**Tentative Rulings for February 23, 2022**
**Department 503**

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**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).)**

**21CECG02290** ***Gutierrez v. Reagan*** **(Dept. 503)**

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

**19CECG00321** ***De Gunya v. De Gunya*** **is continued to Wednesday, March 16, 2022, at 3:30 p.m. in Dept. 503.**

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 503

Begin at the next page

(30)

**Tentative Ruling**

Re: ***Donald Aluisi v. James Jorgensen***
Superior Court Case No. 17CECG01912

Hearing Date: February 23, 2022 (Dept. 503)

Motions: Demurrer and Motion to Strike by Defendants James Jorgensen, David Justice, Paul Brar, and Jorgensen Brar Accountancy Corporation

**Tentative Ruling:**

To overrule defendants' demurrer to the first cause of action for professional negligence. To sustain defendants' demurrer to second cause of action for intentional misrepresentation, with leave to amend.

To grant defendants' motion to strike punitive damages, with leave to amend. To deny defendants' motion to strike general damages.

Plaintiffs are granted 20 days' leave to file an amended complaint. The time in which an amended pleading may be filed will run from service by the clerk of the minute order. All new allegations in the amended complaint are to be set in **boldface** type.

**Explanation:**

The second amended complaint alleges four causes of action: (1) professional negligence, (2) intentional misrepresentation, (3) negligent misrepresentation, and (4) breach of fiduciary duty. Defendants demur to the first and second causes of action based on Code of Civil Procedure section 430.10, subdivisions (e) and (f). Defendants also move to strike plaintiffs' request for general and punitive damages.[1]

Demurrer

*First Cause of Action: Professional Negligence*

To state a cause of action for professional negligence, a party must show: "(1) the duty of the professional to use such skill, prudence and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional negligence." (*Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1682.) "The threshold element of a cause of action for negligence is

[1] As argued by plaintiffs, the court acknowledges that the notices of motions are technically defective. (See Cal. Rules of Court, rule 3.1112.) The court also recognizes that the opposition papers are late. (See Code Civ. Proc., §§ 1005, subd. (b), 12c.) Nonetheless, the court exercises its discretion to decide the motions on the merits and to consider the oppositions. No prejudice has been shown by either party.

the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion." (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397.) "Where there is no legal duty, the issue of professional negligence cannot be pled because with the absence of a breach of duty, an essential element of the cause of action for professional negligence is missing." (*Major Clients Agency v. Diemer* (1998) 67 Cal.App.4th 1116, 1132.)

Here, plaintiffs adequately allege facts to support a cause of action for professional negligence. Plaintiffs allege that defendants were their accountants. As such, defendants owed plaintiffs a duty of care. (See, e.g., *International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606.) Plaintiffs allege that defendants breached their duty by giving inaccurate advice regarding the 1031 exchange, by failing to properly advise plaintiffs regarding their taxes, and by improperly filing plaintiffs' taxes. Plaintiffs further allege that, as a result of defendants' negligence, they had to pay unnecessary taxes and interest. Plaintiffs allege damages of more than $2 million.

Defendants argue that they were not actually employed to provide advice regarding the 1031 exchange at issue – meaning they owed plaintiffs no duty. In support thereof, defendants cite to plaintiff's deposition. The court does not find this argument compelling. There is a split of authority on whether judicial notice may be taken of inconsistent statements made by the pleader in a deposition transcript filed as part of the court record, and defendants fail to set forth conclusive authority for taking judicial notice here. Moreover, even if the court took judicial notice of plaintiff's deposition, defendants have failed to establish grounds to sustain the demurrer. In addition to the allegations regarding the 1031 exchange, plaintiffs also allege that defendants breached their professional duty by failing to properly advise them regarding their taxes and by improperly filing their taxes. A general demurrer does not lie to only part of a cause of action. In other words, since there are sufficient allegations to entitle plaintiffs to relief, the allegations regarding the 1031 exchange cannot be challenged by general demurrer. (See *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167; see also *PH II, Inc. v. Sup.Ct.* (1995) 33 Cal.App.4th 1680, 1682-1683 [malpractice cause of action was supported by other acts beyond grounds in demurrer].)[2]

In their supporting memorandum, defendants present facts to show that any advice regarding the 1031 exchange was beyond the scope of defendants' work. However, a demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are *judicially noticeable*. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) No other extrinsic evidence can be considered (i.e., no "speaking demurrers"). (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881 [error for court to consider facts asserted in memorandum supporting demurrer].)

