



No. 24- 822

IN THE
Supreme Court of the United States

ALEJANDRO ALERS, JR., Pro Se,

Petitioner,

vs.

OLYMPIA MEDICAL CENTER; RONALD LANG,
MD.; SARA KOSSUTH, DO, MD.; HEALTH CARE
PARTNERS AFFILIATES MEDICAL GROUP; MARY
JEAN LOCKARD, N.P.; N. ISABEL KIEFER, MD;
Da VITA MEDICAL GROUP; HAGOP SARKISSIAN,
MD.; KELLY WINER, S.W.; WINDSOR TERRACE
HEALTHCARE, LLC; SEASONS HOSPICE &
PALLIATIVE CARE OF CALIFORNIA, LLC;
PEJMAN NAGHDECHI, MD.; PHILLIP
ROHRBACHER, RN.; THOMAS (TOM) CARMODY;
GARY ZIMNY, RN.; ARMAN AHANGARZADEH, LVN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
CALIFORNIA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are pro se litigants entitled to equal protection under federal and state laws as represented parties are protected under federal and state laws?

2. Are pro se litigants entitled to commence wrongful death lawsuits equally as represented parties may commence wrongful death lawsuits pursuant to California Code of Civil Procedure sections 377.60, 377.30 and 377.32(a)?

3. Are pro se litigants entitled to represent themselves without the assistance of counsel as co-parties; or represent themselves under a power of attorney agreement pursuant to the California Probate Code section 4400, et seq., specifically under sections 4231, 4237 & 4459?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. HAZEL ALERS (Deceased) Plaintiff/Appellant.

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**SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at appendix A to the petition and is unpublished.

The opinion of the California Court of Appeal Division Five appears at appendix B to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was August 28, 2024. A copy of that decision appears at appendix A.

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

1. Federal Judicial Canons of Ethics, Canon # 3
2. First Amendment of the United States Constitution
3. Fourth Amendment of the United States Constitution,

4. Americans with Disabilities Act
5. Equal Protection Clause of the Fourteenth Amendment
6. Procedural Due Process Clause
7. Substantive Due Process Clause
8. Stare Decisis
9. Tenth Amendment of the United States Constitution

STATEMENT OF THE CASE

Petitioner incorporates by reference the Second Amended Complaint filed with the trial court for a full, complete and unbiased recitation of the facts herein. Appendix D.

On March 23, 2019, Decedent, Alejandro Alers, Sr, 97 years of age African American non smoker was rushed to Defendant's, Olympia Medical Center Emergency Room, after being found slumped over and non-responsive in a chair. At the emergency room, the emergency room nurse attempted to insert a foley catheter, however, the foley catheter could not be fully inserted and the insertion procedure caused the Decedent much pain. Dr. Nguyen, the emergency room physician in charge for the Decedent's medical care, ordered that the insertion foley catheter would be discontinued. Defendants, Drs. Ronald Lang and Sara Kossuth, disregarded Dr. Nguyen's order to discontinue the insertion of the foley catheter, and ordered the insertion of the foley catheter. The insertion of the foley catheter was performed by the

hospital's nursing staff. The nursing staff incorrectly inserted the foley catheter without any pain medication which caused severe injury and pain, so much pain, that the Decedent immediately forcibly removed the foley catheter. Consequently, the Decedent suffered three weeks of amnesia. Later, the next day, the hospital's Urologist physician, Dr. Sameer Malhotra, removed the foley catheter and reinserted a french coude-seldinger style catheter correctly. Afterwards, Defendant, Sara Kossuth, orally blamed the Decedent for removing the foley catheter and causing his own injuries, which actually, the wrongful insertion of the foley catheter was the sole cause of the Decedent's injuries. The Decedent's health was deteriorating rapidly because of the side effects of the amnesia. A GI tube was inserted into the stomach of the Decedent so the Decedent was fed nutrients to prevent further health decline. At the order of Defendant, Sara Kossuth, Decedent's hands were restrained with mittens to prevent any further pulling at the catheter, however, the use of mittens is not a recognized prevention of pulling at catheters.

After three weeks of hospitalization, the Decedent was involuntarily transferred to Defendant, Windsor Terrace Healthcare, LLC, a skilled nursing facility, for further rehabilitation. The Decedent's family preferred Decedent to be transferred to a skilled nursing facility closer to Decedent's home. While at the SNF, the Decedent initially received daily physician visits, skilled nursing care, speech, occupational and physical therapies. Defendants, Healthcare Partners Affiliates Medical Group, Dr. Hagop Sarkissian, Mary Jean Lockard, N.P., Kelly Winer, S.W., and Windsor Terrace Healthcare, LLC, invited Thomas (Tom) Carmody, a liaison, of Defendant,

