

Tentative Rulings for October 26, 2021
Department 403

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).)

19CECG01375 *Erickson v. Paul Blanco's Good Car Company* (Dept. 403) – **Hearing will be conducted on Thursday, October 28, 2021 at 3:00 p.m.**

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(32)

Tentative Ruling

Re: ***Hare, et al. v. Hare, et al.***
Superior Court Case No. 21CECG00065

Hearing Date: October 26, 2021 (Dept. 403)
**If oral argument is timely requested, the matter will be heard on
Thursday, October 28, 2021 at 3:00 p.m. in Dept. 403**

Motion: Defendant and cross-complainant's motion for leave to amend
cross-complaint

Tentative Ruling:

To grant, on the condition, that prior to the hearing, moving party shall file a declaration in full compliance with California Rules of Court, rule 3.1324(b), attaching a copy of the proposed amendment or amended pleading as required by California Rules of Court, rule 3.1324(a), and attaching all the exhibits that were supposed to have been included with counsel's declaration but were inadvertently omitted. (Code Civ. Proc., § 473, subd. (a)(1).)

Moving party shall file and serve the first amended cross-complaint within ten (10) days of the clerk's service of the minute order. All new allegations in the first amended cross-complaint shall be set in **boldface** type.

Explanation:

Motions for leave to amend pleadings are directed to the sound discretion of the court. "The court may ... in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading" (Code Civ. Proc., § 473, subd. (a)(1); see also *Glaser v. Meyers* (1982) 137 Cal.App.3d 770, 776-777 [strong judicial policy favoring resolution of all disputed matters in one action].) "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading" (Code Civ. Proc., § 576.) (See *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945 [court has discretion to permit any sort of amendment, including the right to amend "to correct inadvertent misstatements of facts or erroneous allegations of terms"].) The court's discretion will usually be exercised liberally so as not to deprive a party of the right to assert a meritorious cause of action or defense. (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) The policy favoring amendment is so strong that denial of leave to amend can rarely be justified: "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Ibid.*)

Defendant and cross-complainant Richard Hare ("Hare") seeks leave to amend the cross-complaint to properly plead the appropriate dates for when Hare sustained

It appears that the parties have stipulated to the filing of the amended cross-complaint and as such the motion is unopposed. The Court notes, however, that a copy of the proposed amended pleading does not appear to have been attached to counsel's declaration, as is required by California Rules of Court, rule 3.1324(a). "A motion to amend a pleading before trial must: (1) Include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments" (Cal. Rules of Court, rule 3.1324(a)(1).) Neither does counsel's declaration meet the requirements of California Rules of Court, rule 3.1324(b) which states that "[a] separate declaration must accompany the motion and must specify: (1) The effect of the amendment; (2) Why the amendment is necessary and proper; (3) When the facts giving rise to the amended allegations were discovered; and (4) The reasons why the request for amendment was not made earlier." (Cal. Rules of Court, Rule 3.1324(b).) While the memorandum of points and authorities appears to address these requirements, this alone is insufficient as the averments must be made in the supporting declaration. However, since the parties have stipulated to the filing of an amended cross-complaint, and there being no indication of unreasonable delay by moving party or prejudice to the opposing party, the Court intends to grant the motion on the condition that the requirements of California Rules of Court, rule 3.1324 are fully complied with prior to the hearing as noted above.

Tentative Ruling

4

(35)

Tentative Ruling

Re: **Rea v. Sanchez, Jr. et al**
Superior Court Case No. 21CECG00325

Hearing Date: October 26, 2021 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Thursday, October 28, 2021 at 3:00 p.m. in Dept. 403

Motion: Petition to Compromise Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file a new petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4) In the event that oral argument is requested, both Petitioner and Christian Rea are excused from appearing.

Explanation:

Petitioner proposes to accept a compromise of disabled adult Christian Rea's claims arising from a two auto collisions for a gross settlement of \$45,000, paying \$5,000 of the proceeds to cover in excess of \$3.2 million in medical expenses, \$690 in costs and \$15,000, or approximately 38 percent of the settlement after medical expenses and costs, in attorney's fees. The remaining proceeds of approximately \$24,310 are proposed to go directly to Petitioner on behalf of Mr. Rea so as to avoid disruption of public assistance benefits.

