

Tentative Rulings for November 10, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

16CECG03101 *Silva's Oil Company, Inc. v. Orange Grove Industrial Park, LLC* (Dept. 403)

14CECG03484 *Pacific Gas & Electric Company v. J.R. Transport, et al.* (Dept. 501)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

15CECG00978 *Warren v. Ahlin et al.* is continued to November 22, 2016, at 3:30 p.m. in Dept. 502

13CECG03906 *Arteaga v. Fresno Community*, both motions are continued to Thursday, December 8, 2016, at 3:30 p.m. in Dept. 402

(Tentative Rulings begin at the next page)

(5)

Tentative Ruling

Re: Martha Patrick by and through her Personal
Representatives and Conservators, Gregory C.
Ramirez and Silvia M. Torres~Ramirez v. Alice
Manor Convalescent Hospital
Superior Court Case No. 16 CECG 02346

Hearing Date: November 10, 2016 (Dept. 402)

Motions: Demurrer to the Original Complaint and Motion to
Strike

Tentative Ruling:

To sustain the special demurrer for uncertainty to the first cause of action with leave to amend. To sustain the general demurrers to the first and second causes of action with leave to amend. The motion to strike is rendered moot.

An amended complaint in strict compliance with the ruling is to be filed within 10 days of notice of the ruling. The time in which the complaint can be amended will run from service by the clerk of the minute order plus 5 days for service via mail. [CCP § 1013]

Explanation:

Uncertainty

CCP § 430.10(f) states: "The pleading is uncertain. As used in this subdivision, 'uncertainty' includes ambiguous and unintelligible." A demurrer for uncertainty will be sustained only where the complaint is so bad that defendant cannot reasonably respond—i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. [Khoury v. Maly's of Calif., Inc. (1993) 14 Cal.App.4th 612, 616] In the Complaint at bench, various facts, contentions, deductions and conclusions of fact and law are intermingled to such extent that the pleading is ambiguous. The special demurrer should be sustained with leave to amend.

Elder Abuse

None of the elements are clearly pleaded in the Complaint. Plaintiff ignores that there are different elements for different types of elder abuse. For example, the elements of Elder Abuse via Neglect are set forth in the Judicial Council of California Civil Jury Instructions [CACI] No. 3103. It states:

Neglect—Essential Factual Elements (Welf. & Inst. Code, § 15610.57)

[Name of plaintiff] claims that [he/she/[name of decedent]] was neglected by [[name of individual defendant]/ [and] [name of employer defendant]] in violation of the Elder Abuse and Dependent Adult Civil Protection Act. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [[name of individual defendant]/[name of employer defendant]'s employee] had care or custody of [name of plaintiff/decedent];

2. That [name of plaintiff/decedent] was [65 years of age or older/a dependent adult] while [he/she] was in [[name of individual defendant]'s/[name of employer defendant]'s employee's] care or custody;

3. That [[name of individual defendant]/[name of employer defendant]'s employee] failed to use the degree of care that a reasonable person in the same situation would have used in [insert one or more of the following:]

[assisting in personal hygiene or in the provision of food, clothing, or shelter;]

[providing medical care for physical and mental health needs;]

[protecting [name of plaintiff/decedent] from health and safety hazards;]

[preventing malnutrition or dehydration;]

[insert other grounds for neglect;]

4. That [name of plaintiff/decedent] was harmed; and

5. That [[name of individual defendant]'s/[name of employer defendant]'s employee's] conduct was a substantial factor in causing [name of plaintiff/decedent]'s harm.

CACI No. 3104 provides the requirements for seeking enhanced remedies. It states in relevant part:

Neglect—Enhanced Remedies Sought (Welf. & Inst. Code, § 15657)

[Name of plaintiff] also seeks to recover [attorney fees and costs/ [and] damages for [name of decedent]'s pain and suffering]. To recover these remedies, [name of plaintiff] must prove all of the requirements for neglect by clear and convincing evidence, and must also prove by clear and convincing evidence that [[name of individual defendant]/[name of employer defendant]'s employee] acted with [recklessness/oppression/fraud/ [or] malice] in neglecting [name of plaintiff/decedent].

