Tentative Rulings for November 17, 2021
Department 502

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).)

19CECG04463 ***Davis Moreno Construction, Inc. v. City of Fresno et al.*** **(Dept. 502)**

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

19CECG02134 ***Gonzalez v. Guardian industries, LLC*** **is continued to Thursday, January 13, 2022 at 3:30 p.m. in Dept. 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Jones v. Hiller Aircraft Corp.***
Superior Court Case No. 18CECG04044

Hearing Date: November 17, 2021 (Dept. 502)

Motion: Defendant City of Firebaugh's Motion for Reduction of Judgment

Tentative Ruling:

To deny defendant City of Firebaugh's motion for a reduction of the judgment against it, as defendant has not provided sufficient evidence of the amount of the unpaid lien. (Gov. Code § 985; *Joyce v. Simi Valley Unified School Dist.* (2003) 110 Cal.App.4th 292, 308.)

Explanation:

Under Government Code section 985, "after a verdict has been returned against a public entity that includes damages for which payment from a collateral source listed below has already been paid or is obligated to be paid for services or benefits that were provided prior to the commencement of trial, … the defendant public entity may, by a motion noticed within the time set in Section 659 of the Code of Civil Procedure, request a posttrial hearing for a reduction of the judgment against the defendant public entity for collateral source payments paid or obligated to be paid for services or benefits that were provided prior to the commencement of trial." (Gov. Code, § 985, subd. (b).)

"At the hearing the trial court shall, in its discretion and on terms as may be just, make a final determination as to any pending lien and subrogation rights, and, subject to paragraphs (1) to (3), inclusive, determine what portion of collateral source payments should be reimbursed from the judgment to the provider of a collateral source payment, deducted from the verdict, or accrue to the benefit of the plaintiff." (Gov. Code, § 985, subd. (f).)

"The following provisions shall apply to the court's adjustments: … If the court has determined that the verdict includes money damages for which the plaintiff has already received payment from or had his or her expenses paid by the following collateral sources: private medical programs, health maintenance organizations, state disability, unemployment insurance, private disability insurance, or other sources of compensation similar to those listed in this paragraph, the court may, after considering the totality of all circumstances and on terms as may be just, determine what portion of the collateral source benefits will be reimbursed from the judgment to the provider of the collateral source payment, used to reduce the verdict, or accrue to the benefit of the plaintiff." (Gov. Code, § 985, subd. (f)(2).)

"In determining the amount to be reimbursed from the judgment to a provider of a collateral source payment, or the amount by which the judgment will be reduced to account for collateral source payments, the court shall make the following adjustments:

"(A) Where plaintiff has been found partially at fault, the reimbursement or reduction shall be decreased by the same percentage as the entire judgment is reduced to take into account the plaintiff's comparative fault.

"(B) The court shall deduct from the reimbursement or reduction the amount of premiums the court determines were paid by or on behalf of the plaintiff to the provider of a collateral source payment.

"(C) After making the adjustments described in subparagraphs (A) and (B) above, the court shall reduce that amount by a percentage equal to the percentage of the entire judgment that the plaintiff paid or owes for his or her attorney fees and costs and reasonable expenses incurred." (Gov. Code, § 985, subd. (f)(3)(A)-(C).)

Also, "[i]n no event shall the total dollar amount deducted from the verdict, paid to lienholders or reimbursed to all collateral source providers, exceed one-half of the plaintiff's net recovery for all damages after deducting for attorney's fees, medical services paid by the plaintiff, and litigation costs; however, the court may order no reimbursement or verdict reduction if the reimbursement or reduction would result in undue financial hardship upon the person who suffered the injury." (Gov. Code, § 985, subd. (g).)

In addition, "[i]n any case involving multiple defendants, a reduction pursuant to this section shall be proportional to the percentage of the judgment actually paid by the public entity..." (Gov. Code, § 985, subd. (i).)