On August 24, 2021, counsel for Petitioner appeared for argument. The matter was thereafter continued to October 26, 2021 to allow for additional filings. Petitioner has not filed any additional documents for consideration.

The Petition lacks sufficient information and evidence as follows.

Item 13, as further described by counsel, is unsupported by any evidence, except as to the ERISA self-funded plan through UMR. No evidence was submitted as to the medical expenses totaling in excess of \$3.2 million, identified in counsel's declaration as belonging to Blue Cross. (Torem Decl., ¶ 12.) Though counsel declares that Blue Cross paid \$16,996, no evidence is presented in support. (See *id.*) Nor is there evidence that Blue Cross demanded \$15,000 in contemplation of satisfaction on the \$3.2 million for which Blue Cross is obligated. The court denies counsel's request for an order in Compromise ignoring possible reimbursement to Blue Cross. Reference was made to Mr. Rea receiving Medi-Cal. (Petition, Attachment 19b(8).) It is unclear whether Mr. Rea's coverage under Blue Cross represents a potential Medi-Cal lien.

Counsel also references medical bills from Community Regional Hospitals in the amount of \$738,555 that have not been paid. (Torem Decl., ¶ 11.) No evidence is

submitted in support, and it is unclear whether these expenses exist separately from that of the \$3.2 million obligated to Blue Cross. No evidence is submitted addressing this known potential medical expense against Mr. Rea's settlement.

The evidence presented regarding UMR's offer to compromise reimbursement does not match the information provided in the Petition. (Torem Decl., Ex. D.) The letter submitted from UMR offers to settle reimbursement on an obligation in excess of \$360,000, \$160,000 of which has been paid. The amount sought in the letter is \$7,500, contrary to the \$5,000 listed in Item 13(b)(2)(f)(ii)(C).

Item 14 seeking \$15,000 in attorney's fees does not reflect the request of 33 percent. The gross settlement is \$45,000. Petitioner proposes to consider \$5,000 in medical expenses, and \$690 in costs. As such, the total settlement to Mr. Rea is \$39,310. Counsel thereafter seeks \$15,000 in fees, comprising 38.16 percent of the settlement to Mr. Rea. The court is inclined to grant fees at the requested 33 percent, but computed from the net settlement after medical expenses and costs.

Item 19(b)(8), though 19(b)(11) is marked on the Petition, provides no explanation as to how Petitioner seeks to manage the proceeds of settlement if the settlement proceeds were disbursed to her. Additionally, the amount in disposition exceeds \$20,000, and therefore this option is not available to Mr. Rea. (Prob. Code § 3611, subd. (d); see also Petition, Item 19(b)(8).)

Item 19(b)(11) is also unavailable to Mr. Rea. Probate Code section 3611, subdivision (i) serves as authority for such a request. Probate Code section 3610 states that when money is to be paid under a compromise to a disabled adult with no conservator of the estate, it is to be "paid delivered, deposited, or invested as provided in this article," and section 3611 specifically sets out the various options the court has for disposition of the funds. As pertinent here, the court can: 1) require that a conservator be appointed and that the remaining balance be paid/delivered to that conservator once appointed; 2) order the funds paid into a blocked account or annuity; 3) order the funds paid into a special needs trust; or 4) order that the money "be paid or delivered to the person with a disability." (Prob. Code § 3611, subd. (a), (b), (c), and (i), respectively.)

The problem here is that in reality Petitioner is not proposing that the money be distributed to Mr. Rea, but rather that it be distributed to Petitioner, for her to be free to manage without any continuing court oversight or any other system of accountability. The court does not find this to be what is contemplated under subdivision (i) of section 3611. That option appears to be designed for times when the disabled person has sufficient mental capacity to actively participate in the management of their own financial affairs. In such a situation, this statute gives the court the flexibility to make the appropriate order distributing the settlement proceeds to the disabled person, for them to manage. Here, the Petition states that Mr. Rea is mentally incapacitated, and unable to utilize the funds himself. (Petition, Attachment 19b(8).) Therefore the court finds that it would not be in the best interest of Mr. Rea to distribute the settlement directly to him.

Further, the attachment represents that Mr. Rea is on public assistance benefits by way of Medi-Cal, necessitating distribution of the settlement to Petitioner so as to not disrupt those benefits. Petitioner may need to explore options in either a short-term

Finally, no proposed orders were submitted.

Tentative Ruling

7