

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Children's Health Defense- California Chapter vs. Placentia-Yorba Linda Unified School District	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2022-01253908-CU-MC-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 04/17/24 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 4/17/24. Following standard court practice the mailing will occur at Sacramento, California on 4/18/24.

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Clerk of the Court, by: S. Valencia, Deputy

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 04/17/24, was transmitted electronically by an Orange County Superior Court email server on April 17, 2024, at 4:20:46 PM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 04/17/2024

TIME: 04:10:00 PM

DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino

CLERK: S. Valencia

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2022-01253908-CU-MC-CJC** CASE INIT.DATE: 04/07/2022

CASE TITLE: **Children's Health Defense- California Chapter vs. Placentia-Yorba Linda Unified School District**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 74275383

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on April 5, 2024, and having fully considered the arguments of all parties, both written and oral, and the evidence submitted in this case, now rules as follows:

NOTICE OF RULING:

The motion for summary judgment of Defendants Placentia-Yorba Linda Unified School District (the "District"), Jim Elsasser, Richard McAlindin, Linda Adamson, Richard Dinh, Bird Potter, Carrie Buck, Karin Freeman, Marilyn Anderson, Dana Gigliotti, Bryan Bloom, Jacklyn Chavez, John Domen, Madison Waltemeyer and Amber Ferris against the Second Amended Complaint ("SAC") filed by Plaintiffs Children's Health Defense – California Chapter, Chris Palicke and Aidan Palicke, is granted.

Request for Judicial Notice

Defendants' request for judicial notice is granted. However, the contents of a document may only be accepted 'where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed.' . . . And the general rule is that the truthfulness and interpretation of a document's contents are disputable." (Evid. Code, § 452, subds. (c) & (h); *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1103-1104.) Plaintiffs' objections to Defendants' request for judicial notice are thus overruled.

Evidentiary Objections

The Court declines to rule on Plaintiffs' and Defendants' evidentiary objections.

Plaintiffs' objections do not comply with California Rules of Court, rule 3.1354(b), which states that "Each

written objection must be numbered consecutively . . ." (See ROA 231.)

Defendants' objections also do not comply with the California Rules of Court. (See ROA 252.) They do not "[q]uote or set forth the objectionable statement or material." (Cal. Rules of Court, rule 3.1354(b)(3).) Defendants additionally state objections as part of their response to Plaintiffs' separate statement. (ROA 249.) This is also improper. As rule 3.1354 states, "[a]ll written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion."

The Court declines to rule on the evidentiary objections that do not comply with the California Rules of Court. (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 8 [finding that the trial court did not abuse its discretion in declining to rule on evidentiary objections that violated the format rules in Rule 3.1354].)

Defendants' Objection to and Motion to Strike Amended Declaration of Nicole Pearson

On March 22, 2024, Plaintiffs filed Pearson's declaration in support of their opposition to the motion. (ROA 234.) On March 26, 2024, Plaintiffs filed Pearson's amended declaration. (ROA 242.) Defendants object to the amended declaration, noting that it was untimely, and move to strike it. (ROA 251.) In response, Plaintiffs then filed another declaration by Pearson (ROA 266) and two identical declarations by litigation assistant Carla Holland (ROA 272 & 274). As explained by Plaintiffs, Pearson's amended declaration, itself, was the same as the original declaration. The difference between the amended declaration and declaration was the electronic bookmarking on the exhibits, and the exhibits with deposition transcripts. Only the cited portions of the deposition transcripts were attached to the amended declaration, as opposed to the entire deposition transcripts that were attached to the declaration. (Holland Decl., at ¶¶ 4-5.) Defendants' objection to the amended declaration is overruled. The motion to strike Pearson's amended declaration is overruled.

Reply Separate Statement

Defendants filed a reply separate statement. (ROA 249.) California Rules of Court, rule 3.1350 does not contemplate a reply separate statement. Defendants did not obtain prior permission from the Court to file the reply separate statement. Accordingly, the Court did not consider this document.

Legal Standard for Motions for Summary Judgment and Adjudication

In both summary judgment and summary adjudication proceedings, the pleadings determine the scope of the relevant issues. (*Port Medical Wellness, Inc. v. Connecticut General Life Ins. Co.* (2018) 24 Cal.App.5th 153, 169; *FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382 [pleadings serve as the outer measure of materiality in a summary judgment motion]; *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 18-19 [defendant only required to defeat allegations reasonably contained in the complaint].)

