

**APPENDIX A — CALIFORNIA SUPREME COURT
DENIAL OF REVIEW ON AUGUST 28, 2024**

Appellate Courts Case Information

Supreme Court

Disposition

ALERS v. KOSSUTH
Division SF
Case Number S286091

Only the following dispositions are displayed below:
Orders Denying Petitions, Orders Granting Rehearing
and Opinions. Go to the Docket Entries screen for
information regarding orders granting review.

Case Citation:
none

Date	Description
08/28/2024	Petition for review denied

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2a

Appendix A

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

B322634

(Los Angeles County Super. Ct. No. 20STCV36943)

HAZEL ALERS, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST, ETC. *et al.*,

Plaintiffs and Appellants,

v.

SARA R. KOSSUTH *et al.*,

Defendants and Respondents.

Filed: June 13, 2024

APPEAL from a judgment of the Superior Court of
Los Angeles County, Gary Y. Tanaka, Judge. Affirmed.

LEE, J.*; MOOR, Acting P. J., KIM, J. concurred.

Following the death of the 98-year-old Alejandro Alers,
Sr. (decedent), his wife, Hazel Alers, and son, Alejandro

* Judge of the San Bernardino County Superior Court,
assigned by the Chief Justice pursuant to article VI, section 6 of
the California Constitution.

Appendix A

Alers, Jr., brought suit against a number of individuals and entities involved in his care. The defendants all prevailed in pretrial motions and judgment was entered in their favor. Plaintiffs appealed. Previously, we granted multiple defendants' motion to dismiss the appeal as against them, on procedural grounds. In addition, while this action was pending, another defendant Windsor Terrace Healthcare Center filed a petition for bankruptcy, and the appeal is stayed as to that party. We now address plaintiffs' appeal as to the remaining defendants. Plaintiffs, who are proceeding in propria persona, have submitted briefs and an appellate record that are largely inadequate to enable review. To the limited extent their arguments are cognizable, they are meritless. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND***1. Underlying Facts***

We set forth the facts as alleged in the operative, second amended, complaint. We limit our factual discussion to a brief overview, with detailed attention paid to the allegations against the one defendant doctor who successfully demurred on the basis of failure to state a claim.

A. Treatment at the Hospital and Allegations Against Dr. Sara Kossuth

On March 23, 2019, decedent, then 97, was found by wife to be slumped over in a chair and non-responsive. Wife called 911 and decedent was rushed to Olympia

Appendix A

Medical Center (Hospital), where he was diagnosed as suffering from a heart attack and pneumonia. He was admitted to Hospital.

Plaintiffs allege decedent suffered malpractice at the Hospital, which ultimately led to his death. However, plaintiffs' appeal has been dismissed as to all Hospital-related defendants but one, Dr. Kossuth, whose involvement in his treatment was minimal.

During his hospitalization, nurses—on the orders of a different doctor—attempted to insert a urinary catheter in decedent. After several painful attempts, the catheter was inserted, only for decedent to rip it out. Nurses reinserted the catheter and the decedent remained in pain. He continued to pull at the catheter tube. Dr. Kossuth ordered that decedent be placed in hand restraints to prevent him from pulling at the tube.

Dr. Kossuth also called a urologist to consult. That urologist concluded the catheter had been inserted incorrectly. He removed it, and ultimately successfully placed a different type of catheter. Following this process, Dr. Kossuth made a comment which, according to plaintiffs, implied that all of decedent's pain was attributable to his act of pulling out the catheter—intentionally concealing that the catheter had, in fact, been incorrectly placed by the nurses.

Plaintiffs' allegations against Dr. Kossuth in the operative complaint are limited to her ordering hand restraints and her comment allegedly placing blame on decedent for his catheter-related pain.

*Appendix A***B. Treatment at the Skilled Nursing Facility and Allegations Against HealthCare Partners**

Decedent's health problems were in no way limited to urinary ones, although plaintiffs allege the improper catheter placement was causal. Decedent had stopped eating and drinking; wife and son requested placement of a gastrostomy tube, which was successfully performed. After decedent's condition had stabilized, he was transferred to Windsor Terrace Healthcare Center (Skilled Nursing Facility), which is a contracted facility of HealthCare Partners Affiliated Medical Group. Skilled Nursing Facility is presently in bankruptcy; we have stayed the appeal against it. (11 U.S.C. § 362.) Plaintiffs' appeal is still pending against HealthCare Partners and a number of individuals associated with HealthCare Partners—Dr. N. Isabel Kiefer, Dr. Hagop Sarkissian, nurse practitioner Mary Jean Lockard, and social worker Kelly Winer. As these five defendants and respondents presented a unified defense at trial and on appeal, we use "HealthCare Partners" to refer to them collectively.

The specific factual allegations against HealthCare Partners are unnecessary to the resolution of this appeal. Broadly speaking, plaintiffs allege that HealthCare Partners forced them to agree to transfer decedent to Skilled Nursing Facility; and then, once he was there, promised to transfer him home with 24-hour nursing care and all necessary rehabilitation resources, when instead they dumped him into home hospice care with palliative treatment only.

*Appendix A***C. Home Hospice Care and Death**

When decedent was discharged from Skilled Nursing Facility, his care was transferred to Seasons Hospice & Palliative Care of California (Hospice). Plaintiffs' appeal of the judgment in favor of Hospice and individuals associated with it has been dismissed; decedent's treatment by Hospice is therefore not at issue in this appeal. In sum, plaintiffs alleged that, despite what they had been promised, Hospice provided only routine palliative care, and decedent died within a week. Decedent died on April 30, 2019.

2. *Commencement of the Action*

On September 28, 2020, plaintiffs, representing themselves, filed their complaint, alleging some 23 causes of action against myriad defendants. There were three purported plaintiffs: wife, son, and decedent's estate. This would ultimately give rise to the legal issue of whether the estate could proceed in propria persona.

On January 19, 2021, plaintiffs filed their first amended complaint, which was brought by the same three plaintiffs, including the estate, and now alleged 24 causes of action. Plaintiffs' first amended complaint was accompanied by a declaration of son "in support of admission into evidence of the plaintiffs' exhibits," and a stack of exhibits (which mostly, but not exclusively, consisted of decedent's medical records).¹

1. The record is not clear as to the official status of these exhibits. Although they were submitted along with the first

*Appendix A***3. Dismissal of the Estate's Action**

On February 11, 2021, HealthCare Partners demurred to the first amended complaint on the basis that all causes of action alleged against it were alleged by decedent's estate, which could not proceed against it in *propria persona*.² Plaintiffs opposed the demurrer, and subsequently filed a supplemental opposition.

On November 5, 2021, the trial court sustained the demurrer with leave to amend, concluding that the estate could not, in fact, proceed in *propria persona*.³ The court set the matter for an order to show cause regarding the status of representation of the estate.

On November 23, 2021, plaintiffs filed their operative, second amended complaint. Nominally, plaintiffs had

amended complaint, they were not technically exhibits to it; it therefore does not appear that they were impacted when the first amended complaint was later superseded by the second amended complaint. But taken as an independent filing, the exhibits were not submitted in connection with any hearing; son provided a declaration in support of admitting them into evidence, but there was no trial where evidence was taken, and there is no indication that the court ever ruled on their admissibility. Under the circumstances, we think it best to treat the exhibits as simply lodged with the trial court.

2. Plaintiffs have not chosen to include the points and authorities in support of the demurrer in their record on appeal.

3. The record on appeal contains the trial court's tentative ruling, not the court's final ruling. However, it is clear from later events that the court adopted its tentative.

Appendix A

removed the estate as a plaintiff. Factually, however, they had not. Instead of purporting to allege causes of action on behalf of the estate, wife simply alleged those same causes of action “as surviving spouse” of decedent, under statutes providing for survival of a cause of action. (E.g., Code Civ. Proc., § 377.30.)

