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on CD*

LIBRARY OF  
**California**  
**Medical Malpractice**  
**Forms**



MITCHELL LAW GROUP  
JEFFREY S. MITCHELL, ESQ.  
REBECCA BYRNE, ESQ., AND  
MIKA BROWN, PARALEGAL  
EDITORS



THE **RECORDER**

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# INTRODUCTION

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Library of California Medical Malpractice Law Forms addresses issues as they commonly arise through the litigation process—from considering the elements of a malpractice cause of action, through investigating and preparing a case, to managing trial issues.

# MEET THE AUTHORS

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## **JEFF MITCHELL**

In his very busy career, Mitchell has already attained two record setting verdicts, secured innumerable six, seven and eight figure settlements and helped shaped the future of the law as it pertains to medical malpractice in California. He is a frequently sought-after speaker on issues pertaining to jury selection, cross examination, argument, expert witness utilization and psychology of trial practice in California and throughout the country. He is annually listed as a Northern California Super Lawyer, one of San Francisco's Top Attorneys, one of California's Top 100 trial lawyers and is rated annually by his peers as one of the Best Lawyers in America. Jeff was also honored as San Francisco's Trial Lawyer of the Year which is annually given by the San Francisco Trial Lawyer's Association.

## **REBECCA L. BYRNE**

Byrne has specialized in medical malpractice cases since 1991. However, unlike most attorneys specializing in this area of law, she has represented plaintiffs and defended defendants in such cases. Her experience working in firms which represent patients and/or patients' families has been enriched and enhanced by her experience working in firms which defend medical care providers in medical negligence cases.

## **MIKA BROWN**

Brown is responsible for various case management tasks. She assists attorneys Jeffrey Mitchell and Rebecca Byrne by preparing legal documents, drafting legal discovery, scheduling depositions and communicating with clients and defense counsel. Mika also partakes in drafting mediation briefs and motions. She is grateful to work in a small boutique law firm, which has allowed her to undertake a great role in the firm's activities.

Mika is a San Francisco native who received her Bachelor of Arts Degree in Legal Studies from the University of California, Santa Cruz. She spent her senior year in college studying abroad in Tokyo focusing on international relations and global government and she is also fluent in Japanese. In her free time, Mika enjoys being outdoors, camping, swimming, traveling and exploring San Francisco. Mika is currently a law student at Santa Clara University School of Law. Upon graduation from law school, Mika plans to continue working in the legal field of civil litigation, possibility focusing in the specialized, but complex area of medical malpractice law.

2-002

**New Case Checklist (Procedural)**

Checklist  
Medical Malpractice Plaintiff's Attorney

Done?	To-Do:
	Have Client sign Fee-Agreement
	Receive all medical records in client's possession
	Have client sign HIPAA medical authorization <ul style="list-style-type: none"> <li>• Use to investigate claims and theories of liability</li> <li>• Form must comply with Civ. Code, § 56.11</li> </ul>
	Determine whether public entity will be defendant <ul style="list-style-type: none"> <li>• Comply with notice requirements of Government Claims Act [Gov. Code, §§ 945.4, 911.2]</li> <li>• Commence action within six-month statute of limitations [Gov. Code, § 945.6, subd. (a)(1)]</li> </ul>
	Determine theories of liability <ul style="list-style-type: none"> <li>• If action for professional negligence against health care provider to which MICRA provisions apply</li> </ul>
	Advise client as to MICRA's limitations on contingency fees [Bus. & Prof. Code, § 6146] and on damages [Civ. Code, §§ 3333.1, 3333.2; Civ. Proc. Code, § 667.7]
	Serve notice of intent to bring action on potential defendant or claims representative [Civ. Proc. Code, § 364]
	Commence action within the applicable statutes of limitations [Civ. Proc. Code, § 340.5]
	Obtain an expert witnesses to testify as to standard of care and causation
	Inform Client of applicable provisions: <ul style="list-style-type: none"> <li>• If action for other than professional negligence to which MICRA provisions do not apply:               <ul style="list-style-type: none"> <li>○ Advise client as to absence of limitation on contingency fees and damages</li> </ul> </li> <li>• If hybrid action involving MICRA and non-MICRA claims:               <ul style="list-style-type: none"> <li>○ Advise client that if client obtains recovery that may be based on non-MICRA theory, limitation on contingency fees [Bus. &amp; Prof. Code, § 6146] will not apply</li> </ul> </li> </ul>

	Before serving Complaint, consider demand for settlement or offer to compromise [Code Civ. Proc., § 998]
	File Complaint with applicable Superior Court
	Serve filed court documents on applicable defendants
	File Proof of Service of Summons with the Court
	Commence Discovery
	Schedule Depositions of Defendants, Percipient Witnesses, etc.

2-010

**Letter to Defendant's Insurance Company/Claims Representative  
Advising of Representation**

[DATE]

**Via Certified Mail RRR**

[CONTACT NAME]

[TITLE], [INSURANCE COMPANY] Board of Directors

[HEALTH CARE PROVIDER]

[ADDRESS]

[CITY], CA [ZIP CODE]

**Re: [PLAINTIFF NAME] Matter**

Dear [CONTACT NAME]:

The [LAW FIRM NAME] has undertaken the representation of [PLAINTIFF NAME], the surviving wife of [DECEDENT NAME], who passed away at [HEALTH CARE PROVIDER] on [DATE]. The facts of this matter are well known to you and I won't recount them here. Suffice it to say that [DECEDENT NAME] passed away prematurely at [HEALTH CARE PROVIDER] and the causes related to his death are directly attributable to professional negligence at [HEALTH CARE PROVIDER].

As you know, [HEALTH CARE PROVIDER] graciously undertook what sounds to be a very thorough investigation and arrived at the conclusion that errors were made and that those errors contributed to or were the outright causes of [DECEDENT NAME]'s death. [HEALTH CARE PROVIDER] then, to its great credit, agreed to meet with [PLAINTIFF NAME] and her daughter and explained the investigation process and then conclusions and findings of [HEALTH CARE PROVIDER]'s own peer review analysis. The [PLAINTIFF]s were very appreciative of the efforts made by [HEALTH CARE PROVIDER] and the candor.