The standard governing motions for summary judgment and summary adjudication is settled. "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. . . ." (*Ibid.*) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at p. 851.) A defendant moving for summary judgment satisfies his or her initial burden by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

A cause of action cannot be established if the undisputed facts presented by the defendant prove the

contrary of the plaintiff's allegations as a matter of law. (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1597.) Alternatively, a moving defendant can show that a cause of action cannot be established by submitting evidence, such as discovery admissions and responses, that plaintiff does not have and cannot reasonably obtain evidence to establish an essential element of his cause of action. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at pp. 854-855; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590 [finding moving defendant may show plaintiff's lack of evidence by factually devoid discovery responses after plaintiff has had adequate opportunity for discovery]; see *Sheiding v. Dinwiddie Constr. Co.* (1999) 69 Cal.App.4th 64, 80-81 [finding *Union Bank* rule only applies where discovery requests are broad enough to elicit all such information].)

Once a defendant meets its prima facie showing, the burden shifts to the plaintiff to show by reference to specific facts the existence of a triable issue as to that affirmative defense or cause of action. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850.) To meet this burden, the plaintiff must present substantial and admissible evidence creating a triable issue. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) Theoretical, imaginative, or speculative submissions are insufficient to stave off summary judgment. (*Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 481; *Bushling v. Fremont Med. Center* (2004) 117 Cal.App.4th 493, 510.)

A summary adjudication motion "proceed[s] in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) To be successful, a summary adjudication motion must completely dispose of the entire cause of action, defense, damages claim, or duty to which the motion is directed. (Code Civ. Proc., § 437c, subd. (f)(1).)

Merits

The demurrer as to the first through sixth causes of action for mootness for Chris Palicke, as guardian ad litem for his minor child, Aidan Palicke, was sustained without leave to amend. The demurrer as to the ninth, tenth, and twelfth causes of action for lack of standing of Chris Palicke, an individual on behalf of himself, was sustained without leave to amend. The demurrer as to the fifth, seventh, ninth, and eleventh causes of action was sustained without leave to amend. (4/24/2023 Minute Order [ROA 165].) Defendants move for summary judgment, or in the alternative, summary adjudication as to the remaining portions of the SAC.

Mootness

The first through fourth and sixth causes of action seek declaratory and injunctive relief relating to a mandatory mask policy in place during the COVID-19 pandemic. (SAC, at pp. 3, 32-42, 48-49, 68-70.) Defendants argue that these claims are moot. A case is considered moot when "the question addressed was at one time a live issue in the case, but has been deprived of life 'because of events occurring after the judicial process was initiated.'" (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120; see *Giraldo v. Dept. of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 257.) The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief. (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 227; see *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [case moot where contract with county had expired and court could not award it to disappointed bidder].) "Mootness has been described as 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existences (mootness).'" [Citations.]" (*Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1008.) The policy behind a mootness dismissal is that courts decide justiciable controversies and will normally not render advisory opinions. (*Giraldo v. Dept. of Corrections & Rehabilitation*, *supra*, 168 Cal.App.4th at p. 257.)

Here, Defendants submitted evidence that the State of Emergency was lifted on February 28, 2023. (Lin Decl., at ¶ 14; Request for Judicial Notice, Exh. L.) After March 11, 2022, the California Department of

Public Health ("CDPH") terminated the universal masking requirement for K-12 schools. (Lin Decl., at ¶ 11; see Request for Judicial Notice, Exh. I, at p. 1/6.) Since March 11, 2022, the District has not required masking and has not discussed a return to masking. (Lin Decl., at ¶¶ 12, 20, Exh. R [Blades Depo., at pp. 49, 192-193]; Request for Judicial Notice, Exh. J, at p. 2.) Plaintiffs do not dispute that Defendants "suspended their Mask Policy as of March 12, 2022." (See SAC, at ¶ 6.) Thus, the District's policies that Plaintiffs challenge are no longer in effect, and have not been in effect for more than two years. The Court can no longer grant Plaintiffs any effectual relief as to the first through fourth and sixth causes of action.

