary adjudication must seek adjudication of specified "issues" and each issue must entirely dispose of one or more 1) causes of action, 2) claims for punitive damages, 3) affirmative defenses, or 4) issues of duty. CCP section 437c(f)(1).

California Rule of Court ("CRC") 3.1350 sets forth procedural requirements for a motion for summary judgment or summary adjudication. CRC 3.1350(b) governs the requirements for a motion for summary adjudication and requires the issues for which the moving party seeks summary adjudication to be set forth clearly in the notice of motion and repeated in the separate statement of material facts. It states, in full,

> If made in the alternative, a motion for summary adjudication may make reference to and depend on the same evidence submitted in support of the summary judgment motion. If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

CRC 3.1350(d), governing the separate statement of material facts, requires the separate statement to set forth each issue for summary adjudication and the facts being presented for each issue. It states,

> (1) The Separate Statement of Undisputed Material Facts in support of a motion must separately identify:
> (A) Each cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion; and
> (B) Each supporting material fact claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion.

Subdivision (h) clearly sets forth the format which the separate statement "must follow," showing that for summary adjudication it must give a heading for each issue with the facts pertinent to that issue under the heading. The court in *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, at 337, as quoted and relied on in *Zimmerman, Rosenfeld, Gersh & Leeds LLP v. Larson* (2005) 131 Cal.App.4th 1466, at 1477, stated that "[t]he due process aspect of the separate statement requirement is self-evident—to inform the opposing party of the evidence to be disputed to defeat the motion." The court has no power to address issues not raised or identified in a motion. *Maryland Cas.Co. v. Reeder* (1990) 221 Cal.App.3d 961, 974; *Homestead Savings v. Superior Court* (1986) 179 Cal.App.3d 494, 498. As stated in *Homestead Savings, supra*, "[i]f a party desires adjudication of particular issues or subissues, that party must make its intentions clear in the motion."

Authority Governing Assumption of Risk

Implied

Under the doctrine of primary assumption of risk, defendants owe no duty of care to a plaintiff in certain situations, depending on the nature of the activity. *McGarry v. Sax* (2008) 158 Cal.App.4th 983, 999.

In addressing assumption of risk, courts "must evaluate the fundamental nature of the [activity] and the defendant's role in or relationship to that [activity] in order to determine whether the defendant owes a duty to protect a plaintiff from the particular risk of harm." *Avila v. Citrus Community College Dist*. (2006) 38 Cal. 4th 148, 161 (addressing the doctrine in the context of sports); see also *Kindrich v. Long Beach Yacht Club* (2008) 167 Cal.App.4th 1252, 1258-62.

The standard for primary assumption of risk and sports injuries set forth in *Knight v. Jewett* (1992) 3 Cal.4th 296, at 315-316, 320, and essentially reaffirmed in *Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, is that participants in sports generally assume the risk of injuries *normal or inherent* for the activity, but that they do not assume the risk of

every injury. Under the doctrine, one may be liable for conduct outside the ordinary range for the activity or which increases the risks beyond those inherent in the sport. A defendant, therefore, has "no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself...." *Knight*, 315.

Regardless of the labels "negligence" and "recklessness," the ultimate standard is that a party is not liable for ordinary careless conduct committed during the sport but is liable if engaging in "conduct... 'totally outside the range of the ordinary activity'" involved in the sport, in other words, conduct that increases the risks *beyond the dangers inherent* in the sport. *Knight,* 315-316, 320; *Kahn.* This is not a standard that fits neatly into the traditional definitions of either negligence or recklessness and to the extent that liability is based on conduct labeled "reckless" under *Kahn* and *Knight*, it is a specific standard of liability under which conduct is labeled "reckless" when it is outside the range of activity ordinary to the sport or increases the risks beyond those inherent in the sport.

This standard also "does not depend on the particular plaintiff's subjective knowledge or appreciation of the potential risk." *Knight*, 316. A defendant, therefore, may still not be liable even for the injuries to a novice in the sport who, because of inexperience, lacks knowledge of the sport and risks. *Ibid*.