Seasons Hospice & Palliative Care of California LLC, to request Decedent and his family to permit Decedent to be transferred to home rehabilitative care. Decedent and his family declined the offer of home rehab because of the family's lack of medical training to medically care for the Decedent at home. Defendant, Carmody, a sales person and not a licensed physician, guaranteed that the Decedent would receive the same level of medical services as the Decedent had received at the SNF. The Decedent and family reluctantly agreed to home rehabilitation for a two week trial basis. Unbeknownst to the Decedent and his family, the aforementioned Defendants had secretly agreed to transfer the Decedent to a low-level home hospice care instead of the SNF rehabilitative level of medical care. A low-level home hospice care is a level of care provided to terminally ill or patients likely to die within six months. According to Medicare standards, a patient can only be admitted into a hospice care program only after full disclosure to the patient by the attending physician, and there must be medical evidence that clearly demonstrates that the patient is either terminally ill or likely to die within six months. Defendants', Dr. Sarkissian and Windsor Terrace Healthcare, LLC's, medical records only revealed that the Decedent suffered from urinary tract infection, pneumonia, malnutrition and dementia at the time of admission to the low-level home hospice care program. These medical conditions were inadequate for Decedent to be a qualified candidate for hospice care. Nevertheless, Decedent was transferred to low-level home hospice care without the Decedent and his family's oral nor written consent. Defendant, Dr. Pejman Naghdechi who represented Defendant, Seasons Hospice & Palliative Care of California LLC, did not disclose to the Decedent nor to his family that the Decedent was being admitted

into a home low-level hospice care instead of home rehabilitation as guaranteed by Defendant, Carmody. In addition, Dr. Pejman Naghdechi was not the Decedent's attending physician at the time the Decedent agreed to home rehabilitative care on a two week trial basis. The Decedent was transferred home to begin undisclosed home low-level hospice care on April 25, 2019. The Decedent died five days later on April 30, 2019.

During those five days of low-level hospice care, Dr. Naghdechi did not visit the Decedent at home for medical check-ups. At the SNF, the Decedent had daily visits by Dr. Sarkissian.

Defendant, Philip Rohrbacher, RN, head nurse for Seasons Hospice & Palliative Care of California, did not visit at all, although, at the SNF, the Decedent had 24/7 nursing care. The Decedent was not provided with physical, occupational and speech therapies during the five days, although at the SNF, the Decedent received daily therapies.

The Decedent was insufficiently fed for five days. The Decedent was not provided with a feeding tube machine and glucerna which the Decedent needed 16 hours of feeding tube and glucerna, although at the SNF, the Decedent had a feeding tube machine and glucerna. The Decedent had to supply his own glucerna which was only two bottles of eight-ounces of glucerna per day as ordered by Defendant, Arman Ahangarzadeh, LVN of Seasons Hospice & Palliative Care of California LLC.

Decedent was given medications to stop agitative behavior, but, the Decedent never displayed agitative

behavior, however, the side effects of those medications caused heart arrhythmia in senior citizens.

During those five days, the Decedent suffered the collapse of a lung, however, Defendants, Gary Zimny, RN and Arman Ahangarzadeh, LVN, refused to call an ambulance to transfer the Decedent to the hospital. Instead, Defendant, Ahangarzadeh called an oxygen supply company to deliver an oxygen tank to the home to cure the collapse lung problem.

On April 30, 2019, the day the Decedent died, Petitioner called the triage nurse requesting 911 services because the Decedent had stopped breathing. The triage nurse informed the Petitioner that 911 services will not be called, and that, an “on-call” nurse will come to the home the next day to determine the reason why the Decedent had stopped breathing. Petitioner, instead, called 911 in violation of Seasons Hospice & Palliative Care of California LLC’s protocol that 911 services can only be initiated by Seasons Hospice & Palliative Care of California LLC and not the patient. Paramedics came and diagnosed that the Decedent had died from heart failure.

Petitioner requested medical records from the Defendants. The medical records were released from Defendant, Olympia Medical Center, on October 1, 2019, which Olympia Medical Center was the first of the Defendants to release their medical records. The California statute of limitations began to run on the day the medical records were released (delayed discovery rule) instead of the day of death as the trial court had ruled. *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807 (2005). The wrongful death lawsuit against the Defendants

was filed on September 28, 2020, well within the two-year statute of limitations for wrongful death cases. California Code of Civil Procedure section 335.1.

The Plaintiffs, pro se, Hazel Alers 87 years of age and Alejandro Alers, Jr, (surviving spouse and son) as co-parties, filed the wrongful death (CCP section 377.60) and survival statute (CCP section 377.30) lawsuits as successors in interest and their individual claims against the Defendants. Plaintiff, Hazel Alers, filed a declaration to commence the wrongful death and survival actions against the Defendants pursuant to California Code of Civil Procedure section 377.32(a) on January 19, 2021. Appendix C.

After the lawsuit was filed, the lawsuit was transferred to Department 28 of the personal injury court department of the Superior Court. On March 17, 2021, Department 28 issued a minute order that stated this lawsuit was not a medical malpractice lawsuit because the Plaintiffs had alleged causes of action beyond professional negligence. Department 28 transferred the lawsuit back to the presiding judge for re-assignment to the Independent Calendar. The lawsuit was transferred to Judge Gary Y. Tanaka.

