

JUL 14 2015

BY NADYA AVAKIAN
NADYA AVAKIAN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO, CENTRAL DISTRICT

JONG JA JUN, an individual and as the
Successor-In-Interest to Decedent Jin Ouk
Burnham,

Plaintiff,

v.

CHAFFEY JOINT UNION HIGH SCHOOL
DISTRICT, a public entity, CITY OF
FONTANA, a public entity, STATE OF
CALIFORNIA, a public entity, IMELDA
HUGHES, an individual, AND DOES 1-100,
inclusive,

Defendants.

Case No. CIVDS1112258

[Assigned for all purposes to the Hon. Brian S.
McCarville, Dept. S-30]

~~PROPOSED~~ ORDER GRANTING ISSUE
SANCTIONS AGAINST DEFENDANT
CHAFFEY JOINT UNIFIED SCHOOL
DISTRICT

Trial Date: July 6, 2015

TRC: July 2, 2015

Plaintiff's Motion for Terminating, Issue and/or Evidentiary Sanctions came before this Court on July 6, 2015. Appearing for the Plaintiff were Rahul Ravipudi, Deborah Chang, and Thomas Schultz of Panish, Shea & Boyle, LLP. Appearing for the Defendant Chaffey Joint Union High School District ("CJUHSD") was Stephen Harber of McCune & Harber. Appearing for Defendant Imelda Hughes was Christopher Sheedy of Calendo, Puckett & Sheedy.

After oral argument, the Court ordered a 402 Hearing to consider the testimony and credibility of the CJUHSD employees, as well as the evidence presented by the parties. On July

1 6, 2015, testimony in the 402 hearing was provided by CJUHSD officers, managing agents and/or
2 employees, Michael Hook, Al Regis and Maribel Sanchez. The hearing was set to continue on the
3 following day. On the morning of July 7, 2015, counsel for CJUHSD submitted certain
4 documents that counsel claimed were recently found for an in camera review by the Court. After
5 ordering redaction of certain privileged information, the Court ordered that CJUHSD produce
6 redacted documents marked as court exhibits 131 and 132 to Plaintiff's counsel. Counsel for
7 CJUHSD also produced a flash drive to Plaintiff's counsel containing additional documents, and a
8 photograph of such flash drive was marked as court exhibit 133. After hearing limited arguments
9 from the parties, the Court requested that supplemental briefing be provided by the parties. On
10 July 9, 2015, the Court received the Supplemental Briefs filed by Plaintiff and CJUHSD as well as
11 a Notice of Joinder in Plaintiff's Motion by Defendant Imelda Hughes, and heard additional
12 arguments by the parties.

13 Attached as Exhibit 1 to this Order is the July 9, 2015 Reporter's Transcript for this matter
14 at pages 22-31. Based upon the briefing, oral arguments, the testimony and evidence presented at
15 the 402 hearing, and the entire record in this matter which supports the factual findings below, the
16 Court makes the following findings and ORDERS:

17 The Court grants plaintiff's motion insofar as it requests the issue sanctions as set forth
18 below. As set forth more fully in the transcript, the Court finds that CJUHSD employees Michael
19 Hook and Al Regis were not credible witnesses. The Court finds, by clear and convincing
20 evidence, that CJUSD, through its employees, secreted and hid evidence that should have been
21 produced to plaintiff. The Court, having considered and rejected the imposition of terminating
22 sanctions, finds therefore, that the issue sanctions set forth below are appropriate.

23 The Court hereby grants Plaintiff's requests for issue sanctions in toto as requested in her
24 original moving papers as follows:

- 25 ♦ That prior to the 2010 school year, CJUHSD designated bus stops on both the
26 north side of Duncan Canyon and the southwest corner of Duncan Canyon and
27 Serrano for Route 80 so that children did not need to cross Duncan Canyon to
28 get to a school bus stop.