Defendants' demurrer based on Code of Civil Procedure section 430.10, subdivision (f) pertains to plaintiffs' request for damages resulting from the 1031 exchange. According to defendants, plaintiffs' damages calculations are uncertain.

[2] Defendants also assert an argument regarding damages arising from the 1031 exchange. This argument fails for the reason previously provided. The professional negligence claim is viable even if all allegations related to the 1031 exchange are discounted.

The court declines to sustain the demurrer on this basis. Even if defendants' argument is meritorious, it is not dispositive of the entire cause of action. (See *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 616, 616.)

Accordingly, the demurrer to the first cause of action is overruled.

*Second Cause of Action: Intentional Misrepresentation*

The elements of a cause of action for intentional misrepresentation are: (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage. (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.) Each element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216–217, superseded by statute on other grounds as stated in *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235.)

Here, plaintiffs fail to adequately allege facts to support a cause of action for intentional misrepresentation. Plaintiffs do allege that defendants made intentional misrepresentations "by the intentional alteration of the Federal tax basis of [plaintiffs' investment property] on Plaintiffs' 2014 State and Federal returns." (SAC, ¶65.) And according to plaintiffs, defendants deliberately changed the tax basis by lowering the correct Federal tax basis to be consistent with an incorrect State tax basis. Plaintiffs also allege that defendants purposefully deceived them to cover up for the fact that they had done plaintiffs' taxes incorrectly since year 2000, and that defendants made intentional misrepresentations in connection with their advice to plaintiffs regarding the 1031 exchange, as well. However, as defendants note, plaintiffs' allegations are too speculative to support the instant cause of action. No actual facts are alleged to show malice or fraud, or that defendants' actions were not the result of an honest mistake.

Plaintiffs do allege that "Defendants committed the acts averred herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights." (See SAC, ¶¶ 62, 71, 79, & 86.) And, the terms "fraudulent," "malicious," and "oppressive" are the statutory description of the type of conduct which can sustain an intentional cause of action. (See Civ. Code, § 3294.) However, pleading in the language of the statute is only acceptable when sufficient facts are otherwise pled to support the allegations. The terms themselves are conclusive. (*Blegen v. Superior Court* (1981) 125 Cal.App.3d 959, 963.) Thus, because plaintiffs have failed to plead facts which might give rise to liability, the use of legal conclusions is insufficient.

Finally, defendants argue that the claim is subject to demurrer because plaintiffs fail to allege facts showing how, when, where, to whom, and by what means the alleged representations were made. (See *Daniels v. Select Portfolio Servicing. Inc., supra,* 246 Cal.App.4th at pp. 1166-1167.) For this reason, as well, the demurrer is sustained. Although less specificity is required if defendants likely have greater knowledge of the

facts than plaintiffs, plaintiffs have failed to allege adequate facts showing how, when, where, to whom, and by what means the alleged representations were made.

Accordingly, the demurrer to second cause of action is sustained, with leave to amend.

Motion to Strike

A motion to strike can be used to remove any "irrelevant, false or improper" matters or "a demand for judgment requesting relief not supported by the allegations of the complaint." (Code Civ. Proc., § 431.10, subd. (b); see also *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164 [motion to strike is proper procedure to challenge an improper request for relief, or improper remedy, within a complaint].)

Defendants move to strike plaintiffs' requests for general and punitive damages. Defendants maintain that "[n]one of Plaintiffs' allegations, though, contain a single reference to the general damages suffered by Plaintiffs. They are simply tacked on to Plaintiffs' Prayer." (See Memo, 2:16-17.) Regarding plaintiffs' request for punitive damages, defendants argue that plaintiffs simply parrot the words set forth in BAJI. (*Id*. at 2:24.)

Defendants' argument regarding general damages fails. Primarily, defendants fail to provide any authority supporting their contention that it is an improper practice or that there is a requirement for plaintiffs to specifically allege general damages. Moreover, it is generally accepted that general damages, which are those necessarily following from the injury inflicted on the plaintiff and implied by law to have accrued to him or her, need not be specially pleaded. (See e.g., *Worden v. Central Fireproof Bldg. Co.* (1916) 172 Cal. 94; *Ruiz v. Bank of America National Trust & Savings Ass'n* (1955) 135 Cal.App.2d Supp. 860, 863 ["A general allegation of damages with a prayer for a stated amount is sufficient to authorize the recovery of all damages that necessarily result from the act complained of."].)

On the other hand, defendants' argument regarding punitive damages is well-taken. As discussed above, plaintiffs have failed to plead specific facts which might give rise to punitive damages.