Judge Tanaka, initially, held a status conference hearing. At the status conference hearing, Judge Tanaka made disparaging statements regarding the lawsuit. His statements were; "I do not have the time to hear this case. I have 700 other cases on my calendar." "Somebody in the presiding judge department does not like me, that is why I was assigned this case." "I drew the short-stick in case assignments when I was assigned this case." At a

later hearing, more disparaging statements were made Judge Tanaka which included, “ You are not going to get a large judgment from this Court. I do not give out large judgments.” At a later hearing, Judge Tanaka had ex-parte communications with defense counsel on the issue of whether the Petitioner can represent co-plaintiff, Hazel Alers, at the hearings under their then existing power of attorney agreement. The issue of representation under a power of attorney agreement was still at issue before the Court at the time of the ex-parte communication by Judge Tanaka and defense counsel. At the demurrer hearing on April 28, 2022 regarding the SAC, Judge Tanaka intervened in the lawsuit on behalf of Plaintiff, Hazel Alers, and alleged the cause of action of professional negligence. However, the Plaintiffs’ SAC did not allege professional negligence. Judge Tanaka alleged negligence so that he could legally justify his ruling that the lawsuit was legally barred by the one-year statute of limitations defense as raised by the Defendants. California Code of Civil Procedure section 340.5.

The Defendants filed motions for demurrer to dismiss the FAC for failure to state a valid cause of action because the Plaintiffs were not licensed attorneys pursuant to California Business and Professions Code sections 6125 & 6127, and the Plaintiffs could not represent the estate of Alejandro Alers, Sr. The Defendants’ demurrer hearing was held on November 5, 2021. The Trial Court sustained the Defendants’ demurrers with 20 days for Plaintiffs to amend the FAC. At the demurrer hearing, the Plaintiffs argued that successors in interest may represent the estate pro se under the wrongful death and survival statutes and pursuant to legal cases. *Latimore v. Dickey*, 239 Cal. App. 4th 959, 961-962 (2015); *Quiroz v. Seventh*

Avenue Center, 140 Cal. App. 4th 1256, 45 Cal. Reprtr. 3d 222, 228 (2006); *Kockelman v. Segal*, 61 Cal. App. 4th 491, 497 (1998); *Lamont v. Wolfe*, 142 Cal. App. 3d 775 (1983). The Plaintiffs did not comply with the Trial Court's order to hire an attorney to represent the estate of Alejandro Alers, Sr.

During the discovery period, the Defendants requested the Plaintiffs to answer their interrogatories, however, the interrogatories were vague and confusing to the Plaintiffs. The Plaintiffs requested the Defendants to re-submit new questions. The Defendants refused. The Defendants filed multiple motions in Department 28 to compel the Plaintiffs to answer the interrogatories. Department 28 had scheduled conference hearings to resolve the discovery issues. However, the conference hearings were not held because the lawsuit was transferred to Judge Tanaka's Court to continue the lawsuit. Judge Tanaka, instead of scheduling conference hearings as in Department 28 to resolve the discovery issues, decided to hear the Defendants' MTC on multiple hearings dates. Each Plaintiff submitted written legal arguments to support their legal positions regarding the Defendants' vague and confusing interrogatories. At the hearings, Plaintiff, Hazel Alers, requested to the Trial Court that co-Plaintiff, Alejandro Alers, Jr, speak orally on behalf of Plaintiff, Hazel Alers both as (1) a co-party and (2) pursuant to their existing power of attorney agreement. Judge Tanaka denied both requests because Plaintiff, Alejandro Alers, Jr, was not a licensed attorney and could not legally practice law before the Trial Court. Alejandro Alers, Jr responded that he had the legal authority to speak orally on behalf of Plaintiff, Hazel Alers, pursuant to California Code of Civil Procedure section 378 under

permissive joinder, and under California Probate Code section 4459 as well as under the Uniform Statutory Form Power of Attorney Act, 4400 et seq, adopted by the California Legislature in 1995 which permitted attorneys-in-fact, pro se parties, to legally represent the principal in court. Judge Tanaka still denied the request and ordered Plaintiff, Hazel Alers, to orally represent herself in court. Hazel Alers did not orally represent herself. Hazel Alers, instead, decided to permit her legal written arguments to be her statements before the court. Judge Tanaka, on the Court's own motion, consequently, struck both her oral statements and written legal arguments as being non-responsive, and Judge Tanaka refused further to consider any of her legal written arguments in the Defendants' multiple MTC's, Defendants' MSJ and Defendants's demurrer to the Plaintiffs' SAC. The Court imposed monetary sanctions against the Plaintiffs for their failure to respond to the Defendants' vague and confusing interrogatories. Judge Tanaka's course of action in the MTC's hearings were completely discriminatory as compared to Department 28's course of action which included conference hearings as a method to resolve the discovery issues rather than monetary sanctions as a method to resolve the discovery issues.

The Court took judicial notice of an erroneous fact that the Plaintiffs failed to respond to the Defendants' interrogatories and RFAs when in actuality, the Plaintiffs failure to respond to the Defendants' interrogatories and RFA's was because the interrogatories and RFA's were vague and confusing and the Defendants' refusal to rephrase the interrogatories and RFA's. In addition, the Court gave too much legal weight as to the judicial notice. Judicial Notice of a governmental's action is not

presumptively truthful of factual matters. The Court may take the existence of a matter in judicial notice, however, the Courts may not take the truthfulness of the matter in judicial notice. There must be supportive evidence to support the truthfulness of the matter taken a judicial notice. *Mangini v. RJ Reynolds Tobacco Co.*, 7 Cal. 4th 1057, 1063 (1994).