Employer Liability for Enhanced Remedies

CACI No. 3102B Employer Liability for Enhanced Remedies—Employer Defendant Only (Welf. & Inst. Code, §§ 15657, 15657.05; Civ. Code, § 3294(b)) states in pertinent part:

[Name of plaintiff] also claims that [name of defendant] is responsible for [attorney fees and costs/ [and] [name of decedent]'s pain and suffering before death]. To establish

this claim, [name of plaintiff] must prove by clear and convincing evidence [insert one or more of the following four options:]

1. [That the employee who committed the acts was an officer, a director, or a managing agent of [name of defendant] acting on behalf of [name of defendant]]; [or]
2. [That an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee who committed the acts and employed [him/her/] with a knowing disregard of the rights or safety of others;] [or]
3. [That an officer, a director, or a managing agent of [name of defendant] authorized the conduct of the employee who committed the acts;] [or]
4. [That an officer, a director, or a managing agent of [name of defendant] knew of the wrongful conduct of the employee who committed the acts and adopted or approved the conduct after it occurred.]

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision-making such that his or her decisions ultimately determine corporate policy.

The first cause of action is woefully deficient. Plaintiff has used some of the required wording but without alleging supporting facts. The general demurrer should be sustained with leave to amend.

Medical Malpractice

"The elements of a cause of action for medical malpractice are: (1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage." [Lattimore v. Dickey (2015) 239 Cal.App.4th 959, 968]

Here, the Plaintiff alleges:

"The negligence of Defendants, and each of them, was in the failure by Alice Manor Convalescent Hospital, NIA Healthcare Services, Inc., its staff, employees, and agents, Alice Manor, a Corporation, its staff, employees, and agents, and Alex Sherriffs, MD. to monitor, treat, observe, examine, evaluate, diagnose, chart, document, maintain adequate records regarding and protect Plaintiff, Martha Patrick from open and obvious dangers to her health and safety, such that Martha Patrick was exposed to and injured by, vermin, rodents, other small animals, or insects on a habitual basis, while a resident at Alice Manor Convalescent Hospital, Plaintiff also sustained injury as a result of altercations with other residents at Alice Manor Convalescent Hospital, resulting injury to Plaintiff."

See ¶ 3 of the Second Cause of Action. As Defendant argues, it is duplicative of the Third Cause of Action. Compare ¶ 2 of the Third Cause of Action. More importantly,

the necessary elements of a cause of action for medical negligence have not been alleged. The general demurrer should be sustained with leave to amend.

Motion to Strike

Given that the rulings regarding the special and general demurrers to the First Cause of Action, the motion to strike is rendered moot.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH **on** 11/9/16
(Judge's initials) (Date)

Tentative Rulings for Department 403

(29)

Tentative Ruling

Re: Miguel Torres v. Daniel Martinez, et al.
Superior Court Case No. 16CECG03162

Hearing Date: November 10, 2016 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To sign the order appointing Guadalupe Torres as the minor's guardian ad litem. To deny the petition to compromise the minor's claim, without prejudice. An amended Petition correcting the errors set forth below shall be filed.

Explanation:

The law does not require all medical records of the minor to be attached to a petition to compromise a minor's claim. The instructions for item 9 of form MC-350, the mandatory Judicial Council form, require "[a]n original or photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries" be attached as exhibit 9. (Emphasis added.) Attaching approximately 300 pages of medical records, and information regarding an unrelated injury to the minor's other foot, is cumbersome, a waste of judicial resources, and serves only to obfuscate. The amended petition to include only reports showing the minor's diagnosis and prognosis.