Accordingly, defendants' motion to strike punitive damages is granted, with leave to amend. Defendants' motion to strike general damages is 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: KAG on 2/7/2022 .**
(Judge's initials) (Date)

(36)

**Tentative Ruling**

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| Re: | ***Rodriguez v. Nazarikangarlu, et al.***<br>Superior Court Case No. 18CECG03131 |
| Hearing Date: | February 23, 2022 (Dept. 503) |
| Motion: | (1) Defendants Covenant Care Morgan Hill, LLC dba Pacific Hills Manor, and Elevate Home Health, LLC dba Focus Home Health's Demurrer to First Amended Complaint;<br><br>(2) Defendant Archana N. Dhawan, M.D.'s Demurrer to First Amended Complaint; and<br><br>(3) Defendant Mohammadreza Rohaninejad, M.D.'s Demurrer to First Amended Complaint |

**Tentative Ruling:**

To sustain all defendants' demurrers to the first cause of action for failure to state facts sufficient to constitute a cause of action, with leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) To sustain all defendants' demurrers to the second cause of action, without leave to amend. Plaintiff is granted 20 days' leave to file a second amended complaint. The time to file the second amended complaint will run from service by the clerk of the minute order. All new allegations in the second amended complaint are to be set in **boldface** type.

**Explanation:**

Meet and Confer

As a preliminary matter, the Court notes that defendants Covenant Care Morgan Hill, LLC dba Pacific Hills Manor ("Covenant Care") and Elevate Home Health, LLC dba Focus Home Health ("Elevate") have failed to comply with the statutory meet and confer requirement. The only action Covenant Care and Elevate's counsel took to comply with the meet and confer requirement was to send a letter by electronic mail to plaintiff's counsel. Having received no response from plaintiff's counsel, Covenant Care and Elevate filed their demurrer. This meet and confer is insufficient under the statutory requirement. "[T]he demurring party shall meet and confer *in person or by telephone* with the party who filed the pleading that is subject to demurrer . . . ." (Code Civ. Proc., § 430.41, subd. (a), emphasis added.)

If Covenant Care and Elevate required more time to comply with the meet and confer process, they could have requested the automatic extension under Code of Civil Procedure section 430.41, subdivision (a)(2). Alternatively, they could have stipulated to an extension of time, just as defendants Archana N. Dhawan, M.D. ("Dhawan") and Mohammadreza Rohaninejad, M.D. ("Rohaninejad") have done.

The court emphasizes that all parties are expected to adhere to statutory requirements. Typically, in the event that the moving party has failed to satisfy its meet and confer requirement, the court's practice is to take the motion off calendar. However, given the extreme congestion on the court's calendar, the court will consider the merits of the demurrer in this instance only, to preserve judicial economy. In the future, the court expects all parties to comply with this statute.

Proof of Service

While Dhawan filed proofs of service to indicate that she served plaintiff with her memorandum of points and authorities, attorney's declaration, request for judicial notice, and proposed order for her demurrer, notably, she failed to provide a proof of service showing that plaintiff was served with her notice of demurrer. (Code Civ. Proc., § 1005, subd. (b).) The proof of service attached to the notice of demurrer indicates that the proposed order was served, not the notice. However, the court will treat plaintiff's opposition on the merits as a waiver of the defective notice. (See *Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7.)

Demurrers

Defendants Rohaninejad, Dhawan, Covenant Care and Elevate demur to plaintiff's two causes of actions against them: the first cause of action for medical negligence—failure to warn, and the second cause of action for medical negligence—failure to assess, contending essentially the same overarching arguments, as follows:

(1) The causes of actions are barred by the applicable statute of limitations under Code of Civil Procedure section 340.5;

(2) The first amended complaint fails to allege facts sufficient to show that defendants had a duty to plaintiff, more specifically to: (a) warn for the benefit of third parties; and (b) submit a Confidential Morbidity Report ("CMR") to the California Department of Motor Vehicles; and

(3) The second cause of action for medical negligence—failure to assess is duplicative of the first cause of action for medical negligence—failure to warn.

- *Statute of Limitations*

It is undisputed that the applicable statutes of limitation is set forth in Code of Civil Procedure section 340.5, which provides, in relevant part:

> In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(Code Civ. Proc., § 340.5.)

While all parties focus on determining the deadline for plaintiff to bring her claim against defendants based on the time plaintiff discovered, or reasonably should have discovered her injury, the pertinent issue here is whether the statute of limitations for plaintiff's claim against defendants is tolled by plaintiff's incompetence.