- ◆ That CJUHSD eliminated any school bus stop on the south side of Duncan Canyon at the start of the 2010 school year which required all of the students who lived on the south side of Duncan Canyon to cross the uncontrolled 5 lane highway to get to the designated stop on the Northeast Corner of Duncan Canyon and Serrano.
- ◆ CJUHSD's designated stop on the Northeast Corner of Duncan Canyon and Serrano is designated on a multi-lane highway in violation of 13 California Code of Regulation §1238(b)(3).
- ◆ CJUHSD's superintendent, Mat Holten, was not involved in the designation of the Route 80 bus stops despite 13 California *Code of Regulation* §1238(a) mandating that he designate the stops.
- ◆ CJUHSD did not obtain permission from the California Highway Patrol in designating a stop on the Northeast Corner of Duncan Canyon and Serrano which is in violation of 13 California *Code of Regulation* §1238(c).
- ◆ Requiring students to cross Duncan Canyon to get to the stop on the Northeast Corner of Duncan Canyon and Serrano is dangerous.
- ◆ CJUHSD's designation of the bus stop on the Northeast Corner of Duncan Canyon and Serrano created a dangerous condition of public property.
- ◆ The dangerous condition of public property created by CJUHSD's designation of the bus stop on the Northeast Corner of Duncan Canyon and Serrano was a substantial factor in causing the death of Jin Ouk Burnham.
- ◆ The dangerous condition of public property created by CJUHSD's designation of the bus stop on the Northeast Corner of Duncan Canyon and Serrano created a reasonably foreseeable risk that this kind of incident would occur.
- ◆ The negligent and/or wrongful conduct of CJUHSD employees while acting in the course and scope of their employment for CJUHSD created the dangerous condition.
- ◆ CJUHSD was on actual notice of the dangerous condition of public property it created and had a long enough time to protect against it.
- ◆ CJUHSD owned and controlled all of the school bus stops it designated, including the subject bus stop designated on the northeast corner of Duncan Canyon and Serrano.
- ◆ It would not have cost any money for CJUHSD to cure the dangerous condition of public property.

Exhibit 1

1 prohibited. The other issues involved in this case remain
2 viable, and those documents have nothing to do with those.

3 THE COURT: I thank counsel for their arguments and
4 comments and briefing in the limited time that we had in this
5 particular case.

6 Counsel for Plaintiff talked about the issues of the
7 Court of Appeals some years ago and whatever happened, counsel
8 for Plaintiff won. So the job that was done and the briefing
9 and argument before the Court of Appeal resulted in the
10 Plaintiff being vindicated to the point that the District was
11 brought back into the case. And so all I can say is whatever
12 work was done there was laudably done and inured to Plaintiff's
13 benefit.

14 What is troubling to me, based upon the comments that
15 I made before I offered counsel the opportunity to argue the
16 case, and that is as follows:

17 Mr. Hook and Mr. Regis, two different people, they
18 presented differently. Mr. Regis retired. And if looked at it
19 in a vacuum, without Mr. Hook and without these other documents
20 that we now know exist, and the attendant e-mail showing
21 knowledge, I could have looked at him and say, he kind of looks
22 like my dad. And sliding out, especially when I think about
23 the day that I'm going to retire, am I going to care anymore
24 about today's decision or the eight people I've ordered
25 executed in my career as a judge, let alone the ones that I
26 successfully had executed or on death row as a lawyer. Do I

1 care anymore? I do.

2 Mr. Hook, this is the note that I made about Mr. Hook.
3 He's not credible. And I made this after his first day of
4 testimony, with respect to Mr. Hook. And I do that, and that's
5 why I sit here and look at people as they testify.

6 And then the ongoing obligation that anybody who comes
7 to court has, and especially when people are put on notice,
8 there is litigation, so go back, stop, start gathering
9 everything up, protect everything. It may or may not be
10 relevant. We're going to have to let the discovery process go
11 through, whether it's a traffic accident case involving two
12 individuals or an airplane crash. It doesn't matter. Once the
13 parties are on notice, depending upon what jurisdiction you're
14 in, certain obligations are in place.

15 And so whether there's a change in employees or a
16 change, in this case, of the superintendents, assistant
17 superintendents or whatever title that person has, their
18 obligation is ongoing and continues throughout the course of
19 litigation, and requires diligent -- I wonder, what does that
20 mean, diligent? It means that you really take it to heart and
21 you really do things and do them properly.

22 Parenthetically, while we were going yesterday, I
23 mentioned in our in camera, and this doesn't discuss anything
24 but a generic comment that I made to Mr. Harber when he offered
25 an expedited way for me to look at records, and I said, well,
26 the Supreme Court has said that might be a nice thing to help

1 trial judges do, but you just can't do it.

2 When a judge is tasked to do something, he or she is
3 tasked to do it, even though it's onerous. I opened up today's
4 Daily Journal and there's Justice Ming Chin, who was the author
5 of the Seven Zero Opinion on Brady Discovery. San Francisco
6 DA's office and the courts have tried to come up with a policy
7 to just let the District Attorney look through police officers'
8 files and determine what's relevant and then give that to the
9 judge so the judge doesn't have to go through line by line.

