

1 Shawn D. Morris, Esq. (SBN. 134855)  
Christian Barton, Esq. (SBN 303738)  
2 Michael Malady, Esq. (SBN 323310)  
MORRIS, SULLIVAN & LEMKUL, LLP  
3 9915 Mira Mesa Boulevard, Suite 300  
San Diego, CA 92131  
4 Telephone: (858) 566-7600  
Fax: (858) 566-6602  
5 [morris@morrissullivanlaw.com](mailto:morris@morrissullivanlaw.com)  
[barton@morrissullivanlaw.com](mailto:barton@morrissullivanlaw.com)  
6 [malady@morrissullivanlaw.com](mailto:malady@morrissullivanlaw.com)

7 Rahul Ravipudi, Esq. (SBN 204519)  
Paul A. Traina, Esq. (SBN 155805)  
8 John W. Shaller, Esq. (SBN 276084)  
PANISH | SHEA | BOYLE | RAVIPUDI LLP  
9 111111 Santa Monica Blvd., Suite 700  
Los Angeles, CA 92131  
10 T: (310)477-1700  
F: (310)477-1699  
11 [ravipudi@psblaw.com](mailto:ravipudi@psblaw.com)  
[raina@psblaw.com](mailto:raina@psblaw.com)  
12 [shaller@psblaw.com](mailto:shaller@psblaw.com)

13 *Attorneys for Plaintiff, Jack Greener*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF SAN DIEGO**

16 JACK GREENER

17 Plaintiff,

18 v.

19 MICHAEL PHELPS d.b.a. DEL MAR JIU  
20 JITSU CLUB; M.PHELPS, INC.;  
21 FRANCISCO ITURRALDE; and DOES 1  
through 100, inclusive.

22 Defendants.  
23

Case No.: 37-2020-00041382-CU-PO-CTL

**UNLIMITED CIVIL, DEMAND OVER  
\$25,000**

**FIRST AMENDED COMPLAINT FOR:**

1. **NEGLIGENCE**
2. **GROSS NEGLIGENCE**

**DEMAND FOR JURY TRIAL**

24 COMES NOW, Plaintiff, JACK GREENER who complains and alleges as follows:

25 **THE PARTIES**

26 1. Plaintiff JACK GREENER (hereinafter “Mr. Greener” or “Plaintiff”), is, and at all  
27 times relevant to this action was, a resident of the County of San Diego, State of California.

28 2. Plaintiff is informed and believes, and thereon alleges that Defendant MICHAEL

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**10/06/2022** at 02:07:00 PM

Clerk of the Superior Court  
By Lee McAlister, Deputy Clerk

1 PHELPS d.b.a DEL MAR JIU JITSU CLUB (hereinafter “Phelps”) is, and at all times relevant to  
2 this action was, a resident of the County of San Diego, State of California.

3 3. Plaintiff is informed and believes, and thereon alleges that Defendant M.PHELPS  
4 INC. is a California Corporation, organized for the purposes of martial arts training.

5 4. Plaintiff is informed and believes, and thereon alleges that Defendant FRANCISCO  
6 ITURRALDE (hereinafter “Iturralde”) is, and at all times relevant to this action was, a resident of  
7 the County of San Diego, State of California and was at all relevant times an employee of Del Mar  
8 Jiu Jitsu Club.

9 5. Plaintiff is unaware of the true names, capacities, or basis for liability of  
10 Defendants, DOES 1 through 100, inclusive, and therefore sues said Defendants by their fictitious  
11 names. Plaintiff will amend this complaint to allege their true names, capacities, or basis for  
12 liability when the same has been ascertained. Plaintiff is informed and believes and thereon  
13 alleges that Defendants DOES 1 through 100, inclusive, and each of them, are individual  
14 defendants in some manner liable to Plaintiff. Defendants Phelps, M.Phelps Inc., Iturralde, and  
15 DOES 1-100, inclusive, are hereinafter referred to collectively as Defendants.

16 6. Plaintiff is informed and believes, and thereon alleges that at all times relevant to  
17 this action, each of the Defendants, including those fictitiously named, were the agent, subagent,  
18 servant, employee, partner, joint venturer, co-conspirator, or surety of the other Defendants, and  
19 was acting within the scope of said agency, employment, partnership, venture, conspiracy, or  
20 suretyship, with the knowledge and consent or ratification of each of the other Defendants in doing  
21 the things alleged herein.

22 **JURISDICTION & VENUE**

23 7. Jurisdiction and venue are proper in this action, because this case involves causes  
24 of action arising in the County of San Diego, State of California.

25 8. This is an action for recovery in excess of \$25,000.00.

26 //  
27 //  
28 //

1 **GENERAL ALLEGATIONS**

2 9. Plaintiff is informed and believes, and thereon alleges that Defendant Phelps and/or  
3 M.PHELPS INC. owns and operates a Brazilian Jiu-Jitsu studio in Del Mar, California, doing  
4 business under the name Del Mar Jiu Jitsu Club (“DMJJC”).