On December 9, 2021, the court held a hearing on the order to show cause regarding representation of the estate. By this time, there was still no attorney representing the estate, and the court ordered the estate dismissed without prejudice. On December 9, 2021, the court signed a form order of dismissal without prejudice of the estate’s complaint. The next day, the court signed a counsel-prepared order, specifically dismissing (by number), each cause of action in the second amended complaint brought by the estate—or, more accurately, each cause of action brought by wife as decedent’s surviving spouse. HealthCare Partners served notice of entry of the order of dismissal on December 16, 2021.

While this order disposed of all of the causes of action alleged by the estate, it did not resolve the entirety of the action against HealthCare Partners. The second amended complaint had added a cause of action for wrongful death, pursued by wife on her own behalf.

Following the filing of the second amended complaint and the dismissal of the estate, both Dr. Kossuth and HealthCare Partners ultimately obtained judgment. Although the relevant proceedings overlapped chronologically, we discuss the defendants separately.

*Appendix A***4. *Dr. Kossuth Ultimately Prevails on Demurrer***

Dr. Kossuth had not been successfully served with plaintiffs' first amended complaint. She was not served until February 4, 2022, after the second amended complaint had been filed.

Dr. Kossuth was named in three causes of action in the second amended complaint: two causes of action brought by wife as surviving spouse (intentional misrepresentation and concealment) and wrongful death brought by wife herself.

On March 24, 2022, Dr. Kossuth demurred to the complaint on the basis that it failed to state facts sufficient to state a cause of action against her. As to the causes of action brought by wife as surviving spouse, Dr. Kossuth argued that they had already been dismissed. As to the wrongful death cause of action, Dr. Kossuth argued that the allegations of the complaint did not actually allege any tortious act or omission on the part of Dr. Kossuth that caused decedent's death.⁴

The court found the demurrer was moot as to the two survival causes of action, as they had already been

4. Factually, this was correct. The wrongful death cause of action alleged decedent's death was caused by another doctor's order for catheter placement and the nurses' improper insertion of it. Even considering previous allegations incorporated by references, plaintiffs allege only that Dr. Kossuth ordered hand restraints; they do not allege that the hand restraints caused death.

Appendix A

dismissed. As to the wrongful death cause of action, the court sustained the demurrer with 20 days leave to amend.⁵ Plaintiffs did not amend during that time and, on Dr. Kossuth's ex parte motion, the court dismissed the action against her. Judgment was entered in Dr. Kossuth's favor on July 11, 2022. Plaintiffs filed their notice of appeal on August 5, 2022.

5. *HealthCare Partners Ultimately Prevails on Summary Judgment*

A. Deemed Admitted Order

HealthCare Partners had submitted requests for admission to wife. Wife did not answer those requests for admission. HealthCare Partners moved to deem the matters admitted.⁶ Wife's response to this critical motion

5. The court ruled on Dr. Kossuth's demurrer at the same time as demurrers brought by Hospital and Hospice. At least one of those defendants successfully relied on the statute of limitations as a defense. Although Dr. Kossuth had not raised the statute of limitations in her demurrer, the court offered it as an additional basis for sustaining her demurrer to the wrongful death cause of action. In her respondent's brief on appeal, Dr. Kossuth does not rely on the statute of limitations, and we therefore do not address it.

6. Although plaintiffs have included in the record on appeal some discovery-related documents, most of those documents do not relate to HealthCare Partners' motion to deem admitted their unanswered requests for admission to wife. Plaintiffs have included in the appellate record wife's opposition to that motion; but not the motion, the discovery request itself, or, in fact, the court's ruling on the motion.

Appendix A

consisted of a single page of argument plus another page of conclusion. She argued that: (1) the “definitions” section of the requests for admission referred to legal theories, but failed to define them in layperson’s terms; (2) the requests for admission were “not related to any facts as alleged” in the operative complaint; and (3) the requests for admission improperly sought admissions related to legal theories, not facts.⁷

In December 2021, the trial court ordered the matters deemed admitted, on the basis that wife had failed to serve timely responses to the requests.⁸

B. Summary Judgment

The deemed-admitted order was devastating to wife’s remaining wrongful death cause of action against HealthCare Partners. HealthCare Partners obtained summary judgment on the basis that, as part of that order, wife was deemed to have admitted that the care and treatment HealthCare Partners rendered was at all

7. Here, wife quoted a single request for admission: “Admit that these requesting Defendants did not commit PHYSICAL ABUSE on decedent.” She argued that physical abuse is a legal theory, not a fact. As the requests for admission are not part of the record on appeal, we do not know how the capitalized phrase “PHYSICAL ABUSE” was defined by HealthCare Partners for the purpose of the requests for admission.

8. We know this ruling from the court’s tentative, which wife subsequently attached as an exhibit to a later motion, as well as other filings referring to it.

Appendix A

times appropriate and that no act or omission on their part had caused decedent's death.⁹

Summary judgment was granted in favor of HealthCare Partners on April 1, 2022. Wife immediately moved for reconsideration, on the basis that her answers to HealthCare Partners' *interrogatories* raised a triable issue of fact.¹⁰ The court entered judgment for HealthCare Partners on May 31, 2022. On July 27, 2022, the court denied reconsideration on the basis that it lacked jurisdiction, but indicated that the reconsideration motion would not have changed the result. As noted above, plaintiffs filed their notice of appeal on August 5, 2022.

6. *Briefing on Appeal*

As we have discussed, Hospital and Hospice have been dismissed from the appeal (and the appeal has been stayed as to Skilled Nursing Facility). However, the dismissals and stay did not occur until after plaintiffs, still

9. The appellate record provided by plaintiffs contains neither the motion for summary judgment nor any of the briefing on it. Plaintiffs limit their record to the trial court's tentative order granting the motion. (Although the respondents' appendix submitted by HealthCare Partners contains, as an exhibit to another document, the motion for summary judgment itself, it does not include the supporting documents or points and authorities.)

10. Wife's answers to the interrogatories were quite superficial, and simply referred to the allegations of the complaint and the exhibits lodged by son.

Appendix A

proceeding without counsel, had filed their opening brief.¹¹ That brief does not separate out arguments by defendant, and instead takes a holistic approach to showing error, mainly arguing that (1) the allegations of the complaint and lodged exhibits support claims for relief; and (2) the trial court exhibited bias and unfairness against them. Only in the course of these arguments and in their conclusion do they argue the court erred in the key rulings at issue in the appeal: (3) the demurrer ruling barring the estate from litigating in propria persona; (4) the dismissal in favor of Dr. Kossuth; (5) the order deeming admitted HealthCare Partners' requests for admission against wife (erroneously described as the court "order[ing] judicial notice" of the requests); and (6) the grant of HealthCare Partners' motion for summary judgment.

After Dr. Kossuth and HealthCare Partners filed their respective respondent's briefs focusing on the dispositive rulings, plaintiffs filed a reply. The reply brief, however,

11. At no point before the trial court or on appeal did son argue that he was proceeding as anything but a propria persona litigant. However, the proofs of service plaintiffs submitted with their appellate briefs indicate service was made by son, with the state bar No. 240532, of the "Law Office of Alex Alers." We take judicial notice of the information on the California State Bar's website pertaining that bar number. Those records indicate that son was, at one time, licensed to practice law. He was ordered inactive prior to the filing of the complaint in this matter, and was disbarred shortly thereafter, on October 31, 2020. <<https://apps.calbar.ca.gov/attorney/Licensee/Detail/240532>> [as of June 11, 2024] archived at <<https://perma.cc/YBU9-SYQK>>. We caution son against further representations that he is licensed to practice, whether intentional or inadvertent.