Plaintiffs argue that judicial resolution of these causes of action should be favored because the issues are likely to recur and evade judicial review because of the relatively short time that the issues are alive. (Opp., at pp. 17-18.) This exception to the mootness doctrine, is inapplicable. The State of Emergency lasted for three years, which is not a short duration. Because the District has not discussed a return to masking since the requirement ended in March of 2022, there is no reasonable expectation these issues are likely to recure and evade judicial review. "The COVID-19 pandemic has been a "unique, nonrecurring event."" (*Hernandez-Valenzuela v. Superior Court* (2022) 75 Cal.App.5th 1108, 1127; see *People v. Lopez* (2022) 75 Cal.App.5th 227, 232 [noting "the unique and substantial public health risks created by the ongoing global pandemic"]; *Rowan v. Kirkpatrick* (2020) 54 Cal.App.5th 289, 297 ["acknowled[ing] the unprecedented nature of the circumstances presented by the COVID-19 pandemic and the hardships it may have caused".]) To decide these issues would amount to issuing an advisory opinion - something this Court does not do. (See, e.g., *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 316, fn. 1 ["we do not resolve abstract questions of law"]; *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132 ["it is settled that 'the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it'"].) Accordingly, the first through fourth and sixth causes of action are moot.

Defendants Are Entitled to Statutory Immunity

Defendants argue that they are entitled to statutory immunity as to all of the causes of action that are against them. Government Code section 820.2 provides: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Government Code section 818.2 provides that a public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law. Similarly, Government Code section 821 states: "A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment." Finally, Government Code section 855.4 provides:

a. Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.

b. Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

The California Supreme Court has explained:

Because of the special needs of government and public service, the Tort Claims Act expressly allows public employees to engage in certain acts and omissions free of suit, even when they might otherwise be liable for causing injury or violating individual rights. Among the statutory protections afforded is the immunity for discretionary acts, which leaves public officials free of unseemly judicial interference against

them personally when they debate and render those basic policy and personnel decisions entrusted to their independent judgment.

(*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 988.) Elected school board members are also entitled to these statutory protections, when they engage in the "quintessential discretionary act of government." (*Ibid.*)

Here, Defendants have met their prima facie burden. On December 13, 2021, the CDPH issued guidance that "beginning December 15, CDPH will require masks to be worn in all indoor public settings irrespective of vaccine status through January 15, 2022 . . ." (Lin Decl., at ¶ 6; Request for Judicial Notice Exh. D.) On January 11, 2022, Dr. Clayton Chau, Director of the Orange County Health Care Agency and County Health Officer, wrote an email to Defendant Jim Elsasser, Superintendent of Schools, in response to a question regarding mask material. (See Lin Decl., at ¶ 7, Exh. E.) At the January 11, 2022 School Board meeting, School Board President Carrie Buck stated that masks were required for all individuals in indoor public settings, irrespective of vaccine status, per the California Department of Public Health's updated COVID-19 guidance issued on December 13, 2021. Buck also stated that "mesh masks [were] not acceptable per Dr. Chau from the Orange County Health Care Agency." (Lin Decl., at ¶ 8; Request for Judicial Notice, Exh. F.) Defendants are entitled to statutory immunity for the specific actions complained of against them. (See *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 749 [a "decision requiring . . . comparisons, choices, judgments, and evaluations, comprises the very essence of the exercise of 'discretion' and we conclude that such decisions are immunized under section 820.2"]; *Steiner v. Superior Court* (1996) 50 Cal.App.4th 1771, 1784 [legislative immunity "protects not only the conduct of municipal legislators, but also the acts of municipal administrators and executives 'taken in direct assistance of legislative activity'"]; *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 939-940 [legislative immunity "also encompasses local administrators, when they act in direct assistance of legislative activity" and applies to suits for declaratory and injunctive relief, as well as suits for damages].)

Plaintiffs argue that Defendants are not entitled to legislative immunity because the mask policy was unilaterally enacted by Buck without authority and in conflict with state and local mask guidance. In particular, Plaintiffs characterize Buck's actions as "a massive policy change" made "without following the law or District Bylaws." (Opp., at p. 13.) But, Plaintiffs point to no specific law or District bylaws. Plaintiffs have not met their burden in opposing the motion. Accordingly, the motion for summary judgment is granted.

The December 16, 2024 jury trial is hereby vacated. Within 10 days of service of the notice of ruling, Defendants shall submit a proposed judgment for the Court's signature.

The Clerk is ordered to give notice of the ruling.