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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE

CIVIL COMPLEX CENTER

RAELYN STOKES, an individual; MARCUS STOKES, an individual; T.S., a minor, by and through her guardian ad litem;

Plaintiffs,

vs.

COUNTY OF ORANGE; ORANGE COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES; SOCIAL WORKER SUNDAY PETRIE, in both her official capacity and individually; SOCIAL WORKER SUPERVISOR JAMES WALDRON, in both his official capacity and individually; INGRID HARITA, in her official capacity as Director of the Orange County Social Services Agency; SANDRA MURRAY, M.D. in her official capacity as Child Abuse Services Team Medical Director and as an individual; SOCIAL WORKER SUSAN AZADI, in both her official capacity and individually; SOCIAL WORKER OSCAR R. AGUIRRE, in his official capacity and as an individual; SOCIAL WORKER JAKE MICHEL, in his official capacity and as an individual; SOCIAL WORKER SUSAN HORN in her official capacity and as an individual; CHILDREN'S HOSPITAL OF ORANGE COUNTY; SUSPECTED CHILD ABUSE AND NEGLECT TEAM; CHILD ABUSE SERVICE TEAM; DAPHNE WONG, M.D. in her official capacity and as an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30 - 2010 003561398
Judge: Hon. Nancy Wieben Stock
Department: CX 105

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFFS' JUDGMENT ON THE PLEADINGS TO THE AMENDED ANSWER FILED BY HOSPITAL DEFENDANTS

Date: September 23, 2011
Time: 9:00 a.m.

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I. INTRODUCTION

State law cannot provide immunity from suit for a federal civil rights cause of action brought under 42 U.S.C. §1983– as a matter of law. This is true even when the federal claim is asserted in a state court proceeding.

Defendants' Sixth and Seventh Affirmative Defenses are based on state law immunity and improperly target, in part, the Plaintiffs' Fourth Cause of Action for violation of federal civil rights.

The Court should grant this Motion for Judgment on the Pleadings.

II. FACTS

This suit arises from the unjustifiable detention and removal of an infant, Plaintiff T.S., from her parents' care after they brought her to a pediatrician's office. Plaintiffs (Marcus and Raelyn Stokes) sought medical attention for T.S., because T.S. exhibited symptoms of an illness. (First Amended Complaint, ¶24). Marcus and Raelyn contacted their advising nurse, who thought T.S. might have an ear infection and should be seen by a pediatrician. (FAC, ¶24). Out of concern for the health of their child, Marcus and Raelyn brought T.S to see her pediatrician at Coastal Kids Pediatrics. (FAC, ¶25). As it turned out, their regular pediatrician was unavailable so they were seen instead by Dr. Baron, also with Coastal Kids Pediatrics. (FAC, ¶25). Instead of performing an examination to ascertain whether T.S. suffered from an ear infection, Dr. Baron launched into an inquisition regarding some very light and minor bruising that she noticed on T.S. (FAC, ¶25). Marcus and Raelyn told Dr. Baron that T.S. had always been sensitive to bruising and that T.S.'s regular pediatrician could attest to this. (FAC, ¶25). Dr. Baron ignored this information and had paramedics transport T.S. to a hospital emergency room for further testing; she also notified Orange County Social Services. (FAC, ¶25).

An X-Ray and CT Scan were performed on T.S., at no time were the risks of radiation associated with these procedures explained to Marcus and Raelyn. (FAC, ¶26). The tests revealed no bone fractures, or evidence of previous bone fractures, but the CT Scan did reveal tiny acute interhemispheric subdural hematomas. (FAC, ¶27). The neurosugery department was notified of the scan results, but prior to an examination being performed a hospital hold was placed upon T.S. (FAC, ¶27). Soon thereafter, Dr. Muhonen (a Diplomate of the American Board of Neurological Surgery, a specialist in Pediatric Neurological Surgery and the Medical Director of the CHOC Neuroscience Institute) arrived to review the CT scan results, and concluded that T.S. had a congenital condition referred to as benign communicating hydrocephalus of infancy. (FAC, ¶27). This condition is not indicative of any form of child abuse. (FAC, ¶28).

T.S. was not returned to the custody and control of her parents Marcus and Raelyn after Dr. Muhonen's diagnosis. (FAC, 29). Rather, T.S. was removed from the custody and control of her parents and was subjected to further testing, which included an MRI. (FAC, ¶31). Dr. Muhonen reviewed the MRI results and concluded that there was no tear or other damage to T.S.'s brain and that the MRI had been an unnecessary procedure in light of the earlier CT Scan. (FAC, ¶30). Dr. Muhonen also stated in his report that even trivial, self inflicted, trauma could have caused the leakage noticed in the CT Scan and MRI due to the earlier identified congenital condition. (FAC, ¶30).