Sadly the revelations were bittersweet as they confirmed what [PLAINTIFF NAME] believed to be true. Her husband's death was premature and most certainly preventable.

[PLAINTIFF NAME] has asked our firm to request that [HEALTH CARE PROVIDER] stand behind its own admissions of fault and agree to compensate [PLAINTIFF NAME] for her loss.

While the [LAW FIRM NAME] believes that [PLAINTIFF NAME]'s entitlement to compensation significantly exceeds the statutory maximum for general damages of \$250,000. [PLAINTIFF NAME] has authorized our firm to extend a demand for \$250,000 to fully satisfy her claims against [HEALTH CARE PROVIDER]. Please don't view this as a starting point for any negotiations, it's the demand and will not be reduced for any reason.

Some cases need to be litigated but in this setting we don't view this as one of those. [HEALTH CARE PROVIDER] understands the issues, has done a complete root cause analysis and now just needs to stand behind their findings and fairly compensate [PLAINTIFF NAME] in the only way we currently have of making things right.

As I mentioned, we would much prefer to resolve this matter without having to go through the unnecessary time and expense associated with formal litigation. The [PLAINTIFF]s have already experienced more heartache than they should have and a protracted litigation will only serve to perpetuate this grief.

I am enclosing a formal "Notice of Intent" document along with this letter but hope that we won't need to actually file and serve a summons and complaint.

The one year wrongful death statute of limitations is fast approaching and we would be willing to agree to a tolling of the statute to allow [HEALTH CARE PROVIDER] some additional time to respond to our settlement offer.

Please share this letter with all the participants who attend the meeting with the [PLAINTIFF]s and then have one of them or a representative from [HEALTH CARE PROVIDER]'s errors and omissions carrier contact me.

Sincerely,

[ATTORNEY NAME],  
Litigation Analyst  
[LAW FIRM NAME]

Enc: Notice of Intent to Commence Litigation



3-006

Complaint—Elder Abuse

[ATTORNEY NAME], SBN: [ATTORNEY NUMBER]
[LAW FIRM NAME]
[ADDRESS]
[CITY], CA [ZIP]
Tel: [PHONE]
Fax: [FAX]

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF [COUNTY]

[PLAINTIFF NAME], by and through her
Guardian ad Litem, [GUARDIAN AD LITEM],

Plaintiff,

vs.

[DEFENDANT NAMES] and DOES ONE
through FIFTY, inclusive

Defendants.

Case No.: [CASE NUMBER]

COMPLAINT FOR DAMAGES FOR:

(1) Negligence

(2) Elder Abuse Under California
Welfare & Institutions Code §15600 Et
Seq.

COMES NOW Plaintiff, [PLAINTIFF NAME] ("Plaintiff"), to complain of Defendants,
[DEFENDANT NAMES], and DOES 1 through 100, Inclusive, ("Defendants") as follows:

GENERAL ALLEGATIONS

1. Plaintiff, [PLAINTIFF NAME], due to her infirmity, and for the purposes of this
action only, is hereby declared an Incompetent Adult who will prosecute this action by and
through her Guardian ad Litem, [GUARDIAN AD LITEM], who has been appointed Guardian
ad Litem by order of this court.

1           2.       At all times herein mentioned, Plaintiff, [PLAINTIFF NAME], was and is an  
2 adult over the age of 65.

3           3.       At all times herein mentioned, Plaintiff, [PLAINTIFF NAME], was an “elder  
4 adult” as that term is defined in the *Welfare & Institutions Code* §15610.27.

5           4.       At all times herein mentioned, Plaintiff, [PLAINTIFF NAME], resided in the  
6 County of [COUNTY], State of California.

7           5.       At all times herein mentioned, Defendants, [DEFENDANT NAME], M.D. and  
8 [DEFENDANT NAME], M.D. and DOES 1 through 100, inclusive, were and are now  
9 physicians duly licensed to practice their profession, or were engaged in the practice of their  
10 profession, in the County of [COUNTY], State of California.

11          6.       At all times herein mentioned, Defendants, [DEFENDANT NAMES] and DOES  
12 1 through 100, inclusive, were and are: (a) engaged in owning, operating, maintaining,  
13 managing and doing business in the State of California; (b) engaged in rendering medical,  
14 surgical, clinical, diagnostic, nursing, skilled nursing, rehabilitation, and other custodial care and  
15 services to the general public for compensation; and (c) a corporation, partnership, sole  
16 proprietorship, joint venture, unincorporated association, or some other business entity doing  
17 business in the County [COUNTY], State of California, and duly organized and existing under  
18 and by virtue of the laws of the County of [COUNTY] and the State of California.

19          7.       At all times herein mentioned, Defendants, [DEFENDANT NAMES] and DOES  
20 1 through 100, inclusive, were and are in the business of providing long-term custodial care as a  
21 24-hour facility and are subject to the requirements of federal and state law, and were at all times  
22 mentioned doing business in the City of [CITY], County of [COUNTY], in the State of  
23 California.

24          8.       Plaintiff is informed and believes that Defendants, [DEFENDANT NAMES] and  
25 DOES 1 through 100, inclusive, are the owners, operators, and managers of [DEFENDANT  
26 NAME], and participated in, authorized, and/or directed the conduct of [DEFENDANT NAME]  
27 and its respective agents and employees at [DEFENDANT NAME] and are therefore liable for  
28 the acts and omissions of [DEFENDANT NAME], its agents and employees, as is more fully

1 herein alleged.

2 9. Plaintiff is informed and believes that Defendants, [DEFENDANT NAMES] and  
3 DOES 1 through 100, inclusive, are the owners, operators, and managers of [DEFENDANT  
4 NAME], and participated in, authorized, and/or directed the conduct of [DEFENDANT NAME]  
5 and its respective agents and employees at [DEFENDANT NAME] and are therefore liable for  
6 the acts and omissions of [DEFENDANT NAME], its agents and employees, as is more fully  
7 herein alleged.

