

These are the tentative rulings for civil law and motion matters set for Tuesday, August 15, 2017, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, August 14, 2017. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0067231 Harding, Yusupha vs. Gaye, Fatou**

Defendant's Motion to Set Aside Default is continued to September 5, 2017, at 8:30 a.m. in Department 40. Plaintiff may file and serve any opposition to the motion on or before August 28, 2017. No reply shall be permitted.

The proof of service filed by plaintiff on August 9, 2017, is incomplete and deficient. It is signed by defendant despite the statement that the declarant is "not a party to this action." It is not dated, and fails to include other required information including residence or business address (¶2), identification of the documents served (¶4); name of the person served (¶5a); and business or residence address of the person served (¶5b). The proof of service references Form POS-040(D) (Attachment to Proof of Service – Civil), but no such attachment is provided.

Defendant shall cause the ex parte application and order, motion to set aside default, and a notice of continued hearing date which attaches a copy of this ruling, to be properly served on plaintiff on or before August 16, 2017. Service may be made by regular mail.

Execution of judgment shall be stayed pending the continued hearing date and further order of the court.

**2. S-CV-0037165 Swope, Melodie, et al vs. John Mourier Construction, Inc., et al**

First Specialty Insurance Company's Motion for Leave to Intervene on Behalf of Cross-Defendant G&E Landscaping, Inc. is denied without prejudice. The proof of service does not establish proper and timely service of the motion on all parties who have appeared in this action.

**3. S-CV-0037449 Smith, Charley D. vs. Murphy, Anna M.**

This tentative ruling is issued by the Honorable Garen Horst:

Plaintiff's Motion for New Trial and defendant's Motion for Reconsideration are **continued to September 12, 2017, at 8:15 a.m. in Department 4** to be heard in conjunction with plaintiff's motion for reconsideration.

**4. S-CV-0037705 Cornell, Robert vs. Zinicola, Michael, et al**

The Motion to be Relieved as Counsel filed by Lora Grevious, Toeppen & Grevious, is denied. The motion was previously continued with instructions to counsel to file proof of service of the motion on cross-defendant Robert Kitay, and to submit an appropriate proposed order, at least five court days prior to the continued hearing date. It does not appear that these documents have been filed and/or submitted. Accordingly, the motion must be denied.

**5. S-CV-0038087 Bloom, Scott, et al vs. Advance Kids, Inc.**

Motion to Strike Portions of Plaintiffs' Third Amended Complaint

Defendant's Motion to Strike Portions of Plaintiffs' Third Amended Complaint is denied.

A motion to strike may be used to strike any irrelevant, false or improper matter inserted in any pleading, or to strike any pleading or part thereof not drawn or filed in conformity with the laws of this state, court rule, or court order. Code Civ. Proc. § 436. Defendant moves to strike language in the third amended complaint related to plaintiffs' loss of use of equipment, plaintiff's representations to defendant regarding harm caused by the conversion, and plaintiff's prayer for punitive damages. Based on a review of the third amended complaint as a whole, the cited allegations are not irrelevant, false or improper. Plaintiffs sufficiently allege facts to support their prayer for punitive damages, arising from the cause of action for conversion. Contrary to defendant's arguments, the conversion claim does not solely arise from a breach of the sublease between the parties, but is also based on additional wrongful acts of defendant alleged in the third amended complaint.

Defendant shall file and serve its answer to the third amended complaint on or before September 8, 2017.

Motion to Compel Further Responses to Scott Bloom's Third Supplemental Responses to Special Interrogatories

Defendant's Motion to Compel Further Responses to Scott Bloom's Third Supplemental Responses to Special Interrogatories is denied. Defendant fails to establish that plaintiff's response to Special Interrogatory No. 4 is incomplete or evasive based on the information reasonably available to responding party.

The parties' requests for sanctions are denied.

Motion to Compel Further Responses to Scott Bloom's Third Supplemental Responses to Form Interrogatories

Defendant's Motion to Compel Further Responses to Scott Bloom's Third Supplemental Responses to Form Interrogatories is granted.

In response to Form Interrogatory No. 8.8, plaintiff responds that he will lose income in the future as a result of the incident. Plaintiff provides no further information in support of this response, arguing that it is the subject to expert testimony. In opposition to the motion, plaintiff argues that the request is irrelevant because he does not seek future income as damages in this action, but then goes on to state that he will retain an expert to calculate future lost income. If plaintiff does not seek future lost income as damages in this action, it is unclear why expert testimony would be necessary, and this suggests that plaintiff will in fact seek such damages. Defendant is entitled to a clear and straightforward response to the interrogatory, and all information that is reasonably available to plaintiff which supports the response.