However, if the public entity moving for a reduction of the judgment under Government Code section 985 fails to provide evidence of the liens that are owed by plaintiff and how much is still owed on those liens, the trial court may properly deny the motion for a reduction. (*Joyce v. Simi Valley Unified School Dist.* (2003) 110 Cal.App.4th 292, 308.) "At the hearing on the section 985 motion, District failed to identify all of the collateral source providers and medical liens. The trial court found that 'not enough evidence has been presented' and that it 'would be engaging in speculation to know what the liens are, what has been paid or not paid.' There was no abuse of discretion." (*Ibid*, internal citations omitted.) "'The bottom line effect of [a] ... § 985 adjustment is that, after the appropriate reductions and set-offs are made, all "collateral source" subrogation and lien rights terminate.' District may not invoke section 985 to prejudice the lien rights of MaxiCare and other health care providers." (*Ibid*, internal citations omitted.)

Here, the City of Firebaugh has provided evidence indicating that, as of April 8, 2021, there was a workers' compensation lien for plaintiff's medical treatment and temporary disability payments in the amount of $1,253,884.43. (Trial Exhibit 101 attached to October 22, 2021 declaration of Chester Walls.) Defense counsel also states that counsel for the sole lienholder, QBE Americas, Inc., told him that they had already received $191,088.07 from plaintiff, and that as of October 7, 2021, QBE has made

additional payments of $41,922.25. (Walls decl., ¶ 4.) However, defense counsel also states that a final resolution of the workers' compensation claim has not yet been made. (*Ibid*.) The workers' compensation claim remains open and is not likely to be resolved in the foreseeable future due to ongoing medical care. (*Id*. at ¶ 5.)

Thus, the City has not met its burden of presenting sufficient evidence of the amount of the lien that it proposes to use to reduce the amount of the judgment, as the total amount of the lien has not yet been determined and will continue to grow as plaintiff incurs more medical expenses. Indeed, defense counsel admits that the workers' compensation claim has not been closed, and is not likely to be closed in the foreseeable future because of plaintiff's ongoing medical needs. He also admits that the original lien amount of $1,253,884.43 has changed, since $41,922.25 in additional payments have been made on plaintiff's behalf since the date of the first lien statement in April of 2021, and a payment of $191,088.07 has been made against the lien by plaintiff's counsel. More importantly, since the workers' compensation claim remains open, the amount of the lien will continue to grow as more payments are made.

As a result, it is not clear what the exact amount of the lien is, or how much of a reduction of the judgment defendant is actually entitled to. Consequently, it is not possible for the court to make a reasoned calculation of the amount of any reduction under Government Code section 985. It is within the court's discretion to deny a motion for reduction of a judgment where the public entity has not provided sufficient evidence of the amounts paid from a collateral source and what is still owed under the lien. (*Joyce v. Simi Valley Unified School Dist.*, *supra*, 110 Cal.App.4th at p. 308.) This is a particular concern here, where payments continue to be made for plaintiff's medical care, and thus the lien will continue to grow, yet an order under section 985 would have the effect of terminating the lienholder's right to seek compensation for future payments. (*Ibid*.) Therefore, the court intends to deny the motion for a reduction of the judgment, as the City has not provided sufficient evidence of the amounts paid by the collateral source or what plaintiff owes under the lien.

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: RTM on 11/12/21.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Emerald Bay LP et al v. Torosian & Walter LLP et al.***
Superior Court Case No. 19CECG02214

Hearing Date: November 17, 2021 (Dept. 502)

Motion: by Defendant Walter, Wolfe, Leach, and Nii LLP for summary judgment or, in the alternative, summary adjudication

Tentative Ruling:

To deny the motion for summary judgment. To deny the alternative motion for summary adjudication in its entirety.

Explanation:

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c(c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

As the moving party, defendant bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 855.) The court views the evidence in the light most favorable to the party opposing summary judgment, liberally construing the opposing party's submissions and resolving all doubts concerning the evidence in favor of the opposing party. (*Id.* at p. 856.) In professional malpractice claims, expert opinion testimony is required to prove or disprove that the defendant performed in accordance with the prevailing standard of care, except in cases where the negligence is obvious to laymen. (*Ryan v. Real Estate of the Pacific, Inc.* (2019) 32 Cal.App.5th 637, 644-645.) Expert declarations submitted by plaintiffs in opposition to summary judgment motions are entitled to all favorable inferences and do not have to be as detailed and well supported as those submitted by the moving party. (See *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 125-126; *Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606-608.) All doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

Plaintiffs' complaint brings two causes of action against defendant for a breach of fiduciary duty, and for professional negligence.[1] Defendant now seeks summary judgment or, in the alternative, summary adjudication based on several points: three

[1] Defendant's Request for Judicial Notice is granted. Defendant identifies itself, and plaintiffs do not refute, that Walter, Wolfe, Leach, and Nii LLP was formerly known as Torosian & Walter LLP.

points repeated for each of the two causes of action, and one point regarding statute of limitations as to the entire complaint.