10 We have some old-time justices, some new justices,
11 some conservative justices, some liberal justices, as the court
12 has changed. This is the Seven Zero Opinion that says, no,
13 line by line, page by page, that's the judge's obligation to do
14 that. And I mentioned that yesterday because I think that's an
15 obligation that a party or an employee of a party has when
16 asked to look through things and gather things and keep things
17 and discovery is ongoing and continues. And so Mr. Hook, in my
18 mind, failed in his obligations.

19 Mr. Regis, looking at him in light of Mr. Hook's
20 testimony and additional written documentation, he failed.
21 They failed in their obligations to, for lack of a better
22 phrase, take care of the District, do what they should have
23 been doing.

24 I've looked carefully and I find nothing that
25 Mr. Harber or his firm has done that has in any way been
26 anything but good, solid representation of the District. But

1 the District employees that have testified, most specifically
2 Mr. Hook and Mr. Regis, are not credible, and they did not
3 serve their employer, the District, well.

4 Litigation, unfortunately, takes a long time, and
5 counsel mentions that the plaintiff, in their capacity has
6 suffered the loss of any individual, family member, friend, in
7 a tragic way, never goes away. Nor will anything that a jury
8 or a court does in this case ever make it better. Money
9 doesn't do that. Vindication doesn't do it. In 10 years, in
10 20 years, the loss will be the same. It may be mollified in
11 some extent, it may be worse in some extent. So there's
12 nothing that I can do or a jury can do that can change that in
13 any way.

14 Has the District, through its employees from the
15 entire course of the litigation, acted inappropriately? I
16 can't say that. I can see Mr. Ravipudi's belief, but
17 certainly, over the last couple of years, things haven't taken
18 place appropriately.

19 Is it appropriate to terminate every aspect of the
20 defendant's case? I can't say that it is. It is something
21 that I thought about before counsel wanted to have this hearing
22 yesterday when I saw the documentation that he turned over.
23 Would I be faced with making this decision.

24 When Plaintiff files an action they, undertake to
25 prove it to the extent that the law requires them, by
26 preponderance, by clear and convincing evidence, depending upon

1 the nature of the allegations. The inappropriate conduct, in
2 my mind, has taken place. I've wrestled with this and the
3 Court declines Plaintiff's request to issue a terminating
4 sanction in this case.

5 The issue sanctions, as requested in Plaintiff's
6 Motion 18, are granted in toto as the sanction. The Court will
7 reserve on the issue of further monetary sanctions for the --
8 you'd have to delineate what portions of the 402, we could have
9 20 more, 35 motions, I believe, taking everybody's -- some of
10 those are certainly appropriate, and we still may have some to
11 go through. But some time, probably court time and counsel's
12 time, should be or could be properly sanctionable in a monetary
13 fashion. The Court will reserve on that issue.

14 Mr. Ravipudi is to prepare an order for service on
15 counsel for the defendants in this case. That's to be prepared
16 and served on them for my signature tomorrow before 1:30 and
17 then served on counsel Monday and come back to court, and we
18 will be here Monday. I'm assuming -- what's the witness, the
19 expert, who was supposed to be here Monday?

20 MR. HARBER: Roseman, your Honor. I wasn't sure if
21 we --

22 THE COURT: I'm not sure, depending upon whether or
23 not you want to go ahead with that, we're going to take a break
24 here, and then I'm going to let counsel rethink. I have Judge
25 Pacheco has gone over the statements of the case that were
26 provided to both counsel -- or was provided by counsel and

1 trial briefs and is prepared to discuss it with you.

2 MR. HARBER: Your Honor, I would like to review Motion
3 in Limine No. 18. I know there were a number of requests
4 there. May we take a few minutes to review it to make sure we
5 understand the nature of this?

6 THE COURT: You certainly can. I reviewed them all
7 before coming out, and that is the Court's order. You may
8 comment, if you wish.

9 MR. HARBER: Thank you.

10 THE COURT: And then, but I do want the parties, as I
11 prevailed on Judge Pacheco, to be here, and I asked counsel to
12 be ready to discuss this case. And I did ask the principals to
13 be present. I need you to discuss that. If you can resolve
14 it, fine. If you can't, the jury is here Monday morning.

15 MR. RAVIPUDI: Thank you, your Honor.

16 MR. HARBER: Thank you, your Honor.

17 THE COURT: Court's in recess.

18 I'll tell Judge Pacheco you will be there in 15
19 minutes.

20 MR. HARBER: Thank you.

21 (A recess was taken.)

22 THE COURT: We're back on the record in the matter of
23 Jun versus Chaffey Joint Unified, et al., Case No.
24 CIVDS-1112258. Counsel are present.

