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14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF SAN BERNARDINO

16 TRAVIS WALFOORT,
17
18 Plaintiff,
19
20 vs.
21 ERICKSON INC.; and DOES 1-50, inclusive,
22
23 Defendants.

CASE NO. CIVDS1821431
Hon. Thomas S. Garza

**DEFENDANT'S [PROPOSED] ORDER
GRANTING SUMMARY JUDGMENT;
OBJECTIONS TO PLAINTIFF'S
PROPOSED ORDER**

DATE : January 13, 2020
TIME : 8:30 a.m.
DEPT. : S27

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CML DIVISION

FEB 18 2020

BY 
ACHILLE EAYLESS, DEPUTY

1 Defendant Helicopter Transport Services, LLC ("HTS") objects to the Proposed Order
2 filed by Plaintiff on January 27, 2020, relating to the granting of defendant HTS's summary
3 judgment motion. Plaintiff's proposed order does not reflect the ruling of the Court because it
4 erroneously omits any reference to the firefighter's rule, upon which HTS's motion was
5 primarily based. The Court's tentative ruling to grant defendant HTS's motion, which the
6 Court adopted as the ruling of the Court at the hearing on January 13, 2020, was based on both
7 the firefighter's rule and derivative sovereign immunity. Plaintiff's proposed order incorrectly
8 limits the order to derivative sovereign immunity.

9 Pursuant California Rules of Court Rule 3.1312, defendant HTS prepared a proposed
10 order and forwarded it to Plaintiff's counsel on January 16, 2020. The parties thereafter
11 exchanged comments, which defendant HTS intended to provide to the Court in accordance
12 with the rule. Plaintiff rather filed its version of a proposed order on January 27, 2020,
13 apparently without advising the Court of the parties' disagreement.

14 Defendant HTS hereby submits its proposed order attached hereto.

15
16 DATED: January 28, 2020

FITZPATRICK & HUNT,
PAGANO, AUBERT, LLP

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19 By:  _____

Mark R. Irvine
Attorneys for Defendant,
HELICOPTER TRANSPORT SERVICES, LLC

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ATTACHMENT
Defendant Helicopter Transport Services, LLC [Proposed] Order

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

TRAVIS WALFOORT,

Plaintiff,

vs.

ERICKSON INC.; and DOES 1-50, inclusive,

Defendants.

CASE NO. CIVDS1821431
Hon. Thomas S. Garza

**[PROPOSED] ORDER ON DEFENDANT
HELICOPTER TRANSPORT SERVICES,
LLC'S MOTION FOR SUMMARY
JUDGMENT**

DATE : January 13, 2020
TIME : 8:30 a.m.
DEPT. : S27

The motion by defendant Helicopter Transport Services, Inc. for summary judgment came on regularly for hearing on January 13, 2020, before this Court in Department No. S27, Hon. Thomas S. Garza, Judge Presiding. Deborah Wesseln appeared for Plaintiff Travis Walfoort and Suzanne N. McNulty appeared for defendant Helicopter Transport Services, Inc.

After full consideration of the evidence and points and authorities submitted by both parties, the Court finds that defendant Helicopter Transport Services, Inc. has shown by admissible evidence and reasonable inferences therefrom not contradicted by other evidence or inferences, and matters judicially noticed by the Court, that there is no triable issue of any material fact with respect application of the firefighter's rule defense and the derivative sovereign immunity defense, and therefore, defendant Helicopter Transport Services, Inc. is entitled to judgment as a matter of law.

1 **Background**

2 Plaintiff was injured on August 17, 2016, during the scope of his employment as a
3 firefighter for the California Department of Forestry while fighting the Blue Cut Fire in San
4 Bernardino County, when defendant Helicopter Transport Services, Inc.'s helicopter dropped
5 water on Plaintiff. Plaintiff asserts a cause of action for negligence against defendant. Defendant
6 moved for summary judgment based on three affirmative defenses: the firefighter's rule;
7 derivative sovereign immunity; and the government contractor's defense.

8 **Request to File Exhibit Under Seal**

9 On January 7, 2020, Plaintiff submitted and requested that Exhibit 3 to the Declaration of
10 Michael Sutton be filed under seal pursuant to applicable provisions of the Stipulated Protective
11 Order entered in this case. There is no opposition. The Court orders that Exhibit 3 be filed under
12 seal.