The application of this standard varies depending on the roles of the parties involved and their relationship to the activity. *Knight*, 316-318. Liability, the *Knight* court explained, turns not on the plaintiff's knowledge, but largely on the nature of the activity itself, as well as the defendants' role in, and relationship to, the activity. *Id.,* 316-318; *Kahn*, 113; see also *Wattenbarger v. Cincinnati Reds, Inc.* (1994) 28 Cal.App.4th 746, 751-752. Thus, the court stated, a baseball player and a stadium owner would have different duties and different liabilities where a spectator is hit by a bat which the player threw; while the player might not be liable, the stadium owner might be. *Knight*, 317. As further explained in *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, at 161, primary assumption of risk "precludes liability for injuries arising from those risks deemed inherent in a sport" so the court "must evaluate the fundamental nature of the sport and the defendant's role in or relationship to that sport in order to determine whether the defendant owes a duty to protect a plaintiff from the particular risk of harm."

A final consideration is that the overriding policy behind this test is to avoid imposing duties that would chill vigorous participation and alter the sport's nature. *Knight,* 318-319*;* see also *Yancey v. Sup.Ct.* (1994) 28 Cal.App.4th 558, 566. As the Supreme Court stated in *Kahn*, at 119, "the object to be served by the doctrine of primary assumption of risk in the sports setting is to avoid recognizing a duty of care when to do so would tend to alter the nature of an active sport or chill vigorous participation in the activity."

In *Knight*, at 316, the Supreme Court noted that a ski resort had "no duty to remove moguls from a ski run," because they are a specific characteristic, and risk, of the sport, but it did "have a duty to maintain its towropes in a safe, working condition...." Therefore, a defendant has no duty to counter dangerous conditions that are part of the sport, but it must still maintain the facilities and the like in the appropriate condition.

In *Aaris*, a cheerleader sued a school district for negligence over an injury sustained in cheerleading practice. The appellate court upheld the decision to grant summary judgment in the defendant's favor on the basis of primary assumption of risk. It explained that the coach did not increase the risks beyond those inherent in the activity since the coach simply instructed the team to practice and did not take it beyond its level of experience and capability.

The court in *Aaris* distinguished the situation from cases in which instructors were held to have increased the risks beyond those inherent in the activity. It pointed out that in *Galardi v. Seashore Riding Club* (1993) 16 Cal.App.4th 817, the instructor raised the height of jumps without increasing the distance between them. The court distinguished *Tam v. Goddard* (1993) 13 Cal.App.4th 1528, where a student jockey was told to ride a lame horse the wrong direction on an unsafe track. Finally, it distinguished the situation from *Wattenbarger v. Cincinnati Reds, Inc.* (1994) 28 Cal.App.4th 746, where a pitcher hurt his arm because he was required to continue pitching after hearing a "pop" sound in his arm.

In *Kahn*, a novice swimmer broke her neck on a dive after being instructed to into a shallow racing pool without adequate instruction on how to do so. The Supreme Court reversed the decision to uphold the trial court's order granting summary judgment for the defendants. It pointed to evidence showing that the instructor failed to provide adequate training on shallow dives, lulled the swimmer into a false sense of security by a promise that should would not have to dive at competitions but breached that promise in the heat of a competition, and failed to follow a well-established progression of instruction. This evidence, the court explained, could support a finding that the coach increased the risks beyond those inherent in the sport, even though the nature of the injury was itself inherent in the sport.

In *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, the Supreme Court ruled that a community college district could not be liable for injuries resulting from one player accidentally, or negligently, hitting a batter when pitching the ball. The court held, in part, that this was because it is an inherent risk of the game for a batter to be hit with a ball.

Express

Parties may of course contractually agree to assume the risks of an activity or another's negligence and the agreement is valid if it does not contravene public policy. *Coates v. Newhall Land & Farming* (1987) 191 Cal.App.3d 1, 8; see also 6 Witkin, Summary of Cal. Law (11th Ed.2017, May 2023 Update) Torts, section 1449.