The Court's monetary sanctions against the Plaintiffs led to the Defendants, Heath Care Partners Affiliates Medical Group, et al., to file a MSJ against the Plaintiffs. The Plaintiffs and Defendants submitted written legal arguments. However, the Court only considered the written legal arguments of the Defendants in the MSJ. The Court, on its motion, struck the Plaintiffs oral and written legal arguments. In addition, the Trial Court failed to follow a "de novo" form of review of the legal arguments and evidence when considering the MSJ.

The Defendants filed a demurrer motion to the Plaintiffs' SAC. All parties filed their written legal arguments in support of their position. The Trial Court accepted the Defendants' written legal arguments. However, the Trial Court refused to acknowledge the Plaintiffs' written legal arguments. The demurrer hearing was heard on April 28, 2022. At the hearing, the Trial Court stated that all of the Plaintiffs' causes of action were dismissed on December 9, 2021. The Trial Court failed to state that the Plaintiffs' SAC, the operative complaint, filed on November 23, 2021 had been modified to delete the Estate of Alejandro Alers, Sr. as a party. In addition, the Trial Court failed to state that the Plaintiffs had filed a declaration pursuant to California Code of Civil Procedure section 377.32(a) on January 19, 2021 which permitted the

Plaintiffs to commence this wrongful death and survival action against the Defendants. Appendix C. The Trial Court sustained the Defendants' demurrer without leave to amend the SAC. The Trial Court intervened and added negligence as a cause of action to the SAC without the consent of the Plaintiffs. The Trial Court, then, ruled that the negligence cause of action was barred by the one-year statute of limitation, California Code of Civil Procedure section 340.5. However, the Trial Court failed to consider the "delayed discovery rule" which the statute of limitations began to run on the date the medical records were released. *Fox v. Ethicon-Endo Surgery, Inc.*, *supra*, 35 Cal. 4th at page 807 (2005). In addition, the statute of limitations in a wrongful death cause of action in California is two years from the date of death. California Code of Civil Procedure section 335.1.

In addition, the Trial Court failed to make a final ruling as to Defendant, Ronald Lang, as well as Plaintiffs', Hazel Alers, individual, seventh cause of action of battery, which has a two year statute of limitations; causes of action twenty-two through twenty-four and Alejandro Alers, Jr's individual causes of action twenty five through twenty-seven.

The Trial Court then ordered multiple orders of dismissals which confused the Plaintiffs as to when the "one final judgment rule" had been issued by the Trial Court in the lawsuit which was necessary to begin the running of the time to file the notice of appeal. The Trial Court orders of dismissals were on April 28, 2022; May 27, 2022; May 31, 2022; June 23, 2022. Each order issued by the Trial Court substantively contradicted its previously dated order. The Trial Court also denied the Plaintiffs'

Motion for reconsideration on the Defendants', Health Care Partners Affiliates Medical Group, et al., MSJ on July 27, 2022. At the motion for reconsideration, the Trial Court stated that July 27, 2022 was the date that the "one final judgment rule" would apply and the time to file an appeal would begin on July 27, 2022. The Plaintiffs filed their notice of Appeal on August 5, 2022, within the 60 days requirement that notices of appeals had to be filed.

On appeal, the California Appellate Courts lacked subject matter jurisdiction to hear and rule on this case because the Trial Court failed issue a "one final judgment" as to all of the causes of action and parties in the lawsuit on April 28, 2022. *In re Baycol Cases I & II*, 51 Cal. 4th 751, 757 (2011); *Flanagan v. United States*, 465 US 259, 263 (1984).

On appeal, the Defendants filed motions to dismiss the appeal because the Plaintiffs allegedly had filed their notice of appeal untimely. The Court of Appeal ruled that the Plaintiffs had filed their notice of appeal untimely as to Defendants, Ronald Lang, MD; Seasons Hospice & Palliative Care of California LLC, et al.; Sara Kossuth, MD; and Olympia Medical Center.

On appeal, Defendant, Windsor Terrace Healthcare LLC, filed a petition for Chapter 11 Bankruptcy on August 23, 2023. Windsor Terrace Healthcare's Court of Appeal decision is still pending the decision of the Bankruptcy Court.

The California Court of Appeal issued its ruling affirming the Trial Court's decision in part on June 13, 2024. The Court of Appeal denied rehearing. The

California Supreme Court denied review on August 28, 2024.

FEDERAL LAW VIOLATIONS

I. FEDERAL JUDICIAL CANONS OF ETHICS, CANON #3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

At the status conference hearing, Judge Tanaka made disparaging statements regarding the lawsuit. Judge Tanaka's statements were: "I do not have the time to hear this case because I have 700 other cases on my calendar." "I drew the short-stick when assigned to this case. Some one in the assignment department does not like me." "You are not going to receive a large judgment from me. I do not give large judgments." At a later hearing, Judge Tanaka stated that before the hearing he had a conversation with Defense Counsel, Hoban of Health Care Partners Affiliates Medical Group, et al., outside of the presence of the Plaintiffs regarding that the Plaintiffs could not represent the Estate of Alejandro Alers, Sr because the Plaintiffs were not attorneys licensed to practice law. This issue was still under review by the Trial Court. At the hearing, the Trial Court agreed with Attorney Hoban and ruled that the Plaintiffs could not represent the Estate of Alejandro Alers, Sr. The Plaintiffs were ordered to hire an attorney to represent the Estate.