In item 13a, the total cost of medical care is listed as \$19,052.80. Item 13b shows that Medi-Cal paid \$3,431.50 towards the minor's medical costs. This leaves an unpaid balance of \$15,621.3. The petition fails to address whether the remaining medical costs were paid by Petitioner, private insurance, or some other payor.

The contingency fee agreement entered into by counsel and Petitioner provides, in paragraph 6, for improper costs to be paid out of the settlement proceeds (e.g., telephone charges, photocopying, legal research, postage, facsimile charges, "sign up fees," parking, mileage, and "other similar items[]"). These costs are included in counsel's overhead and are thus not properly charged to the minor client. At item 14b of the petition, counsel seeks \$250 for "case costs and fees," though no documentation or explanation is provided as to what constitutes such charge. The filing fee, fees for hospital and billing records, and investigation fee are each listed separately. Accordingly, the Court disallows the \$250 "case costs and fees."

On a petition to compromise a minor's claim, requests for attorney's fees should be made on the net, not gross, recovery. Here, counsel seeks \$3,750.00 in fees. This figure represents 25% of the minor's gross settlement. The attorney is entitled to 25% of the gross settlement minus appropriate costs.

Under California Rules of Court, rule 7.955(b), counsel's declaration must show that the amount of fees requested is reasonable under the circumstances, addressing the applicable factors set forth in the rule. (See CRC, rule 7.955(b)(1)-(14) and (c).) Here, the declaration of counsel fails to address most of these criteria. A declaration fully in compliance with this rule of court shall be filed with any amended petition. Counsel is also to include his customary billing rate and that of his paraprofessional help, if applicable.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK **on** 11/4/16
 (Judge's initials) (Date)

Tentative Ruling

Re: S&B Investments v. Samuel Federico, et al.
Case No. 15 CE CG 03932

Hearing Date: November 10th, 2016 (Dept. 403)

Motion: Plaintiff's Application for Default Judgment

Tentative Ruling:

To deny the application for default judgment, without prejudice.

Explanation:

Plaintiff's counsel has now submitted one default judgment instead of three separate judgments, as he did with the last application. However, the judgment does not break down how much each individual defendant owes. This is important because there are three separate notes, each signed by different defendants, so each defendant owes a different amount.

Sam Federico signed all three notes, and thus he can be held liable for the full amount of damages. However, Linda Federico only signed one of the notes, and therefore she is only liable for failure to pay that note, which was for \$100,000, plus interest. Federico Career Colleges, Inc. is also a signatory on the third note, which was for \$100,000 plus interest, so it can only be held liable on that note. Yet the proposed judgment simply states that all three defendants are liable for the whole amount of \$425,000, without making any attempt to allocate how much each defendant owes of the total. Therefore, the proposed judgment is incorrect and needs to be changed to reflect the amounts owed by each separate defendant.

Also, the damages set forth in Mr. Shubin's declaration include interest that was incurred after the date of filing of the complaint, which is improper. Plaintiff seeks to recover both prejudgment interest on the unpaid amounts from the date of breach of the notes, as well as interest under the terms of the notes after the dates of breach. In other words, it appears that plaintiff is seeking double recovery of interest for the dates after the breach but before entry of judgment.

Under Civil Code section 3287, subdivision (b), "Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed." (Civil Code § 3287, subd. (b), emphasis added.) Thus, plaintiff cannot recover prejudgment interest from the date of breach, but only from the date of filing of the complaint.

(6)

Tentative Ruling

Re: Baldwin v. Aon Risk Services Companies, Inc.
Superior Court Case No.: 14CECG00572

Hearing Date: November 10, 2016 (Dept. 403)

Motion: By Defendants/Cross Complainants Aon Risk Services Companies, Inc., Aon Risk Insurance Services West, Inc., AON Plc, Aon Group, Inc., and Aon Corporation to compel further response to request for production #23 and for monetary sanctions

Tentative Ruling:

To grant, ordering that Alliant Insurance Services, Inc., produce the 2011 raid analysis and a new verified written response to the document requests containing request for production #23 within 10 days of service of the minute order. The Court further grants Aon Risk Services Companies, Inc., et al.'s request for monetary sanctions against Alliant Services, Inc., in the reasonable amount of \$5,733.00, payable to the attorney for Aon Risk Services Companies, Inc., et al. within 30 days after service of the minute order.