Appendix A

does not address the merits. Instead, plaintiffs have used their reply brief to: (7) seek reconsideration of our order dismissing their appeal as to Hospital and Hospice; (8) contend that no timely respondent's briefs were actually filed; and (9) argue that Skilled Nursing Facility's bankruptcy filing constituted an admission of the merits of this action which should result in an immediate judgment against Skilled Nursing Facility (and, through conspiracy allegations, also be binding against Health Care Partners). This final argument prompted Skilled Nursing Facility to file a motion to strike the reply brief and request for sanctions, for violating the automatic bankruptcy stay. We decline to impose sanctions but disregard this improper argument.

DISCUSSION***1. Plaintiffs' Argument as to the Merits of their Complaint Is Irrelevant***

The majority of plaintiffs' opening brief is devoted to a rehash of the allegations of their complaint and an argument that, factually, they have made sufficient allegations to support each cause of action alleged.

But, with the exception of the order sustaining Dr. Kossuth's demurrer to wife's wrongful death cause of action, which we discuss below, none of the rulings at issue on this appeal implicate the sufficiency of plaintiffs' allegations. This argument is therefore irrelevant.

*Appendix A***2. *Plaintiffs' Argument as to Judicial Bias Is Unsupported by the Record***

“[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on the appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] [Citation.] ‘This means that an appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim. The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record.’” (*L.O. v. Kilrain* (2023) 96 Cal.App.5th 616, 619-620, 314 Cal. Rptr. 3d 470.) If a party fails to support an argument with necessary citations to the record, the argument is deemed to have been waived. (*Id.* at p. 620.) This rule applies equally to parties represented by counsel and self-represented parties. (*Ibid.*)

In plaintiffs’ brief, they argue that the trial court was biased against them, based on any number of statements the trial court allegedly made.¹² There is no citation to the

12. For example, plaintiffs represent that the trial judge “stated at the multiple discovery hearings that he had over 700 cases before his Court. He did not have the time to read nor consider the Plaintiffs’ opposition papers. He was going to make his decision regarding the Discovery issues based solely upon the arguments of the Defendants. If the Defendants’ arguments made logical sense, he planned to rule in the Defendant’s favor and levy sanctions against the Plaintiffs for failure to answer the

Appendix A

record for any of these statements and our review of the record reveals no evidence of them. With no evidence to support this argument, it is considered waived.

3. *The Estate Could Not Proceed In Propria Persona*

The vast bulk of the causes of action in plaintiffs' first amended complaint were not brought directly by wife and/or son, but were pursued on behalf of the estate. When the trial court concluded that plaintiffs could not litigate in propria persona on behalf of the estate, plaintiffs amended their complaint to reassert the same causes of action, but replace the estate plaintiff with wife as decedent's "surviving spouse." The trial court concluded this recharacterization made no difference, and dismissed those causes of action pursuant to its prior order.

The court's initial ruling, that plaintiffs could not represent the estate in propria persona, was correct. "[A] conservator, executor, or personal representative of a decedent's estate who is unlicensed to practice law cannot appear in propria persona on behalf of the estate in matters outside the probate proceedings." (*Hansen v. Hansen* (2003) 114 Cal.App.4th 618, 619, 7 Cal. Rptr. 3d 688.) While unlicensed individuals can represent their own interests in legal proceedings, they cannot represent the interests of others. (*Id.* at p. 621.)

Defendant's interrogatories, also including but not limited to, the Court's finding of judicial notice of admissions of facts against the Plaintiffs."

Appendix A

The question next raised is whether wife could avoid this prohibition by recasting the claims by the estate as claims brought by “herself as the surviving spouse of the [e]state” and by invoking the statutes governing survival of causes of action. She cannot. Preliminarily, she has not alleged a sufficient basis to pursue the causes of action under the survival statute. Code of Civil Procedure section 377.30 provides, “A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent’s successor in interest [subject to identified sections of the Probate Code] and an action may be commenced by the decedent’s personal representative or, if none, by the decedent’s successor in interest.”¹³ A “surviving spouse” is not necessarily a successor in interest nor a personal representative of the estate—she may be either, both, or neither. Moreover, the survival doctrine alone cannot solve plaintiffs’ representation problem. If wife is purporting to pursue these causes of action as the personal representative of the estate, rather than for herself as a sole successor in interest, she would still be representing others’ interests, and be barred from proceeding in *propria persona*.

In short, plaintiffs’ amendment of their pleading did not resolve the issue that they could not pursue causes of

13. Code of Civil Procedure section 377.32 requires that a person who seeks to pursue a survival action under these provisions, “shall execute and file an affidavit or a declaration under penalty of perjury” setting forth the factual basis for their right to pursue the action. There is no evidence in the record that wife complied with this provision.

Appendix A

action on behalf of the estate in propria persona, and the court did not err in dismissing those claims.

4. *Wife Has Not Established Error in the Dismissal of Dr. Kossuth*

The discussion portion of plaintiffs' brief does not contain any express arguments against the dismissal in favor of Dr. Kossuth; instead, those arguments are briefly made in the conclusion section of their brief.¹⁴ These arguments violate the Rules of Court, which require briefs to state each point under a separate heading and support it by argument and, if possible, citation to authority. (Cal. Rules of Court, rule 8.204(a)(1)(B).) We consider these arguments as forfeited and decline to consider them. (*People v. Lombardo* (2020) 54 Cal.App.5th 553, 565, fn. 6, 269 Cal. Rptr. 3d 62.)

5. *Wife Has Not Established Error in the Order Deeming Matters Admitted*

Wife suggests the trial court erred in granting HealthCare Partners' motion to deem admitted its

14. Specifically, plaintiffs raise a new issue, suggesting—contrary to their representation in the case management statement—that Dr. Kossuth was properly served with the first amended complaint and plaintiffs were therefore entitled to default judgment against her. Following that argument, plaintiffs' reply brief simply states, with no argument or citation to authority, "Plaintiffs have stated sufficient facts in the [second amended complaint] to constitute a valid cause of action, or in the alternative, the Plaintiffs should be permitted to amend the [second amended complaint]." But plaintiffs were, in fact, granted leave to amend as to Dr. Kossuth, but failed to do so.

Appendix A

requests for admission. The record wife submitted on appeal does not contain the requests for admission themselves or HealthCare Partners' motion to deem them admitted; wife's record on this issue consists only of her opposition to the motion.

"It is the appellant's affirmative duty to show error by an adequate record. [Citation.] 'A necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.'" (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435, 25 Cal. Rptr. 3d 379.) Wife has failed in her duty to provide an adequate record, and has defaulted in her burden to establish error.

In any event, Code of Civil Procedure section 2033.280 provides that if a party fails to timely respond to requests for admission, the requesting party may move for an order that the truth of the matters be deemed admitted. "The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance" with statutory requirements. (§ 2033.280, subd. (c).) Even on the limited appellate record wife provided, there is no indication that she ever served a proposed response to the requests for admission. The court's order deeming the matters admitted was therefore mandatory.

*Appendix A***6. *Wife Has Not Established Error in the Grant of Summary Judgment in Favor of HealthCare Partners***

Following dismissal of the causes of action wife purported to pursue on behalf of the estate, her only cause of action against HealthCare Partners was for wrongful death. The court granted summary judgment on this cause of action based on the requests for admission it had deemed admitted against wife.

On appeal, wife contends this ruling was error. On appeal, we review a summary judgment ruling de novo. (*Jackson v. Lara* (2024) 100 Cal.App.5th 337, 343, 319 Cal. Rptr. 3d 34.) In practical effect, we assume the role of the trial court and apply the same rules and standards governing the trial court's resolution of the motion. (*Ibid.*)

Again, we conclude the appellate record provided is inadequate for this review. Wife provided only the trial court's tentative ruling granting the motion—a document that is irrelevant to our de novo review. Even with the motion itself having been provided by HealthCare Partners, our record still lacks all supporting documents, points and authorities, and briefing on the motion. We cannot review what we do not have.