During the multiple discovery hearings, Plaintiff, Hazel Alers, submitted written legal arguments to support her positions. However, Plaintiff, Hazel Alers, was reluctant to orally respond to Judge Tanaka's questions

because of age, 87, intellectual disability (senior citizen forgetfulness) as to the judicial process and her fear of public speaking. Hazel Alers requested that her son speak on her behalf. Judge Tanaka denied the request because her son was not a licensed attorney, although the son was a co-plaintiff in the lawsuit as well as Hazel Alers' agent-in-fact in an existing power of attorney agreement. Judge Tanaka, on his own motion, struck all of her oral and written legal statements for the remainder of the lawsuit, which included all of the MTC's, the MSJ, and the demurrers on the SAC.

At the demurrer hearing held on April 28, 2022, regarding the SAC, Judge Tanaka failed to state that the Plaintiffs were the only remaining parties and that the Estate of Alejandro Alers, Sr had been deleted as a party as of November 23, 2021 when the SAC was filed. Also at the demurrer hearing, Judge Tanaka, on his own motion, wrongfully intervened in the lawsuit and alleged a cause of action of negligence on behalf of the Plaintiffs which was not alleged in the operative SAC. Judge Tanaka, then, used the negligence cause of action he wrongfully alleged to implement his ruling in favor of the Defendants against the Plaintiffs for violating the one year statute of limitations in a professional negligence lawsuit.

Wrongfully, Judge Tanaka minimized the importance of this wrongful death lawsuit. Judge Tanaka stated that his 700 other cases had a higher priority than this lawsuit. A wrongful death case should automatically have a high priority in any court. A wrongful death case, criminally, is the equivalent of a murder case which is given high priority in criminal court. Judge Tanaka's statement implied a preference in favor of the defense, rather than

being neutral in the administration of justice in this lawsuit. *Republican Party of Minn. v. White*, 536 U.S. 765, 775 (2002).

Lastly, Judge Tanaka and the California Court of Appeal deleted 90% of the material facts as stated in the SAC. In a state demurrer action, the material facts are assumed regardless of the plaintiff's ability to prove the facts. *Marina Pacific Hotel and Suites, LLC v. Fireman's Fund Insurance Company*, 81 Cal. App. 5th 96, 104-105 (2022).

Judge Tanaka violated the Federal Judicial Canon of Ethics, canon #3.

II. FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

The First Amendment of the United States Constitution guarantees every person the right to petition the government to seek the redress of grievances.

In a First Amendment claim, the plaintiff must prove: (1) the plaintiff was engaged in constitutionally protected activity; (2) the defendant's actions against the plaintiff would chill a person of ordinary firmness from continuing to engage in the protected activity; (3) the plaintiff's protected activity was a substantial or motivational factor in defendant's conduct.

Here, the Plaintiffs' were engaged in the constitutionally protected activity of seeking the redress of a grievance in a wrongful death lawsuit in trial court.

Judge Tanaka's ruling that the Plaintiffs hire an attorney and ultimate dismissal of the lawsuit rather than the Plaintiffs being permitted to continue the lawsuit as pro se litigants would chill a person of ordinary firmness from continuing to exercise their rights to petition the court for redress of grievances in the future.

The Plaintiffs' filing of the grievance in court as pro se litigants was a substantial factor in Judge Tanaka's ruling that demanded the Plaintiffs hire an attorney to represent the Estate of Alejandro Alers, Sr.

Judge Tanaka ruled at the demurrer hearing that the Plaintiffs must hire an attorney in order to continue their lawsuits against the Defendants. The Plaintiffs did not hire an attorney and their lawsuit was dismissed. In California, Pro Se parties may file a wrongful death lawsuit as successors in interest pursuant to California Code of Civil Procedures sections 377.60, 377.30 and 377.32(a).

III. FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

The Fourth Amendment of the United States Constitution secures the public from unreasonable searches and seizures by the government. A seizure is defined as a governmental termination of freedom of movement through means intentionally applied. *Brower v. County of Inyo*, 489 U.S. 593, 596-597 (1989).

Judge Tanaka ordered the Plaintiffs to hire an attorney. The Plaintiffs failed to hire an attorney, and

Judge Tanaka then intervened by terminating and dismissing the Plaintiffs' right to continue this lawsuit.

The Plaintiffs have a constitutional right of privacy as a family(surviving spouse and son) to decide how they want to petition the government for redress of grievances. The Plaintiffs may file their petition as pro se parties or with the assistance of counsel. The Plaintiffs' choice on how to file their redress of grievances is a private right not be intruded and wrongfully terminated upon by the government.

IV. AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against people with disabilities in every day life. The ADA guarantees that people with disabilities have the same opportunities as every one else to enjoy employment opportunities, purchase goods and services, and participate in state and local government programs. Title II, subtitle A applies to all services, programs and activities of state and local governments. California Courts fall within Title II, subtitle A.