Explanation:

Discovery is available of any matters not privileged, relevant to the subject matter in the pending action, if the matter either is itself admissible or appears reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010.) This standard is liberally construed, and any doubts as to relevance must be resolved in favor of permitting discovery. (Colonial Life & Accident Insurance Co. v. Superior Court (1982) 31 Cal.3d 785, 790.)

A party may move to compel further responses to document requests where the responses are inadequate, incomplete, or based on meritless objections. (Code Civ. Proc., § 2031.310.) To compel production of a document, the moving party must show good cause for its production, which merely requires a fact-specific showing of relevance. (TBF Ins. Services Corp. v. Superior Court (2002) 96 Cal.App.4th 443, 448.) In the context of discovery, evidence is relevant if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating settlement. Admissibility is not the test. (Id. at p. 448.)

Here, the 2011 raid analysis is relevant to Aon's theory that the 2014 raid was merely a continuation of the June 2011 raid. (Second amended cross complaint, filed February 25, 2016, ¶11, et seq.) The second amended complaint alleges that while the matters were resolved when the parties reached a settlement agreement in June of 2013, that Alliant continued to conspire through Peter Arkley to continue to raid Aon's

central California operations of personnel and clients. (Second amended complaint, ¶¶8-9.) Further, the second amended cross complaint alleges that after the 2011 raid in 2011, Aon sought to retain key executives and employees in its central California operations by offering cash bonuses to key employees to give them ample incentive to stay employed by Aon, as well as stock awards. Most of the individual Cross Defendants, entered into special retention bonus agreements and seven individual Cross Defendants were paid more than one million dollars in cash bonuses and granted stock awards worth more than one million dollars as an incentive to remain with Aon. (Second amended cross complaint, ¶¶127-129.)

Alliant's arguments concerning relevance are without merit because Aon is contending and has always contended that the 2014 raid is a continuation of the 2011 raid. Relevance means that the information sought is relevant to the "subject matter" of the pending action. (Code Civ. Proc., § 2017.010.)

"To establish good cause [for production of a document], a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact." (Digital Music News LLC v. Superior Court (2014) 226 Cal.App.4th 216, 224.) The fact that Aon wants to impeach all statements by Alliant's witnesses that each leveraged hired is unique and that no raid analyses were prepared for the 2014 raid, in contrast to the 2011 raid, is also good cause to compel production of the document.

That the 2011 raid analysis has been in the public domain as part of a court opinion means it is no longer subject to the three protective orders cited by the parties. (H.B. Fuller Co. v. Doe (2007) 151 Cal.App.4th 879, 898.)

The sanctions request is reduced to a reasonable amount to reflect that only one request for production was at issue. (Code Civ. Proc., § 2023.030; Parker v. Wolters Kluwer U.S., Inc. (2007) 149 Cal.App.4th 285, 294.) There are no facts showing that Alliant acted with substantial justification and there are no circumstances that make the imposition of the monetary sanction unjust. (Code Civ. Proc., § 2023.030.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 11/9/16
 (Judge's initials) (Date)

Tentative Rulings for Department 501

(24) Tentative Ruling

Re: Reyes v. Burris
Court Case No. 16CECG03184

Hearing Date: November 10, 2016 (Dept. 501)

Motion: Petition to Approve Disputed Claim of Minor, Brianna Reyes

Tentative Ruling:

To continue to Tuesday, November 22, 2016, to allow Petitioner to file an amendment (not a fully amended petition) specifying the banking institution at which the blocked account will be created, and a revised (not amended) Order Approving Compromise of Minor's Claim and a fully completed Order to Deposit Money Into Blocked Account (Judicial Council forms MC-351 and MC-355, respectively).