8 10. Since the true names and capacities, whether individual, corporate, associate, or  
9 otherwise, of the Defendants designated and sued as DOES 1-100, inclusive, are unknown to  
10 Plaintiff, those Defendants are designated by their fictitious names. Plaintiff alleges on  
11 information and belief that each of the Defendants designated and sued as a DOE is legally  
12 responsible in some manner for the events and happenings referred to herein below, and legally  
13 caused the injury and damages to Plaintiff as herein alleged. Plaintiff will ask leave of this Court  
14 to amend this pleading to insert the true names and capacities of these Defendants designed by  
15 their fictitious names when those facts become known to Plaintiff.

16 11. At all times herein mentioned, the Defendants DOES 1-50, inclusive, were and  
17 now are physicians, surgeons, nurses, medical personnel or other health care professionals, duly  
18 licensed to practice their profession, or engaged in the practice of their profession, in the  
19 Counties of [COUNTIES], State of California.

20 12. At all times mentioned herein, Defendants DOES 51-60, inclusive, were  
21 technicians, and laboratories or radiological facilities engaged in, and licensed to operate a  
22 business maintaining and offering laboratory facilities to the public and to the physicians and  
23 hospitals herein and others involved in the rendition of ancillary services and facilities incidental  
24 to the operation of a hospital, clinic or doctor's office and/or the provision of health services to  
25 the general public, and, in particular, to the Plaintiff herein.

26 13. At all times mentioned herein, Defendants DOES 61-70, inclusive, and each and  
27 every DOE in between, were and now are corporations, partnerships, sole proprietorships, joint  
28 ventures, unincorporated associations or some other business entities doing business in the State

1 of California and duly organized and existing under, and by virtue of the laws of the State of  
2 California, each of which in some way contracted to provide, and/or in some other manner  
3 provided, medical care and treatment or ancillary services to the general public, including the  
4 Plaintiff herein.

5 14. At all times mentioned herein, Defendants DOES 71-80, inclusive, were  
6 administrative and clerical staff engaged to operate the business of offering non-medical services  
7 to the general public, including the Plaintiff herein.

8 15. At all times mentioned herein, Defendants DOES 81-90, inclusive, were Risk-  
9 Bearing Organizations (“RBOs”)/Medical Business Organizations (“MBOs”), including but not  
10 limited to HMOs, administering or managing the provision of health services, or agents thereof,  
11 or middlepersons interfacing between an MBO and the health care providers actually providing  
12 care to patients, including the Plaintiff herein.

13 16. During said periods of time hereinabove alleged, Defendants, and DOES 1-100,  
14 inclusive, and each of them, agreed to perform and undertook to perform for the Plaintiff herein  
15 all services necessary to the Plaintiff’s care, including both medical and non-medical services,  
16 which included, but were not limited to, observation, attention, examination, evaluation,  
17 diagnosis, care and treatment of the Plaintiff herein, as well as proper administrative and clerical  
18 management of his health care and custodial care needs. In so doing, the Defendants, and each  
19 of them, established a relationship with the Plaintiff herein, giving rise to each Defendant’s duty  
20 to provide skillful management of the Plaintiff’s health conditions and medical, custodial,  
21 clerical and administrative needs.

22 17. At all relevant times, Defendants, and each of them were the agents, servants,  
23 employees, joint venturers, ostensible agents and/or contractors of each of the remaining  
24 Defendants, and were, at all times acting within the course and scope of such agency, service,  
25 employment, contract, and/or joint venture. Plaintiff is informed and believes, and upon said  
26 basis alleges that, at all times herein mentioned, each of the Defendants hired and employed  
27 agents, servants, staff members, employees, and/or joint venturers. Each Defendant had also  
28 given prior approval and subsequent ratification for the conduct, acts, and/or omissions of the

1 other Defendants, and each of them.

2 18. At all relevant times, Defendants, [DEFENDANT NAMES] and DOES 1 through  
3 100, operated, managed, maintained, oversaw and controlled the activities of all co-Defendants  
4 and DOES 1-100, inclusive, and each of them, so that the conduct, acts, and omissions of each  
5 co-Defendant and DOES 1-100, inclusive, and each of them, were the conduct, acts and  
6 omissions of Defendants, [DEFENDANT NAMES] and DOES 1 through 100, and, at all  
7 relevant times, said co-defendants were then acting as the actual or ostensible agents of  
8 Defendants, [DEFENDANT NAMES] and DOES 1 through 100.

9 19. At all times herein mentioned, Defendants, and each of them, when acting as a  
10 principal, was negligent in the selection and hiring of each and every other Co-Defendant as an  
11 agent, servant or employee and, furthermore, expressly directed, consented to, approved,  
12 affirmed, and ratified each and every action taken by the co-Defendants.

13 **DIRECT AND VICARIOUS LIABILITY**

14 20. That Defendants, [DEFENDANT NAMES] and DOES 1 through 100, and each  
15 of them, operated in such a way as to make their individual identities indistinguishable, and are,  
16 therefore, the mere alter egos of one another.

17 21. That Defendants, [DEFENDANT NAMES] and DOES 1 through 100, and each  
18 of them, through their managers, directors, officers, and other agents, directly oversaw, managed,  
19 and/or controlled all aspects of the operation and management of [DEFENDANT NAME],  
20 including but not limited to, the budget, staffing, staff training, policy and procedures manuals,  
21 accounts payable, accounts receivable, facility development and leasing, general accounting,  
22 cash management, pricing, reimbursement, capitalization, and profit and loss margins.

23 22. That Defendants, [DEFENDANT NAMES] and DOES 1 through 100, and each  
24 of them, through their managers, directors, officers, and other agents create budgets, policies,  
25 and procedures which their employees were required to implement and follow.

26 23. That Defendants, [DEFENDANT NAMES] and DOES 1 through 100, and each  
27 of them, through their administrators, directors, and managing agents, ratified all conduct of  
28 employees of [DEFENDANT NAME] and DOES 1 through 100, alleged herein.



1 of them, provided management services to their respective facilities, which governed and  
2 controlled the care and custodial services provided to Plaintiff, and that by virtue of their  
3 management and control over the facilities, Defendants, [DEFENDANT NAMES] and DOES 1  
4 through 100, and each of them, voluntarily and impliedly assumed responsibility for providing  
5 supervisory and custodial services for Plaintiff's care while she was a resident at the respective  
6 facilities.

