

7.

STOKES VS COUNTY
OF ORANGE

(1) Plaintiffs Motion for Judgment on the Pleadings
(Affirmative Defenses of "Hospital Defendants")

The Motion for Judgment on the Pleadings is **Granted** without leave to amend, as to the Sixth and Seventh Affirmative Defenses, in the Answer of the "Hospital Defendants" regarding the Fourth Cause of Action [Civil Rights, 42 U.S.C. §1983] in the First Amended Complaint.

The Motion for Judgment on the Pleadings was not precluded by the prior Demurrer as the prior Demurrer was based on different legal grounds.

Federal law must be applied to Plaintiffs' Federal claims and Federal law holds that California's immunity statutes cannot control 1983 claims. *Martinez v. California* (1980) 444 U.S. 277. *Wallis I* is not controlling on this Court as it is an unpublished decision. Defendants also cannot support their

assertion that *Regents* and *Buckheit* were wrong, based on *Wallis I*. Plaintiff correctly notes that the language of Section 5106 was amended, making the immunity good faith rather than absolute, and it is notable that *Wallis ex rel. Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126 [*Wallis II*] and *Buckheit* were decided after the amendment while *Thomas* and *Wallis I* were decided before the amendment.

Federal law also prevents the application of Civil Code Section 47(b) to the 1983 Cause of Action.

Procedural Note: Generally a general demurrer and therefore, a motion for judgment on the pleadings, must address an entire affirmative defense. Neither party has objected and since the issue is one of importance to the parties, the Court has ruled, *supra*.

Plaintiffs to give Notice.