5 10. DMJJC held itself out to the public as having expertise in the training, promotion,  
6 performance, and physical risks of Brazilian Jiu-Jitsu and other martial arts. Defendants, and each  
7 of them, further held themselves out as having expertise in the mitigation and avoidance of such  
8 physical risks.

9 11. DMJJC utilizes instructors to teach its paying students the grappling techniques  
10 which predominate the martial art of Brazilian Jiu-Jitsu, including pins, holds, and traps.

11 12. Plaintiff is informed and believes and thereon alleges that all of the instructors at  
12 DMJJC are employees of DMJJC.

13 13. Plaintiff is informed and believes and thereon alleges that Iturralde is among the  
14 instructors employed by DMJJC.

15 14. Iturralde has a history of utilizing dangerous techniques not permitted, utilized, or  
16 even taught by Jiu Jitsu instructors.

17 15. Iturralde’s nickname is “Sinistro,” which translates from Portuguese to sinister,  
18 disaster, or damage.

19 16. At all times relevant to this action, Defendants admit that Iturralde was employed  
20 by M.PHELPS, INC. and acting in the course and scope of his employment.

21 17. Plaintiff is informed and believes and thereon alleges that as a direct result of  
22 Iturralde’s reckless behavior Iturralde has on multiple occasions caused significant injury or  
23 damage to students under his tutelage. Less than six-months prior to the subject incident, Iturralde  
24 broke one of his student’s ribs while using a technique which is not permitted due to its high risk  
25 of injury.

26 18. Plaintiff is informed and believes and thereon alleges that at all times Phelps was  
27 aware of Iturralde’s recklessness and repeated injuries to students and yet Phelps continued to  
28 employ Iturralde to instruct DMJJC students.

1           19.     On or about May 2018, Plaintiff enrolled as a student at DMJJC, paying a fee of  
2 approximately \$120 per month, for instruction, training, and or assistance in the development of  
3 Brazilian Jiu-Jitsu skills and for the use of DMJJC’s facilities and/or gymnasium.

4           20.     On November 29, 2018, Plaintiff was training at DMJJC under the direct tutelage  
5 of Iturralde. At all relevant times on November 29, 2018, Iturralde was acting within the scope of  
6 his employment at DMJJC. At the time Plaintiff held a “white belt” in Brazilian Jiu Jitsu, which is  
7 the lowest ranking in Brazilian Jiu Jitsu and signifies an absolute beginner student. Particularly  
8 due to his status as an absolute beginner, Plaintiff reposed his implicit trust and confidence for his  
9 safety and well-being into his instructor, Iturralde.

10          21.     White belts are dangerous because they lack experience and have little knowledge  
11 of what they are doing in Brazilian Jiu Jitu. When a black belt is instructing a white belt, the black  
12 belt is responsible for the safety of the white belt.

13          22.     While under Phelps’ direct supervision and instruction, Iturralde pinned Mr.  
14 Greener, locking Mr. Greener to the mat in an extremely vulnerable position. Crouching on the  
15 balls of feet and holding fast to Mr. Greener, Iturralde launched himself up and over Mr.  
16 Greener—using Mr. Greener as a fulcrum to perform a full flip. Iturralde drove all his weight into  
17 Mr. Greener’s neck as he used Mr. Greener as a springboard.

18          23.     The technique which Iturralde attempted on Mr. Greener was an extremely  
19 dangerous technique known as a forward-flip backtake. The purpose of a technique like this is to  
20 “take the back” of the recipient.

21          24.     Aside from the forward-flip backtake, there are many ways to take the back of a  
22 person in turtle position, the position Mr. Greener was in prior to Iturralde initiating the forward-  
23 flip backtake. However, Iturralde knowingly chose to utilize the forward-flip backtake rather than  
24 the numerous other methods to take Mr. Greener’s back.

25          25.     The forward-flip backtake carries a high risk of significant injury to the recipient,  
26 like Mr. Greener, and an extremely small margin of error.

27          26.     There are no backtake techniques that are more compromising for the spine than  
28 the forward-flip backtake—there is no more inherently dangerous technique. Indeed, Iturralde was

1 injured himself due to a forward-flip backtake, which resulted in injury to Iturralde's brachial  
2 plexus nerve and the loss of feeling in his arm for two months.

3 27. At least one other practitioner, instructed students at DMJJC, received his black  
4 belt from DMJJC, and has trained five years there, had never been taught a forward-flip backtake,  
5 never had seen one performed, and never had one performed on him.

6 28. Iturralde's reckless actions increased the risks to Plaintiff over and above those  
7 inherent to Brazilian Jiu-Jitsu and Inturralde's conduct can be prohibited without discouraging  
8 vigorous participation or otherwise fundamentally changing the activity of Brazilian Jiu-Jitsu.

9 29. The extreme force of Iturralde's reckless conduct, crushed Mr. Greener's cervical  
10 vertebrae at the C4-C5 level. As a result of Iturralde's reckless conduct, Mr. Greener was  
11 paralyzed, with a loss of sensation and movement in his upper and lower extremities.