Explanation:

The Petition fails to specify the name, branch and address of the depository for the blocked account, as required at Paragraph 19b(2). (See Cal. Rules of Court, Rule 7.950—petition must be “fully completed”.) Petitioner's proposed order specifying that he will first open the blocked account and then file an amended petition is unacceptable, and requires a needless hearing. Furthermore, once a compromise is approved, no amended petition is possible, as the Order approving the compromise constitutes a judgment into which the minor's claim is merged. (Mycogen Corp. v. Monsanto Co. (2002) 28 Cal.4th 888, 896-897—after judgment the cause of action is merged into the judgment.)

If petitioner desires, he may avoid the continuance by calling for a hearing and presenting the court with revised (not “amended”) Order Approving Compromise of Minor's Claim and Order to Deposit Money Into Blocked Account. In that event, no amendment is needed, and the minor is excused from attending.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 11/9/16
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: Loera v. Phillips
Court Case No. 16 CECG 02344

Hearing Date: November 10, 2016 (Dept. 501)

Motion: Motion for Order Vacating and Setting Aside Default Judgment

Tentative Ruling:

To deny.

Explanation:

Code of Civil Procedure § 473, Subdivision (d) Does Not Apply

Code of Civil Procedure section 473, subdivision (d) provides: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." Here, notice has been given to defendant as required by statute.

Plaintiff has not demonstrated that the order voiding of her complaint was itself void. Plaintiff maintains that the order striking the complaint was void because she was not given 20 days to pay the filing fee pursuant to Code of Civil Procedure section 411.20, subdivision (b). Plaintiff apparently bases this argument on the fact that the document voiding the complaint, the "Notice of Voiding of Filed Documents," has a box checked that states "The case has been voided per § CCP 411.20(b)." However, the complaint was not actually voided pursuant to section 411.20, subdivision (b), or any provision of section 411.20. Subdivision (b) of section 411.20 provides: "The clerk shall void the filing if the party who tendered a returned check or on whose behalf a returned check was tendered has not paid the full amount of the fee and the administrative charge by a means specified in subdivision (a) within 20 days of the date on which the notice required by subdivision (a) was mailed." Here, plaintiff submitted a fee waiver request. She never tendered a check. Section 411.20 does not apply, and the court's order's reference to it is a clerical error. Accordingly, the order voiding the complaint is not itself void for failing to give plaintiff 20 days to pay the filing fee.

Plaintiff's complaint was voided because she failed to pay the filing fee, request a hearing on her fee waiver, or file a new fee waiver with 10 days after her original fee waiver was denied on July 22, 2016. As such, plaintiff's complaint was voided pursuant to the Government Code section 68634, subdivision (g), which provides: "If an application is denied in whole or in part, the applicant shall pay the court fees and costs that ordinarily would be charged, or make the partial payment as ordered by the court, within 10 days after the clerk gives notice of the denial, unless within that time the applicant submits a new application or requests a hearing under

subdivision (e). If the applicant does not pay on time, the clerk shall void the papers that were filed without payment of the court fees and costs." Accordingly, the voiding of the complaint on August 11, 2016, after service of the notice of denial on July 25, 2016, complied with the time standards of section 68634 and was not itself void.

Code of Civil Procedure § 473, Subdivision (b) Does Not Apply

Under Code of Civil Procedure section 473, subdivision (b), the court is empowered to relieve a party "upon such terms as may be just ... from a judgment, dismissal, order or other proceeding taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect."

"Excusable neglect" is the most common ground for obtaining discretionary relief from default. The issue boils down to whether the moving party has shown a reasonable excuse for the default. (Davis v. Thayer (1980) 113 Cal.App.3d 892, 905.) "The word 'excusable' means just that: inexcusable neglect prevents relief." (Carroll v. Abbott Laboratories, Inc. (1982) 32 Cal.3d 892, 895.) "Excusable neglect" is generally defined as an error ""a reasonably prudent person under the same or similar circumstances might have made."" [Citation.] (Zamora v. Clayborn Contracting Group, Inc. (2002) 28 Cal.4th 249, 258.) "The burden of establishing excusable neglect is upon the party seeking relief who must prove it by a preponderance of the evidence." (Iott v. Franklin (1988) 206 Cal.App.3d 521, 528, fn. omitted.)