In response to Form Interrogatory No. 9.1, plaintiff asserts that defendants have also incurred an obligation as follows: "All equipment is owned by Plaintiff Bloom; equipment also contains data owned by Plaintiffs, clients of Plaintiffs, and Defendants." Plaintiff argues that it "cannot and need not" give additional information about the nature, amount of other facts or valuation of such purported damages. In fact, it is plaintiff's obligation to respond in a straightforward and complete manner to the interrogatory, and to provide all requested information that is reasonably available. If plaintiff seeks damages related to the response to Form Interrogatory No. 9.1, defendant is entitled to know the nature, date, and amount of the obligation incurred. Plaintiff's response is both evasive and incomplete.

In response to Form Interrogatory No. 15.1, which seeks identification of all facts, witnesses and documents supporting any affirmative defenses pleaded by plaintiff, plaintiff has responded with overly general conclusions, as opposed to material facts which support these conclusions. Plaintiff also fails to identify witnesses and documents pertaining to each affirmative defense, instead asserting generally that all witnesses and all documents produced in the action bear each affirmative defense. These responses are insufficient and do not comply with the Code of Civil Procedure.

Plaintiff shall serve further responses to the subject form interrogatories on or before September 15, 2017. Sanctions shall not be awarded to defendant, as the notice of motion does not include a request for sanctions.

**6. S-CV-0038831 Shade & Putnam Technology Solutions, Inc. vs. Granite Fin'l**

Application to Appear as Counsel *Pro Hac Vice*

The application of Paul Schlaud to appear as counsel *pro hac vice* in this action is granted.

Motion to Compel Arbitration

Defendant's Motion to Compel Arbitration is **continued to September 12, 2017, at 8:30 a.m. in Department 40.**

Although the court's records indicate that an opposition to the motion was filed by plaintiff on August 2, 2017, the opposition and supporting declaration are missing from the court's file. Plaintiff is directed to lodge a conformed copy of the opposition and supporting declaration with the clerk of the court at least five court days prior to the continued hearing date. The court apologizes for any inconvenience to the parties.

**7. S-CV-0039173 Williams, Jeffrey G. vs. Ugalde, Adolf A., et al**

Dan Silver dba Win Home Inspection Roseville's Petition to Compel Binding Arbitration is denied without prejudice. The proof of service in the court's file fails to establish proper and timely service of the petition on all parties who have appeared in this action.

**8. S-CV-0039311 Love, Devon T., et al vs. State of Calif. Dept. Education, et al**

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on August 15, 2017, at 8:30 a.m. in Department 42.

Demurrer to Complaint

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted.

Ruling on Demurrer

Plaintiffs have filed the instant action challenging California Senate Bill ("SB") 277, which eliminates the personal belief exemption to California's immunization requirements for children attending public or private elementary or secondary schools, or child care facilities. Plaintiffs' complaint seeks injunctive and declaratory relief, and alleges three separate causes of action asserting violation of the right to due process, the right to public education, and right to privacy pursuant to the California Constitution. Defendants demur to the complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts.

(*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

The United States Supreme Court has held that the state has the right to enact and enforce laws requiring its citizens to be vaccinated. (*Jacobson v. Commonwealth of Massachusetts* (1905) 197 U.S. 11, 27; *Zucht v. King* (1922) 260 U.S. 174.) And as noted in *Zucht*, “it is within the police power of a state to provide for compulsory vaccination” of public school children. (*Zucht v. King, supra*, 260 U.S. at 176.) Following *Jacobson*, courts have repeatedly rejected constitutional challenges to mandatory vaccination laws based on the right to due process, free exercise, and equal protection. (*Zucht v. King, supra*; *Prince v. Massachusetts* (1944) 321 U.S. 158; *see also Phillips v. City of New York* (2d. Cir. 2015) 775 F.3d 538; *Workman v. Mingo County Board of Education* (4th Cir. 2011) 419 Fed. Appx. 348.)

The purpose of SB 277 is “to provide ... [a] means for eventual achievement of total immunization of appropriate age groups” against certain childhood diseases enumerated in Health and Safety Code section 120325(a). SB 277 removes a parent’s ability under the prior law to be exempted from vaccination requirements for school-aged children based on the parent’s personal beliefs. In this action, plaintiffs argue that the removal of the personal beliefs exemption violates their constitutional rights under the California Constitution.