The Entities

On or about July 15, 2013, Plaintiffs Emerald Bay LP and Marc Wilson entered into a limited partnership named Clovis Assisted Living Facilities-One LP ("CALF"), with Clovis Shaw Associates LLC ("CSA"). Plaintiffs were limited partners, while CSA acted as the general partner. The members of CSA were Greg Roderick and Brian Glover.

On or about October 10, 2013, Emerald Bay entered into a second limited partnership named CCV Senior Living Properties LP ("CCV") with Shaw Memory Partners, LLC ("SMP"). Once again, Emerald Bay was a limited partner, while SMP was the general partner. Once again, the members of SMP were Roderick and Glover.

Each of CALF and CCV had, among other things, terms for distribution of cash and other proceeds of their respective partnerships.

The First Cause of Action for Breach of Fiduciary Duty

Plaintiffs allege that defendant: was a certified public accountant providing, among other services, accounting for the distributions to be made upon dissolution of CALF and CCV; improperly allocated and accounted for said distribution; failed to disclose and provide corporate records upon request; and as a result, plaintiffs did not receive the proper allocations or accounting, causing harm and damages.

Defendant argues that there are no triable issues of material fact as to this cause of action because: (1) defendant adhered to the applicable professional standards to provide tax preparation services to CALF and CCV; (2) defendant did not cause any harm to plaintiffs in providing tax preparation services to CALF and CCV; and (3) plaintiffs will be unable to demonstrate harm from the tax preparation services provided to CALF and CCV.

In support, defendant submits the Declaration of Nicholas Leach, CPA, to affirm that defendant was only engaged for the preparation of federal and state partnership returns for CALF for years ending December 31, 2012 through 2017, and for CCV for years ending December 31, 2014 through 2017. (Def. Statement of Evidence, Ex. E, Declaration of Nick Leach, ¶ 3.) Defendant further submits the Declaration of Joel Slonski, CPA, for expert testimony. Mr. Slonski opined that the scope of engagement for both CALF and CCV were for the preparation of federal and state partnership tax returns. (*Id.*, Ex. J, Declaration of Joel Slonski, ¶ 11.) Further, Mr. Slonski opined that no documentation supported to position that defendant acted as the accountant of CALF and CCV. (*Id.*, Ex. J, ¶ 12.) Rather, Mr. Slonski opined that evidence suggested that Frontier Management, LLC provided and otherwise managed the financial information used for tax preparation. (*Id.*, Ex. J, ¶¶ 12-14.) As to distribution of proceeds following dissolution, Mr. Slonski further opined that he observed no evidence suggesting that defendant sought information on the distributions from Frontier rather than providing such information. (*Id.*, Ex. J, ¶ 15.)

As to damages, Mr. Slonski opined that he found defendant followed the Partnership Agreements of CALF and CCV as to transferences of interest insofar as it was reported on the related tax returns. (*Id.*, Ex. J, ¶¶ 16-17.) Rather, any errors of the values would fall to the general partner to accurately track and report thereon for tax preparation. (*Id.*, Ex. J, ¶¶ 18, 20.) It was the obligation of the partners of CALF and CCV to ensure the accuracy of each of the income tax returns, and therefore the obligation of the respective general partners, SMP and CSA, respectively. (*Id.*, Ex. J, ¶ 21.)

In opposition, plaintiffs submit the Declaration of Paul E. Quinn, a certified public accountant, to opine that defendant provided significant accounting services. (Declaration of Paul E. Quinn, ¶ 9.) Specifically, Mr. Quinn opined that defendant provided accounting services to CALF and CCV, in addition to tax preparation, when it paid bills and generated wire transfers at the request of the general partners; prepared personal financial returns of the general partners; reviewed potential joint ventures; researched and applied for California tax credits; used its office address for vendors; maintained entity formation records, providing copies to the general partners; and provided general accounting assistance and research. (*Id.*, ¶ 10.)