However, section 473 cannot provide relief for a jurisdictional error such as failure to timely pay filing fees or secure a waiver of filing fees. The case of Hu v. Silgan Containers Corp. (1999) 70 Cal.App.4th 1261 is directly on point. In Hu, the plaintiff filed her action May 8, 1997. On May 28, 1997, the trial court notified plaintiff that the check had been returned unpaid. This letter was returned to the court as "unclaimed." On August 21, 1997, the clerk sent plaintiff another letter indicating the complaint had been voided for failure to pay the filing fee. Plaintiff then went to court, explained her mail was regularly stolen, that she was unaware the filing fees were due, and had first learned of the voiding in August. The trial court then reinstated the complaint. The defendant raised the statute of limitations as a defense and moved for judgment on the pleadings on the grounds that the court had no jurisdiction to proceed since the complaint had been voided for failure to timely pay filing fees. The trial court granted the motion.

The appellate court affirmed, finding once plaintiff failed to comply with section 411.20's time limitation, "the court lost jurisdiction over her complaint and could only void the complaint." (Id. at p. 1266.) The appellate court also found that, in addition to having no jurisdiction to entertain the 473 motion, section 473 did not apply to jurisdictional errors such as failure to timely pay filing fees. (Id. at p. 1269.) "[T]he only basis for setting aside the judgment of dismissal by application of section 473 would be if the fees had actually been paid within the time limit or if Hu had been prevented from paying the fees by fraud or some other conduct perpetuated by the defendant. Neither is the case here." (Ibid.)

Tentative Rulings for Department 502

Tentative Rulings for Department 503

(29) Tentative Ruling

Re: Aaron Jamaal Owens, et al. v. Producers Dairy Food, Inc., et al.
Superior Court Case No. 15CECG01019

Hearing Date: November 10, 2016 (Dept. 503)

Motion: Good faith settlement

Tentative Ruling:

To grant the motion, finding that the settlement between Defendants Producers Dairy Foods, Inc., and Hilario Rodriguez III, and Plaintiffs Aaron Owens and Elaina Owens is in good faith.

To sign the proposed order, and take the hearing off calendar.

Explanation:

In considering a motion pursuant to section 877.6, the court balances the statute's twin goals of (1) encouragement of settlements, and (2) equitable sharing of costs among the parties at fault. (Tech-Bilt v. Woodward-Clyde & Assoc. (1985) 38 Cal.3d 488, 494.) The standard is whether the amount of the settlement is within the "reasonable range" or "ballpark" of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries. (Id. at p. 499.)

Where a determination for good faith settlement is uncontested, the moving party's burden is slight. If the nonsettling defendants do not oppose the motion on the issue of good faith, only a "barebones" showing is required; such a motion should set forth the grounds of good faith and be accompanied by a declaration setting forth a brief background of the case. (City of Grand Terrace v. Superior Court (1987) 192 Cal.App.3d 1251, 1261.) In other words, where the motion is unopposed, the court need not go through the Tech-Bilt factors. (Ibid.; see Tech-Bilt, supra, 38 Cal.3d at p. 499)

In the case at bench, Defendants Producers and Rodriguez have made the required barebones showing. The motion is unopposed. Accordingly, the motion is granted. The Court will sign the proposed order.

