

Daniel M. Hodes, Esq., State Bar No. 101773
Benjamin T. Ikuta, Esq., State Bar No. 260878
Carlos X. Colorado, State Bar No. 231031
HODES, MILMAN IKUTA, LLP
9210 Irvine Center Drive
Irvine, California 92618
Telephone: (949) 640-8222
Facsimile: (949) 336-8114
Liaison Counsel and Co-Lead-Counsel for Plaintiffs

Dane Levy, Esq., State Bar No. 210473
LEVY LAW FIRM
4500 E. Pacific Coast Highway, Suite 150
Long Beach, CA 90804
Telephone: 562.270.7810
Facsimile: 562.293.2843
Attorneys for Plaintiff ALEJANDRINA AVILA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Coordination Proceeding
Special Title (CRC 3.550(b))

Children's Dental Group Cases

Subject Case:

***Avila v. Jacks, et al., Case No. 30-2016-
00894723-CU-MM-CJC***

JUDICIAL COUNCIL COORDINATION
NO: JCCP 4917
[Hon. Glenda Sanders, Judge – Dept. CX 101]

**PLAINTIFFS' OPPOSITION TO CDG
DEFENDANTS' MOTION *IN LIMINE* NO. 14 – TO
PRECLUDE "INTRODUCTION OF EVIDENCE"
IN OPENING STATEMENT PRIOR TO "RULING
ON ADMISSIBILITY."**

Master Complaint Filed: February 8, 2018
1st Bellwether Trial Date: February 14, 2022

Hearing Date: February 3, 2022
Hearing Time: 2:00 p.m.
Dept.: CX101 (Zoom Facility)

1 **I. PLAINTIFFS ASSUME THIS AMBIGUOUS MOTION SEEKS TO PRECLUDE THE**
2 **USE OF MARKED EXHIBITS IN OPENING STATEMENT WITHOUT A PRIOR**
3 **STIPULATION OF ALL PARTIES, WHICH IS A CUSTOMARY PRACTICE AS TO**
4 **WHICH NO *IN LIMINE* MOTION IS NECESSARY.**

5 At the outset, Defendants' motion appears to misunderstand the nature and purpose of an
6 opening statement. For starters, an opening statement is not evidence and jurors may not accept it
7 as proof of the matters stated. *McIntyre v. Colonies-Pac., LLC* (2014) 228 Cal.App.4th 664, 674;
8 *People v. Arnold* (1926) 199 Cal. 471, 486. Nor may an opening statement be used to argue the
9 case. *Williams v. Goodman* (1963) 214 Cal.App.2d 856, 869. Rather, the purpose for an opening
10 statement is to allow counsel to outline (i.e., present a "roadmap" of) the facts she or she intends
11 to prove at trial "to prepare the minds of the of the jury and to follow the evidence and to more
12 readily discern its materiality, force, and effect." *Arnold, supra*, 199 Cal. at 486. Therefore, as a
13 learned judge once observed long ago, in opening statement an attorney may properly claim client's
evidence will show the Moon is made of "green cheese."

14 The imprecision and ambiguity of Defendants' instant *in limine* motion suggests they may
15 be seeking broadly to exclude any and all evidence even being mentioned in Opening Statements.
16 Absurdly, were that case, and Plaintiffs thereupon barred from even mentioning in Opening
17 Statement what the "evidence" will show, Plaintiffs would be nonsuited.

18 So the instant motion more likely appears intended just to preclude bringing before the jury
19 actual exhibits to be offered in trial, unless there has first been a stipulation thereto by the parties.

20 In *Kelly v. New West Fed. Savings* (1996) 49 Cal.App.4th 659, the Court observed this is
21 the type of ministerial trial practice detail improperly and unnecessarily made the subject of an *in*
22 *limine* motion.¹ This motion is similar to Defendant Amtech's unnecessary and improper Motion
23 *in limine* 17 eschewed in *Kelly, supra*.

24 Here, too, this is yet another matter that is properly handled without the need for a defense
25 *in limine* motion.

26 ^{1/} "Matters of day-to-day trial logistics and common professional courtesy should not be the subject
27 of motions *in limine*. Motion No. 17 sought an order that no exhibits be shown to the jury without having
28 first been seen by all counsel and the court. These are matters of common professional courtesy that should
29 be accorded counsel in all trials. Also, procedural matters and items relating to jury selection most often
can be addressed orally and informally with the court, and later preserved on the record if
necessary....These issues could have been raised orally, which would have reduced the amount of
paperwork the court needed to review prior to impaneling a jury." *Id.*, 49 Cal.App.4th at 671.