Plaintiff, albeit briefly, asserts that the statute of limitations was tolled by her mental and physical incompetence caused by her injuries giving rise to this action. While plaintiff provides no authority to support this argument, the court finds that, under the allegations of the first amended complaint, plaintiff has sufficiently alleged that, by virtue of plaintiff's incompetence, the one-year statute of limitations on her medical negligence claim has not run. "If a person entitled to bring an action . . . is, at the time the cause of action accrued either under the age of majority or lacking the legal capacity to make decisions, the time of the disability is not part of the time limited for the commencement of the action." (Code Civ. Proc., § 352, subd. (a).) In general, the tolling statute applies so long as the plaintiff remains disabled, even where the "limitation period may remain open for the lifetime of the plaintiff . . . ." (*Tzolov v. International Jet Leasing, Inc.* (1991) 232 Cal.App.3d 117, 120.) However, in a medical malpractice action, while the three-year limitations period in Code of Civil Procedure 340.5 is not suspended,[3] the legal incapacity tolling provision in Code of Civil Procedure section 352, subdivision (a) suspends the one-year limitations period. (*Alcott Rehabilitation Hospital v. Superior Court* (2001) 93 Cal.App.4th 94, 103.) Moreover, an appointment of a guardian ad litem does not interfere with or override this exception. (*Tzolov v. International Jet Leasing, Inc., supra,* 232 Cal.App.3d 117, 120.)[4]

Here, the first amended complaint alleges that plaintiff is permanently cognitively damaged from the traumatic brain injury sustained on July 20, 2018, the date of the incident giving rise to this action. Specifically, the first amended complaint alleges that plaintiff's "long term memory is fragmented, not remembering her youngest child. Her short term memory is even worse, not remembering often what happened only after minutes have passed." (FAC, p. 8:15-17.) The first amended complaint sufficiently alleges that plaintiff has been legally incapable within the meaning of Code of Civil Procedure section 352, subdivision (a) from the time her injury occurred, July 20, 2018, to the date of the first amended complaint, May 4, 2021. Additionally, plaintiff filed her claim against the moving parties under the three-year limitations period. Thus, plaintiff's medical negligence claims are sufficiently alleged within the statute of limitations.

- *Duty to Plaintiff*

"The elements of a cause of action in tort for professional negligence are: (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." (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1077, internal quotations and citations omitted.)

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[3] *Fogarty v. Superior Court* (1981) 117 Cal.App.3d 316, 320-321.

[4] The court recognizes that no party has cited these authorities; however, since plaintiff is alleged to be incompetent and a guardian ad litem has been appointed on her behalf, they are directly applicable.

- *Duty to Warn*

"In general, each person has a duty to act with reasonable care under the circumstances. However, 'one owes no duty to control the conduct of another, nor to warn those endangered by such conduct.'" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619, internal citations omitted.) Plaintiff relies on *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, to support her assertion that the moving parties had a special relationship with defendant Ray Nazarikangarlu ("Nazarikangarlu"), which arose from their respective medical provider-patient relationships and the foreseeability of plaintiff being a victim. (*Id.* at p. 436 [special relation that arises between a patient and his doctor or psychotherapist may support affirmative duties for the benefit of third persons].) First, as is noted by Covenant Care and Elevate, there is no mention in *Tarasoff* of any application to a skilled nursing facility and home health nurses, and plaintiff fails to provide any authority to support such application. Second, plaintiff has stated insufficient facts to determine whether a physician-patient relationship existed between defendant physicians and Nazarikangarlu <u>*at the time the subject incident occurred.*</u>

Alternatively, in a case involving harm caused by a third party, an exception to the general no-duty-to-protect rule exists if the defendant had a special relationship with either the victim or person who created the harm. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 215.) "[W]hether to recognize a duty to protect is governed by a two-step inquiry. First, the court must determine whether there exists a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect. Second, if so, the court must consult the factors described in *Rowland* [*v. Christian* (1968) 69 Cal.2d 108] to determine whether relevant policy considerations counsel limiting that duty." (*Brown v. USA Taekwondo*, supra, 11 Cal.5th at p. 209.)