13 **Evidentiary Objections**

14 Both Plaintiff and Defendant filed objections to evidence. The Court has considered, and
15 overrules all objections.

16 **Discussion**

17 The Court finds that there is no triable issue of material fact based on the following
18 evidence. At the time of the incident Defendant was operating under validly conferred
19 government authorization and direction of the U.S. Forest Service pursuant to a U.S. Forest
20 Service Exclusive Use Large Fire Support Helicopter Services contract, including the specific
21 direction by the U.S. Forest Service to engage in joint operations with the California Department
22 of Forestry in fighting the Blue Cut Fire. (Defendant Statement of Undisputed Facts, Nos. 14-15;
23 Dillman Declaration paragraphs 5-6; Gilpin Declaration Ex. A) The California Department of
24 Forestry's Single Resource Crew's Superintendent located on the ground directed Defendant on
25 when and where to drop the water. (Defendant Statement of Undisputed Facts, No. 10; Dillman
26 Declaration paragraphs 8-11) The pilots dropped the water as directed after carefully looking for
27 but not seeing anybody in the area they were instructed to drop the water. (Dillman Declaration,
28 paragraphs 2, 12)

1 Plaintiff's negligence claim is accordingly barred by the firefighter's rule and by
2 derivative sovereign immunity.

3 Plaintiff's argument based on additional facts that Plaintiff wore bright yellow and that
4 other persons and a yellow bulldozer were in the area does not affect the outcome. This "notice"
5 argument by Plaintiff does not overcome application of the firefighter's rule when the injury is
6 caused by jointly engaged safety personnel, which also defeats Plaintiff's argument based on the
7 independent cause exception to the firefighter's rule. *Calatayud v. State of California* (1998) 18
8 Cal.4th 1057. Nor does the argument affect the application of the derivative sovereign immunity
9 defense. *Yearsley v. W.A. Ross Const. Co.* (1940) 309 U.S. 18. The case of *Brady v. Roosevelt*
10 *S.S. Co.* (1943) 317 U.S. 575, relied on by Plaintiff, was decided under distinguishable admiralty
11 and maritime principles.

12
13 **IT IS ORDERED** that the motion for summary judgment is granted and judgment shall
14 be entered as requested in the motion in favor of defendant Helicopter Transport Services, Inc.
15 and against Plaintiff Travis Walfoort. The parties will jointly submit a proposed form of
16 judgment (or, if they cannot agree, separate proposed forms of judgment) within 5 court days of
17 this Order.

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20 Dated: _____

2/10/20

THOMAS GARZA

Judge of the Superior Court

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA) Walfoort v. Erickson, Inc., et al.
3) ss. San Bernardino Superior Court, Case #CIVDS1821431
4 COUNTY OF LOS ANGELES) Our File No.: 601,350

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 633 West Fifth Street, 60th Floor, Los
7 Angeles, California 90071.

8 On January 28, 2020, I served the document described as DEFENDANT'S
9 [PROPOSED] ORDER GRANTING SUMMARY JUDGMENT; OBJECTIONS TO
10 PLAINTIFF'S PROPOSED ORDER on the interested parties in this action, as follows:

11 SEE ATTACHED SERVICE LIST

12 X (By U.S. Mail) By placing ___ the original / ___ a true copy thereof enclosed in a sealed envelope(s), with
13 postage fully paid, addressed as per the attached service list, for collection and mailing at Fitzpatrick & Hunt
14 in Los Angeles, California following ordinary business practices. I am readily familiar with the firm's practice
15 of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S.
16 postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary
17 course of business. I am aware that on motion of the party served, service is presumed invalid if postal
18 cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

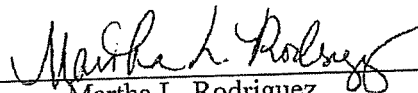
19 ___ (By E-Service) I attached a true and correct copy of the above-entitled document(s) to all counsel of record
20 by electronic service pursuant to the Stipulation to Permit Service by Electronic Mail (E-Mail) Transmission.
21 This service complies with C.C.P. § 1010.6(a)(4).

22 ___ (By Personal Service) By placing the above-entitled document in a sealed envelope(s) and instructing First
23 Legal Courier to personally serve and deliver the envelope(s) to the offices at the addressee(s) set forth on the
24 attached service list. The signed proof of service by the courier is attached.

25 ___ (By FedEx) I caused said envelope(s) to be sent via FedEx [Overnight] to the offices of the addressee(s) on
26 the attached Service List.

27 X (STATE) I declare under penalty of perjury under the laws of the State of California that
28 the above is true and correct.

Executed on January 28, 2020, at Los Angeles, California.

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30 Martha L. Rodriguez

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SERVICE LIST

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