Plaintiffs offer several arguments to support their claims in this action. First, plaintiffs argue that SB 277 impermissibly infringes on their constitutional right to privacy because a child will be required to reveal personal medical information in order to attend school. Under Article I, section 1 of the California Constitution, “[a]ll people are by nature free and independent and have inalienable rights. Among those are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness and privacy.” The constitutional right to privacy is not absolute however. (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 961.) The right to privacy “must be balanced against other important interests.” (*Hill v. Nat’l Collegiate Athletic Ass’n* (1994) 7 Cal.4th 1, 37.)

“[A] plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” (*Hill v. Nat’l Collegiate Athletic Ass’n, supra*, 7 Cal.4th at 39-40.) In this case, the first element is satisfied as a person’s medical history, as well as the right to retain personal control over the integrity of one’s body is protected under the right to privacy. (*People v. Martinez* (2001) 88 Cal.App.4th 465, 474-475; *Am. Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 332-333.) As to whether a reasonable expectation of privacy exists under the circumstances, the court may decide the issue as a matter of law where the material facts are undisputed. (*Hill v. Nat’l Collegiate Athletic Ass’n, supra*, 7 Cal.4th at 40.) “Conduct alleged to be an invasion of privacy is to be evaluated based on the extent to which it furthers legitimate and important competing interests.” (*Hill v. Nat’l Collegiate Athletic Ass’n, supra*, 7 Cal.4th at 37-38.) “In the area of health and health care legislation, there is a presumption both of constitutional validity and that no violation of privacy has occurred.” (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 712.) In addition, “when the state asserts important interests in safeguarding health, review is under the rational basis standard.” (*Wilson v. Cal. Health Facilities Com.* (1980) 110 Cal.App.3d 317, 322.)

The State's legitimate and compelling interest in protecting public health and safety by mandating immunization of schoolchildren has been recognized repeatedly by the courts. (*See Jacobson v. Commonwealth of Massachusetts, supra*, 197 U.S. at 32 (mandatory vaccination statute a lawful exercise of state's police power to protect public health and safety); *Zucht v. King, supra*, 260 U.S. at 175-177 (within the police power of the state to provide for compulsory vaccination of school children); *Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646 (“[f]or their own good and that of their classmates, public school children are routinely required to submit to various physical examinations, and to be vaccinated against various diseases”; *Phillips v. City of New York* (2d Cir. 2015) 775 F.3d 538, 543 (mandatory vaccination as condition for admission to school did not violate the Constitution); *Love v. Superior Court* (1990) 226 Cal.App.3d 736, 740.) “A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. (*Board of Education of Independent School Dist. No. 92 of Pottawatomie County v. Earls* (2002) 536 U.S. 822.) “Conduct alleged to be an invasion of privacy is to be evaluated based on the extent to which it furthers legitimate and important competing interests.” (*Hill v. Nat'l Collegiate Athletic Ass'n, supra*, 7 Cal.4th at 38.)

Plaintiffs allege that their right to privacy is infringed upon in two ways, by causing plaintiffs to forego the right to control the integrity of their own body or that of their children, and by causing plaintiffs to have to disclose private and confidential medical records in order to obtain a public school education. (Complaint at 19:14-18.) In both cases, requiring vaccinations as a condition to attending school, and requiring the disclosure of information regarding whether vaccinations have been obtained, or whether the child is medically exempt pursuant to Health and Safety Code section 120370(a), clearly further the legitimate and important interest of the state in safeguarding health and safety, an interest that has been repeatedly recognized by the United States Supreme Court, the California Supreme Court, and numerous other jurisdictions. Thus plaintiffs' state privacy claims fail as a matter of law because the invasions of privacy are justified by SB 277, which “substantially furthers” the “legitimate and important competing interests” of the State. (*See Hill v. Nat'l Collegiate Athletic Ass'n, supra*, 7 Cal.4th at 38, 40.)

Plaintiffs also argue that SB 277 infringes on their right to education, which has been recognized as a fundamental right in California. (*Serrano v. Priest* (1976) 18 Cal.3d 728, 778.) Nevertheless, the California Supreme Court has held that a law requiring vaccination of children as a condition to attending public schools “in no way interferes with the right of the child to attend school, provided the child complies with its provisions.” (*French v. Davidson* (1904) 143 Cal. 658, 662; *see also Viemeister v. White* (1904) 179 N.Y. 235 (holding that New York's mandatory school vaccination statute did not violate New York's constitutional right to a free public education).