12 30. Defendants' actions caused severe, permanent, and life-threatening injuries to Mr.  
13 Greener. The injuries sustained by Mr. Greener are the result of extreme trauma, requiring  
14 extensive surgery and future medical care.

15 **FIRST CAUSE OF ACTION**

16 **Negligence (as to all Defendants)**

17 31. Plaintiff realleges and incorporates by reference each and every allegation of the  
18 above paragraphs, as if fully set forth herein.

19 32. Defendants, and each of them, were under a duty to exercise ordinary and  
20 reasonable care to avoid exposing Plaintiff to an unreasonable risk of harm.

21 33. Defendants, and each of them, breached the duty of ordinary care owed to Plaintiff  
22 and were therefore negligent by exposing Plaintiff to unreasonable risk of harm and knowingly  
23 placed Plaintiff's physical and mental health in harm's way.

24 34. As a direct and proximate result of the negligence of Defendants, and each of them,  
25 Plaintiff suffered injury, damage, loss, and/or harm, including, but not limited to, past and future  
26 medical damages, loss of income, and general damages, all according to proof.

27 35. Plaintiff is informed and believes and thereon alleges that Defendant Phelps is the  
28 chief executive officer of Defendant M.PHELPS INC. and is personally guilty of oppression,

1 fraud, and/or malice, and/or authorized or ratified the wrongful conduct of Defendant Iturralde, as  
2 described above, for which Plaintiff seeks damages.

3 36. In performing the above described acts and/or omissions, Defendants, and each of  
4 them, acted maliciously, oppressively and despicably, thereby entitling Plaintiff to an award of  
5 punitive damages against Defendants, and each of them, in an amount to be determined and  
6 proven at time of trial. In so acting Defendants, and each of them, acted with the intent to vex and  
7 injure Plaintiff, and for the purpose of causing great bodily injury to Plaintiff, and with a  
8 conscious disregard of the rights of Plaintiff, and of the fact that Plaintiff would likely suffer great,  
9 severe and permanent bodily injury by reason of the actions of Defendants, and each of them. It  
10 was in furtherance of this intent to cause great bodily injury to Plaintiff that Defendants, and each  
11 of them, performed each and all of the acts and omissions described herein.

12 **SECOND CAUSE OF ACTION**

13 **Gross Negligence (as to all Defendants)**

14 37. Plaintiff realleges and incorporates by reference each and every allegation of the  
15 above paragraphs, as if fully set forth herein.

16 38. The aforementioned conduct of Defendants, and each of them demonstrated the  
17 lack of any care and/or an extreme departure from what a reasonably careful person would do in  
18 the same situation to prevent harm to Plaintiff.

19 39. As a direct and proximate result lack of care by Defendants and/or an extreme  
20 departure from the conduct of a reasonably careful person by Defendants, and each of them,  
21 Plaintiff suffered injury, damage, loss, and/or harm, including, but not limited to, past and future  
22 medical damages, loss of income, and general damages, all according to proof.

23 40. Plaintiff is informed and believes and thereon alleges that Defendant Phelps is the  
24 chief executive officer of Defendant M.PHELPS INC. and is personally guilty of oppression,  
25 fraud, and/or malice, and/or authorized or ratified the wrongful conduct of Defendant Iturralde, as  
26 described above, for which Plaintiff seeks damages.

27 41. In performing the above described acts and/or omissions, Defendants, and each of  
28 them, acted maliciously, oppressively and despicably, thereby entitling Plaintiff to an award of

1 punitive damages against Defendants, and each of them, in an amount to be determined and  
2 proven at time of trial. In so acting Defendants, and each of them, acted with the intent to vex and  
3 injure Plaintiff, and for the purpose of causing great bodily injury to Plaintiff, and with a  
4 conscious disregard of the rights of Plaintiff, and of the fact that Plaintiff would likely suffer great,  
5 severe and permanent bodily injury by reason of the actions of Defendants, and each of them. It  
6 was in furtherance of this intent to cause great bodily injury to Plaintiff that Defendants, and each  
7 of them, performed each and all of the acts and omissions described herein.

8 **WHEREFORE**, Plaintiff JACK GREENER prays for judgement as follows:

- 9 1. For economic damages, according to proof thereof;
- 10 2. For non-economic damages, according to proof thereof;
- 11 3. For punitive and/or exemplary damages;
- 12 4. For pre-trial and pre-judgment interest thereon at the maximum legal rate, according to  
13 proof thereof;
- 14 5. For post-trial interest thereon at the maximum legal rate, according to proof thereof;
- 15 6. For costs of Suit herein, according to proof thereof; and
- 16 7. For such other and further relief as the Court may deem just and proper.

17  
18 Dated: October 6, 2022

**MORRIS, SULLIVAN & LEMKUL, LLP**

19  
20 By: /s/ Shawn Morris  
21 Shawn D. Morris, Esq.  
22 Christian W. Barton, Esq.  
23 Attorneys for Plaintiff,  
24 JACK GREENER  
25  
26  
27  
28