Despite Neurosurgeon Specialist Dr. Muhonen's well considered diagnosis of T.S., Defendants' Children's Hospital of Orange County and Daphne Wong, M.D. continued to detain T.S. claiming she was suffering from serious intentional trauma. (FAC, ¶¶112 and 113). This misdiagnosis furthered the separation of T.S. from her parents, and caused her to be subjected to a series of unnecessary

medical tests and procedures without any court order or parental consent. (FAC, ¶¶112 and 113).

In response to Plaintiffs' Complaint, Defendants Children's Hospital and Daphne Wong, M.D. filed their joint Answer which consisted of *Seventeen* affirmative defenses. As appears more fully herein, CHOC and WONG's Sixth and Seventh Affirmative Defenses are inapplicable to the federal Section 1983 claims, as a matter of law and are thus, fatally defective. Judgement on the pleadings as to these defenses should be granted.

To the extent this Court may disagree, Plaintiffs respectfully request that this issue be certified for immediate writ review as permitted pursuant to C.C.P. §166.1

III. GOVERNING LAW

Any party may move for judgment on the pleadings after the time for a demurrer has expired. (*Cal. Civ. Proc. Code*, § 438 et seq.) The motion may be made as to the entire answer or one or more of the affirmative defenses set forth therein. (*Id.*) The same rules govern a motion for judgment on the pleadings that govern demurrers. (See *Mendoza v. Rast Produce Co., Inc.* (2006) 140 Cal.App.4th 1395.)

IV. ARGUMENT

1. The Supremacy Clause of the United States Constitution Requires State Courts to Apply Federal Law in Deciding Suits Arising Under 42 U.S.C. §1983

Under the Supremacy Clause of the Federal Constitution, the relative importance to the State of its own law is not material when there is a conflict with valid federal law. (*Felder v. Casey* (1988) 487 U.S. 131, 138.) Any state law which interferes with or is contrary to federal law, must yield. (*Id.* at 138) Moreover, the Supremacy Clause imposes on state courts a constitutional duty to

proceed in such manner that all the substantial rights of the parties under controlling federal law are protected. (*Id.* at 151.)

This Court must apply only federal immunities – as opposed to immunities arising under state law – to the §1983 cause of action. This is true for the simple reason that state law interferes with and/or is contrary to the federal law in *this* litigation. As highlighted below, immunities finding their genesis in state law cannot – as a matter of law – be applied to bar the federal claims asserted by Plaintiffs.

2. Mandated Report Immunity Arising Under State Law as Asserted In The Sixth and Seventh Affirmative Defenses Is Not Applicable to Plaintiffs' Federal §1983 Causes of Action

Any construction of a federal statute which permits a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced. (*Martinez v. California* (1980) 444 U.S. 277, 284. n8.) Based on these basic precepts, California immunity statutes cannot control §1983 claims, even though the federal cause of action is being asserted in state court. (*Id.* at 284)

Simply put, any state law that seeks to immunize conduct which is otherwise subject to suit under §1983 is preempted. This is so even where the federal civil rights litigation takes place in state court. This is because the application of the state immunity law would thwart the congressionally mandated remedy. (*Felder v. Casey* (1988) 487 U.S. *supra* at 139.)

The Ninth Circuit Court of Appeals applies the same rule, "[i]mmunity under §1983 is governed by federal law; state law cannot provide immunity from suit for federal civil rights violations." (*Wallis ex rel. Wallis v. Spencer* (9th Cir. Cal. 2000) 202 F.3d 1126, 1144.) In *Wallis* the Ninth Circuit reversed a district

court that had applied state statutory immunities for child abuse investigations to federal §1983 constitutional claims. (*Id.* at 1144.)

While it is unclear from the court's opinion in *Wallis* which state statutory immunities were at issue in the child abuse investigations, courts are bound by the United States Supreme Court and the Ninth Circuit; and in the face of such explicit admonition, cannot dismiss a federal claim based on state law. (*Buckheit v. Dennis* (N.D. Cal. 2010) 713 F.Supp.2d 910, 924-925; *see also Doe v. Regents of the Univ. of Cal.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 65035, 17-18.)

Here, the Plaintiffs fourth causes of action against Defendants CHOC and Wong is a federal §1983 claim. (See FAC, ¶¶73-80). Defendants' Sixth and Seventh Affirmative Defenses assert the state law immunities of *California Penal Code* section 11172 (Mandated Reporter Immunity) and *California Civil Code* section 47(b), in part, target Plaintiffs' fourth cause of action. (See Amended Answer, ¶10, ln. 20 and ¶11, ln. 1).

California immunity statutes do not – and as a matter of law, cannot – apply to Plaintiffs' section 1983 claims. Therefore, the Defendants Sixth and Seventh Affirmative Defenses are improper and judgment should be entered in favor of Plaintiffs on these defenses..