1 Refraining from showing anticipated trial exhibits to jurors in Opening Statement absent a
2 stipulation of counsel is a customary and accepted trial practice as to which Plaintiffs do not object
3 (if that is in fact the fully extent of the reach of this ambiguous *in limine* motion) and all parties
4 should be bound by that practice.

5 **II. DEFENDANT’S RELEVANCE ARGUMENTS INVOLVING OPENING**
6 **STATEMENTS ARE INAPPROPRIATE.**

7 Because opening statement are not evidentiary, *McIntyre, supra*, 228 Cal.App.4th at 674,
8 Defendants’ arguments predicated on relevance and Evid.C. § 352 are misplaced and furnish not
9 ground for exclusion.

10 **III. CONCLUSION.**

11 For all of the foregoing reasons, this inappropriate and unnecessary *in limine* motion must
12 be denied.

13
14 Dated: January 10, 2022

HODES MILMAN IKUTA, LLP

15 By: /s/ Carlos X. Colorado
16 Carlos X. Colorado, Esq.
17 Plaintiffs’ Co-Liaison Counsel
18
19
20
21
22
23
24
25
26
27
28
29

PROOF OF SERVICE

COORDINATION PROCEEDING

Special Title:

CHILDREN'S DENTAL GROUP CASES

Judicial Council Coordination No. JCCP 4917
Orange County Superior Court, Civil Complex Center

STATE OF CALIFORNIA, COOUNTY OF ORANGE

I am over the age of 18, employed in the County of Orange, State of California, and not a party to the within action. My business address is 9210 Irvine Center Drive, Irvine, California 92618.

On January 28, 2022, I served the foregoing document(s) described as **PLAINTIFF'S OPPOSITION TO CDG DEFENDANTS' MOTION IN LIMINE NO. 14 – TO PRECLUDE "INTRODUCTION OF EVIDENCE" IN OPENING STATEMENT PRIOR TO "RULING ON ADMISSIBILITY."** on the party or parties named below as follows:

[SEE ATTACHED SERVICE LIST]

☒ BY ELECTRONIC SERVICE ONLY VIA THE CASE ANYWHERE SYSTEM: I transmitted a true copy of the above entitled document(s) to the Case Anywhere for service and notification on all parties as registered pursuant to the Case Management Order.

☒ STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 28, 2022 at Irvine, California.

By: Paria Tavakoli
Paria Tavakoli

Case Anywhere Electronic Service List

Case Name: **Children's Dental Group Cases**

Case Info: **JCCP4917, Orange County Superior Court**

Callahan & Blaine

Brian McCormack, Esq. (bmccormack@callahan-law.com).
Laura Morris, Esq. (lmorris@callahan-law.com).
3 Hutton Centre Drive, 9th Floor
Santa Ana, CA 92707
Phone: (714) 241-4444
Fax: (714) 241-4445

Representing:

Plaintiffs

Carroll, Kelly, Trotter & Franzen

Sandra Carlson, Esq. (scarlson@cktfmlaw.com).
Callan Franklin, Esq. (cwfranklin@cktfmlaw.com).
Patrick Goethals (pjgoethals@cktfmlaw.com).
Gabriel Irwin, Esq. (gmirwin@cktfmlaw.com).
John Kelly, Esq. (jckelly@cktfmlaw.com).
Mercedes Sequoia, Esq. (mcsequoia@cktfmlaw.com).
111 West Ocean Boulevard, 14th Floor
PO Box 22636
Long Beach, CA 90802
Phone: (562) 432-5855
Fax: (562) 432-8785

Representing:

J&G Dental Advisors, LLC
Jerry Minsky, D.D.S., Dental Corp.
Marsha Jacks
Samuel H. Gruenbaum
Scott Jacks, D.D.S., Inc. d/b/a Children's Dental Group
Sierra Pacific Dental Consultants, LLC

