

**AMIN v. VANDENBERG, et al**

**20CV44940**

**PLAINTIFF'S MOTION FOR LEAVE  
TO FILE FIRST AMENDED COMPLAINT**

This is a personal injury action involving a dog bite at an RV park. Before the Court this day is plaintiff's motion for leave to file a First Amended Complaint. Plaintiff generally wishes to add new negligence claims, revive a previously dismissed claim, and include new parties.

To amend a pleading already at issue, the party is required first to seek leave of court by way of noticed motion. (CCP §473(a)(1).) Pursuant to CRC 3.1324, the moving party must specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and include with the moving papers a copy of the proposed amended pleading and a declaration specifying the effect of the amendment(s); why the amendment is necessary and proper; when the facts giving rise to the amended allegations were discovered; and the reasons why the request was not made earlier.

Plaintiff's earlier motion for leave was denied without prejudice due to fatal omissions in the supporting declaration. This time, counsel has gone above and beyond the requirements of CRC 3.1324 and spells out in great detail how circumstances have shifted, justifying an amended pleading.

Defendants do not challenge the motion for leave on any procedural grounds, or upon the ground that the declaration does not state grounds for leave. Instead, defendants' entire opposition is moored to the concept that the new claims will not survive a pleading attack. A court will not ordinarily consider the validity of the proposed amendment in deciding whether to grant leave to amend (that can normally be dealt with via demurrer), and may not condition leave upon the submission of evidence substantiating the new claim(s). (*Sanai v. Saltz* (2009) 170 Cal.App.4<sup>th</sup> 746, 769-770.) However, the court has discretion to deny leave to amend where the new claim is, on its face, fatally flawed or where the amendment is a sham. (See *Edwards v. Superior Court* (2001) 93 Cal.App.4<sup>th</sup> 172, 180; *Yee v. Mobilehome Park Rental Review Board* (1998) 62 Cal.App.4<sup>th</sup> 1409, 1429; *Garcia v. Roberts* (2009) 173 Cal.App.4<sup>th</sup> 900, 912; *State ex rel Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4<sup>th</sup> 402, 412.) Although quite a few possible defenses are obvious, all of them depend to one degree or another on some factual determination (claim presentation compliance, scope of claim presented, control, notice, etc). This Court cannot engage in that kind of analysis without an actual pleading – and it is entirely possible that plaintiff will revisit some of her proposed changes after reviewing defendants' opposition papers.

Motion for leave to file a First Amended Complaint is GRANTED. Plaintiff shall have ten days to file and serve a First Amended Complaint consistent with (but not necessarily identical to) that which is proposed here.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further order is required. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

# CROCKER v. CALAVERAS COUNTY HEALTH AND HUMAN SERVICES AGENCY

**21CV45342, 21CV45540**

## RESPONDENT'S DEMURRER TO PETITIONS

These are nearly-identical special proceedings to confirm arbitration awards, pursuant to CCP §§ 1285 and 1286. Before the Court are demurrers to both by respondent, on the grounds that the petitions fail to state a basis for relief. (CCP §430.10(e).) The demurrers are SUSTAINED on that ground, as well as on grounds of uncertainty. (CCP §430.10(f).)

A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. The challenge is limited to the “four corners” of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (CCP §§ 425.10(a), 459; in accord, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5<sup>th</sup> 225, 236 n.10.)

A demurrer on the grounds of failure to state a cause of action will be overruled if upon consideration of all the facts stated, it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. (*New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5<sup>th</sup> 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5<sup>th</sup> 556, 566.) In other words, a general demurrer for failure to state will not succeed if the pleading states, however inartfully, facts disclosing some right to relief. (*Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5<sup>th</sup> 341, 352.)

A petition to confirm an arbitration award is ordinarily quite short, and is anchored by the two necessary attachments: the arbitration agreement, and the arbitration award. (See CCP §1285.4.) The petition here does not include any arbitration agreement between the parties. In fact, the award states (at page 5) that the agreement containing the alleged arbitration clause was unsigned. In addition, while there is a copy of the award, there are issues with the award itself suggesting it is incomplete or inauthentic. For example, there is no reference therein to the mandatory disclosures and affiliations sufficient to negate a conflict of interest (CCP §§ 1281.85-1281.9), the usual and

customary fees of the arbitrator have been settled (CCP §1281.97), a clear statement regarding the legal issues and the “determination of all the questions submitted to the arbitrator” (CCP §1283.4), and no proof of service of the award “by registered or certified mail” (CCP §1283.6).

A pleading is also subject to demurrer on grounds of uncertainty if the essential facts upon which a determination of the controversy depends are not easy to discern from the allegations made. (See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5<sup>th</sup> 677, 695; *Chen v. Berenjian* (2019) 33 Cal.App.5<sup>th</sup> 811, 822.) With no arbitration agreement, and no bona fide award, this petition to confirm is uncertain and ambiguous. The petition is fourteen (14) pages in length, and difficult to follow. It includes a number of formatting defects (spacing, margins, typeset, punctuation, syntax) which alone are not problematic for a self-represented party, but raise some questions given that the same formatting choices are found in the arbitration award. Both the petition and the award are challenging to follow, at times incoherent.

In addition to the foregoing procedural shortcomings with regard to the alleged arbitration, the petition ignores that once a juvenile court assumes jurisdiction over a detained minor, this jurisdiction is exclusive. While there are provisions in California law for counties to adopt a court-overseen mediation process in dependency cases, no such program has to date been established in Calaveras County. Moreover, there is no provision within the Welfare and Institution Code for any extra-judicial arbitration procedure in a dependency proceeding.

Based on the foregoing, the fatal flaws concerning the “arbitration award” and the attempted use of the procedure itself cannot be corrected by any amendment. Therefore, The demurrers in both actions are SUSTAINED, WITHOUT leave to amend. The Clerk shall provide notice of this Ruling to the parties forthwith. Respondent to prepare formal Orders pursuant to Rule of Court 3.1312 in conformity with this ruling.