7         30. That Defendants, [DEFENDANT NAMES], M.D., supervising agents and  
8 employees of [DEFENDANT NAMES] and DOES 1 through 100, and each of them, were at all  
9 relevant times responsible for rendering, overseeing, supervising, and approving the medical,  
10 nursing, and physical and occupational therapy care received by Plaintiff at [DEFENDANT  
11 NAME] and [DEFENDANT NAME]. In that role, [DEFENDANT NAME], M.D. and the  
12 supervising agents and employees of [DEFENDANT NAME] and [DEFENDANT NAME] and  
13 DOES 1 through 100, and each of them, were responsible for recognizing, diagnosing,  
14 managing, and/or treating [PLAINTIFF NAMES]'s progressive extremity weakness in order to  
15 avoid it worsening so as to result in paralysis. These Defendants, and each of them, neglected  
16 [PLAINTIFF NAME] by failing to appreciate her worsening weakness, failing to properly treat  
17 it, failing to avoid harmful therapies that could exacerbate the injury, and failing to ensure that  
18 the staff at [DEFENDANT NAME] and [DEFENDANT NAME] were properly treating and/or  
19 managing it. [DEFENDANT NAME], M.D. and the supervising agents and employees of  
20 [DEFENDANT NAME] and [DEFENDANT NAME], and DOES 1 through 100, and each of  
21 them, knowingly and intentionally failed to render treatment to the Plaintiff and failed to ensure  
22 that others treated her properly.

23         31. That the DEFENDANTS, and each of them, owed a duty to Plaintiff, yet failed to  
24 operate and provide services in compliance with all applicable federal, state, and local laws,  
25 regulations, and codes, and with accepted standards and principles that apply to those providing  
26 services in such a facility as required by Health & Safety Code §1250, et. seq. and 42 C.F.R.  
27 §483.75(b). By way of example, DEFENDANTS, and each of them, failed to operate  
28 [DEFENDANT NAME] and [DEFENDANT NAME] in compliance with many of the statutes



1 and regulations set forth below.

2           32. That the DEFENDANTS, and each of them, owed a duty to Plaintiff, yet failed to  
3 provide services by sufficient numbers of personnel on a 24-hour basis to provide care to  
4 Plaintiff in accordance with resident care plans as required by California Health & Safety Code  
5 §1250, et. seq., 42 C.F.R. §483.30(a), and 22 C.C.R. § 72501(e). By way of example,  
6 DEFENDANTS, and each of them, failed to provide the facilities with sufficient number of  
7 personnel to implement the care plans and perform complete assessments to prevent the failure to  
8 recognize the progressive extremity weakness that ultimately resulted in paralysis due to delayed  
9 treatment. DEFENDANTS and each of them knew that patients, including [PLAINTIFF  
10 NAME], would not and could not receive adequate assessment and care and would suffer injury  
11 as a result. Further, Defendants [DEFENDANT NAMES] and DOES 1 through 100, and each of  
12 them, based upon prior Department of Health Services deficiencies, knew that inadequate care  
13 and inadequate staffing would result in harm to their patients, including [PLAINTIFF NAME],  
14 yet knowingly and intentionally persisted in offering inadequate care to their patients by  
15 understaffing the facilities.

16           33. Defendant [DEFENDANT NAME] and DOES 1 through 100, and each of them,  
17 knew as a result of resident assessments submitted by [DEFENDANT NAME] to the federal and  
18 state government, that it exceeded the state average with regard to, among other things, residents  
19 whose need for help with daily activities increased and residents who lost control of their bowels  
20 or bladder were more depressed or anxious. In spite of this knowledge, Defendants and each of  
21 them acted recklessly and neglectfully by failing to properly staff the facility and to properly  
22 recognize and/or treat [PLAINTIFF NAME]'s worsening extremity weakness. As a result of this  
23 reckless and neglectful conduct, [PLAINTIFF NAME] suffered permanent paralysis.

24           34. That the DEFENDANTS and each of them, owed a duty to their residents,  
25 including Plaintiff, yet failed to provide services and activities and failed to operate, own,  
26 manage, control and/or administer the facilities in a manner that enable their residents to attain or  
27 maintain the highest practicable physical, mental, and psychosocial well-being, including  
28 Plaintiff, in accordance with a written plan of care as required by 42 U.S.C. §§1396r(b)(2) and



1 1396r(d)(1)(A), 42 C.F.R. §483.25, and 22 C.C.R. §§72501(e) and 72515(b). By way of  
2 example, the services the DEFENDANTS, and each of them, failed to provide included, but were  
3 not limited to, proper patient assessments so as to recognize worsening weakness and proper  
4 charting and recordkeeping.

5 35. That the DEFENDANTS, and each of them, owed a duty to their residents,  
6 including Plaintiff, yet failed to provide a sufficient budget and sufficient staffing to meet the  
7 care needs of their residents, including Plaintiff, as required by 42 U.S.C. §1396r(b)(4)(C). By  
8 way of example, the services the DEFENDANTS, and each of them, failed to provide included,  
9 but were not limited to, the proper method to perform patient assessments and the proper method  
10 to do proper charting and recordkeeping.

11 36. That the DEFENDANTS, and each of them, owed a duty to Plaintiff, yet failed to  
12 care for her in a manner and in an environment that promoted maintenance or enhancement of  
13 her quality of life, as required by 42 U.S.C. §1396r(b)(1)(A), 42 C.F.R. §483.15, and 22 C.C.R.  
14 §72315(b). By way of example, the environment the DEFENDANTS, and each of them,  
15 provided harmed, not enhanced, Plaintiff's quality of life by allowing Plaintiff's weakness to  
16 worsen to the point of paralysis.

17 37. That Defendants, [DEFENDANT NAMES] and DOES 1 through 100, inclusive,  
18 and each of them, through their Administrators, failed to screen Plaintiff for admission in order  
19 to ensure that the facility admitted only those patients for whom they could provide adequate  
20 care as required by 22 C.F.R. §72513(f). By way of example, Defendant intentionally admitted  
21 more residents than they could provide care, knowing that they did not have appropriate staff,  
22 based on the fact that the Plaintiff's worsening weakness went unrecognized and untreated and  
23 which ultimately resulted in her paralysis.

