

Tentative Rulings for July 29, 2026
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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).) *The above rule also applies to cases listed in this "must appear" section.*

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

25CECG05256	<i>Lue Yang v. County of Fresno</i> is continued to Thursday, July 30, 2026, at 3:30 p.m. in Department 501.
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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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Tentative Ruling

Re: **Jazzeen Martinez**
Court Case No. 25CECG05696

Hearing Date: July 29, 2026 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

**If oral argument is timely requested, it will be entertained on
Thursday, July 30, 2026, at 3:00 p.m. in Department 501.**

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested, the minor is excused from appearing.

Explanation:

The medical records attached to the Petition included recommendations by Adventist Health and Dr. Dadfarin for the minor to have a follow-up consultation with a pediatric orthopedic surgeon. There are no records indicating that the minor had any follow-up consultation with a pediatric orthopedic surgeon. Additionally, if such a consultation did occur and resulted in any additional medical expenses, these are not accounted for in the Petition.

The records attached also included a recommendation by Dr. Avila for the minor to participate in mental health therapy as a result of the accident. There are no records indicating the minor participated in therapy. Additionally, if such did occur and resulted in any additional expenses, these are not accounted for in the Petition.

The court is unable to assess whether this settlement is in the minor's best interests given the unresolved issues described above.

Pursuant to California Rules of Court, Rule 3.1312 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** 07/27/26 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: **G. Simon Bachir v. William Etiz, D.O.**
Superior Court Case No. 24CECG01765

Hearing Date: July 29, 2026 (Dept. 501)

Motion: By Defendants William Etiz, D.O. and Anesthesia Consultants
of Fresno for Summary Judgment

**If oral argument is timely requested, it will be entertained on
Thursday, July 30, 2026, at 3:00 p.m. in Department 501.**

Tentative Ruling:

To deny defendants' motion for summary judgment. (Code Civ. Proc., § 437c.)

Explanation:

The plaintiffs, G. Simon Bachir (Dr. Bachir) and Molly Bachir (Mrs. Bachir), sued defendants William Etiz, D.O. (Dr. Etiz), Dr. Ertz's employer, Anesthesia Consultants of Fresno, and other defendants, alleging the defendants negligently performed a cataract surgery on Dr. Bachir's left eye, resulting in pain and vision loss. The complaint has two causes of action—the first for medical malpractice and the second for Mrs. Bachir's loss of consortium.

Dr. Etiz and Anesthesia Consultants of Fresno now move for summary judgment. They contend the care and treatment provided by Dr. Etiz was reasonable and within the standard of care at all times, and did not contribute to plaintiffs' injuries. They contend "[s]ince all of Dr. Etiz's care and treatment complied with the standard of care, his employer, Anesthesia Consultants of Fresno, is also entitled to summary judgment." (Memo., p. 2:7-9.)

Grounds for Summary Judgment

A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

In a medical malpractice case, expert testimony is required unless the challenged conduct is within the common knowledge of laymen. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. [Citations.]

(*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985, internal quotation marks omitted (*Munro*).)

Dr. Etiz Meets His Initial Burden of Production

"'Negligence on the part of a physician or surgeon will not be presumed; it must be affirmatively proved.' [Citations.]" (*Huffman v. Lindquist* (1951) 37 Cal.2d 465, 474.) Physicians and surgeons must possess and exercise "that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of the medical profession under similar circumstances." (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 36.) In a medical malpractice action, the plaintiff must establish the following elements:

(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence. [Citations.]

(*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606, internal quotation marks omitted (*Hanson*).)

The parties agree on the need for expert testimony on summary judgment, as explained in *Hanson*:

" 'California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.' [Citations.]" (*[Munro, supra]*, 215 Cal.App.3d [at pp.] 984-985.) "[E]xpert opinions ... are worth no more than the reasons and factual data upon which they are based." [Citation.]

(*Hanson, supra*, 76 Cal.App.4th at p. 607.)