That said, even on the skeletal summary judgment record we have, it is apparent that the trial court did not err. “[A] deemed admitted order establishes, by judicial fiat, that a nonresponding party has responded to the requests by admitting the truth of all matters contained therein.” [Citation.] Any matter deemed to have

Appendix A

been admitted ‘is conclusively established against the party making the admission’. . . .” (*Inzunza v. Naranjo* (2023) 94 Cal.App.5th 736, 742, 312 Cal. Rptr. 3d 596.) It was thus conclusively established that the care and treatment HealthCare Partners rendered was at all times appropriate and that no act or omission on their part caused decedent’s death. This justifies judgment against wife on her wrongful death cause of action against HealthCare Partners.

7. *Plaintiffs’ Challenge to the Dismissal of Hospital and Hospice Is Untimely*

In their reply brief on appeal, plaintiffs argue that the previous order dismissing their appeal against Hospital and Hospice should be vacated. It is too late to raise that argument. The motions to dismiss of Hospital and Hospice were granted on August 28, 2023. A partial remittitur, indicating the order of dismissal had become final, issued November 6, 2023. Three months later, when we no longer have jurisdiction over the action against Hospital and Hospice, plaintiffs attempt to seek reconsideration of the dismissal. That portion of this matter is simply no longer before us.

8. *Plaintiffs’ Suggestion That No Timely Respondents’ Briefs Were Filed Is Belied by the Record*

Finally, plaintiffs argue that neither Dr. Kossuth nor HealthCare Partners filed a timely respondent’s brief. They argue that this is so “according to the Court Clerk of Division Five,” but provide no evidence supporting this assertion.

Appendix A

Our record contradicts plaintiffs' assertion. Their opening brief was filed on March 21, 2023. Respondents were therefore required to file their briefs within 30 days, unless an extension was granted by stipulation or the presiding justice. (Cal. Rules of Court, rule 8.212.) On April 20, 2023, the 30th day, the presiding justice granted Dr. Kossuth an extension to June 20, 2023. She timely filed her respondent's brief on June 13, 2023. HealthCare Partners' extension path was more convoluted, but no less valid. If a party fails to timely file a respondent's brief, the clerk must notify the party and grant an additional 15 days, before any sanction may follow. (Cal. Rules of Court, rule 8.220(a).) At no point did such a notice issue to HealthCare Partners, nor did plaintiffs ever move to strike HealthCare Partners' brief as untimely filed. Their decision to disregard the brief, based solely on their independent belief that it was untimely, is made at their peril.

DISPOSITION

The judgment of dismissal in favor of Dr. Kossuth and the summary judgment in favor of HealthCare Partners are affirmed. Plaintiffs shall pay Dr. Kossuth's and HealthCare Partners' costs on appeal.

/s/ Lee
LEE, J.*

* Judge of the San Bernardino County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

23a

Appendix A

WE CONCUR:

/s/ Moor
MOOR, Acting P. J.

/s/ Kim
KIM, J.

24a

**APPENDIX B — OPINION OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT, DIVISION 5,
FILED JULY 3, 2024**

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 5

B322634

Los Angeles County Super. Ct. No. 20STCV36943

HAZEL ALERS, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST, ETC. *et al.*,

Plaintiffs and Appellants,

v.

SARA KOSSUTH *et al.*,

Defendants and Respondents.

Filed: July 3, 2024

THE COURT:

Appellants' petition for rehearing is denied.

<u>/s/ Moor</u>	<u>/s/ Kim</u>	<u>/s/ Lee</u>
MOOR, Acting P.J.	KIM, J.	LEE, J.*

* Judge of the San Bernardino County Superior Court,
assigned by the Chief Justice pursuant to article VI, section 6 of
the California Constitution.

**APPENDIX C — OPINION OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT, DIVISION 5,
FILED OCTOBER 5, 2023**

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 5

B322634

Los Angeles County Super. Ct. No. 20STCV36943

HAZEL ALERS, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST, ETC. *et al.*,

Plaintiffs and Appellants,

v.

SARA KOSSUTH *et al.*,

Defendants and Respondents.

Filed: October 5, 2023

THE COURT:

The court has received the Notice of Pendency of Bankruptcy and Automatic Stay of Proceeding from Windsor Terrace Healthcare, LLC, (“Windsor Terrace”) dated September 7, 2023. The appeal as to Windsor Terrace is stayed pending further order of this court. Counsel for Windsor Terrace is ordered to file with this court, on or before December 4, 2023, a status report on the bankruptcy proceeding including any operative stay order from the Bankruptcy Court.

/s/ Lee
Presiding Justice

Concurrred by Justices Moore, Acting P.J., and Justice Kim.

26a

**APPENDIX D — ORDER OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT, DIVISION FIVE,
FILED AUGUST 28, 2023**

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

B322634

Los Angeles County Super. Ct. No. 20STCV36943

ESTATE OF ALEJANDRO ALERS, SR, *et al.*,

Plaintiffs and Appellants,

v.

SEASONS HOSPICE & PALLIATIVE CARE
OF CALIFORNIA, LLC, *et al.*,

Defendants and Respondents.

Filed: August 28, 2023

ORDER RE MOTIONS TO DISMISS

BY THE COURT:*

This order addresses the four motions to dismiss
pending before the court in this appeal.

*Appendix D***1. *HealthCare Partners Affiliates Medical Group et al.***

Respondents HealthCare Partners Affiliates Medical Group; Mary Jean Lockard, N.P.; N. Isabel Kiefer, M.D.; Hagop Sarkissian, M.D.; and Kelly Winer, S.W. (collectively, HealthCare) filed a motion to dismiss on June 15, 2023. Appellants filed an opposition on June 22, 2023. HealthCare filed a reply on June 23, 2023.

HealthCare asserts judgment was first entered in this case on April 1, 2022, when the trial court filed an unsigned document titled “proposed judgment.” As the notice of appeal was not filed until August 5, 2022, HealthCare contends it was untimely. We disagree. On May 31, 2022, the trial court entered an “amended” judgment that included an award of costs. The “amended” judgment was signed by the trial court. Because the earlier “proposed judgment” lacks a judge’s signature, we conclude the “amended” judgment is the first and only judgment entered in HealthCare’s favor. As HealthCare points to no notice of entry of this judgment, appellants had 180 days in which to file their notice of appeal. (Cal. Rules of Court, rule 8.104(a)(1)(C).) The August 5, 2022, notice of appeal filed within 66 days of May 31, 2022, was, therefore, timely.

HealthCare next argues the notice of appeal is insufficient because it does not identify either April 1, 2022, or May 31, 2022, as the date of the judgment being appealed. Appellants checked the box on the notice of appeal indicating they were appealing a judgment following the grant of summary judgment. They identified

Appendix D

July 27, 2022, the date on which the trial court denied reconsideration of that summary judgment, as the date of the order or judgment being appealed. This was sufficient. (Cal. Rules of Court, rule 8.100(a)(2) [“The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular order or judgment being appealed.”].)

MOTION TO DISMISS DENIED**2. *Olympia Medical Center***

Olympia Medical Center (Olympia) filed a motion to dismiss on June 15, 2023. Appellants did not file an opposition. (See Cal. Rules of Court, rule 8.54(c) [“A failure to oppose a motion may be deemed a consent to the granting of the motion.”].) Olympia nevertheless filed a reply on June 26, 2023.