24 38. That the DEFENDANTS, and each of them, failed to meet the standard of care  
25 and otherwise failed to exercise that degree of care that a reasonable person in a like position  
26 would exercise with respect to caring for the Plaintiff by: failing to conduct an ongoing,  
27 accurate, and comprehensive assessment of Plaintiff's needs; failing to develop and/or follow a  
28 complete care plan; failing to timely notify a physician and Plaintiff's legal representative of

1 material changes in condition and needs; failing to maintain sufficient staff on duty at all times to  
2 meet the needs of their residents, including Plaintiff; and failing to operate the facilities with a  
3 sufficient budget and staff so as to operate in a lawful and safe manner.

4 39. That the DEFENDANTS and each of their alleged violations of state and federal  
5 laws and regulations as specifically set forth herein are not meant to limit the generality of the  
6 allegations contained herein, but are merely illustrative of the depth of the DEFENDANTS and  
7 each of their malicious, oppressive, fraudulent, and/or reckless conduct.

8 40. That the laws and regulations set forth herein set the standard of care in the skilled  
9 nursing home and rehabilitation services industry and define the care due to elders, and are  
10 appropriate in determining whether DEFENDANTS and each of their conduct amounted to  
11 physical abuse, neglect, recklessness, oppression, fraud or malice.

12 41. Based on information and belief, that Defendant, [DEFENDANT NAME], had a  
13 history of providing sub-standard care to residents before and during Plaintiff's admittance to the  
14 facility as evidenced by deficiency notices received from the State of California's Department of  
15 Health Services. In spite of receiving deficiency notices, thereby being placed on notice of the  
16 deficiencies and the conduct, and agreeing to a plan of correction to ensure that such conduct  
17 would not reoccur, Defendant, [DEFENDANT NAME], repeated this conduct with regard to  
18 [PLAINTIFF NAME]. This conduct represents intentional and reckless conduct toward  
19 [PLAINTIFF NAME].

20 42. That Defendant, [DEFENDANT NAME], had a history of providing sub-standard  
21 care to residents before and during Plaintiff's admittance to the facility as evidenced by the  
22 deficiency notices it received from the State of California's Department of Health Services.  
23 Specifically, from [DATE] through [DATE], the facility received, among other things, at least  
24 four quality care deficiency notices, at least three resident assessment deficiency notices, and at  
25 least two residents rights deficiency notices. In spite of receiving these deficiency notices,  
26 thereby being placed on notice of the deficiencies and the conduct, and agreeing to a plan of  
27 correction to ensure that such conduct would not reoccur, Defendant, [DEFENDANT NAME],  
28 repeated this conduct with regard to [PLAINTIFF NAME] during the same period. This conduct

1 represents intentional and reckless conduct toward [PLAINTIFF NAME].

2           43.     That DEFENDANTS and each of their neglect and abuse of Plaintiff was due to  
3 the fact that Defendants, and each of them, conceived, implemented, and carried out a scheme to  
4 place “profits over people” at the facility, whereby the DEFENDANTS and each of them  
5 intentionally underfunded and understaffed the facility in order to decrease expenses and  
6 increase profits.

7           44.     That DEFENDANTS and each of them knew that their scheme of promoting  
8 profits over people would result in inadequate care and services to their residents and that the  
9 underfunding and understaffing posed an extreme risk to the health, safety and welfare of the  
10 Plaintiff, as well as the other residents.

11           45.     That as part of their profit scheme, DEFENDANTS and each of them  
12 implemented cost cutting measures at the facility, which included failing to adequately train  
13 and/or screen existing or incoming staff to ensure that they were competent in meeting the needs  
14 of their residents, including Plaintiff. Defendants, and each of them, also retained incompetent  
15 service personnel, many of whom were not properly trained or qualified to care for the residents  
16 of the facility, including Plaintiff.

17           46.     That DEFENDANTS, and each of them, intentionally underfunded and  
18 understaffed the facility in order to maximize profits, even though the Defendants, and each of  
19 them, knew that their conduct severely jeopardized the health, safety and welfare of their  
20 residents, including Plaintiff.

21           47.     That DEFENDANTS and each of them ratified the conduct of each of their co-  
22 defendants in that they mandated, knew, and/or acquiesced to the chronic understaffing, in both  
23 number and training, of the facility and were aware that such understaffing and lack of training  
24 led to injury to and death of residents of the facility. This awareness is clear by way of the  
25 imposition of prior deficiencies by the Department of Health Services. Defendants had notice of  
26 the deficiencies and the opportunity to correct them, and yet failed to do so, resulting in the  
27 neglect of [PLAINTIFF NAME] . This failure is intentional, willful, malicious and oppressive.

28           48.     That the DEFENDANTS and each of them had within their power, ability and

1 discretion to mandate that the facility employ adequate staff to meet the needs of their residents,  
2 including Plaintiff, yet each of the Defendants intentionally and/or with conscious disregard  
3 failed to do so.

4 49. That the DEFENDANTS and each of them attempted to hide Plaintiff's serious  
5 and deteriorating medical condition, as well as their abuse of Plaintiff, so as not to alert  
6 Plaintiff's family, legal representative, and physician to the fact that the Defendants and each of  
7 them had understaffed and underfunded the facility with inadequate and insufficiently trained  
8 care personnel.

9 50. That the physical harm inflicted upon Plaintiff would not have occurred but for  
10 the willful disregard by the Defendants and each of their duties to Plaintiff.

11 51. On [DATE], in accordance with *Code of Civil Procedure* § 364, Plaintiff gave  
12 notice to [DEFENDANT NAME], M.D.; [DEFENDANT NAME], M.D.; [DEFENDANT  
13 NAME], M.D.; [DEFENDANT NAMES], named herein by their actual names.

14 52. This Court is the proper Court, because injury to Plaintiff occurred in its  
15 jurisdictional area and because damages exceed the jurisdictional limits of lower courts.