Cifarelli Law Firm

Thomas Cifarelli, Esq. (tomc@cifarellilaw.com).
Mackenzie Johnson, Esq. (mackenzie@cifarellilaw.com).
7700 Irvine Center Drive, Suite 150
Irvine, CA 92618
Phone: (949) 502-8600
Fax: (949) 502-8603

Representing:

Plaintiffs

Cole Pedroza LLP

Matthew Levinson, Esq. (mlevinson@colepedroza.com)
Kenneth Pedroza, Esq. (kpedroza@colepedroza.com)
2295 Huntington Drive
San Marino, CA 91108
Phone: (626) 431-2787
Fax: (626) 431-2788

Representing:

J&G Dental Advisors, LLC
Jerry Minsky, D.D.S., Dental Corp.
Marsha Jacks
Samuel H. Gruenbaum
Scott Jacks, D.D.S., Inc. d/b/a Children's Dental Group
Sierra Pacific Dental Consultants, LLC

David Weiss Law

Melissa Corona, Esq. (coronam@djwlaw.com)
Pamela Owen, Esq. (owenp@djwlaw.com)
Katie Shaller, Esq. (shallerk@djwlaw.com)
David Weiss, Esq. (weissd@djwlaw.com)
11340 West Olympic Boulevard
Suite 100
Los Angeles, CA 90064
Phone: (310) 575-9566

Representing:

Avishan Kolahdouz Nasiri, D.M.D.
David M. Diaz, D.D.S.
Yazan Mazan Kasey, D.D.S.

Dickson & Dickson

Robert Dickson, Esq. (bdickson@dicksonanddickson.com)
3151 Airway Ave., Building S
Costa Mesa, CA 92626
Phone: (714) 884-4140
Fax: (714) 333-4622

Representing:

Plaintiffs

Ford Walker Haggerty & Behar LLP

William Haggerty, Esq. (bill@fwhb.com)
One World Trade Center, 27th Floor
Long Beach, CA 90831
Phone: (562) 983-2500
Fax: (562) 983-2555

Representing:

Jerry Minsky, D.D.S.

Hodes Milman, LLP

Jacob Brender, Esq. (jbrender@hodesmilman.com)
Carlos Colorado, Esq. (ccolorado@hodesmilman.com)
Daniel Hodes, Esq. (dhodes@hodesmilman.com)
Benjamin Ikuta, Esq. (bikuta@hodesmilman.com)
9210 Irvine Center Drive
Irvine, CA 92618
Phone: (949) 640-8222
Fax: (949) 640-8294

Representing:

Plaintiffs

Konell Ruggiero LLP

Jerome Konell, Esq. (jerry@konellruggiero.com)
Cheryl Ruggiero, Esq. (cheryl@konellruggiero.com)
401 Wilshire Blvd., 12th Floor
Santa Monica, CA 90401
Phone: (213) 583-1360

Representing:

Plaintiffs

Lane Powell PC

Paul George, Esq. (georgep@lanepowell.com)
601 S.W. Second Avenue, Suite 2100
Portland, OR 97204
Phone: (503) 778-2100
Fax: (503) 778-2200

Representing:

Marsha Jacks
Samuel Gruenbaum

Law Office of Mitchell B. Hannah

Hallie Hannah, Esq. (hallie@hannahlaw.com)
Mitchell Hannah, Esq. (mhannah@hannahlaw.com)
100 Pacifica, Suite 370
Irvine, CA 92618
Phone: (949) 477-9020
Fax: (949) 477-9080

Representing:

Plaintiffs

Law Office of Victor M. Cueto

Victor Cueto, Esq. (victor@victorcuetoalaw.com)
2700 North Main Street, Suite 1040
Santa Ana, CA 92705
Phone: (714) 835-7676
Fax: (714) 835-7776

Representing:

Plaintiffs

Law Offices of Edwin J. Zinman DDS, JD, Inc.

Edwin Zinman, Esq. (staff@toothattorney.com)
220 Bush Street, Suite 422
San Francisco, CA 94104
Phone: (415) 391-5353

Representing:

Plaintiffs

Law Offices of Geraldine G. Ly

Geraldine Ly, Esq. (geraldinely@mac.com)
2700 North Main Street, Suite 610
Santa Ana, CA 92705
Phone: (714) 442-9998

Representing:

Plaintiffs

Law Offices of James R. Moriarty

James Moriarty, Esq. (jim@moriarty.com)
4119 Montrose Boulevard, Suite 250
Houston, TX 77006
Phone: (713) 528-0700

Representing:

Plaintiffs

Law Offices of John S. Roth

John Roth, Esq. (john@rothlawoffice.com)
2901 West Coast Highway, Suite 200
Newport Beach, CA 92663
Phone: (949) 646-1818
Fax: (949) 646-2323

Representing:

Plaintiffs

Law Offices of Nicholas R. Braico, P.C.

