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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

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| TARON MALKHASHYANPlaintiff,vs.LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.Defendants. |  Case No.: BC658007 Assigned For All Purposes to: Judge: Hon. Michael J. Raphael Dept: 51 **PLAINTIFF’S MEMORANDUM OF**  **POINTS AND AUTHORITIES IN**  **OPPOSITION TO DEFENDANT LOS**  **ANGELES UNIFIED SCHOOL**  **DISTRICT’S DEMURRER TO**  **PLAINTIFF’S THIRD AMENDED**  **COMPLAINT** **DATE: AUGUST 16, 2018** **TIME: 9:00 a.m.** **DEPT.: 51 06**   **Reservation ID: 180627326375** **Complaint filed: April 14, 2017** **Trial Date: None Set**  |

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I**

**INTRODUCTION**

 The LAUSD has not previously filed a demurrer in this case. Not to Plaintiff’s Complaint, First Amended Complaint or Second Amended Complaint. Contrary to the assertion by the LAUSD, the present Third Amended Complaint (TAC) does NOT contain new substantive allegations against the LAUSD. The LAUSD has not previously asserted the “field trip/excursion” immunity contained in Education Code section 35330(d) and nothing alleged in the TAC implicates such a claim that was not just as available from the outset of this case. The facts of this case do not now and never have been of the type or character as to describe a “field trip” or “excursion.” This apparent long shot attempt on the part of the LAUSD to think of something else as a basis for attacking Plaintiff’s lawsuit should be rejected.

CCP section 430.41 states:

“…(b) A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer.”

 CCP section 435.5 states:

 “(b) A party moving to strike a pleading that has been amended after a motion to strike an earlier version of the pleading was granted shall not move to strike any portion of the pleadings on grounds that could have been raised by a motion to strike as to the earlier version of the pleading.”

 In this case, Defendant LAUSD has filed its first demurrer and another motion to strike offering for the first time a new alleged immunity statute, on facts and allegations that as to the LAUSD have not changed in any substantive way. On this ground alone, the LAUSD Demurrer (and MTS, addressed in a separate opposition) should be overruled/denied.

**II.**

**THE FACTS ALLEGED AGAINST DEFENDANT LAUSD IN THE TAC DEMONSTRATE THAT THE TAC CONTAINS NO NEW ALLEGATIONS AS COMPARED TO THE SAC**

Defendant LAUSD essentially admits that to justify its very late and inappropriate first time citation to Education Code section 35330(d), it needs to convince the Court that the TAC contains “new allegations” against the LAUSD. It is of course nothing more than common sense to say that “new allegations” is a matter of substance, not form, a matter not merely of a few additional words or even a change, addition or deletion of phrases so as to improve understanding, but rather a significant new accusation, event, person or place not previously part of the case against a party. In this case, the TAC contains NO “new allegations” against the LAUSD.

 The present demurrer by the LAUSD offers the following from Plaintiff’s TAC, paragraph 17, as the so-called “new allegations:”

 “LAUSD and its school Helen Bernstein High School signed up for the NTMA Regional Competition, entering a team of its students consisting of the Plaintiff as well as Omar Guzman and Jenny Pimental. At all times material hereto, Plaintiff was informed and believed that his participation in “robotics,” including on April 18, 2015 and in the preparation for the April 18, 2015 event, was under the direct guidance, supervision, control and management of his school, Helen Bernstein High School and his teacher Mr. C, and that once he arrived at Defendant NTMA’s facility in Santa Fe Springs, the event location on April 18, 2015, his well-being and safety would be attended to by his school and by the event promoter, organizer and sponsor, defendant NTMA.”

 There is nothing “new” about these words from the TAC in the sense of “allegations.” Here are essentially the same facts from the First Amended Complaint (FAC) and Second Amended Complaint (SAC):

From the FAC:

1. Defendants LAUSD, NTMA, and Does 1 through 50, inclusive, sponsored,

managed, maintained, ran, operated, organized, supervised, controlled, and/or administered the COMPETITION.

1. Plaintiff was a student enrolled in Defendant LAUSD’s Helen Bernstein High

School.