16 **GENERAL ALLEGATIONS OF CIRCUMSTANCES SURROUNDING**

17 **THE COMPLAINED-OF INJURIES**

18 53. On or about [DATE], Plaintiff, [PLAINTIFF NAME], became a patient of  
19 Defendants [DEFENDANT NAME], M.D., [DEFENDANT NAME], M.D.; and [DEFENDANT  
20 NAME], M.D.; for treatment of neck and back pain and weakness in her extremities following a  
21 fall at her residence.

22 54. On or about [DATE], Plaintiff underwent nerve conduction testing at the request  
23 of Defendant [DEFENDANT NAME], M.D., which revealed significant reduction in nerve  
24 signals and indicia of potential spinal cord compromise.

25 55. On or about [DATE], Plaintiff presented to the emergency room at Defendant  
26 [DEFENDANT NAME] with severe pain and weakness, and was not able to walk unassisted.  
27 However, she was still able, at this time to [BATHE, DRESS, FEED, TOILET AND GROOM  
28 HERSELF], without assistance.

1           56. Plaintiff was admitted to [DEFENDANT NAME] on DATE and transferred to  
2 their rehabilitation unit on or about [DATE], where she remained under their care and custody  
3 until [DATE].

4           57. Plaintiff's care plan at [DEFENDANT NAME] included both medical treatment  
5 and non-medical custodial care. The custodial care of Plaintiff at [DEFENDANT NAME]  
6 included, but was not limited to, assistance to Plaintiff to the extent necessary with her activities  
7 of daily living [FEEDING, TOILETING, TRANSFERS TO AND FROM HER BED AND  
8 WHEELCHAIR, REPOSITIONING WHILE IN BED, BATHING AND GROOMING], and  
9 protection from health and safety hazards. Plaintiff was to be provided with these custodial  
10 services on a daily basis.

11           58. During the commission of these custodial care activities over her course at  
12 [DEFENDANT NAME], Plaintiff's increasing inability to perform her activities of daily living  
13 was noted in the medical chart by her custodial care providers. However, despite noting the  
14 patient's increasing deficits, there was no seeming comprehension by Plaintiff's custodial care  
15 providers that this increasing inability to perform her basic activities of daily living was  
16 indicative of the worsening of Plaintiff's neurological condition.

17           59. Moreover, either these observations were not communicated to Plaintiff's medical  
18 providers at all, or they were communicated to her medical providers but ignored.

19           60. Plaintiff's deteriorating condition required her custodial care providers to provide  
20 increased assistance to Plaintiff with performance of her activities of daily living and protection  
21 from health and safety hazards, including but not limited to any activity or exercise or movement  
22 (e.g. turning the patient to change her linens) of Plaintiff by the custodial care providers that  
23 could result in further harm.

24           61. However, no modifications to Plaintiff's care plan were made in light of her  
25 deteriorating condition.

26           62. On at least three occasions, [DATE], the evening shift [DATE] and [DATE],  
27 there was a failure by the custodial care staff at [DEFENDANT NAME] to provide custodial  
28 care to Plaintiff in the areas of hygiene, safety, activity, and skincare, despite the requirement to

1 provide this custodial care to Plaintiff on a daily basis.

2           63. While she was at [DEFENDANT NAME], Plaintiff was not properly assessed or  
3 examined or provided with any supportive device or other precautions to protect her  
4 compromised spine. Instead, as part of her care regimen, she underwent transfers, stretching and  
5 bending exercises, bedrolls, and ambulation exercises while unprotected, and while under pain  
6 medications to mask any pain she was experiencing.

7           64. On or about DATE, Plaintiff was discharged to Defendant [DEFENDANT  
8 NAME] for custodial and rehabilitative care. During her stay at [DEFENDANT NAME],  
9 Plaintiff was not fully and properly assessed nor provided with any supportive device or other  
10 precautions to protect her compromised spine. Instead, Plaintiff was medicated for pain and  
11 underwent transfers, stretching and bending exercises, bedrolls, and ambulation exercises while  
12 unprotected. Moreover, while she was under the care and custody of this facility, in deliberate  
13 disregard of Plaintiff's physical condition, Plaintiff was berated as malingering by the  
14 [DEFENDANT NAME] staff for being unable to complete the physical tasks before her.

15           65. Plaintiff grew progressively weaker and became unable to move her lower  
16 extremities and arm.

17           66. On or about [DATE], an MRI performed on Plaintiff revealed a 9mm disk  
18 herniation from C2-C7 with significant cord compromise, necessitating spinal surgery.

19           67. Defendants, their employees, agents, staff and non-licensed personnel and each of  
20 them, and DOES 1 through 100, Inclusive, were responsible for the health, welfare and caring  
21 for Plaintiff, [PLAINTIFF NAME],, which included, but was not limited to, observation,  
22 attention, examination, evaluation, diagnosis, protection, care and treatment of the Plaintiff  
23 herein, assistance in performance of her activities of daily living, including but not limited to  
24 feeding, bathing, dressing, elimination/toileting, transfers and ambulation as well as proper  
25 administrative and clerical management of her health care, physical well-being and custodial  
26 care needs. Defendants, their employees, agents, staff, and non-licensed personnel, and each of  
27 them, recklessly failed to properly observe, monitor, care for, protect, and rehabilitate Plaintiff,  
28 [PLAINTIFF NAME].





1 each of them, so negligently and carelessly cared for, treated and rendered medical services upon  
2 the person and body of the plaintiff and so negligently and carelessly operated, managed,  
3 controlled and conducted their services, activities and supervision in connection with Plaintiff's  
4 care and treatment, and so negligently and carelessly failed to properly ensure the character,  
5 quality, ability and competence of individuals treating patients in said hospital that as a direct  
6 and proximate result thereof Plaintiff was caused to and did suffer the injuries hereinafter  
7 alleged.

8         73. During said periods of time herein above alleged, Defendants, and each of them,  
9 were negligent, careless and unskillful in their management of the health of Plaintiff,  
10 [PLAINTIFF NAME], including but not limited to the observation, attention, examinations,  
11 diagnosis, care and treatment that were or should have been provided to Plaintiff, [PLAINTIFF  
12 NAME].