42 U.S. Code section 12132 provided that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. *United States v. Georgia*, 546 U.S. 151, 153-154 (2006). The statute authorizes a private right of action for money damages against the state government for violating this statute.

42 U.S. Code section 12131(2) defined a qualified individual as an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by a public entity. The Act defines a public entity to include any State or local government.

Here, Plaintiff, Hazel Alers, was 87 years of age. As a senior citizen she did not understand all the complexities of the court system, as a result, she suffered an intellectual disability (forgetfulness) to adequately represent herself in court. In addition, Hazel Alers had a fear of public speaking. Hazel Alers, nevertheless, preferred to represent herself without the assistance of legal counsel. Hazel Alers personally appeared at each scheduled hearing by telephonic appearance. When Judge Tanaka asked Hazel Alers a question, she deferred to her son to answer the questions. Defense counsels objected, stating that Alejandro Alers, Jr, son and a party to the lawsuit, could not answer the questions on Hazel Alers' behalf because Alejandro Alers, Jr was not a licensed attorney. Alejandro Alers, Jr replied that he could respond on Hazel Alers' behalf orally based on two legal grounds. First legal ground was that Alejandro Alers, Jr was a party in the case, therefore, Alejandro Alers, Jr had legal standing to orally respond to protect his personal legal interest in the lawsuit because his legal interests was factually intertwined with Hazel Alers' legal interests. The second legal ground was that Alejandro Alers, Jr could orally respond on Hazel Alers' behalf in court based upon their existing power of attorney agreement.

In 1995, the California Legislature adopted the Uniform Statutory Form Power of Attorney Act, California Probate Code section 4400, et seq. Specifically, section 4459 of the Probate Code authorized the attorney-in-fact to represent the principal in any court.

Judge Tanaka disregarded the Probate Code sections, ordered the Plaintiffs to hire an attorney because Alejandro Alers, Jr's representation of Hazel Alers orally in court was an unauthorized practice of law.

Hazel Alers defined herself as a qualified individual under the ADA because with the assistance of her son in court, she could participate in the court services or hearings. Hazel Alers requested that Judge Tanaka make a reasonable accommodation in the rules which only permitted an attorney to represent a party in court. Hazel Alers requested that her son under the power of attorney agreement represent her orally in court rather than an attorney.

V. EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

The Equal Protection Clause of the Fourteenth Amendment protects plaintiffs who have been intentionally treated differently from others similarly situated, and there is no rational basis for the difference in treatment. The Equal Protection Clause of the Fourteenth Amendment also protects a "class of one" plaintiff. *Village of Willowbrook, et al. v. Olech*, 528 U.S. 562, 564 (2000). The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary

discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. *Village of Willowbrook, supra*, at page 564.

Judge Tanaka's refusal to allow a reasonable accommodation for Plaintiff, Hazel Alers, to permit her son and co-party, to represent her orally in court was an intentional and arbitrary discrimination. California Probate Code section 4459 expressly authorized attorneys-in-fact to represent principals in any court. In addition, Alejandro Alers, Jr was a co-party and had legal standing to speak orally on Hazel Alers' behalf to protect Alejandro Alers, Jr's legal interest in the lawsuit as both Plaintiffs' legal interests were intertwined. Plaintiffs, Hazel Alers and Alejandro Alers, Jr had a right to be treated equally as pro se parties similarly situated as parties represented by attorneys. *Nuno v. California State University, Bakersfield, et al., Case No. F077889, Court of Appeals, Fifth District, filed April 13, 2020; Gamet v. Blanchard*, 91 Cal. App. 4th 1276, 1283-1285 (2001).

VI. PROCEDURAL & SUBSTANTIVE DUE PROCESS

A. PROCEDURAL DUE PROCESS CLAIM

A Procedural Due Process claim requires (1) the deprivation by state action of a protected interest in life, liberty or property, and (2) the inadequate state process. *Reed v. Goertz*, 598 U.S. 230, 143 S. Ct. 955, 961 (2023).

Judge Tanaka denied Plaintiffs, Hazel Alers and Alejandro Alers, Jr the procedural due process right of

liberty to pursue their lawsuit as pro se litigants because the Plaintiffs were not licensed attorneys. Judge Tanaka denied the Plaintiffs their right to pursue their lawsuit even though the Plaintiffs were co-parties with legal standing, and there existed a power of attorney agreement pursuant to California Probate Code section 4459 which permitted pro se parties to pursue legal action in court without an attorney.

Judge Tanaka's denial process was inadequate because California law permitted co-parties to permissively join their legal action as long as there was a common question of law or fact. California Code of Civil Procedure section 378. Second, the Plaintiffs were permitted to bring their lawsuit pro se under California Probate Code section 4459 under a power of attorney agreement.