Mr. Quinn further opined that defendant failed to comply with numerous duties and obligations owed to plaintiffs. (*Id.*, ¶ 11.) Namely, regardless of whether defendant provided only tax preparation services, or tax preparation and accounting services, defendant failed to adhere to professional standards when it failed to notify plaintiffs of conflicts between mutually represented clients. (*Id.*, ¶ 16; *see also id.*, ¶ 17, 19-23.)[2] For the same reasons, Mr. Quinn opined that defendant breached duties to plaintiffs to advise and disclose improper and unauthorized payments. (*Id.*, ¶ 24.) Mr. Quinn concludes that the failure to advise on potential conflicts, and improper and unauthorized payments, resulted in substantially less distributions than what plaintiffs would have received. (*Id.*, ¶¶ 53-54.)

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[2] Defendant objects to the Declaration of Paul Quinn in its entirety because Mr. Quinn's declaration only states conclusions without facts. Defendant cites to *Kelly v. Trunk*. ((1998) 66 Cal.App.4th 519, 523-524.) *Kelly* found that expert declarations required foundational showing that an opinion rests on matters of a type experts reasonably rely on. (*Id.* at p. 524.) Here, Mr. Quinn declared the documents he reviewed for his declaration. (Quinn Decl., ¶ 8.) Mr. Quinn thereon states his disagreement with defendant's expert. (*Id.*, ¶ 9.) Mr. Quinn states the bases for his disagreement. (*Id.*, ¶¶ 10-12, 16-24 [regarding the breach of duty on conflicts]; *id.*, ¶¶ 25-34 [regarding breaches of duty based on tax preparation errors based on direction from the general partners that result in harm to plaintiffs]; *id.*, ¶¶ 35-42 [regarding the breach of duty to provide tax records]; *id.*, ¶¶ 43-53 [regarding a breach of duty based on known improper and unauthorized distributions]; and *id.*, ¶ 54 [regarding the above breaches resulting in a distribution at dissolution to plaintiffs being substantially less than what plaintiffs should have received.) Defendant's Objection to Plaintiffs' Evidence in Opposition as to the Declaration of Paul Quinn is overruled as to Nos. 1 through 8 in their entirety.

Defendant's Objection to Plaintiffs' Evidence in Opposition as to Plaintiffs' Exhibits 3, 9, 11, 13, and 14 is overruled. (Code Civ. Proc. § 2023.030 [requiring notice and opportunity to be heard to issue an evidence sanction in the form of an order prohibiting a party from engaging in the misuse of the discovery process]; *Biles v. Exxon Mobile Corp.* (2004) 124 Cal.App.4th 1315, 1327 [finding the imposition of a nonmonetary evidence sanction requires willful failure to comply with a court order].)

Though defendant argues that plaintiffs did not oppose these issues, making all favorable inferences in favor of the opposing party, the court finds sufficient conflicting expert testimony, and therefore triable issues of material fact, as to whether defendant met the applicable standard of care in providing tax preparation services; whether defendant caused harm to plaintiffs in providing tax preparation services; and whether plaintiffs can demonstrate harm from the tax preparation services. (*Kelly v. Trunk* (1998) 66 Cal.App.4th 519, 524 [conflicting expert opinions give rise to a material issue of fact for trial regarding which expert is correct].) Thus, summary adjudication of the First Cause of Action is denied as to Issues One through Three.

The Second Cause of Action for Professional Negligence

Plaintiffs allege that defendant: owed a duty to plaintiffs to render competent accounting services using the skill and care that a reasonably prudent accountant would have used in the same or similar circumstances; breached such duties when it failed to properly allocate distributions owed, and in preparation of corresponding tax returns upon the dissolution of CALF and CCV; and as a result, causing harm and damages.

Defendant reiterates its argument from the first cause of action, namely that there are no triable issues of material fact as to this cause of action because: (1) defendant adhered to the applicable professional standards to provide tax preparation services to CALF and CCV; (2) defendant did not cause any harm to plaintiffs in providing tax preparation services to CALF and CCV; and (3) plaintiffs will be unable to demonstrate harm from the tax preparation services provided to CALF and CCV.