3. Mandated Reporter Immunity Arising Under State Law Is Preempted; *the Supreme Court of California is in Accord*

Sate law must yield to federal law, where a different outcome will result based solely on whether the federal claim is asserted in state rather than in federal court. The Supreme Court has made it perfectly clear that Congress desires that the federal civil rights laws be given a uniform application within each State. (*Felder v. Casey* (1988) 487 U.S. *supra* at 153.) A law that predictably alters the outcome of §1983 claims depending solely on whether those claims are brought in state or federal court is inconsistent with federal interests. (*Id.* at 153)

Thuds, where different outcomes in §1983 litigation will be produced based *solely* on whether the claim is asserted in state or federal court, within the same state, federal law preempts state law – period. (*Felder v. Casey* (1988) 487 U.S. *supra* at 138.) The very notion of federalism dictates that a State's outcome-determinative law must give way when a party asserts a federal right in state court. (*Felder v. Casey* (1988) 487 U.S. *supra* at 151.)

Simply put, state courts cannot apply an outcome-determinative mechanism, i.e., an affirmative defense based on state law – like mandated reporter immunity – when entertaining substantive federal rights in their courts. (*See, Felder v. Casey* (1988) 487 U.S. *supra* at 141.)

The California Supreme Court is in accord: "[S]tate law that would produce a different outcome in state than in federal court must yield to federal law. Only then does federal preemption prevent a state court from applying state law in a federal civil rights case brought in state court. [citations]" (*County of L.A. v. Superior Court* (1999) 21 Cal.4th 292, 300.)(emphasis added)

A. Federal Law Prevents the Application of Defendants' Sixth Affirmative Defense, *California Penal Code* §11172, to a § 1983 Cause of Action

Courts are prevented from applying state law immunities to §1983 claims, including in the context of mandatory reporters of suspected child abuse. (*Buckheit v. Dennis* (N.D. Cal. 2010) 713 F.Supp.2d 910, 924-925.) Federal law prevents the application of the absolute immunity found in *Cal. Penal Code* §11172 to shield Defendants – like CHOC and Wong – from liability for the Plaintiffs' federal constitutional claims, i.e. §1983 cause of action. (*Id.* at 924-925)

This Court is unable to shield Defendants CHOC and Wong from liability based on the absolute immunity found in *Cal. Penal Code* §11172, because doing

so is contrary to federal law and creates a different outcome than if this action was brought in federal court.

As such, Defendant CHOC and Wong's Sixth Affirmative Defense is not applicable.

B. *Thomas v. Chadwick* (1990) 224 Cal.App.3d 813 is Pre-empted by Federal Law and is not Applicable

Federal Courts are mindful of the California Appellate Court's reasoning in *Thomas v. Chadwick*, but the Federal Courts have since declined to follow *Chadwick* because it contravenes federal law. (*Buckheit v. Dennis* (2010) 713 F.Supp.2d 910, 924; *Doe v. Regents of the Univ. of Cal.* (2006) 2006 U.S. Dist. LEXIS 65035, 18.) Controlling federal precedents in California specifically prohibit the application of mandated reporter immunity to a §1983 cause of action based on the concepts of supremacy and preemption.

Federal preemption prevents a state court from relying on *Chadwick* when adjudicating a §1983 cause of action, because such application is outcome determinative. (*See e.g. County of L.A. v. Superior Court* (1999) 21 Cal.4th 292, 300.)

In addition, *Chadwick* runs directly contrary to the holding that California immunity statutes do not apply to §1983 claims, even though the federal cause of action is being asserted in the state courts. (*See Martinez v. California* (1980) 444 U.S. 277, 284.)

It is therefore impermissible to apply *Chadwick* to this litigation.

C. Federal Law Prevents the Application of *California Civil Code* §47(b) to a § 1983 Cause of Action

The immunity provided by *California Civil Code* section 47(b) does not apply to a section 1983 cause of action. (*Kimes v. Stone* (1996) 84 F.3d 1121, 1127.) To hold otherwise would improperly produce a different outcome in state

than in federal court. (*See e.g. County of L.A. v. Superior Court* (1999) 21 Cal.4th 292, 300.)

Therefore, Defendant CHOC and Wong are unable to assert their Seventh Affirmative Defense against the Plaintiffs' fourth cause of action – as a matter of federal law.

V. CONCLUSION

The Defendants' affirmative defenses rooted in state law cannot provide immunity from the Plaintiffs' Fourth Cause of Action for violation of federal civil rights pursuant to 42 U.S.C. §1983. This is true even here, when the federal claim is being asserted in the State Court.

Therefore, this Court should grant Plaintiffs' Judgment on the Pleadings in its entirety, without leave to amend.

Dated: August 24, 2011

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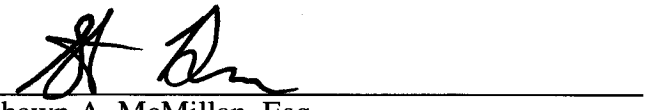

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