Also, Judge Tanaka's minute orders of April 28, 2022; May 27, 2022; May 31, 2022; June 23, 2022 and July 27, 2022 violated the procedural due process clause right of a liberty interest. The multiple orders violated California law that only "one final judgment rule" may be appealed. The Court of Appeal ruled that the Plaintiffs' notice of appeal filed on August 5, 2022 was not timely filed as the 60 day time limit was exceeded. The Court of Appeal ruled that the notice of appeal should have been filed by June 28, 2022. The Plaintiffs disagree. Judge Tanaka's multiple orders was confusing to the Plaintiffs as to when the one final judgment was issued by the Court. Was the one final judgment issued on April 28, 2022 or May 27, 2022 or May 31, 2022 or June 23, 2022 or July 27, 2022? In addition, the multiple orders substantively contradicted each other. Some orders were "dismissal without prejudice", then the Court revised the same order on another date claiming

clerical error, and make the previous order “dismissal with prejudice”. Such confusion by Judge Tanaka’s multiple orders confused the Plaintiffs as to the proper time to file the notice of appeal. In addition, Judge Tanaka orally stated at the reconsideration hearing held on July 27, 2022 that the July 27, 2022 hearing was the “one final judgment” regarding this lawsuit. Consequently, the state process of providing adequate notice as to when to file the timely notice of appeal was inadequate.

B. SUBSTANTIVE DUE PROCESS CLAIM

Substantive due process rights safeguard persons against the government’s exercise of power without any reasonable justification in the service of a legitimate governmental objective. The first step in substantive due process analysis is to identify the constitutional right at stake. Second, the plaintiff must show that the state action was egregious, so outrageous, that it may be said to shock the contemporary conscience. The interference with the plaintiff’s protected rights must be so shocking, arbitrary, and egregious that the Due Process Clause would not countenance it even were it accompanied by full procedural protection. *Hurd v. Fredenburgh*, 984 F.3d (2nd Cir.) 1075, 1087 (2020).

The constitutional right at stake in this substantive due process claim is the first amendment to the United States Constitution. Specifically, the right to petition the government to seek redress of grievances.

Judge Tanaka ordered that the Plaintiffs had to hire an attorney in order to continue the Plaintiffs’ lawsuit. The Plaintiffs were denied their basic right to represent

themselves pro se in court. Judge Tanaka dismissed their claims against the Defendants because the Plaintiffs failed to hire an attorney within the time specified in the motion with leave to amend. Judge Tanaka concluded that the Plaintiffs' pro se representation in the SAC was an unauthorized practice of law. In addition, Judge Tanaka, on his own motion, struck all of the oral and written legal arguments made by Plaintiffs in the Defendants's MTC's, MSJ and demurrer to the SAC because the Plaintiffs failed to hire an attorney.

The Plaintiffs had a legal right to pursue a pro se claim because the Plaintiffs had legal standing to commence a wrongful death and survival lawsuit pursuant to California Code of Civil Procedure sections 377.60, 377.30 and 377.32(a). The Plaintiffs were successors in interest and authorized by the statutes to commence the lawsuit. There was no unauthorized practice of law because the lawsuit was family oriented, surviving spouse and son, were the only parties. In addition, California legal precedents had permitted pro se parties to commence wrongful death and survival lawsuits. *Latimore v. Dickey*, 239 Cal. App. 4th 959, 961-962 (2015); *Quiroz v. Seventh Avenue Center*, 140 Cal. App. 4th 1256, 45 Cal. Repr. 3d 222, 228 (1983); *Kockelman v. Segal*, 61 Cal. App. 4th 491, 497 (1998); *Lamont v. Wolfe*, 142 Cal. App. 3d 775 (1983). Judge Tanaka's order which prevented the Plaintiffs from the commencement of a wrongful death and survival statute lawsuit was inconsistent with California legal precedents, as well as being egregious, shocking and arbitrary.

VII. STARE DECISIS

Stare Decisis is a legal doctrine which states that past court decisions should be followed by subsequent courts

regarding the same issues. The doctrine encourages the reduction in challenging settled precedents, saving parties and courts the expense of endless relitigation, and upholds the integrity of the judicial process. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 142 S. Ct. 2228, 2237 (2022).

Department 28 was the superior court initially assigned this lawsuit. Department 28 of the Superior Court had prior jurisdiction over this lawsuit before Judge Tanaka. Department 28 issued a minute order on March 18, 2021 which stated that this lawsuit was no longer a medical malpractice lawsuit because of the allegations alleged in the original complaint. Allegations alleged were medical battery, elder abuse, discrimination, intentional misrepresentation, concealment, patient dumping and punitive damages. The lawsuit was reassigned to Judge Tanaka. Judge Tanaka ruled on April 28, 2022 in favor of the Defendants based on professional negligence-medical malpractice and the statute of limitations of one-year pursuant to California Code of Civil Procedure section 340.5. Judge Tanaka ignored the minute order of Department 28 that this lawsuit was no longer a medical malpractice lawsuit. Judge Tanaka's ruling violated the principle of stare decisis. Judge Tanaka relitigated the issue of medical malpractice which was previously decided by Department 28.

VIII. TENTH AMENDMENT

The Tenth Amendment of the United States Constitution stated that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States or to the people.

Consequently, basic constitutional rights are reserved to the people. Such constitutional rights are the First Amendment-right to petition the government to seek redress of grievances; Fourth Amendment-right to be free from government intrusion and seizure; Equal Protection of the Fourteenth Amendment- all people are equal to receive protection under the laws.