Defendant relies again on Mr. Slonski, who, based on the findings stated as to the First Cause of Action by Mr. Slonski, further opined that there was no evidence that defendant violated professional responsibilities based on applicable governing standards. (Def. SOE, Ex. J, ¶¶ 4, 23-24.)

In opposition, plaintiffs rely again on Mr. Quinn to refute Mr. Slonski. Mr. Quinn opined that there was evidence that defendant violated professional responsibilities based on applicable governing standards. (Quinn Decl., ¶¶ 6, 12, 16; *see id.*, ¶¶ 25-27, 33, 35, 41, 42, 52-54.)

On reply, defendant argues that the opposition fails to produce evidence that defendant caused distributions upon the dissolution of CALF and CCV. Namely, the sole evidence submitted by plaintiffs, a statement from their expert, Mr. Quinn, that the ultimate dissolution distribution amounts made upon the dissolution of CALF and CCV were relatively consistent with the improperly accounted adjustments booked by defendant, is wholly unsupported and therefore mere speculation. However, Mr. Quinn clearly states the facts upon which he relied to support such a conclusion, wherein he opines that an error made by defendant resulted in incorrect reporting that carried through to the dissolution of the entities in question. (Quinn Decl., ¶¶ 29-33.) Mr. Quinn concludes that, among other reasons, the error resulted in distributions at dissolution being substantially less than what plaintiffs should have received had there been no error. (*Id.*, ¶ 54.)

Mr. Quinn's declaration sufficiently raises triable issues of material fact as to whether defendant met the applicable standard of care in providing tax preparation services; whether defendant caused harm to plaintiffs in providing tax preparation services; and whether plaintiffs can demonstrate harm from the tax preparation services. (*See Powell*, *supra*, 151 Cal.App.4th at pp. 125-126.)[3] Therefore, summary adjudication of the Second Cause of Action is denied as to Issues One through Three.

Statute of Limitations

For accounting malpractice actions, the two-year statute of limitations as prescribed by Code of Civil Procedure section 339, subdivision (1) applies. (*Sahadi v. Scheaffer* (2007) 155 Cal.App.4th 704, 714-715; Code Civ. Proc. § 339.) In cases of professional malpractice, the period of limitations begins upon discovery. (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 187-188.) This is because the client may not recognize the negligence of the professional when he sees it. (*Id.* at p. 188.) To require such would be to require clients to hire a second professional to observe the work of the first. (*Ibid.*) Further, the client may lack an opportunity to see the negligence; the injury may lie buried in the figures of the ledger. (*Ibid.*)

Defendant argues that the common facts of the complaint comprise negligent acts of accountancy. As plaintiffs knew or should have known of the claim on June 21, 2017, plaintiffs' June 26, 2019 complaint is untimely, and therefore the action is barred. Specifically, defendant points to a distribution check of Equity Payout, dated June 21, 2017, to establish when plaintiffs knew or should have known there was issues with the accounting. (Def. SOE, Ex. I, WCPA 001013-001017.)

In opposition, plaintiffs refute actual or constructive knowledge of negligent acts of accountancy based on the date defendant suggests. Rather, plaintiff Wilson suggests that he had no reason to suspect any wrongdoing by defendant at the time the distribution was made. (Declaration of Marc A. Wilson, ¶¶ 2-6.) Rather, plaintiff Wilson had only suspected that Roderick and Glover had acted negligently. (*Id.*, ¶¶ 5-7.) Thus, plaintiff Wilson began investigations of only Roderick and Glover following the dissolutions of CALF and CCV. (*Id.*, ¶¶ 6-10.) From that investigation, on or about March 19, 2019, plaintiffs discovered the negligent acts of accountancy. (*Id.*, ¶ 10.) Three months later, on June 29, 2019, plaintiffs filed the instant action. (*Id.*, ¶ 14.)

On reply, defendant argues that plaintiffs concede they were suspicious in March 2017 due to CALF and CCV's financing problems, and that by June 2017, plaintiffs' knew they were getting substantially less than the sums they were entitled to. Based on such, defendant concludes that there were facts sufficiently before plaintiffs in April 2017. Defendant however makes no argument and cites no evidence to suggest that knowledge of financing problems and receipt of less than expected on dissolution constitutes knowledge of potential accounting negligence. Plaintiffs declare the

[3] Defendant further argues that conflicts of interest are questions of law for which expert testimony is excluded. Defendant cites to *Blanchard v. State Farm Fire & Casualty Co.* ((1991) 2 Cal.App.4th 345, 350.) *Blanchard* dealt with the question of conflict of *counsel* regarding *counsel's* conflict in representing an individual versus the insurance company who is providing coverage, and has no application here.

opposite, that they had no reason or ability to know of such accounting error until they received copies of complete tax returns in March 2019. (Wilson Decl., ¶ 14.)