Pursuant to Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on** 11/7/16
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: Jasup Lake v. Adam Lopez-Baldwin
Superior Court Case No. 16CECG03009

Hearing Date: Thursday, November 10, 2016 (Dept. 503)

Motion: Petition to Compromise a Minor's Claim

Tentative Ruling:

To deny the petition, without prejudice. Petitioner must file an amended petition, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

The petition contains the following discrepancies and omissions:

1. Attorney's Fees

The contingency fee agreement allows for 25% prior to commencement of litigation and 33 1/3% after commencement of litigation subject to approval by the Court. (Agreement, article 7.)

Here, Attorney requests 29% which equals \$36,061.83. (Attorney Dec, ¶ 2.) However, litigation was minimal and unnecessary. A form complaint was filed on September 15, 2016, after settlement had already occurred (see State Farm letter dated 9/7/16, Lopez-Baldwin Claim dated 9/14/16, and Tafoya Claim dated 6/1/16). Upon resubmission, request must be reduced to 25% or \$31,087.85.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on 11/7/16**
(Judge's initials) (Date)

Tentative Ruling

Re: Rivera-Diaz v. Rivera-Diaz
Superior Court Case No. 16CECG00180

Hearing Date: November 10, 2015 (Dept. 503)

Motion: Deem request for admissions, set one, admitted and sanctions

Tentative Ruling:

To grant plaintiff Alvaro Rivera-Diaz's motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Alejandro Rivera-Diaz unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure sections 2033.210, 2033.220 and 2033.240. Code of Civil Procedure §2033.280.

To grant plaintiff's motion for sanctions. Alejandro Rivera-Diaz is ordered to pay sanctions in the amount of \$310 to Tomas Nunez within 30 days after service of this order.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on** 11/7/16
(Judge's initials) (Date)

Tentative Ruling

(17)

Re: Moran v. Digital Dog Auto Recovery, et al.
Superior Court Case No. 15 CECG 00209

Hearing Date: November 10, 2016 (Dept. 503)

Motion: Petitions for Minors' Compromise

Tentative Ruling:

To deny. Amended petitions must be filed addressing the following concerns.

Explanation:

First, Devonny's petition states her medical care totaled "\$2,019.58." Hector's petition states that his cost of medical care was "\$1,024.00". However the Medi-Cal lien letters state that Medi-Cal paid just \$311.14 for Devonny and \$303.98 for Hector. Medi-Cal has a lien of \$233.36 for Devonny and \$227.99 for Hector. What were the other medical costs? Were they paid, and if so who paid them? Or are the minor's still liable for outstanding medical costs? The subsequent petition should answer these questions.

Second, with respect to costs the costs entitled "Deposition division" of \$258.34, for Hector and \$258.32 for Devonny is not explained. The subsequent petition should indicate the total number and cost of the depositions and how the costs of the depositions were apportioned between clients. Also, please provide an explanation for the \$78.00 "LawServ Court Docs/Bank" cost charged to Devonny.

Third, there are issues with Item 18. Counsel indicates, in both petitions, that he does not expect to receive attorney's fees or other compensation in addition to that requested in each petition for services provided in connection with the claim giving rise to the petitions in Item 18(f). This is clearly untrue. He has submitted two petitions for two different minors in this case and also represents the petitioner for her direct claims. The court is not concerned with the multiple representation. However it must be disclosed as required by law.

Fourth, there are serious issue with Item 12. Each minor's petition states, in Item 12(b), that defendants have paid money to settle claims arising out of the same incident or accident that resulted in the claimant's injury. However, the other settlements are not disclosed in Item 12(b)(5), nor is the reason for apportionment of the settlement disclosed in Item 12(b)(6). Also the answers given in response to Items 12(b)(1) and 12(b)(3) are clearly false. Item 12(b)(2) is likely false. Because there are at least two settlements, the value of "total amount" "offered to others" should not be the same value as the amount given to each individual minor. (Item 12(b)(1).) Also, petitioner, Marisol Moran is the lead plaintiff. (Item 12(b)(3).) She also likely obtained some sort of settlement. (Item 12(b)(2).) If so, it must be disclosed in Item 12(b)(5).

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on** 11/9/16
(Judge's initials) (Date)