First, Judge Tanaka required the Plaintiffs to hire an attorney to continue their lawsuit against the Defendants. The Plaintiffs preferred to proceed with their lawsuit as pro se litigants in the SAC. Judge Tanaka dismissed the Plaintiffs' lawsuit for failure to hire an attorney to represent the Estate of Alejandro Alers, Sr in the SAC, even though, the Estate of Alejandro Alers, Sr was deleted as a party in the SAC. The Plaintiffs' right to continue this lawsuit as pro se litigants are guaranteed basic rights under the First and Fourth Amendments, Equal Protection Clause of the Fourteenth Amendment and the Tenth Amendment.

Second, the California Court of Appeal and the California Supreme Court lacked subject matter jurisdiction to hear and rule on this lawsuit. The Appellate Courts can only obtain subject matter jurisdiction on appeal when the trial court issues a "one final judgment". *In re Baycol Cases I & II*, 51 Cal. 4th 751, 756 (2011).

Judge Tanaka issued multiple orders on April 28, 2022, May 27, 2022, May 31, 2022, June 23, 2022 and July 27, 2022. In addition, Judge Tanaka failed to issue rulings for Defendant, Ronald Lang, MD.; Plaintiff's, Hazel Alers, individual claims regarding seventh cause of action regarding battery, causes of action twenty-two

through twenty four; Co-Plaintiff's, Alejandro Alers, Jr, individual claims causes of action twenty-five through twenty-seven. Consequently, the California Court of Appeal and the California Supreme Court violated the Tenth Amendment when the two appellate courts issued rulings regarding this lawsuit.

REASONS FOR GRANTING THE PETITION

REASON #1

Judge Tanaka's administration of justice in this lawsuit was unfair to the Plaintiffs. Judge Tanaka had the responsibility to treat the Plaintiffs as pro se litigants with the same respect, impartiality, competence and diligence that Judge Tanaka would have given to represented parties. A judge should manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

REASON #2

Judge Tanaka dismissed the Plaintiffs' SAC on April 28, 2022, consequently, denying the Plaintiffs the right to seek redress of grievances against the Defendants. Access to justice is a fundamental and essential right in a democratic society. It is the responsibility of government to ensure that all people enjoy this right. The right of access to the courts is a principle grounded in Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, Fifth Amendment Due Process Clause and the Fourteenth Amendment Equal Protection Clause, and Due Process Clause.

REASON#3

Judge Tanaka issued multiple orders of dismissals on April 28, 2022, May 27, 2022, May 31, 2022, June 23, 2022 and July 27, 2022. The dismissals orders contradicted each other. The orders used language such as “dismissed with prejudice”, and in the same order, “dismissed without prejudice”. The use of such language was confusing to the Plaintiff as to when the “one final judgment rule” occurred. A judge’s responsibility is to ensure clear and understandable communication concerning proceedings. Judges must make sure that pro se parties are not misled by the court, court staff, or opposing counsel in communication that takes place before the court. The judge must ensure that verbal instructions, orders, and notices given by the court and staff to pro se parties are in clear and understandable language for lay persons, avoiding when possible, legal jargon.

REASON#4

The California Court of Appeal and the California Supreme Court issued appellate decisions regarding this lawsuit. However, the Appellate Courts lacked subject matter jurisdiction because Judge Tanaka failed to issue a “one final judgment” in this lawsuit. Judge Tanaka failed to issue a ruling regarding Defendant, Ronald Lang, MD.; Plaintiff, Hazel Alers, regarding her seventh cause of action of battery, and her causes of action twenty-two through twenty-four; Plaintiff, Alejandro Alers, Jr, causes of action twenty-five through twenty-seven. The theory behind the “one final judgment rule” is that piecemeal disposition and multiple appeals in a single action would be oppressive, costly and clog the courts with time consuming

appeals. The rule ensures a complete record for the reviewing court to permit the reviewing court to craft its directions to the trial court and reduce uncertainty and delay to the trial court.

REASON#5

Judge Tanaka issued an order that stated the Plaintiffs must hire an attorney to continue this lawsuit because Plaintiff, Alejandro Alers, Jr's representation of Plaintiff, Hazel Alers, in court under a power of attorney agreement between the Plaintiffs is an unauthorized practice of law. Judge Tanaka's order is inconsistent with California legal precedents.

First, the California legislature in 1995 adopted the Uniform Statutory Form Power of Attorney Act, California Probate Code section 4400, et seq. Specifically, Probate Code section 4459 authorized the attorney-in-fact to represent the principle in any court.

Second, pro se parties may represent themselves and their own interests without state bar membership. *Birbower, Montalbano, Condon & Frank, et al. v. Superior Court*, 17 Cal. 4th 119, 127 (1998). The Plaintiffs were family members who filed this private wrongful death and survival statute lawsuit to recover damages for the death of Alejandro Alers, Sr pursuant to California Code of Civil Procedure sections 377.60, 377.30 and 377.32(a). The Plaintiffs did not hold themselves out to the public as practicing law for the benefit of the public. California law regarding the unauthorized practice of law is unclear. The United States Supreme Court should resolve the conflict between (1) what is an unauthorized practice of law, (2)

California Legislature's grant of authority to attorneys-in-fact to represent a principal under section 4459 of the California Probate Code, and (3) the extent that pro se parties may represent themselves as co-parties under the rules of permissive joinder, California Code of Civil Procedure section 378.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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