Nicholas Braico, Esq. (braicolaw@gmail.com)
25283 Cabot Road, Suite 112
Laguna Hills, CA 92653
Phone: (949) 916-3105

Representing:

Plaintiffs

Law Offices of Paul W. Ralph

Paul Ralph, Esq. (pwr@ocinjuryattorney.com)
500 North State College Boulevard, Suite 1100
Orange, CA 92868
Phone: (714) 919-4415
Fax: (714) 919-4315

Representing:

Plaintiffs

Law Offices of Steven D. Hillyard

Steven Hillyard, Esq. (shillyard@sdhlawoffices.com)
280 Newport Center Drive Suite 260
Newport Beach, CA 92660
Phone: (949) 502-5215

Representing:

Plaintiffs

Law Offices of Timothy J. Swift

Timothy Swift, Esq. (tim@timswiftlaw.com)
4 Park Plaza, Suite 500
Irvine, CA 92614
Phone: (714) 541-4331

Representing:

Plaintiffs

Ledezma Law Group

Jorge Ledezma, Esq. (jorge@ledezmalaw.com)
1851 East First Street, Suite 850
Santa Ana, CA 92705
Phone: (657) 210-2050

Representing:

Plaintiffs

Leone + Associates

Fernando Leone, Esq. (avlg@sbcglobal.net)
207 North Broadway, Suite F
Santa Ana, CA 92701
Phone: (714) 836-4439

Representing:

Plaintiffs

London Fischer LLP

Nicholas Davila, Esq. (ndavila@londonfischer.com)
Richard Endress, Esq. (rendres@londonfischer.com)
Grant Mullen, Esq. (gmullen@londonfischer.com)
2505 McCabe Way, Suite 100
Irvine, CA 92614
Phone: (949) 252-0550
Fax: (949) 252-0553

Representing:

CRH California Water, Inc.

Munoz & Associates

Edward Munoz, Esq. (munozlaw@sbcglobal.net)
600 West Santa Ana Boulevard, Suite 910
Santa Ana, CA 92701
Phone: (714) 954-0225

Representing:

Plaintiffs

Napolin Law Firm, LLP

Catherine Lombardo, Esq. (catherine@napolinlaw.com)
Alexander Napolin, Esq. (alexander@napolinlaw.com)
433 Arrow Highway
P.O. Box 2001
Claremont, CA 91711
Phone: (909) 325-6032
Fax: (909) 614-7373

Representing:

Plaintiffs

O'Melveny & Myers LLP

Sabrina Strong, Esq. (ssstrong@omm.com)
Michael Yoder, Esq. (myoder@omm.com)
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Phone: (213) 430-6000
Fax: (213) 430-6407

Representing:

Allison Olex, D.D.S.
Avishan Kolahdouz Nasiri, D.M.D.
David M. Diaz, D.D.S.
Elaine Lam, D.D.S.
Joanne Gabot-Heyman, D.D.S.
Maria Lima, D.D.S.
Pamela Abraham, D.D.S.
Trinh Pham, D.D.S.
Yazan Mazan Kasey, D.D.S.

O'Melveny & Myers LLP

Amy Laurendeau, Esq. (alaurendeau@omm.com)
Ashton Massey, Esq. (amassey@omm.com)
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
Phone: (949) 823-6900
Fax: (949) 823-6994

Representing:

Allison Olex, D.D.S.
Avishan Kolahdouz Nasiri, D.M.D.
David M. Diaz, D.D.S.
Elaine Lam, D.D.S.
Joanne Gabot-Heyman, D.D.S.
Maria Lima, D.D.S.
Pamela Abraham, D.D.S.
Trinh Pham, D.D.S.
Yazan Mazan Kasey, D.D.S.