Olympia argues the notice of appeal—only one notice of appeal was filed as to all respondents—does not identify any judgment or order in Olympia’s favor. July 27, 2022, was the sole date on the notice of appeal—but the July 27, 2022, order only concerned HealthCare. Although appellants checked the box on the notice of appeal that indicated they were appealing from a “judgment of dismissal after an order sustaining a demurrer,” which theoretically applied to Olympia, the checking of that box also applied to most of the other defendants. It did not identify any dismissal based on Olympia’s demurrer. Finally, the civil case information statement, to which appellants attached orders and judgments in favor of

Appendix D

other defendants, did not include the order sustaining Olympia's demurrer or a dismissal based on Olympia's demurrer. As such, we conclude the notice of appeal did not sufficiently identify "the particular order or judgment being appealed" and did not give proper notice to Olympia. (Cal. Rules of Court, rule 8.100(a)(2).)

MOTION TO DISMISS GRANTED**3. *Seasons Hospice & Palliative Care of California et al.***

Seasons Hospice & Palliative Care of California, LLC; Arman Ahangarzadeh, LVN; Gary Zimny, RN; Thomas Carmody; Philip Rohrbacher, RN; and Pejman Naghdechi, MD. (collectively, Seasons) filed a motion to dismiss on April 20, 2023. Appellants filed an opposition on May 1, 2023. Seasons did not file a separate reply brief.

On May 31, 2022, the trial court signed an order of dismissal in favor of Seasons, which the clerk served by mail, with a certificate of mailing. Because the notice of appeal was filed on August 5, 2022, more than 60 days later, it is untimely. (Cal. Rules of Court, rule 8.104(a)(1)(A).) Although plaintiffs contend the July 27, 2022, order denying reconsideration of HealthCare's summary judgment was also a denial of appellants' motion to set aside the summary judgment in favor of Seasons, we disagree. It is clear from the minute order for July 27, 2022, that the only matter the court heard and decided that day related to HealthCare; the court's reference to a motion to set aside appears to have been a calendaring error.

Appendix D

MOTION TO DISMISS GRANTED

4. *Ronald Lang, M.D.*

Ronald Lang filed a motion to dismiss on May 18, 2023. Appellants did not file an opposition.

Lang contends there is no judgment or appealable order in his favor, and thus, no basis for appellants' appeal. As it appears Lang has never appeared in this case, we agree there is no appealable order.

MOTION TO DISMISS GRANTED

All respondents that have not filed briefs and that have not been dismissed by this order shall file a Respondent's Brief within 30 days of this order. Appellants may file a combined Reply Brief as to all non-dismissed respondents within 30 days of the last filed Respondent's Brief.

<u>/s/ Rubin</u>	<u>/s/ Moor</u>	<u>/s/ Kim</u>
*RUBIN, P. J.	MOOR, J.	KIM, J.

**APPENDIX E — ORDER OF DISMISSAL OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF LOS ANGELES, FILED DECEMBER 9, 2021**

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp Filed: December 9, 2021
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503	
PLAINTIFF(S): Estate of Alejandro Alers, Sr. et al	
DEFENDANT(S): OLYMPIA MEDICAL CENTER et al	
ORDER OF DISMISSAL	CASE NUMBER: 20STCV36943

On the motion of the Court, and

- ☐ pursuant to the provisions of section _____ of the
Civil Code of Procedures,
☐ pursuant to Local Policy and / or Local Rules,

it is hereby ordered that the within action is dismissed

- ☐ with prejudice as to
☐ entire action
☒ without prejudice as to
☐ complaint only
☐ cross complaint of _____
☒ other Estate of Alejandro Alers, Sr.

It is further ordered that _____
to recover costs as provided by law

32a

Appendix E

— in the sum of \$ _____
— per filing memorandum of costs (1033 CCP et. Seq.)

Dated: 12/09/2021

Gary Y. Tanaka

Gary Y. Tanaka /Judge
Judicial Officer

**APPENDIX F — ORDER OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF LOS
ANGELES, CIVIL DIVISION, FILED APRIL 28, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

Civil Division

Southwest District, Torrance Courthouse,
Department B

20STCV36943

April 28, 2022

ESTATE OF ALEJANDRO

3:55 PM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka CSR: None

Judicial Assistant: J. Ahn ERM: None

Courtroom Assistant: None Deputy Sheriff: None

NATURE OF PROCEEDINGS: Court Order Re:

1. Seasons Hospice and Palliative Care of California, LLC, Arman Ahangarzadeh, LVN, Gary Zimny, R.N., Thomas (Tom) Carmody, Philip Rohrbacher, R.N., and Pejman Naghdechi, M.D.'s (collectively "Seasons")

Demurrer to Second Amended Complaint

2. Seasons Hospice and Palliative Care of California, LLC, Arman Ahangarzadeh, LVN, Gary Zimny, R.N., Thomas (Tom) Carmody, Philip Rohrbacher, R.N., and Pejman Naghdechi, M.D.'s Motion to Strike Portions of Second Amended Complaint

3. Olympia Health Care, LLC dba Olympia Medical Center's ("Olympia") Demurrer to Second Amended Complaint

Appendix F

4. Olympia Health Care, LLC dba Olympia Medical Center's Motion to Strike Portions of Second Amended Complaint

5. Sara R. Kossuth, D.O.'s Demurrer to Second Amended Complaint

COURT RULING

Seasons' Demurrer to Second Amended Complaint is sustained without leave to amend.

Olympia's Demurrer to Second Amended Complaint is sustained without leave to amend.

Sara R. Kossuth, D.O.'s Demurrer to Second Amended Complaint is sustained with 20 days leave to amend, in part, and is moot, in part.

Defendants' Motions to Strike are deemed moot.

Background

Plaintiffs filed their Complaint on September 28, 2020. Plaintiffs' First Amended Complaint was submitted on January 19, 2021, but never officially filed. On August 24, 2021, the parties stipulated that the First Amended Complaint was deemed filed on January 19, 2021. Plaintiffs' operative Second Amended Complaint was filed on November 23, 2021. Plaintiffs allege numerous causes of action in relation to the death of Plaintiffs' decedent Alejandro Alers, Sr. The Plaintiffs in this action are the Estate of Alejandro Alers, Sr., Alejandro Alers, Jr., and Hazel Alers. Each of the Plaintiffs bring this action in pro

Appendix F

per. On December 9, 2021, all causes of action that were brought on behalf of the Estate of Alejandro Alers, Sr. were ordered dismissed.

Meet and Confer

Defendants Seasons set forth a meet and confer declaration in sufficient compliance with CCP § 430.41. (Decl., Brian T. Katoozi, ¶¶ 3-5.) Defendants Seasons did not submit a declaration in compliance with CCP § 435.5. However, in connection with the declaration submitted in compliance with CCP § 430.41, declarant attached a copy of the meet and confer correspondence as Exhibit 1, and the correspondence does demonstrate an attempt to meet and confer pursuant to CCP § 435.5.

Defendant Olympia set forth a meet and confer declaration in sufficient compliance with CCP §§ 430.41 and 435.5. (Decl., Laura G. Lopez, ¶¶ 2-3.)

Defendant Sara R. Kossuth, D.O. set forth a meet and confer declaration in sufficient compliance with CCP § 430.41. (Decl., David J. Masutani, ¶¶ 5-8.)

Request for Judicial Notice

Defendant Seasons' request for judicial notice is granted pursuant to Evidence Code section 452(d).

Demurrer

A demurrer tests the sufficiency of a complaint as a matter of law and raises only questions of law. (Schmidt

Appendix F

v. Foundation Health (1995) 35 Cal.App.4th 1702, 1706.) In testing the sufficiency of the complaint, the court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) The Court may not consider contentions, deductions, or conclusions of fact or law. (Moore v. Conliffe (1994) 7 Cal. App.4th 634, 638.) Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. (Rakestraw v. California Physicians Service (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should sustain the demurrer. (C.C.P., § 430.10(e); Zelig v. County of Los Angeles (2002) 27 Cal.App.4th 1112, 1126.)