The court in *Leon v. Family Fitness Center (#107), Inc.* (1998) 61 Cal.App.4th 1227, at 1235, noted that releases, even if broad, will cover only activity or injuries "reasonably related to the object or purpose for which the release is given." Quoting *Paralift, Inc. v. Sup.Ct.* (1993) 23 Cal.App.4th 748, at 757, it stated, with original emphasis,

> "[W]here a participant in an activity has expressly released the defendant from responsibility for the consequences of any act of negligence, 'the law imposes no requirement that [the participant] have had a specific knowledge of the particular risk which resulted in his death [or injury.]' ... Not every possible specific act of negligence by the defendant must be spelled out in the agreement or discussed by the parties.... Where a release of all liability for *any* act of negligence is given, the release applies to any such negligent act, whatever it may have been.... '*It is only necessary that the act of negligence, which results in injury to the releasor, be reasonably related to the object or purpose for which the release is given*.' "

In *Leon*, the plaintiff joined a fitness club and signed a release stating that he was

> aware that participation in a sport or physical exercise may result in accidents or injury, and Buyer assumes the risk connected with the participation in a sport or exercise.... Buyer specifically agrees that FFC, its officers, employees and agents shall not be liable

> for any claim, demand, cause of action of any kind whatsoever for, or on account of death, personal injury, property damage or loss of any kind resulting from or related to Member's use of the facilities or participation in any sport, exercise or activity within or without the club premises, and Buyer agrees to hold FFC harmless from same.

Plaintiff suffered a head injury whilst lying on a sauna bench that collapsed underneath him. The court ruled that the release did not cover this injury since the negligence and injury were not reasonably related to the purpose for which the release was given, namely taking part in exercise and fitness activities. *Leon*, 1235.

In *Cohen v. Five Brooks Stable* (2008) 159 Cal.App.4th 1476, plaintiff sued defendant for injuries resulting from a fall in horseback riding. Defendant argued that plaintiff had assigned a release by which she assumed the risk of the injury at issue. The trial court granted summary judgment in favor of the defendant. The appellate court, explaining its reasoning in detail at 1484-1489, reversed, finding that the release did not cover the risk at issue, the negligence of defendant's employee, and only applied to injuries resulting from the inherent risks of horseback riding. It pointed out that the release purported to apply to risks inherent in horseback riding, and then identified a number of examples of such risks, but also added that it applied to risks "not specifically identified." It explained, at 1487-1488, that a "Release relieves a defendant of the consequences of its own negligence only if it does so in "clear, unambiguous, and explicit" language" and that "California courts require a high degree of clarity and specificity in a Release in order to find that it relieves a party from liability for its own negligence." It found that the release at issue applied only to the risks inherent in the horseback riding, and plaintiff's own negligence, but that it did not apply to the negligence of defendant or its employees.

Authority Governing Immunity for Field Trips and Excursions

Education Code ("Ed. Code") § 35330, governing excursions and field trips, makes schools and school employees immune for injuries to students occurring on "field trips" or "excursions." It states, in pertinent part and with emphasis added,

> (a) The governing board of a school district or the county superintendent of schools of a county may:
> (1) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, *athletic*, or school band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for pupils enrolled in elementary or secondary schools. A field trip or excursion to and from a foreign country may be permitted to familiarize pupils with the language, history, geography, natural sciences, and other studies relative to the district's course of study for pupils.

A "field trip" is a visit usually of teacher and students for first-hand observation while an "excursion" is a journey primarily for recreation, "a usual brief pleasure trip," and the like. See *Castro v. Los Angeles Bd. of Ed.* (1976) 54 Cal.App.3d 232, at 236, n.1. Cases have repeatedly held that this statute provides complete immunity if it applies. *Castro, supra*; *Casterson v. Sup.Ct.* (2002) 101 Cal.App.4th 177, 185, 188. The immunity has been found to be broad in scope. *Wolfe v. Dublin Unif. Sch. Dist*. (1997) 56 Cal.App.4th 126. The court in *Sanchez v. San Diego County Office of Education* (2010) 182 Cal.App.4th 1580, at 1584-1587, held that field trip immunity is not limited to the student's home district, but includes any school district that is

a significant participant in conducting the field trip. In that action, a student of one school district died while on a field trip on a facility belonging to defendant, a different school district, the court held that the immunity applied not only to plaintiff's own district, but defendant as well.