Poliquin & DeGrave LLP

Elizabeth Flatley, Esq. (eflatley@pdattorneys.com)
Mark Poliquin, Esq. (mpoliquin@pdattorneys.com)
22972 Mill Creek Drive
Laguna Hills, CA 92653
Phone: (949) 716-8230
Fax: (949) 716-4750

Representing:

Anne Hoang, D.D.S.
Benjamin Sapir, D.D.S.
Caroline Hu, D.D.S.
Hisako Seigemartin, D.D.S.
Namie Kon, D.D.S.

Ray & Gourde, LLP

Nicholas Aloia, Esq. (nicholas@raygourde.com).

Burdick Ray, Esq. (burdick@raygourde.com).

111 Pacifica, Suite 120

Irvine, CA 92618

Phone: (949) 825-6520

Representing:

Irina Tarnavsky, D.D.S.

Lisa Nguyen, D.D.S.

Resnick & Louis, P.C.

Carol Knoblow, Esq. (cknoblow@rlattorneys.com).

James McDermed, Esq. (jmcdermed@rlattorneys.com).

9891 Irvine Center Drive, Suite 200

Irvine, CA 92618

Phone: (714) 709-4400

Fax: (714) 709-4254

Representing:

CRH California Water, Inc.

Taylor DeMarco LLP

Bora Song, Esq. (bsong@taylordemarco.com).

N. Denise Taylor, Esq. (dtaylor@taylordemarco.com).

Sage Zermeno-Romero, Esq. (szermenoromero@taylordemarco.com).

1000 Wilshire Boulevard, Suite 600

Los Angeles, CA 90017

Phone: (213) 687-1600

Representing:

Allison Olex, D.D.S.

Elaine Lam, D.D.S.

Joanne Gabot-Heyman, D.D.S.

Pamela Abraham, D.M.D.

Trinh Pham, D.D.S.

The Dominguez Firm

Patricia Alabise, Esq. (patricia.alabise@dominguezfirm.com).

Pamela Rodriguez, Esq. (pamela.rodriguez@dominguezfirm.com).

One Park Plaza

3250 Wilshire Blvd. Suite 2200

Los Angeles, CA 90010

Phone: (213) 388-7788

Fax: (213) 388-9540

Representing:

Plaintiffs

The Goldman Law Firm

Kevin Kelly, Esq. (kkelly@goldmanlawfirm.net)
55 Main Street
Tiburon, CA 94920
Phone: (415) 435-5500

Representing:

The Dentists Insurance Company

The Levy Law Firm

Dane Levy, Esq. (dlevylaw@msn.com)
4500 East Pacific Coast Highway, Suite 150
Long Beach, CA 90804
Phone: (562) 270-7810
Fax: (562) 293-2843

Representing:

Plaintiffs

The Skiver Law Firm

Ryan Skiver, Esq. (rskiver@skiverlawfirm.com)
3200 North Hayden Road, Suite 220
Scottsdale, AZ 85251
Phone: (480) 626-1667
Fax: (480) 482-7285

Representing:

Plaintiffs

Umberg Zipser LLP

Carole Reagan, Esq. (creagan@umbergzipser.com)
Adina Stowell, Esq. (astowell@umbergzipser.com)
Dean Zipser, Esq. (dzipser@umbergzipser.com)
1920 Main Street, Suite 750
Irvine, CA 92614
Phone: (949) 679-0052
Fax: (949) 679-0461

Representing:

Marsha Jacks
Samuel Gruenbaum

Wilson, Elser, Moskowitz, Edelman & Dicker LLP

Steven Parminter, Esq. (steven.parminter@wilsonelser.com)
Ashan Peiris, Esq. (ashan.peiris@wilsonelser.com)
555 South Flower Street, 29th Floor
Los Angeles, CA 90071
Phone: (213) 443-5100
Fax: (213) 443-5101

Representing:

Culligan International Company

Zukor & Nelson

Marilyn Nelson, Esq. (marilynhnelson@gmail.com).

Abram Zukor, Esq. (zukorandnelson@gmail.com).

9401 Wilshire Boulevard, Suite 1250

Beverly Hills, CA 90212

Phone: (310) 274-0846

Representing:

Plaintiffs

The Service List is compiled from information provided to Case Anywhere and is not independently reviewed for accuracy.

Only attorneys are listed. Other authorized users may also receive case notifications by email.