Sufficient facts are the essential facts of the case “with reasonable precision and with particularity sufficiently specific to acquaint the defendant with the nature, source, and extent of his cause of action.” (Gressley v. Williams (1961) 193 Cal.App.2d 636, 643-644.) “Whether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer.” (Stevens v. Superior Court (1986) 180 Cal.App.3d 605, 609-610.) Under Code Civil Procedure § 430.10(f), a demurrer may also be sustained if a complaint is “uncertain.” Uncertainty exists where a complaint’s factual allegations are so confusing they do not sufficiently apprise a defendant of the issues it is being asked to meet. (Williams v. Beechnut Nutrition Corp. (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Appendix F

Generally, upon the sustaining of the demurrer, the scope of leave to amend is to amend the existing causes of action and not to add new causes of action. See, *People ex rel. Dept. of Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785. Addition of a new cause of action may be proper, however, when it “directly responds to the court’s reason for sustaining the earlier demurrer.” *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.

Demurrer of Seasons Defendants

Seasons’ demurrer is sustained without leave to amend.

Defendants’ demurrer to Plaintiff Hazel Alers’ twenty first cause of action for Wrongful Death is sustained without leave to amend.

Code Civ. Proc., § 340.5 states, in relevant part:

“In an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.”

Here, the allegations of the Second Amended Complaint reveal a bar based on the applicable statute of limitations as the factual allegations demonstrate that Plaintiffs knew of the alleged injury or through reasonable diligence should have discovered the injury beginning on the date

Appendix F

of decedent's death on April 30, 2019. The Complaint was filed more than one year later on September 28, 2020. In addition, as to Defendants Rohrbacher, Zimny, and Ahangarzadeh, these Defendants were added as parties to this cause of action without Plaintiff first obtaining leave to amend. The scope of leave to amend upon the sustaining of a demurrer is simply to amend the cause of action and not to add new causes of action or parties. See, *People ex rel. Dept. of Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785.

Defendants' demurrer to the twenty second through twenty seventh causes of action is sustained without leave to amend.

Generally, upon the sustaining of the demurrer, the scope of leave to amend is to amend the existing causes of action and not to add new causes of action. See, *People ex rel. Dept. of Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785. Addition of a new cause of action may be proper, however, when it "directly responds to the court's reason for sustaining the earlier demurrer." *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015. Here, the scope of leave to amend upon the sustaining of the demurrer to the First Amended Complaint did not authorize the adding of these new causes of action. Adding these new causes of action was not done to address the reasons that the Court stated for sustaining the prior demurrer.

Therefore, the demurrer to the twenty first through twenty seventh causes of action is sustained without leave to amend.

Appendix F

Demurrer of Olympia Defendant

Olympia's demurrer is sustained without leave to amend.

Defendant's demurrer to Plaintiff Hazel Alers' sixth cause of action for Wrongful Death is sustained without leave to amend.

Code Civ. Proc., § 340.5 states, in relevant part:

"In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first."

Here, the allegations of the Second Amended Complaint reveal a bar based on the applicable statute of limitations as the factual allegations demonstrate that Plaintiff knew of the alleged injury or through reasonable diligence should have discovered the injury beginning on the date of decedent's death on April 30, 2019. The Complaint was filed more than one year later on September 28, 2020.

Defendant's demurrer to the seventh cause of action is sustained without leave to amend.

Generally, upon the sustaining of the demurrer, the scope of leave to amend is to amend the existing causes of action and not to add new causes of action. See, *People ex rel.*

Appendix F

Dept. of Pub. Wks. v. Clausen (1967) 248 Cal.App.2d 770, 785. Addition of a new cause of action may be proper, however, when it “directly responds to the court’s reason for sustaining the earlier demurrer.” Patrick v. Alacer Corp. (2008) 167 Cal.App.4th 995, 1015. Here, the scope of leave to amend upon the sustaining of the demurrer to the First Amended Complaint did not authorize the adding of this new causes of action. Adding these new causes of action was not done to address the reasons that the Court stated for sustaining the prior demurrer.

Therefore, the demurrer to the sixth and seventh causes of action is sustained without leave to amend.

Demurrer of Sara R. Kossuth, D.O.

Sara R. Kossuth, D.O.’s Demurrer to Second Amended Complaint is moot, in part, and sustained with 20 days leave to amend, in part.

Defendant’s demurrer to the fourth and fifth causes of action is moot as these causes of action were dismissed by the Court.

Defendant’s demurrer to the sixth cause of action is sustained with 20 days leave to amend.

Code Civ. Proc., § 340.5 states, in relevant part:

“In an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after

Appendix F

the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.”

Here, the allegations of the Second Amended Complaint reveal a bar based on the applicable statute of limitations as the factual allegations demonstrate that Plaintiff knew of the alleged injury or through reasonable diligence should have discovered the injury beginning on the date of decedent’s death on April 30, 2019. The Complaint was filed more than one year later on September 28, 2020.

In addition, Plaintiff has failed to plead facts demonstrating a breach of duty, causation, and damages caused by demurring Defendant. The allegations are specifically limited to Dr. Lang and the nursing staff. (SAC, ¶¶ 90-91.)

With the Reply, demurring Defendant, herself, asked that Plaintiff be allowed leave to amend. (Reply, page 3, lines 12-17.) Therefore, the demurrer to the sixth cause of action is sustained with 20 days leave to amend.

Motions to Strike

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading. CCP § 436(a). The court may also strike all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. CCP § 436(b). The grounds for a motion to strike are that the pleading has irrelevant, false or improper

Appendix F

matter, or has not been drawn or filed in conformity with laws. CCP § 436. The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. CCP § 437.

Defendants Seasons' and Olympia's Motions to Strike are moot.

Defendants are ordered to give notice of this ruling.

Certificate of Mailing is attached.

**APPENDIX G — NUNC PRO TUNC ORDER
OF THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES, CIVIL DIVISION,
FILED APRIL 28, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Southwest District, Torrance Courthouse,
Department B**

20STCV36943

April 28, 2022

ESTATE OF ALEJANDRO

3:11 PM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka CSR: None

Judicial Assistant: J. Ahn ERM: None

Courtroom Assistant: None Deputy Sheriff: None

NATURE OF PROCEEDINGS: Nunc Pro Tunc Order

It appearing to the Court that through inadvertence and/or clerical error, the minute order of 12/09/2021 in the above-entitled action does not properly reflect the Court's order. Said minute order is ordered corrected nunc pro tunc as of 12/9/2021, as follows:

By striking: The Court orders Estate of Alejandro Alers, Sr. in Complaint filed by Estate of Alejandro Alers, Sr., et al. on 09/28/2020 dismissed without prejudice.

By substituting: The Court orders Estate of Alejandro Alers, Sr. in Second Amended Complaint filed by Estate of Alejandro Alers, Sr., et al. on 11/23/2021 dismissed without prejudice.

44a

Appendix G

The Judicial Assistant hereby gives notice.

Certificate of Mailing is attached.

**APPENDIX H — ORDER OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF LOS
ANGELES, CIVIL DIVISIONS, FILED MAY 27, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**
Civil Division
Southwest District, Torrance Courthouse,
Department B

20STCV36943

May 27, 2022

ESTATE OF ALEJANDRO

12:00 PM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka CSR: None

Judicial Assistant: J. Ahn ERM: None

Courtroom Assistant: None Deputy Sheriff: None

NATURE OF PROCEEDINGS: Court Order

On April 28, 2022, defendants Seasons Hospice and Palliative Care of California, LLC, Arman Ahangarzadeh, LVN, Gary Zimny, R.N., Thomas (Tom) Carmody, Philip Rohrbacher, R.N., and Pejman Naghdechi, M.D.'s Demurrer to Second Amended Complaint was sustained without leave to amend.