Identification of Issues for Summary Adjudication

As explained above, CRC 3.1350 clearly requires a party moving for summary adjudication to state each issue separately and clearly in the notice of motion, repeat these verbatim in the separate statement of material facts, and specify the facts relevant to each issue. Plaintiffs object that the motion is defective by failing to comply with these requirements.

Defendants do, if perhaps somewhat imperfectly, set forth the five issues for summary adjudication in the notice of motion. These are the five issues set forth above and repeated below in the analysis. In contrast to Plaintiffs' assertions, these five issues are repeated in the memorandum of points and authorities and are the same as the arguments raised in that memorandum.

The separate statement is, however, defective. Defendants present eight facts in a single group in their separate statement. They do not repeat the issues for summary adjudication and they do not specify any facts for the issues on which they request summary adjudication. They do, however, state that this one set of facts is presented "with regard to all issues on this Motion…."

In this instance, given the statement which Defendants make and the limited number of facts, the court finds this statement to be technically defective, but finds the defect to be immaterial. It is clear that Defendant is claiming that all of the facts are relevant to each issue, the issues are few and limited, and the facts are few and limited. It is therefore clear, and it is simple to address and analyze the facts in this particular instance.

Separate Statement and Facts

In their opposition separate statement, Plaintiffs dispute only some of Defendants' proffered facts. They state that facts 2-6 are not disputed. They attempt to dispute, in whole or in part, facts 1 and 7-8.

In fact 1, Defendants contend that "[t]he sport of men's wrestling has the highest incidence of concussion in intramural sport…." They cite to a document which is not provided as evidence in any form. Plaintiffs do not dispute the contention or object to the evidence, but since Defendants fail to provide the evidence, there is no support for it. Accordingly, Defendants do not establish this fact.

Plaintiffs in response say this is "Disputed," but only assert that, "Defendants here had zero concussion protocol at the wrestling meet. There was no nurse present at the meet, [sic]…" They themselves cite to no evidence and thus they fail to establish the purported fact which they themselves present.

In fact 2, Defendants present factual assertions about the incident from the complaint. They state,

> On January 29, 2022, Plaintiff Ray Pacheco — then a 15-year-old sophomore - sustained a concussion while voluntarily participating in a wrestling tournament called the 2022 Redwood Empire Classic that took place in the gymnasium at Ukiah High School in Ukiah, California. Complaint, attached letter of April 27, 2022, from Joel H. Siegal to Windsor Unified School District. The Complaint recites at page four: "Plaintiff

incorporates by reference and herein pleads fully as if plead [sic] herein, the April 27, 2022 letter to Windsor Unified School District."

Plaintiffs do not dispute this.

In fact 3, Defendants demonstrate that Plaintiff was wrestling as a member of the varsity team from Casa Grande High School, owned and operated by Petaluma City Schools ("Petaluma"). Plaintiffs do not dispute this.

In fact 4, again citing the complaint in this action, Defendants show that teams from other school districts participated in the event, including that of Defendant Windsor Unified School District. Plaintiffs, once more, do not dispute this.

In fact 5, once more citing the complaint, Defendants show that when Plaintiff was injured he was wrestling a boy from Windsor High School. Plaintiffs do not dispute this, either.

In fact 6, Defendants demonstrate that Plaintiff claims that the other wrestler violated a rule but the referee overseeing the match did not call any foul. Plaintiffs also do not dispute this.

Fact 7 demonstrates that, as a condition of participating on the Casa Grande High School wrestling team, Plaintiffs, Ray and his mother Patricia Pacheco, received and signed documents stating:

Voluntary Activities Acknowledgement and Assumption of Risk

By submitting athletic and medical clearance forms, a student demonstrates interest and intent to participate in the District-sponsored athletic program. By submitting those forms, the student and parent(s)/guardian(s) agree to the following:

We understand and acknowledge that these activities, by their very nature, post the potential risk of serious injury/illness to individuals who participate in such activities.

We understand and acknowledge that some of the injuries/illnesses which may result from participating in these activities include, but are not limited to, the following: sprains/strains, fractured bones, unconsciousness, head and/or back injury, paralysis, loss of eyesight, communicable diseases, and death.

We understand and acknowledge that participation in these activities is completely voluntary and as such is not required by the School.