The court finds Dr. Etiz meets his initial burden of production. He offers the expert opinion of a competent physician, Steven Gayer, M.D., who is board certified in anesthesiology, to establish the nonexistence of any triable issue of material fact as to both the standard of care and causation. In his declaration, Dr. Gayer summarizes the documents he reviewed:

I have reviewed plaintiff's medical records from Fresno Surgical Hospital, Eye Medical Center of Fresno, and UCSF Medical Center, as well as the deposition transcripts of plaintiff G. Simon Bachir and Molly Bachir. My review of these records has provided me a sufficient factual basis for me to form an opinion as to whether or not the care and treatment rendered to plaintiff by Dr. Etiz complied with the standard of care and caused or contributed to his injuries.

(Gayer decl., ¶ 3.)

Dr. Gayer then summarizes the pertinent factual chronology regarding Dr. Bashir's care and treatment, explains his reasoning, and opines that Dr. Etiz complied with the standard of care at all times:

I conclude to a reasonable degree of medical probability that Dr. Etiz did not cause or contribute to plaintiff's eye injury. Subsequent records showed retinal detachment inferiorly and into the macula of the left eye. It is implausible that a peribulbar block with a short 5/8" needle could reach the anatomically remote retina. I therefore conclude that plaintiff's eye injury is not attributable to Dr. Etiz's administration of a peribulbar block as the needle for this anesthetic would not have reached the location of plaintiff's eye injury.

(Gayer decl., ¶ 7.)

Where a defendant in a medical malpractice action presents expert testimony in support of a summary judgment motion showing that the defendant's care and treatment did not fall below the standard of care, the burden shifts to the plaintiff to offer contrary expert testimony demonstrating that the defendant's care and treatment did not fall below the standard of care. (*Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 844 [affirming summary judgment in favor of treating physician where plaintiff failed to offer opinion evidence to contradict defendant's expert declarations on standard of care].)

Based on this showing, Dr. Etiz meets his initial burden of production to disprove two essential elements of the claim for medical negligence—breach and causation. The burden then shifts to plaintiffs to show the existence of a triable issue of material fact.

Plaintiffs Raise a Triable Issue of Material Fact

The moving papers in favor of summary judgment are strictly construed, while the opposing papers are liberally construed, "and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion." (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 20; *Aguilar, supra*, 25 Cal.4th at pp. 850, 856.) "Because of the severity of the consequences of summary judgment, we carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion. [Citation.]" (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.)

On summary judgment, opposing declarations are liberally construed, while the moving party's evidence is strictly construed. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) "The rule that a trial court must liberally construe the evidence submitted in opposition to a summary judgment motion applies in ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact." (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 189.)

Plaintiffs first ask the court to exclude Dr. Gayer's declaration because the Fresno Surgical Hospital records attached to the declaration of Dr. Etiz's counsel as exhibit A do not include a custodian of records declaration. Evidence Code section 1414 provides:

A writing may be authenticated by evidence that:

(a) The party against whom it is offered has at any time admitted its authenticity; or

(b) The writing has been acted upon as authentic by the party against whom it is offered.

Dr. Etiz cites *Ambriz v. Kelegian* (2007) 146 Cal.App.4th 1519, where the court held that a party cannot object to evidence while simultaneously relying on that same evidence.

Here, plaintiffs rely upon the same Fresno Surgical Hospital records that they object to (plus a proper custodian affidavit), which cures the defect. (Evid.Code, § 1414; *Ambriz v. Kelegian*, *supra*, 146 Cal.App.4th at p. 1527 [opposing party authenticated writing by relying on same evidence; "[r]aising an objection as to lack of authentication of an excerpt from the same deposition defendants themselves relied upon in their motion is disingenuous"].) The court finds the evidence relied upon by Dr. Gayer is sufficiently authenticated.

In their substantive opposition to the summary judgment motion, plaintiffs submit the expert declaration of Richard J. Novak, M.D., a board certified anesthesiologist. To reach his conclusions, Dr. Novak reviewed Dr. Bachir's medical records from Fresno Surgical Hospital, the follow-up records from UCSF Medical Center, the deposition transcripts of Dr. Bachir and Dr. Etiz, and all of the moving papers for summary judgment.