25 Gentlemen? Counsel?

26 MR. HARBER: Your Honor, it was me who requested to

1 talk to you briefly.

2 I did want to talk briefly and put on the record some
3 discussion on Motion in Limine 18 and the Court's ruling today
4 on the sanctions. And the list that sanctions are imposed.

5 We do contend, your Honor, that this puts the
6 plaintiff in a far, far better position than they would have
7 been.

8 This case -- and the sanctions are a result not
9 because of the destruction of evidence, because of the late
10 provision of the evidence. So, your Honor, if, in fact, we put
11 the plaintiff in the very spot that she was in before and these
12 e-mails were not provided just a couple of days ago but
13 provided a couple of years ago, as they should have been --

14 THE COURT: You know you're repeating yourself from
15 what you argued already. Verbatim so far.

16 MR. HARBER: Let me try to do something different.

17 Your Honor, relative to the statement at Page 6, which
18 is a finding that defendant destroyed all of the evidence which
19 confirms it dangerously designed bus stops, I don't believe
20 there has been any demonstration of any destruction of
21 evidence. There's been late provision of evidence, but not
22 destruction of evidence.

23 THE COURT: I would find it to be late production and
24 secretion and hiding, based upon the testimony of the two
25 witnesses, by clear and convincing evidence.

26 MR. HARBER: Your Honor, relative to that, let me just

1 repeat myself on one matter and that is, the hiding of evidence
2 has nothing to do with the three issues that we talked about.
3 That is, the location of the bus stop. It has nothing to do
4 with the condition of the bus stop. It has nothing to do with
5 the phantom bus stop that apparently never existed or certainly
6 didn't exist before this incident.

7 Consequently, your Honor, we would contend that
8 there's no connection between the sanction that's being issued
9 relative to the bus stop that's truly at issue and the subject
10 matter of the e-mails, et cetera, that are the issue in the
11 sanctions motion.

12 There is no connection between those, your Honor, and
13 therefore, we contend that they are inappropriate.

14 THE COURT: But not as draconian as terminating.

15 MR. HARBER: Not as draconian as that.

16 THE COURT: Mr. Ravipudi?

17 MR. RAVIPUDI: I don't want to revisit any -- I mean,
18 there's nothing for me to add at this point, your Honor. Thank
19 you.

20 THE COURT: On behalf of Ms. Hughes?

21 MR. SHEEDY: Nothing. I just want to get a
22 clarification. I think counsel is talking about line 24,
23 Page 6 of the motion?

24 THE COURT: That's correct.

25 MR. SHEEDY: So the Judge -- your Honor -- Judge, I
26 apologize.

1 So your Honor is going to modify "destroy" to read
2 how?

3 THE COURT: The language that I used was secreted and
4 hid -- and/or hid.

5 MR. HARBER: Your Honor, perhaps this is a case of I
6 don't want to get what I wish for. I think hiding evidence
7 sounds every bit as bad as destroying evidence.

8 THE COURT: I'm basing it on the testimony and the
9 evidence that's been presented to me. So, I think, factually
10 based upon the testimony and what I have seen at the hearing so
11 far, that hiding and/or secreting is appropriate.

12 MR. HARBER: Your Honor, one last time then on the
13 dangerous condition.

14 Again, the condition here is the bus stop, not the
15 phantom bus stop. While it isn't as draconian as it could be,
16 your Honor, it still has no connection with the late production
17 of the documents. And, your Honor, it should not be connected
18 now. It has nothing to do with the phantom stop, whether or
19 not that condition is dangerous, and there should not be a
20 connection here in the sanctions.

21 THE COURT: On that issue, Mr. Ravipudi, did you wish
22 to place anything on the record?

23 MR. RAVIPUDI: No, your Honor.

24 THE COURT: The Court's ruling as modified is the
25 Court's ruling. Please have that prepared as I've indicated.

26 Now, I know we had some portions of in limines left to

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11111 Santa Monica Boulevard, Suite 700, Los Angeles, CA 90025.

On July 10, 2015, I served true copies of the following document(s) described as **[PROPOSED] ORDER GRANTING ISSUE SANCTIONS AGAINST DEFENDANT CHAFFEY JOINT UNIFIED SCHOOL DISTRICT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY PERSONAL SERVICE: I personally delivered the document(s) to the person at the addresses listed in the Service List. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 10, 2015, at Los Angeles, California.



Monica Davis

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SERVICE LIST
Jong Ja Jun vs. Chaffey Joint Union High School District, et al.
CIVDS 1112258

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