On the Court's own motion, the above noted defendants are dismissed without prejudice.

Certificate of Mailing is attached.

**APPENDIX I — ORDER OF DISMISSAL OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF LOS ANGELES, FILED MAY 27, 2022**

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp Filed: May 27, 2022
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503	
PLAINTIFF(S): Estate of Alejandro Alers, Sr. et al	
DEFENDANT(S): OLYMPIA MEDICAL CENTER et al	
ORDER OF DISMISSAL	CASE NUMBER: 20STCV36943

On the motion of the Court, and

- ☐ pursuant to the provisions of section _____ of the
Civil Code of Procedures,
☐ pursuant to Local Policy and / or Local Rules,

it is hereby ordered that the within action is dismissed

- ☐ with prejudice as to
☐ entire action
☒ without prejudice as to
☐ complaint only
☐ cross complaint of _____
☒ other Seasons Hospice & Palliative Care, Pejman
Naghdechi, Tom Carmody, Gary Zimny, Arman
Ahangarzadeh, Philip Roh

47a

Appendix I

It is further ordered that _____

to recover costs as provided by law

___ in the sum of \$ _____

___ per filing memorandum of costs (1033 CCP et. Seq.)

Dated: 05/27/2022

Gary Y. Tanaka

Gary Y. Tanaka /Judge
Judicial Officer

**APPENDIX J — NUNC PRO TUNC ORDER
OF THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES, CIVIL DIVISION,
FILED MAY 31, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Southwest District, Torrance Courthouse,
Department B**

20STCV36943

May 31, 2022

ESTATE OF ALEJANDRO

3:46 PM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka

CSR: None

Judicial Assistant: J. Ahn

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

NATURE OF PROCEEDINGS: Nunc Pro Tunc Order

It appearing to the Court that through inadvertence and/or clerical error, the minute order of 05/27/2022 in the above-entitled action does not properly reflect the Court's order. Said minute order is ordered corrected nunc pro tunc as of 05/27/2022, as follows:

By striking: On the Court's own motion, the above noted defendants are dismissed without prejudice.

By adding: On the Court's own motion, the above noted defendants are dismissed with prejudice.

49a

Appendix J

The Judicial Assistant hereby gives notice.

Certificate of Mailing is attached.

**APPENDIX K — ORDER OF DISMISSAL OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF LOS ANGELES, FILED MAY 31, 2022**

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp Filed: May 31, 2022
COURTHOUSE ADDRESS: Torrance Courthouse 825 Maple Avenue, Torrance, CA 90503	
PLAINTIFF(S): Estate of Alejandro Alers, Sr. et al	
DEFENDANT(S): OLYMPIA MEDICAL CENTER et al	
ORDER OF DISMISSAL	CASE NUMBER: 20STCV36943

On the motion of the Court, and

- ☐ pursuant to the provisions of section _____ of the
Civil Code of Procedures,
☐ pursuant to Local Policy and / or Local Rules,

it is hereby ordered that the within action is dismissed

- ☒ with prejudice as to
☐ entire action
☐ without prejudice as to
☐ complaint only
☐ cross complaint of _____
☒ other Seasons Hospice & Palliative Care, Pejman
Naghdechi, Tom Carmody, Gary Zimny, Arman
Ahangarzadeh, Philip Roh

51a

Appendix K

It is further ordered that _____

to recover costs as provided by law

___ in the sum of \$ _____

___ per filing memorandum of costs (1033 CCP et. Seq.)

Dated: 05/31/2022

Gary Y. Tanaka

Gary Y. Tanaka /Judge
Judicial Officer

**APPENDIX L — ORDER OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF LOS
ANGELES, CIVIL DIVISION, FILED JUNE 23, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

Civil Division

Southwest District, Torrance Courthouse,
Department B

20STCV36943

June 23, 2022

ESTATE OF ALEJANDRO

8:30 AM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka	CSR: None
Judicial Assistant: J. Ahn	ERM: None
Courtroom Assistant: L. Luis	Deputy Sheriff: None

NATURE OF PROCEEDINGS: Hearing on Ex Parte Application OF DEFENDANT WINDSOR TERRACE HEALTHCARE, LLC, FOR AN ORDER OF DISMISSAL/ENTRY OF JUDGMENT FOR PLAINTIFFS FAILURE TO AMEND COMPLAINT WITHIN TIME ALOTTED BY COURT

In Chambers ruling on the Ex Parte Application:

The Ex Parte Application EX PARTE APPLICATION OF DEFENDANT WINDSOR TERRACE HEALTHCARE, LLC, FOR AN ORDER OF DISMISSAL/ENTRY OF JUDGMENT FOR PLAINTIFFS FAILURE TO AMEND COMPLAINT WITHIN TIME ALOTTED BY COURT filed by WINDSOR TERRACE HEALTHCARE

53a

Appendix L

CENTER SNF on 06/22/2022 is Granted. Ex Parte is granted pursuant to CCP 581(f).

The Court orders WINDSORTERRACE HEALTHCARE CENTER SNF in Complaint filed by Estate of Alejandro Alers, Sr., et al. on 09/28/2020 dismissed without prejudice.

The following event(s) is/are advanced to this date and vacated: 07/27/2022 8:30 AM Case Management Conference in Department B

The Judicial Assistant hereby gives notice.

Certificate of Mailing is attached.

**APPENDIX M — NUNC PRO TUNC ORDER
OF THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES, CIVIL DIVISION,
FILED JUNE 23, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Southwest District, Torrance Courthouse,
Department B**

20STCV36943

June 23, 2022

ESTATE OF ALEJANDRO

11:05 AM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka

CSR: None

Judicial Assistant: J. Ahn

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

NATURE OF PROCEEDINGS: Nunc Pro Tunc Order

It appearing to the Court that through inadvertence and/or clerical error, the minute order of 06/23/2022 in the above-entitled action does not properly reflect the Court's order. Said minute order is ordered corrected nunc pro tunc as of 06/23/2022, as follows:

By striking: The Court orders WINDSOR TERRACE HEALTHCARE CENTER SNF in Complaint filed by Estate of Alejandro Alers, Sr., et al. on 09/28/2020 dismissed without prejudice.

By adding: The Court orders WINDSOR TERRACE HEALTHCARE CENTER SNF in Complaint filed

55a

Appendix M

by Estate of Alejandro Alers, Sr., et al. on 09/28/2020
dismissed with prejudice.

Certificate of Mailing is attached.

**APPENDIX N — ORDER ON MOTION OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF LOS ANGELES, CIVIL DIVISION,
FILED JULY 27, 2022**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Southwest District, Torrance Courthouse,
Department B**

20STCV36943

July 27, 2022

ESTATE OF ALEJANDRO

8:30 AM

ALERS, SR., et al. vs OLYMPIA

MEDICAL CENTER, et al.

Judge: Honorable Gary Y. Tanaka	CSR: None
Judicial Assistant: J. Ahn	ERM: None
Courtroom Assistant: M. Fondon	Deputy Sheriff: None

NATURE OF PROCEEDINGS: Hearing on Motion to Set Aside/Vacate Dismissal (CCP 473); Hearing on Motion for Reconsideration; Hearing on Motion for Leave to Amend for punitive damages and discovery on financial condition

Matters are called for hearing.

The above captioned motion is held.

Plaintiff argues on the Court's tentative ruling, and the defendants submit.