Dr. Novak notes a conflict in the record about whether a retrobulbar block or a peribulbar block was actually used, but opines that neither option was appropriate and neither option met the standard of care. Dr. Novak specifically disagrees with Dr. Gayer's conclusions, and suggests not only that the option for anesthetic used by Dr. Etiz was inappropriate in California, but also that the use of either option could have caused Dr. Bashir's eye injury.

Liberally construing the complaint and Dr. Novak's declaration, the court finds fact number seven (Dr. Etiz's care and treatment of Dr. Bachir complied with the standard of care at all times) is material and disputed. Therefore, the court finds plaintiffs raise a triable issue of material fact as to standard of care and causation.

In their reply, the moving defendants argue plaintiffs fail to meet their burden to raise a triable issue of material fact because plaintiffs' expert does not explicitly opine

that a 5/8" needle caused or could have caused the alleged retinal detachment or any of Dr. Bachir's injuries.

The moving defendants fail to cite *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, where the Court of Appeal, Fifth District, on summary judgment, stated that while a defendant's expert's declaration has to be detailed and with foundation in order to *obtain* a summary judgment, a plaintiff's expert's declaration in *opposition* to a summary judgment motion does not have to be detailed and is entitled to all favorable inferences. (*Id.* at p. 125.) The *Powell* court found that when the expert doctor's declaration was given all favorable inferences, it contained an explanation as to causation. Since it disclosed the existence of a triable issue of fact, the expert opinion precluded summary judgment based on the issues of breach of the duty of care and causation, and the appellate court reversed the summary judgment. (*Powell, supra*, 151 Cal.App.4th at pp. 130-131.) The appellate court found even "obtuse" declarations are sufficient to oppose a summary judgment motion:

However obtuse [the expert's] declaration may appear, as a party opposing summary judgment, [the plaintiff] is entitled to *all favorable inferences* that reasonably may be derived from it, which includes a reading of the declaration to state that [the plaintiff's] injuries were caused by [the defendant doctor's] conduct, which conduct fell below the applicable standard of care.

(*Id.* at p. 129, italics original.)

On balance, the court finds that Dr. Novak's declaration raises a triable issue of material fact as to standard of care and causation. Therefore, the court denies the motion by Dr. Etiz and Anesthesia Consultants of Fresno for summary judgment.

Plaintiff's Evidentiary Objections

The court overrules plaintiffs' evidentiary objections.

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 07/27/26
(Judge's initials) (Date)

(49)

Tentative Ruling

Re: ***Hamoy v. Alkobadi***
Superior Court Case No. 25CECG04785

Hearing Date: July 29, 2026 (Dept. 501)

Motion: By Plaintiffs to Substitute Christine Calderon as Successor in Interest after the Death of Plaintiff Frank Calderon

If oral argument is timely requested, it will be entertained on Thursday, July 30, 2026, at 3:00 p.m. in Department 501.

Tentative Ruling:

To deny, without prejudice. (Code. Civ. Proc., § 377.32, subd. (c).)

Explanation:

Plaintiff Christine Calderon ("Plaintiff") moves to have Plaintiff substituted in as successor in interest to plaintiff Frank Calderon due to the death of Frank Calderon under Code of Civil Procedure section 377.31.

Code of Civil Procedure section 377.31 states, "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." Code of Civil Procedure section 377.32 states in pertinent part, "(a) The person who seeks...to continue a pending action or proceeding as the decedent's successor in interest under this article, shall execute and file an affidavit or a declaration...(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration."

Plaintiff fails to attach a copy of Frank Calderon's death certificate to the submitted declaration as required by Code of Civil Procedure section 377.32, subdivision (c). Plaintiff provides a factual explanation why Plaintiff is unable to acquire a copy of Frank Calderon's death certificate at this time. (Christine Calderon Decl., ¶¶ 5-9) However, the death certificate is a statutory requirement of Code of Civil procedure section 377.32, subdivision (c). Accordingly, the motion is denied without prejudice.

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** 07/28/26 .
(Judge's initials) (Date)