13         74. The negligence of Defendants, and each of them, include but is not limited to the  
14 following: (1) negligent failure to timely diagnose, manage, and treat Plaintiff's condition,  
15 including, but not limited to disk herniation; (2) negligent failure to render timely, appropriate  
16 and complete treatment of Plaintiff's condition; (3) negligent failure to timely undertake  
17 appropriate courses of action; (4) medical and administrative abandonment of Plaintiff; (5)  
18 negligent failure to have adequate staffing to meet reasonably expected medical needs of their  
19 patient; (6) negligent failure to properly investigate the competency of physicians and surgeons  
20 before reappointing them to the medical staff of the hospital; (7) negligent failure to maintain the  
21 highest level of medical care for patients in the hospital and/or rehabilitation facility; (8)  
22 negligent failure to protect patients from harm; and (9) negligent failure to evaluate the quality of  
23 medical treatment rendered on its premises.

24         75. Further, during said periods of time, Defendants, and each of them, did  
25 negligently and carelessly fail to properly advise, warn or inform Plaintiff, [PLAINTIFF  
26 NAME], of any other possible alternative methods of diagnosis or treatment, or of the possible  
27 risks attendant to the methods of diagnosis or treatment utilized, thereby failing to obtain a free  
28 and informed consent.





1           83.     That DEFENDANTS, [DEFENDANT NAMES] , and each of them, intentionally  
2 and/or recklessly caused or permitted Plaintiff to be injured and/or to be placed in a situation  
3 such that her health was in danger by failing to have adequately trained staff in sufficient  
4 numbers to recognize and appreciate Plaintiff’s worsening condition.

5           84.     That DEFENDANTS, [DEFENDANT NAMES], and each of their conduct, as  
6 alleged herein, created circumstances or conditions likely to produce great bodily harm, and  
7 DEFENDANTS, [DEFENDANT NAMES], and each of them, willfully caused or permitted  
8 Plaintiff to suffer, and inflicted upon her, unjustifiable physical pain and mental suffering.

9           85.     That DEFENDANTS, [DEFENDANT NAMES], and each of their conduct, as  
10 alleged herein, constitutes “abuse of an elder or dependent adult” as set forth in *Welfare and*  
11 *Institutions Code* §15610.07.

12           86.     That DEFENDANTS, [DEFENDANT NAMES], and each of their conduct, as  
13 alleged herein, constitutes “neglect” as set forth in *Welfare and Institutions Code* §15610.07, by  
14 failing to provide custodial care to Plaintiff on a daily basis, and by failing to summon medical  
15 attention in light of Plaintiff’s deteriorating condition.

16           87.     That DEFENDANTS, [DEFENDANT NAMES], and each of their conduct, as  
17 alleged herein, constitutes “physical abuse” as set forth in *Welfare and Institutions Code*  
18 §15610.07.

19           88.     That DEFENDANTS, [DEFENDANT NAMES], and each of their conduct, as  
20 alleged herein, constitutes “other treatment with resulting physical harm or pain or mental  
21 suffering” as set forth in *Welfare and Institutions Code* §15610.07, by causing Plaintiff to engage  
22 in strenuous physical activity, including stretching, straining, and bending during the commission  
23 of transfers, bedrolls, and ambulation exercises with an unsupported, compromised spinal cord.  
24 Plaintiff’s custodial care providers rolled Plaintiff to change her linens, and moved patient from  
25 bed to wheelchair to bed without taking precautions to protect her unsupported spine. Further,  
26 DEFENDANT, [DEFENDANT NAME], inflicted mental suffering on Plaintiff by berating her  
27 when she could not complete these exercises due to her condition.

28           89.     That DEFENDANTS, [DEFENDANT NAMES], and each of their conduct, as

1 alleged herein, constitutes “the deprivation by a care custodian of goods or services that are  
2 necessary to avoid physical harm or mental suffering” as set forth in *Welfare and Institutions*  
3 *Code* §15610.07. [DEFENDANT NAME] failed to provide assistance to Plaintiff in the areas  
4 of hygiene, safety, activity and skincare on at least three occasions from [DATE] to [DATE].  
5 Moreover, DEFENDANTS, [DEFENDANT NAMES], and each of them, failed to provide basic  
6 supportive orthotic devices to protect Plaintiff’s compromised spine.

7       90. At all times herein mentioned, Defendants, [DEFENDANT NAMES], and each of  
8 them, by turns, had care and custody of Plaintiff, [PLAINTIFF], and were her “care custodians”  
9 within the meaning of California Welfare & Institutions Code §15610.17.

10       91. At all times herein mentioned, Defendants, [DEFENDANT NAMES], and each of  
11 them understood or reasonably should have understood that Plaintiff, [PLAINTIFF NAME],  
12 was an elder adult at all times she was under the care and custody of Defendants and each of  
13 them.

14       92. At all times herein mentioned, one or more of Defendants, [DEFENDANT  
15 NAMES]’s employees, agents, officers, directors, or managing agents acting in his or her  
16 corporate and/or employment capacity, recklessly failed to use the degree of care that a  
17 reasonable person in the same situation would have used by, among other things, (1) failing to  
18 provide care for her physical and mental health needs while in their custody; (2) failing to protect  
19 Plaintiff from health and safety hazards in the performance of their custodial obligations to  
20 Plaintiff; (3) failing to provide the very services for which Plaintiff was in their care; (4) failing  
21 to appropriately monitor and observe Plaintiff’s condition; (5) failing to respond appropriately to  
22 Plaintiff’s basic needs and comforts, in deliberate disregard of Plaintiff’s physical condition; (6)  
23 failing to render appropriate and complete treatment of Plaintiff’s condition; (7) recklessly  
24 failing to undertake appropriate courses of action; (8) failing to have adequate staffing to meet  
25 reasonably expected needs of their resident; (9) failing to maintain the highest level of care for  
26 patients in the facility; (10) failing to evaluate the quality of care rendered on its premises; (11)  
27 abandoning Plaintiff; and (12) intentionally and oppressively berating Plaintiff for her physical  
28 limitations.

1           93.     At all times herein mentioned, Defendants, [DEFENDANT NAMES]’s  
2 employees, agents, officers, directors, or managing agents acting in his or her corporate and/or  
3 employment capacity, acted with recklessness, malice, oppression, and/or fraud.

