

Tentative Rulings for December 17, 2024
Department 503

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.

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Tentative Rulings for Department 503

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(03)

Tentative Ruling

Re: **De Santis v. De Santis**
Case No. 19CECG01922 (lead case, consolidated with case nos. 19CECG04121 and 20CECG02264)

Hearing Date: December 17, 2024 (Dept. 503)

Motion: Receiver's Motion to Approve His Final Report and Accounting

If oral argument is timely requested, it will be entertained on Tuesday, January 7, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant the motion to approve the receiver's final report and accounting. However, the court intends to modify the proposed order, as discussed below.

Explanation:

Under Code of Civil Procedure section 564, the court has the power to appoint a receiver in certain circumstances. (Code Civ. Proc. § 564.) The court's power also includes the inherent power to discharge the receiver when his services are no longer necessary. (*Sly v. Superior Court of California in and for Los Angeles County* (1925) 71 Cal.App. 290, 294.) The receiver may be discharged and his bond exonerated after the court approves his final report and accounting. (*Aviation Brake Systems, Ltd. v. Voorhis* (1982) 133 Cal. App. 3d 230, 232.)

Under Rule of Court 3.1184(a), "A receiver must present by noticed motion or stipulation of all parties: (1) A final account and report; (2) A request for the discharge; and (3) A request for exoneration of the receiver's surety." (Cal. Rules of Court, rule 3.1184(a), paragraph breaks omitted.) "No memorandum needs to be submitted in support of the motion or stipulation served and filed under (a) unless the court so orders." (Cal. Rules of Court, rule 3.1184(b).) "Notice of the motion or of the stipulation must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it." (Cal. Rules of Court, rule 3.1184(c).) "If any allowance of compensation for the receiver or for an attorney employed by the receiver is claimed in an account, it must state in detail what services have been performed by the receiver or the attorney and whether previous allowances have been made to the receiver or attorney and the amounts." (Cal. Rules of Court, rule 3.1184(d).)

Here, the property that the receiver was appointed to manage has been sold and control over the property has been transferred to the new owners, with the exception of two parcels which the receiver has been unable to sell. Apparently there has been very little interest in the two parcels, which have limited value and are roughly the same value. The receiver has proposed to split ownership of the parcels evenly between the two

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Tentative Ruling

Re: ***Cruz v. Fresno Ambulatory Surgery Center***
Superior Court Case No. 23CECG01792

Hearing Date: December 17, 2024 (Dept. 503)

Motion: By Defendant for Judgment on the Pleadings on First Amended Complaint

If oral argument is timely requested, it will be entertained on Tuesday, January 7, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant judgment on the pleadings as to the cause of action for Intentional/Negligent Fraud/Deceit Based on Concealment, with plaintiff granted 20 days' leave to file a second amended complaint. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) The time in which the complaint (second cause of action only) may be amended will run from service of the order by the clerk. All new allegations shall be in **boldface** type.

Explanation:

This is a medical negligence action arising out of a procedure performed on decedent Julia de la Cruz on 5/11/2020. Plaintiff alleges that decedent passed away on 5/13/2020 as a result of the negligence by defendant Fresno Ambulatory Surgery Center. The second cause of action alleges that defendants concealed the fatal risk of internal bleeding, told plaintiff "that there was no risk of internal bleeding at all, that initial external bleeding was normal which they had resolved by stitching, that there would be no further problems except maybe some swelling, and assured Plaintiff that the surgery had been a great success and no further post-surgery care would be necessary. Decedent died 2 days later of internal bleeding from the surgery."

Defendant moves for judgment on the pleadings on the ground that the cause of action for "Intentional/Negligent Fraud/Deceit Based on Concealment" does not comply with the heightened pleading requirements applicable to claims of fraud.

To make a claim for "fraud and deceit based on concealment," the plaintiff must assert: (1) the defendant intentionally "concealed or suppressed a material fact"; (2) the defendant had "a duty to disclose" to the plaintiff; (3) the defendant "[intended] to defraud the plaintiff"; (4) the plaintiff was "unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact"; and (5) the plaintiff suffered damages as a result. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.)

The court finds the allegations of concealment of the risk of internal bleeding to be sufficiently pled. A physician must disclose the risk attendant to a procedure. (*Flores v. Liu* (2021) 60 Cal.App.5th 278, 297.) Plaintiff alleges that this risk was not disclosed.