As noted above, where the challenged action primarily concerns health and safety, review is under the rational basis standard. And it is settled that requiring immunization as a precondition to attending school serves a legitimate state interest in protecting public health and safety. Yet even if, as plaintiff argues, strict scrutiny review applied due to infringement upon the fundamental right to education, the result would be the same. Under strict scrutiny analysis, defendants must show a compelling state interest, and that the law is necessary or narrowly tailored to meet that interest. In enacting SB 277, the Legislature declared that its intent was “to

provide: (a) A means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases: ...” That the state has a compelling interest in requiring vaccination of school-aged children has been repeatedly reinforced by court decisions going back over a century. (*See Abeel v. Clark* (1890) 84 Cal. 226, 230; *Zucht v. King*, *supra*, 260 U.S. at 176; *Jacobson v. Commonwealth of Massachusetts*, *supra*, 197 U.S. at 11; *Workman v. Mingo County Board of Education* (4th Cir. 2011) 419 Fed. Appx. 348, 356.) The same courts have also recognized that requiring the vaccination of school children as a precondition to attending school is a legitimate means to achieve the state’s compelling interest of preventing the spread of certain diseases in the interest of protecting public health and safety. SB 277 mandates vaccination for certain proscribed diseases which have been determined by the Legislature to be “very serious” and to “pose very real health risks to children.” (Ass. Com. On Health, Analysis of Sen. Bill No. 277 (2014-15 Reg. Sess.), at p. 4.) Limited exceptions exist within the statute for children with certain medical conditions, or children who are homeschooled or enrolled in independent study. (Health & Safety Code § 120335(f).) In this case, SB 277 is both necessary and narrowly tailored to meet the state’s compelling interest.

Plaintiff also argues that SB 277 infringes upon the rights of parents to direct the upbringing of their children. However, as with the other constitutional rights asserted by plaintiffs, this right is “not without limitations.” (*Pickup v. Brown* (9th Cir. 2014) 740 F.3d 1208, 1235.) Courts have found that a wide variety of state actions may be permitted to intrude upon the interests of parents in controlling the upbringing of their children, including state requirements for compulsory vaccination of children. (*Id.*, citing *Prince v. Massachusetts* (1944) 321 U.S. 158.) Thus, this claim also fails to state a valid cause of action.

Finally, plaintiffs argue that SB 277 creates an unconstitutional condition by requiring plaintiffs to relinquish one constitutional right in order to exercise another fundamental right. “To determine whether the government has violated the unconstitutional conditions doctrine, the court must look to whether the condition placed upon the receipt of a benefit ‘further[s] the end advanced as the justification for the prohibition.’” (*Palmer v. Valdez* (9th Cir. 2009) 560 F.3d 965, 972.) “[T]he ‘government cannot impose a condition for a reason not germane to one that would have justified denial’ of the benefit.” (*Id.*) However, “such limitations only arise when the condition attached infringes on a constitutionally protected interest.” (*Parks v. Watson* (9th Cir. 1983) 716 F.2d 646, 651.) Plaintiff argues that in order to attend school, students are required to relinquish their right to privacy and their right to bodily autonomy. The allegations of the complaint establish that the right articulated by plaintiffs is the right to refuse immunization before attending public or private school in this state. The fact that such a right does not exist as a fundamental constitutional right has been stated repeatedly by courts in every jurisdiction. As noted in *Boone v. Boozman*, in response to the question of whether protection of the Due Process Clause includes a parent’s right to refuse to have her child immunized before attending school where immunization is a precondition, “[t]he Nation’s history, legal traditions, and practices answer with a resounding ‘no.’” Plaintiffs fail to demonstrate that the unconstitutional conditions doctrine applies to its claims in this action.

Based on the foregoing, plaintiffs’ complaint fails to state a valid cause of action. Defendants’ demurrer is sustained as to each cause of action set forth in the complaint. The question remains whether plaintiffs should be afforded leave to amend to cure the defects noted

above. Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) A demurrer shall be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Although plaintiffs request leave to amend, they have articulated no basis on which the claims could be amended to change their legal effect. For this reason, defendants' demurrer to the complaint is sustained without leave to amend.

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