1. Plaintiff competed in the COMPETITION on a team (hereinafter “TEAM”) that

was managed, maintained, ran, operated, organized, supervised, and/or controlled by Defendant LAUSD. The chaperone /coach/ teacher of the TEAM, Defendant CHANUDOMCHUCK, was employed by Defendant LAUSD. The TEAM included minor schoolchildren.

1. Despite being the chaperone /coach/ teacher, Defendant CHANUDOMCHUCK,

failed to appear at the COMPETITION and , as such, the TEAM, including Plaintiff, was completely unsupervised at all relevant times. Defendants LAUSD, NTMA, and Does 1through 50, inclusive, failed to provide an alternative chaperone /coach/ teacher to supervise the TEAM. Also, Defendants LAUSD, NTMA, and Does 1through 50, inclusive failed to implement and/or did not have proper procedures, precautions, rules, guidelines, regulations, and policies in place necessary to protect Plaintiff and unsupervised participants from risk of injury.

From the SAC (the factual allegations and from the second cause of action as to NTMA):

16. On or about April 18, 2015, LAUSD student Taron Malkhashyan participated in the NTMA Training Center Robotics League's Regional Competition (hereinafter “competition”) for 2015. The competition took place at a facility and premises owned, operated, managed, supervised and maintained by NTMA, located at 12131 Telegraph Road, Santa Fe Springs, CA 90670.

17. Plaintiff was an LAUSD student enrolled in LAUSD's Helen Bernstein High School, a senior high school wholly owned, operated, managed, supervised and maintained by LAUSD. Plaintiff competed on a team that was organized by Helen Bernstein High School, which had designated a chaperone/coach who was an LAUSD employed teacher, PUNJATORN CHANUDOMCHUCK (Mr. C). The said robotics competition event was fully sponsored by, run by, supervised, organized, and administered by and under the auspices of the LAUSD and NTMA.

18. A robot - called Optimus - was entered into the competition by LAUSD. It was funded, designed, constructed, built, tested, assembled, managed, owned and controlled by LAUSD. It was transported, shipped and made available to Plaintiff for the competition by LAUSD and as placed into the said competition event, it was in a dangerous and defective condition of which LAUSD had actual and/or constructive notice well before the robot was made operational at the competition. Despite being designated by LAUSD as Plaintiff’s teacher, chaperone and coach, Mr. C failed to appear at the event, with the express or implied knowledge, approval, understanding and acquiescence of LAUSD, which failed to provide a replacement teacher, chaperone and/or coach. As such, Plaintiff proceeded to participate in the said competition event in his capacity as a LAUSD student with no or inadequate supervision, protection, guidance and instruction.

23. Defendants LAUSD, Mr. C and Does 1-10, inclusive (hereinafter “LAUSD”) are required by California law to carefully supervise their students, including the Plaintiff herein, while engaged in school sponsored activities, school sponsored, organized and promoted athletic and other competitions wherein the LAUSD school has expressly offered its students the opportunity to engage in such activities as an integral part of the LAUSD school and educational experience. Plaintiff is informed and believes and thereon alleges that LAUSD undertook to arrange for Plaintiff and his robotics teammates from Helen Bernstein High School to appear at the site of the said robotics competition, and/or undertook to sponsor plaintiff and his teammates, as representatives of Helen Bernstein High School at the said robotics competition at the NTMA premises in Santa Fe Spring, CA. In such an educational environment, it does not matter, in terms of the LAUSD general duty to carefully and affirmatively supervise its students, whether that activity, program, competition or event is “off campus” or held on a weekend day.

 24. At all times relevant hereto, LAUSD undertook to provide educational, instructional, recreational, health and related services to Plaintiff and in particular to supervise Plaintiff during his participation in the aforementioned robotics event.

41. Plaintiff and his teammates, high school students at Helen Bernstein High School, participated in the hereinabove described robotics event solely in their capacity as high school students. While they may have appeared to be under the control and supervision of Helen Bernstein High School /LAUSD authorities, they were in fact not so controlled and supervised. Under all of the circumstances then presented, the trained professionals at Defendant NTMA knew, or in the exercise of reasonable care, should have known, that they had a duty of care to assume responsibility for providing a safe premises and event environment for Plaintiff, including but not limited to provision for safety gear, reasonably available first aid stations and materials and appropriate oversight and supervision into the use and application of such safety mechanisms.