4           94.     At all times herein mentioned, Defendants, [DEFENDANT NAMES], and each of  
5 them, and DOES 1 through 100, inclusive, ratified and/or authorized the acts of its officers,  
6 directors, managing agents acting in his or her corporate and/or employment capacity,  
7 physicians, nurses, rehabilitation therapists, nutritionists, employees, agents, staff, and other  
8 medical and non-medical and/or non-licensed personnel while they attended Plaintiff.

9           95.     As a legal result of the failure of Defendants, [DEFENDANT NAMES]’s  
10 employees, agents, officers, directors, or managing agents acting in his or her corporate and/or  
11 employment capacity to protect Plaintiff in light of her conditions, and failure to provide  
12 adequate custodial care for Plaintiff, [PLAINTIFF NAME], and/or failure to protect Plaintiff,  
13 [PLAINTIFF NAME], from health and safety hazards, she suffered damages, including, without  
14 limitation, severe neurologic injuries and other general and special damages, all in an amount  
15 according to proof at trial.

16           96.     Plaintiff, [PLAINTIFF NAME], was substantially more vulnerable than other  
17 members of the public to Defendants, [DEFENDANT NAMES]’s, respective conduct because of  
18 her age and physical condition.

19           97.     That as a direct, actual, legal, and proximate cause of DEFENDANTS  
20 [DEFENDANT NAME], and each of their conduct, Plaintiff suffered unjustifiable and  
21 substantial physical pain and mental suffering and paralysis.

22           98.     That by engaging in the conduct, neglect and abuse, as alleged herein, including  
23 but not limited to, the deliberate understaffing of the facility knowing the harm that resulted to  
24 other patients during the months immediately before, during, and after the care at issue here, and  
25 the profit scheme by which the DEFENDANTS, [DEFENDANT NAMES], and each of them,  
26 underfunded and understaffed the facility with personnel adequately trained and qualified to  
27 recognize and appreciate Plaintiff’s worsening condition during the provision of their custodial  
28 obligations to Plaintiff and take appropriate action, despite the known risk to elder adults,

1 including Plaintiff, DEFENDANTS and each of their actions were malicious, oppressive and/or  
2 reckless.

3 99. The actions taken by Defendants, [DEFENDANT NAMES], and each of them, as  
4 set forth hereinabove, were in all respects malicious, oppressive, despicable, reckless, and  
5 manifested a conscious disregard or contempt for the rights of Plaintiff, [PLAINTIFF NAME].  
6 Plaintiff is thereby entitled to an award of heightened damages, including attorneys' fees,  
7 pursuant to Welfare & Institutions Code §15657, in an amount according to proof at trial.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
10 follows:

11 **FIRST CAUSE OF ACTION:**

- 12 1. General damages according to proof;
- 13 2. Special damages according to proof;
- 14 3. Legal interest on judgment from the filing of this complaint to the date of  
15 judgment; and
- 16 4. Any other and further relief as the Court deems just and proper.

17 **SECOND CAUSE OF ACTION:**

- 18 1. General damages according to proof;
- 19 2. Special damages according to proof;
- 20 3. Legal interest on judgment from the filing of this complaint to the date of  
21 judgment;
- 22 4. Attorneys' fees and heightened damages as allowable pursuant to *Welfare &*  
23 *Institutions Code* §15657; and
- 24 5. Any other and further relief as the Court deems just and proper.

25 Dated: [LAW FIRM NAME]

26 By: \_\_\_\_\_

[ATTORNEY NAME]

Attorney for Plaintiff

[PLAINTIFF NAME]

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9-015

**Plaintiff's Proposed Jury Instructions**

[ATTORNEY NAME], SBN: [ATTORNEY NUMBER]  
[LAW FIRM NAME]  
[ADDRESS]  
[CITY], CA [ZIP]  
Tel: [PHONE]  
Fax: [FAX]

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF [COUNTY]

[PLAINTIFF NAME],

Plaintiff,

vs.

[DEFENDANT NAME]; and DOES ONE  
through FIFTY inclusive,  
Defendants.

Case No.: [CASE NUMBER]

**The Honorable [JUDGE NAME]**

**PLAINTIFF'S PROPOSED JURY INSTRUCTIONS**

**Time:** [TIME]

**Trial:** [DATE]

**Dept.:** [DEPARTMENT]

Plaintiff [PLAINTIFF NAME] respectfully submits the following proposed jury instructions to be used at trial:

Dated: [LAW FIRM NAME]

By: \_\_\_\_\_

[ATTORNEY NAME]  
[LAW FIRM NAME]  
[ADDRESS]  
[CITY], [STATE] [ZIP CODE]  
Attorneys for Plaintiff

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PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

**100. Preliminary Admonitions**

Instruction No


Request by Plaintiff		Request by Defendant		Requested by	
Given as Proposed		Given as Modified		Given on Court’s Motion	
Refused					
Withdrawn					

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant -messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

**10-001**

**Settled Case Checklist**

Settled Case Checklist

1. Is the case:
  - Medical Malpractice       Personal Injury       Other
2. Will MICRA fee calculation apply?
3. What is the Fee Agreement?
4. Has there been any agreed fee reduction?
5. How Many Plaintiffs?
6. Any Minors?
7. If yes, what are the names and apportionments to each?

MINOR NAMES:	APPORTIONMENT:

8. If more than one plaintiff: How should fees and all other items be allocated between plaintiffs?
9. Is there a referring attorney?
10. If so, what is their fee percentage?
11. Are there any medical liens?
12. If so, by what entity?
  - Medi-Cal       Medi-Care       ERISA       Private Carrier
13. How much for cost reserve?
14. Have we requested all costs, including those incurred by co-counsel or referring attorney if applicable?
15. Is there any loan payment to be withheld from settlement? (e.g. DeRungs or Green-Stark)
16. Is there going to be any reserve held for prosecuting another related case?
17. Is any part of the settlement going to go to reimbursing a co-plaintiff or GAL for care, services provided, expenses incurred, etc.?
18. Is there a prior attorney with a lien?
19. Is there any part of the settlement going to an annuity?
20. Is there any part of the settlement going to a trust, special needs or other?
21. Is there going to be a trust prep reserve held out of the settlement?



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