Based on the above, the court finds triable issues of material fact as to the date in which plaintiffs discovered, or should have discovered the alleged negligent acts. (*Neel*, *supra*, 6 Cal.3d at pp. 188-189.) Therefore, summary judgment is denied, and summary adjudication of the Second Affirmative Defense regarding statute of limitations to each of the First and Second Causes of Action are denied.

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: RTM on 11/16/2021.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Gonzalez v. Galindo***
Superior Court Case No. 20CECG02834

Hearing Date: November 17, 2021 (Dept. 502)

Motion: Petitions to Compromise Minor's Claim of Aubree Ann Gonzalez and Isabella Marie Gonzalez

Tentative Ruling:

To grant. The Court intends to sign the proposed orders. No appearances necessary.

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: RTM on 11/16/21.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Neal v. Tyler Gasser, M.D., et al.***
Superior Court Case No. 21CECG02063

Hearing Date: November 17, 2021 (Dept. 502)

Motion: By Plaintiff for Trial Setting Preference

Tentative Ruling:

To grant. (Code Civ. Proc. § 36, subd. (a).) If the parties do not call and request a hearing, the new trial date shall be February 28, 2022, the Trial Readiness Conference shall be February 25, 2022, and the Mandatory Settlement conference shall be February 11, 2022.

Explanation:

The court "shall" grant a petition made by a party to a civil action who is over the age of 70 and upon findings that the party "has a substantial interest in the action as a whole" [and] [t]he health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation." (Code of Civ. Proc., § 36 subd. (a).) "Where a party meets the requisite standard for calendar preference under subdivision (a), preference must be granted. No weighing of interests is involved." (*Fox v. Superior Court* (2018) 21 Cal.App.5th 529, at p. 535 [noting that the defendant's claims of prejudice were "baseless" since the preference motion was made eleven months into the case].)

The purpose of Code of Civil Procedure, section 36 is to operate as a "safeguard to litigants beyond a specified age against the legislatively acknowledged risk that death or incapacity might deprive them of the opportunity to have their case effectively tried and the opportunity to recover their just measure of damages or appropriate redress." (*Rice v. Superior Court* (1982) 136 Cal.App.3d 81, 89.) Accordingly, because damages for pain, suffering and disfigurement are recoverable only while the plaintiff is alive, allegations of personal injury suffered by the plaintiff from the defendant's conduct is sufficient to justify preferential trial setting under Code of Civil Procedure, section 36, subdivision (a). (*Ibid*.)

If the court grants a motion for preference under Code of Civil Procedure section 36, subd. (a) (i.e., if it makes the pertinent findings) it *must* set the case for trial within 120 days after the motion is granted. [Code of Civ. Proc., § 36, subd. (f); see *Sprowl v. Superior Court* (1990) 219 Cal.App.3d 777, 780 [failure to set not excused by court congestion]; *Miller v. Superior Court* (1990) 221 Cal.App.3d 1200, 1202–1203 [entitled to priority over "fast track" cases].) If such a preference is granted the court has *no discretion* to delay the trial setting. [*Vinokur v. Superior Court* (1988) 198 Cal.App.3d 500, 502–503]

Plaintiff has provided medical records showing her date of birth (August 31, 1951) and advanced prognosis. She has also provided a declaration by a practicing oncologist who declares that plaintiff is terminally ill. Accordingly, the court can make the required findings. Furthermore, there is no opposition. Therefore, the court intends to grant her motion for trial preference.

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: RTM on 11/16/2021.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Aulakh v. Sykes***
Superior Court Case No. 19CECG03909

Hearing Date: November 17, 2021 (Dept. 502)

Motion: Minor's compromise

Tentative Ruling:

To grant. The Court intends to sign the proposed order. No appearances necessary.

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: RTM on 11/16/2021.
(Judge's initials) (Date)