 Are there “new allegations” by Plaintiff in the TAC? No.

 Had Plaintiff previously alleged that the School signed up for the NTMA competition? Yes.

 Had Plaintiff previously alleged that the School entered a “team” in the NTMA competition? Yes. The only difference in the TAC is that the names of Plaintiff’s teammates were provided.

 Had Plaintiff previously alleged that his participation in the NTMA robotics event, on the date of the event and in preparation for the event, was under the supervision of his school and his teacher? Of course; that is exactly what was previously alleged.

 Had Plaintiff previously alleged that once he arrived at the NTMA facility, his well-being and safety would be attended to by his school and by the event promoter, organizer and sponsor, defendant NTMA? Yes. Such is explicitly stated in paragraphs 24 and 41 of the Second Amended Complaint.

 Since the TAC contains no new allegations, the LAUSD demurrer is improper, as it had the opportunity to demur to the SAC and failed to do so.

**III.**

**THE ROBOTICS EVENT WAS NOT A FIELD TRIP OR EXCURSION AS THOSE WORDS ARE DEFINED AND HAVE BEEN APPLIED**

 Education Code section 35330 states in pertinent part as follows:

 “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…

 (3) Transport by use of district equipment… provided that, when district equipment is used, the governing board shall secure liability insurance…

(4) Provide supervision of pupils involved in field trips or excursions by certificated employees of the district.

(d) All persons making the field trip or excursion shall be deemed to have waived all claims against the district, a charter school, or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion.

 The statute does not define “field trip” or “excursions,” leaving that task to the appellate courts.” Our courts have uniformly defined a field trip or excursion as a form of education beyond the walls of a school to engage in first hand observation, or as a journey chiefly for recreation, a usual brief pleasure trip, departure from a direct or proper course of deviation from a definite path. Those are the words from the appellate cases quoted by the moving party at page 7 of its Demurrer, generally attributed to the Court in Castro v. Los Angeles Board of Education (1976) 54 Cal.App.3d 232. The Helen Bernstein team preparation for and entry into a robotics event is not a field trip or excursion.

 There are some other practical as well as legal reasons why section 35330 does not apply to our facts. First, the Legislature also enacted Education Code section 44808:

 “Notwithstanding any other provision of this code, no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, **unless** such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances. In the event of such a specific undertaking, the district, board, or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is **or should be** under the immediate and direct supervision of an employee of such district or board (emphasis added).”

 This case sets forth facts as to the LAUSD undertakings both on campus (the assembly of a robot in a negligent manner, resulting in a defective robot the LAUSD entered into the NTMA event) and off, thus taking the facts of this case out of the field trip/excursion immunity. The Legislature clearly had in mind distinct types of activities when adopting sections 35330 and 44808. The facts alleged in Plaintiff’s TAC are facts that match the immunity exceptions set forth in section 44808. The facts in this case are not aligned with the observation and pure recreation ideas associated with section 35330. Pure recreation does not define the robotics event, when it is obvious that the underlying reason for the event and the school’s participation is tied to the career of machining and engineering; the idea being to motivate students to choose that field for their future. But more than that, the LAUSD publically put its name and its school’s name out front as an entrant into the NTMA program; it’s school formed its team made up of students; to go to such lengths to “win” a competition with its students and then to say the students are on their own in terms of safety, makes no sense and would essentially render the word “undertaking” in section 44808 meaningless.

 The facts in the cited appellate cases further support plaintiff’s assertion that section 35330 does not apply to this case. In Castro v. Los Angeles Board of Education (1976) 54 Cal.App.3d 232, the Court was faced with a student’s outing with his high school ROTC unit. The statutory numbering was different at that time but the dilemma was the same. The Court noted the apparent contradiction between (now) sections 44808 and 35330: “Certainly there would have been no purpose in the Legislature's *adding* section [now section 44808] to the Education Code at its 1972 session if by its amendment of [now section 35330] of the same code, it provided absolute immunity from liability for the same away-from-school activity.” 54 Cal.App.3d at 236. So the Court essentially provided future trial courts with the distinction that makes the most sense:

 “The Legislature, by these sections, recognized that: not all educational facilities can be provided within the confines of each school's property. To accomplish a school's educational aims, it therefore is necessary for students to accomplish portions of their study off the school's property. Students who are off of the school's property for required school purposes are entitled to the same safeguards as those who are on school property, within supervisorial limits. Students who participate in nonrequired trips or excursions, though possibly in furtherance of their education but not as required attendance, are effectively on their own; the voluntary nature of the event absolves the district of liability. As we construe the governing sections, we conclude that where a "school-sponsored activity," i.e., one that requires attendance and for which attendance credit may be given, is involved, the event is a "specific undertaking" of the district. In such a case "the district ... shall be liable or responsible for the ... safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district." *Id.*

It would be a different matter if Plaintiff and his friends merely entered the NTMA event on their own, or entered on their own and built their robot at one of their homes, yet called themselves “the kids from Helen Bernstein High School.” But that is not what happened here and it is not what has been alleged in this lawsuit from its inception. Helen Bernstein High School created its robotics team, promoted its team, entered its team in the NTMA event. In that sense, these facts are like the ROTC in Castro; the Court rejecting the Defendant’s claim of the absolute immunity and finding that the facts there alleged came under the provisions of what is now section 44808.

 It has been suggested in at least one case that a high school’s traveling sports teams may come under the field trip immunity and that the robotics competition is similar to a high school sport. See Barnhart v. Cabrillo Community College (1999) 76 Cal.App.4th 818. The problem with that analysis is that the Barnhart Court cited Castro with approval regarding the narrow definition of a field trip as a sub-species of the off campus type of school activity that a school undertakes as part of its curriculum. The only reason for the traveling sports team scenario to have been placed under the field trip umbrella in Barnhart was that there was a California Code of Regulations provision then in existence that so characterized such teams. That provision has since been repealed. Thus, the current state of the law is as defined in Castro, Our facts are those contemplated in Education Code section 44808 since the LAUSD undertook to create, lead, supervise the Helen Bernstein High School involvement in robotics. Plaintiff was thus not involved in a field trip or excursion subject to an immunity from liability.

**IV.**

**CONCLUSION**

 The foregoing establishes that the LAUSD demurrer should be overruled. First, there is the important procedural ground that such a demurrer is untimely and in violation of CCP section 430.41. Second, substantively, the new LAUSD-cited immunity under the Education Code, section 35330(d), does not apply to the facts alleged in Plaintiff’s Third Amended Complaint.

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| DATE: July 30, 2018 | CARPENTER, ZUCKERMAN & ROWLEY, LLPBY:  GARY N. STERN Attorneys for Plaintiffs |
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**PROOF OF SERVICE**

***Malkhasyan v. Los Angeles Unified School District, et al.***

Los Angeles County Superior Court Case No. BC658007

**STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

 On July 30, 2018, I served the following document described as **PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT LOS ANGELES UNIFIED SCHOOL DISTRICT’S DEMURRER TO PLAINTIFF’S THIRD AMENDED COMPLAINT** on all parties in this action by placing [ X ] a true copy [ ] the original thereof enclosed in a sealed envelope addressed as follows:

**[SEE PROOF OF SERVICE LIST]**

[ X ] BY MAIL: By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Services. I am “readily familiar” with my employer’s practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service on that same day.

[ ] BY OVERNIGHT DELIVERY/COURIER: I deposited such envelope in a box or facility regularly maintained by the express service carrier in an envelope or package designated by the express service carrier with delivery fees provided for.

[ ] BY MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service (A proof of service executed by the messenger will be filed in compliance with Code of Civil Procedure.)

[ ] BY FACSIMILE: I caused such document to be sent via facsimile to the names and facsimile numbers listed in the Mailing list and received confirmed transmission reports indicating that this document was successfully transmitted to such parties.

[ X ] (STATE) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

[ ] I declare that I am employed in the office of a member of the bar of this court at whose direction the service is made.

 Executed on July 30, 2018, at Beverly Hills, California.

 LADY LUNA

SERVICE LIST

***Malkhasyan v. Los Angeles Unified School District, et al.***

Los Angeles County Superior Court Case No. BC658007

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