We understand and acknowledge that in order to participate in these activities, the parent/legal guardian agrees to assume liability and responsibility for any and all potential risks that may be associated with participation in such activities.

We understand, acknowledge and agree that the School, its employees, officers, agents, or volunteers shall not be liable for any injury/illness suffered by the student athlete which is incident to and/or in association with preparing for and/or participating in this activity.

Plaintiffs state that they do not dispute this itself but they do note that this release applied only to Plaintiff's school, not Defendants.

Finally, in fact 8, Defendants show that Plaintiffs received from Ray's school information regarding concussions, stating,

> A concussion is a brain injury and all brain injuries are serious. They are caused by a bump, blow, or jolt to the head. or by a blow to another part of the body with the force transmitted to the head. They can range from mild to severe and can disrupt the way the brain normally works. Even though most concussions are mild, all concussions are potentially serious and | may result in complications including prolonged brain damage and death if not recognized and managed properly. In other words, even a "ding" or a bump on the head can be serious. You can't see a concussion and in most sports, concussions occur without loss of consciousness. Signs and symptoms of concussion may show up right after the injury or can take hours or days to fully appear. If your child reports any symptoms of concussion, or if you notice the symptoms or signs of concussion yourself, seek medical attention right away.

However, the evidence cited is simply a collection of papers obtained from Ray's school district and nothing in the evidence in any way actually shows that Plaintiffs ever received this document. For their part, Plaintiffs add nothing material. Plaintiffs claim that this is disputed, but state only "Deposition of Mrs. Patricia Pacheco only [sic] received information about shoulder injury but this is irrelevant as any information received was only as it related to Plaintiff's school." This statement is unclear and, in any case, Plaintiffs neither cite to nor provide any evidence.

Issue 1: Express Assumption of Risk

Defendant first contends that Plaintiffs expressly assumed the risk of the alleged injury by agreeing to participate despite the release regarding risk set forth in fact 7, above.

Plaintiffs argue that this does not apply to the claims here because the release was only between Plaintiffs and Ray's school district, Petaluma, and because it applied only to inherent risks of the sport, not others' negligence. Plaintiffs are correct. The release was between Plaintiffs and Petaluma only and nothing in it indicates that it involved Defendants in any way. Moreover, the release language discusses only inherent risks of the sport. It does not state that it applies to injuries resulting from the negligence or other misconduct by other parties. As explained above, a release must clearly cover the risks at issue in order to be enforced as to them, while a release which covers only "inherent" risks of an activity will not apply to others' negligence. Plaintiffs allege, and argue, that the injury was the result of Defendants' negligence outside the scope of the inherent risks or conduct of the sport. Defendants fail to meet their burden on this point of demonstrating, as a matter of law, that Plaintiffs expressly assumed the risks at issue.

The court DENIES the motion on this point.

Issue 2: Implied Assumption of Risk

Defendants also contend that the doctrine governing implied assumption of risks in sport bars Plaintiffs' claims, and again Plaintiffs contend that this does not apply. Plaintiffs allege, and argue, that the injury was the result of Defendants' negligence outside the scope of the inherent risks or conduct of the sport. Defendants fail to meet their burden on this point of demonstrating, as a matter of law, that Plaintiffs impliedly assumed the risks at issue.

The court DENIES the motion on this point.

Issue 3: Immunity of Ed. Code section 35330

Defendants next assert that they are immune under Ed. Code section 35330, setting forth the immunity for field trips, and set forth above. Plaintiffs do not address this argument.

Defendants demonstrate that this immunity applies. Ray was allegedly injured while on a "field trip" for athletic purposes. In contrast to the release discussed above, this immunity on the face of the pleadings applies to Defendants. This applies to all causes of action.

The court GRANTS the motion for summary adjudication on this issue. Moreover, because this issue applies to, and shields Defendants from all liability for all causes of action pleaded, this court also GRANTS summary judgment based on this argument.

Issue 4: No Negligence

Defendants next argue that Plaintiffs cannot establish any negligence. However, they fail to provide any facts, evidence, or analysis demonstrating that they were not negligent. As explained above, the moving party has the burden of demonstrating this before the opposing party has a burden to counter it.

The court DENIES the motion as to this issue.