"A special relationship between the defendant and the victim is one that 'gives the victim a right to expect' protection from the defendant, while a special relationship between the defendant and the [perpetrator] is one that 'entails an ability to control [the perpetrator's] conduct.'" (*Id*. at p. 216, internal citations omitted.) "Where the defendant has neither performed an act that increases the risk of injury to the plaintiff nor sits in a relation to the parties that creates an affirmative duty to protect the plaintiff from harm, . . . the defendant owes no legal duty to the plaintiff." (*Ibid.*)

Here, plaintiff is the alleged victim, and Nazarikangarlu is the alleged perpetrator. It is not alleged in the first amended complaint that a special relationship exists between any moving party and plaintiff. Although the first amended complaint asserts that there was a special relationship between all the moving parties and Nazarikangarlu, plaintiff has failed to allege sufficient facts to suggest that any moving party had the ability to control Nazarikangarlu's conduct. By the plain language of the first amended complaint, Nazarikangarlu was no longer under Dhawan and Covenant Care's custody and care at the time of the incident. While plaintiff alleges Rohaninejad to be "the responsible physician for Nazarikangarlu's Home Health care while he was being seen by Elevate" (FAC, p. 3:19-22), it is unclear whether Nazarikangarlu was even still receiving such care from both Rohaninejad and Elevate at the time of the incident, much less whether Rohnaninejad and Elevate had the requisite ability to control Nazarikangarlu.

Even if a special relationship existed as to all the moving parties, plaintiff has also failed to allege facts sufficient to show that plaintiff's injury was foreseeable. (*Tarasoff v. Regents of University of California*, *supra*, 17 Cal.3d at p. 435 [foreseeability is most important consideration in determining existence of a duty]; see also *Rowland v. Christian*, *supra*, 69 Cal.2d at pp. 112-113.) It is not alleged the surgery performed, Nazarikangarlu's diagnosed medical condition, Nazarikangarlu's condition when he left each defendants' care, etc.

Thus, the first amended complaint has failed to allege facts sufficient to establish that any moving party had an affirmative duty to protect plaintiff, specifically the existence of a special relationship between the moving parties and Nazarikangarlu and the foreseeability of the harm to plaintiff.

- *Duty to Report*

"Every physician and surgeon shall report immediately to the local health officer in writing, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a case of a disorder characterized by lapses of consciousness." (Health & Saf. Code, § 103900, subd. (a).)

As discussed above, plaintiff has failed to allege any facts to show that any physician defendant diagnosed Nazarikangarlu with a disorder characterized by lapses of consciousness. Therefore, plaintiff has failed to state facts sufficient to support the imposition of this duty against the moving parties. Moreover, since Covenant Care and Elevate are not alleged to be either a physician or surgeon, this statute appears wholly inapplicable to these parties.

Consequently, plaintiff has failed to allege sufficient facts to impose the statutory duty to report upon any moving party to support the first cause of action for medical negligence—failure to warn. The court sustains the moving parties' demurrer to the first cause of action, with leave to amend.

- *Duplicative Causes of Action*

A cause of action which adds nothing to the complaint by way of fact or theory of recovery cannot withstand demurrer. (*Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128, 1135.) In *Award Metals, Inc.*, the plaintiff alleged five causes of action, where the first and fifth causes of action contained allegations that were virtually identical, with the exception of one conclusory allegation that the defendant acted negligently. Here, the first cause of action and second cause of action are virtually identical, except that plaintiff substitutes "failure to warn" with "failure to assess" in the second cause of action. Plaintiff adds no additional fact or theory of recovery; thus, the second cause of action is duplicative of the first, and accordingly fails to state a separate cause of action against the moving parties. The court sustains the moving parties' demurrer to the second cause of action, without leave to amend.

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: KAG on 2/22/2022 .**
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***In re: Neymar Sanchez***
Superior Court Case No. 21CECG03119

Hearing Date: February 23, 2022 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

**Tentative Ruling:**

To grant. Orders signed. 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: KAG on 2/22/2022 .**
(Judge's initials) (Date)

(5)

**Tentative Ruling**

Re: ***In Re: Micah Ortega***
Superior Court Case No. 22CECG00351

Hearing Date: February 23, 2022 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

**Tentative Ruling:**

The petition is denied without prejudice on the following grounds:

1. Section 1 lists petitioner as both parent and guardian. This appears incorrect. Ordinarily, a parent applies to the court to proceed as a "guardian ad litem." An explanation is required.

2. Section 8 is incomplete. A doctor's report regarding the minor's injuries or prognosis for recovery along with a report of the minor's current condition is required as attachment 8. See instructions in section 8.

3. Section 11b. lists $97,000 as the total amount offered to settle all claims arising from the accident. Yet, attachment 10c sets forth $99,000 in settlement. This needs to be reconciled.

4. Section 12 is filled out incorrectly. The calculations are in error. In addition, the names of the minor's medical providers are not listed in section 12b.

5. Petitioner's attorney has provided no contract of representation for the court's review. It appears that the attorney's fees are 50 percent of the gross amount of settlement proceeds. Further explanation is required.

**Tentative Ruling**
**Issued By: KAG on 2/22/2022 .**
(Judge's initials) (Date)