Issue 5: No Dangerous Condition

Defendants next argue that Plaintiffs cannot establish a dangerous condition on Defendant District's property because the events and injury took place on the property of an entirely different school district. This argument applies only to the cause of action for premises liability and dangerous condition on public property. Defendants are correct, the undisputed facts showing that the events and injury took place on the grounds of Ukiah High School. The court GRANTS the motion as to this issue. However, this ultimately is immaterial in the end because the court also, as explained above, grants summary judgment based on immunity under Ed. Code section 35330.

Conclusion

The court GRANTS summary judgment based on immunity under Ed. Code section 35330. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing counsel shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

2. SCV-273134, Lenert v. Lenert

Motion to Adopt Appraisal Valuation and Send Buyout Notice CONTINUED to the law and motion calendar of February 28, 2024, in Department 17, at 3:00 p.m., because there is no proof of service showing notice of this hearing. Prior to the new hearing, Plaintiff must file *complete*, proper, and *timely* proof of service compliant with California Rule of Court 3.1300, and actually demonstrating service of notice of the hearing.

Facts and History

Plaintiff seeks to partition real property containing a single-family home at 38048 Foothill Close, Santa Rosa (the "Property"). He alleges that he is Co-Trustee of the C&S Lenert Family Trust dated December 12, 2014 (the "CS Trust"), owner of an undivided one-half interest

in the Property, and that Defendant Carolyn S. Lenert is a trustee of the Carolyn S. Lenert Revocable Trust (the "Revocable Trust"), also an owner of an undivided half interest in the Property. He complains that the parties' relationship has deteriorated to the point that they no longer communicate well and cannot reach an agreement regarding the Property.

He seeks an award of damages; a judgment that the parties each are 50% tenants in commons owners; a judgment for partition by sale, not physical division; proceeds of the sale first pay encumbrances and then are split between the parties according to their respective interests in the Property; appointment of a referee for partition and sale; an order to change the locks and eject inhabitants to prepare for sale; an accounting; an order imposing on Defendant and her interest Plaintiff's costs expended on the Property as well as his damages; a writ of possession giving Plaintiff possession of the Property; attorneys' fees and costs; pre-judgment interest; and other relief.

Defendant answered on June 14, 2023. She partly admits and partly denies the complaint allegations, and she asserts three purported affirmative defenses: 1) Plaintiff is not entitled unilaterally to force partition because Defendant has a right to exercise an option to purchase Plaintiff's share; 2) notwithstanding equal ownership in the Property, Plaintiff has failed to pay his share of expenses as set forth in the answer, so that Defendant is entitled to an award against Plaintiff for this amount; and 3) she reserves the right to add additional affirmative defenses if she obtains information supporting them.

Plaintiff demurred to Defendant's answer. After the hearing on August 23, 2023, this court overruled that demurrer.

On October 31, 2023, Defendant filed a substitution of attorney, substituting in Brendan Brewer as Defendant's attorney.

Plaintiff filed a Motion to Adopt Appraisal Valuation and Send Buyout Notice, moving the court for an order to adopt the appraisal valuation and send a buyout notice to all parties, pursuant to Code of Civil Procedure ("CCP") sections 874.316 and 874.317 of the Partition of Real Property Act. Plaintiff had not filed a proof of service showing notice of the hearing date so on November 21, 2023, the day before the hearing, the court issued the tentative to continue the motion due to this defect. At 4:04 p.m. that day, after the issuance of the tentative ruling, Plaintiff filed a new proof of service for the motion. At the hearing, Plaintiff appeared and informed the court of the recently filed proof of service, but the proof of service was not found in the court file. The court therefore confirmed its tentative, continuing the motion.

Motion

This matter is again on calendar for Plaintiff's Motion to Adopt Appraisal Valuation and Send Buyout Notice. Plaintiff moves the court for an order to adopt the appraisal valuation and send a buyout notice to all parties, pursuant to Code of Civil Procedure ("CCP") sections 874.316 and 874.317 of the Partition of Real Property Act.

There is no opposition.

Service and Notice

The only proofs of service predate the last hearing. One is the original proof of service, attached to the moving papers as filed, showing service of the papers on October 4, 2023, one day before filing. The other is the proof of service filed November 21, 2023, the evening prior to the last hearing. It does not actually demonstrate that Plaintiff served notice of that hearing and, moreover, it would at best have related to that prior hearing and thus did not provide notice of this hearing. The court further notes that the second proof of service was not only unavailable to the court because of the late timing of its filing, but it was untimely. Proof of service for a

motion is supposed to be filed at least 5 court days prior to the hearing. California Rule of Court ("CRC") 3.1300(c). The results of the last hearing, when the proof of service was filed too late for this court to consider it, amply demonstrate the practical basis for this requirement. Plaintiff has, despite the court's ruling at the last hearing and the fact that Plaintiff was present at the hearing, still not filed a new proof of service for this hearing.

Accordingly, the court again CONTINUES the motion. Prior to the new hearing, Plaintiff must file complete, proper, and *timely* proof of service compliant with CRC 3.1300, and actually demonstrating service of notice of the hearing.

Analysis

The Partition of Real Property Act (the "PRPA"), effective January 1, 2023, is at Code of Civil Procedure ("CCP") section 874.311, et seq. The PRPA "applies to real property held in tenancy in common where there is no agreement in a record binding all the cotenants which governs the partition of the property." CCP section 874.311(b). It governs actions for partition of real property filed on or after January 1, 2023. CCP section 874.311(c).

CCP section 874.316 governs the determination of fair market value. According to subdivision (b), "[i]If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation."

CCP section 874.317 governs a cotenant's buyout of the others' interests. According to subdivision (a), when any cotenant has requested partition by sale, the court shall, after determining the value under section 874.316, send notice to the parties that any cotenant, except a cotenant requesting partition by sale, may buy all the interests of the cotenants that requested partition by sale. According to subdivision (b), by 45 days after the notice is sent under subdivision (a), any cotenant except one that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale. Subdivision (c) specifies that the purchase price for each of the interests is the value of the entire parcel as determined multiplied by the cotenant's fractional ownership of the entire parcel. Subdivision (d) requires the court to send notices as to which cotenants, if any, elects to buy the remaining interests. According to subdivision (e), if the court sends such a notice, it shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants shall pay their apportioned price into the court. After this date, it adds, if all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them, but if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under CCP section 874.318(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

Plaintiff demonstrates that after he filed this action for partition of the Property, in which he and Defendant each own an undivided one-half interest, Defendant on June 27, 2023 sent Plaintiff a letter agreeing that there is no dispute about their respective ownership interests and proposing an agreement to obtain an appraisal of the Property with the following terms: the parties split the cost of the appraisal; the appraisal would be conducted by a mutually selected appraiser (the "Joint Appraiser"); the parties stipulated that the Joint Appraiser be the appraiser appointed to determine the fair market value of the property pursuant to CCP section 874.316; the Joint Appraiser's appraisal shall be the appraisal submitted to the court pursuant to CP section 874.316; and the parties retain the right to object to the Joint Appraiser's appraisal in accordance with CCP section 874.316. Luu Dec.¶5; Ex.2. Plaintiff agreed in a letter of July 18,

2023, proposing Dana Adams Blake and Alanya Navarro Blake of Adams Appraisals, and Defendant agreed via e-mail of July 26, 2023. Luu Dec., ¶¶6-7, Exs.3-4. On August 22, 2023, Alanya Navarro Blake, as Joint Appraiser, inspected the Property and appraised its fair market value at $900,000. Luu Dec., ¶8, Ex.5. Petitioner also demonstrates that there has been no objection to the appraisal valuation. Luu Dec., ¶9.

As Plaintiff argues, the appraisal has been conducted pursuant to the parties' agreement and the court must adopt it. The court finds that the next step is to send a buyout notice to Defendant, giving her 45 days to notify the court, in accord with CCP section 874.317, whether she intends to buy out Plaintiff's interest.

In the event that the court finds the defect is service to be cured, the court WILL GRANT the motion. The court will adopt the appraised value of $900,000 for the Property and direct Plaintiff to prepare a notice to Defendant of her right to notify of the court of her intent to buyout Plaintiff's interest.

Conclusion

The court CONTINUES the motion to the defect in service and notice set forth above.