The Court having fully considered the arguments of all parties, both written and oral, adopts the tentative ruling as final ruling as follows:

Appendix N

1. Hazel Alers' Motion for Reconsideration of Order of Dismissal
2. Hazel Alers, et al.'s Motion to Amend Second Amended Complaint to Include Punitive Damages Claims
3. Hazel Alers, et al.'s Motion for an Order to Allow Plaintiffs to Discover Financial Condition Information

Hazel Alers' Motion for Reconsideration of Order of Dismissal is denied.

Hazel Alers, et al.'s Motion to Amend Second Amended Complaint to Include Punitive Damages Claims and Motion for an Order to Allow Plaintiffs to Discover Financial Condition Information are deemed moot. No operative Second Amended Complaint currently remains against the Defendants that would support a Motion to Amend the Second Amended Complaint or a Motion to Allow Discovery of Financial Condition.

The Court further notes that the Court's calendar reflects a purported "Motion to Set Aside or Vacate Dismissal." However, this appears to be merely a duplicate scheduling of the Motion for Reconsideration, and is, thus, taken off calendar.

Background

Plaintiffs filed their Complaint on September 28, 2020. Plaintiffs' First Amended Complaint was submitted on January 19, 2021, but never officially filed. On August 24, 2021, the parties stipulated that the First Amended

Appendix N

Complaint was deemed filed on January 19, 2021. Plaintiffs' operative Second Amended Complaint was filed on November 23, 2021. Plaintiffs allege numerous causes of action in relation to the death of Plaintiffs' decedent Alejandro Alers, Sr. The Plaintiffs in this action are the Estate of Alejandro Alers, Sr., Alejandro Alers, Jr., and Hazel Alers. Each of the Plaintiffs bring this action in proper. On December 9, 2021, all causes of action that were brought on behalf of the Estate of Alejandro Alers, Sr. were ordered dismissed.

Defendants', Healthcare Partners Affiliates Medical Group, Mary Jean 27 Lockard, N.P., N. Isabel Kiefer, M.D., Hagop Sarkissian, M.D., and Kelly Winer, S.W., motion for summary judgment was granted on March 23, 2022.

Thereafter, various demurrers by other Defendants were sustained with leave to amend and without leave to amend. As to the portions of the demurrers to which leave to amend was granted, Plaintiffs failed to timely amend.

On May 31, 2022, Defendants Seasons Hospice and Palliative Care of California, LLC, Arman Ahangarzadeh, LVN, Gary Zimny, R.N., Thomas (Tom) Carmody, Philip Rohrbacher, R.N., and Pejman Naghdechi, M.D were dismissed with prejudice.

Defendant Sara Kossuth, D.O. was dismissed with prejudice on June 17, 2022. Defendant Windsor Terrace Healthcare, LLC was dismissed with prejudice on June 23, 2022.

Appendix N

Motion for Reconsideration

CCP § 1008(a) states: “When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” In addition, the party seeking reconsideration must provide not just new or different facts, circumstance, or law, but a satisfactory explanation for the failure to produce it at an earlier time. See *Garcia v. Hejmadi* (1997) 58 Cal. App.4th 674, 690.

“A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment.” *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236 (emphasis in original).

Appendix N

Plaintiffs move for reconsideration of the Court's March 23, 2022 order granting Healthcare Partners Affiliates Medical Group, et al.'s motion for summary judgment. Plaintiff's motion is based on a purported new fact. Plaintiff contends that she served responses to Healthcare Partners' Interrogatories, Set One, Number 17.1 on December 17, 2021.

However, because judgment has been entered, the Court lacks jurisdiction to hear this motion. The Court does note that the motion for summary judgment was granted based on deemed admissions pursuant to the Court's order granting Defendants' motion to deem requests for admissions admitted. The ruling on the motion for summary judgment was not based on the motion to compel responses to form interrogatories. In addition, there was no Court order to provide for Plaintiffs to serve responses to requests for admissions. Instead, the requests for admissions were deemed admitted.

Plaintiff Hazel Alers' Motion for Reconsideration is denied.

Defendants are ordered to give notice of this ruling.

**APPENDIX O — OPINION OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF LOS
ANGELES, FILED JANUARY 19, 2021**

ESTATE OF ALEJANDRO ALERS, SR (IN PRO PER)
HAZEL ALERS (IN PRO PER)
ALEJANDRO ALERS, JR (IN PRO PER)
611 NORTH PARK AVENUE
INGLEWOOD, CALIFORNIA 90302
310-672-0369
alalersjr@att.net

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
SPRING STREET COURTHOUSE**

CASE NO. 20STCV36943

ESTATE OF ALEJANDRO ALERS, SR;
HAZEL ALERS; ALEJANDRO ALERS, JR.

Plaintiffs,

vs.

OLYMPIA MEDICAL CENTER; RONALD LANG,
MD; SARA KOSSUTH, DO, MD; HEALTHCARE
PARTNERS AKA OPTUM; MARY JEAN
LOCKARD, NP; N. ISABEL KIEFER, MD; Da VITA
MEDICAL GROUP; KELLY WINER; WINDSOR
TERRACE HEALTHCARE CENTER, SNF;
HAGOP SARKISSIAN, MD; SEASONS HOSPICE &
PALLIATIVE CARE; PEJMAN NAGHDECHI, MD;
PHILIP ROHRBACHER, RN; THOMAS

62a

Appendix O

(TOM) CARMODY; GARY ZIMNY, RN;
ARMAN AHANGARZADEH, LVN; DOES 1-100.

Defendants.

Filed: January 19, 2021

DECLARATION OF HAZEL ALERS AS THE
DECEDENT'S SUCCESSION INTEREST TO
COMMENCE AN ACTION ON BEHALF OF THE
ESTATE OF ALEJANDRO ALERS, SR. PURSUANT
TO CALIFORNIA CODE OF CIVIL PROCEDURE
SECTION 377.32(a).

COURTHOUSE: SPRING STREET COURTHOUSE,
312 NORTH SPRING STREET, LOS ANGELES,
CALIFORNIA 90012

DEPARTMENT: 28

ACTION FILED: 9/30/2020

FSC: 3/14/2022

TRIAL DATE: 3/28/2022

I, Hazel Alers, declare as follows:

1. The Decedent's name is ALEJANDRO ALERS,
SR.
2. The date of Decedent's death was April 30, 2019.
The place of death was at Decedent's home.

Appendix O

3. There is no current pending of the administration of the Decedent's estate.

4. The Declarant is the Decedent's successor in interest as being the spouse of the Decedent at the time of the Decedent's death. The Declarant succeeds to the Decedent's interest in this action.

5. No other person has a superior right to commence the action for the Decedent in this pending action.

6. The Declarant declares under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: NOVEMBER 9, 2020

By: /s/ Hazel Alers
HAZEL ALERS
Plaintiff

64a

APPENDIX P — CERTIFICATE OF DEATH

**STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD**

**COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC HEALTH**

**CERTIFICATE OF DEATH
STATE OF CALIFORNIA
USE BLACK INK ONLY/NO ERASURES,
WHITEOUTS OR ALTERATIONS
VS-11e (REV 3/06)**

MAY 28 2019

3052019104466

STATE FILE NUMBER

3201919023626

LOCAL REGISTRATION NUMBER

DECEDENT'S PERSONAL DATA

1. NAME OF DECEDENT – FIRST (Given)

ALEJANDRO

2. MIDDLE

–

3. LAST (Family)

ALERS SR

AKA, ALSO KNOWN AS –

Include full AKA (FIRST, MIDDLE, LAST)

ALEJANDRO ALERS ALERS

4. DATE OF BIRTH mm/dd/ccyy

04/24/1921

65a

Appendix P

5. AGE Yrs.
98

6. SEX
M

7. DATE OF DEATH mm/dd/ccyy
04/30/2019

8. HOUR (24 Hours)
2128

9. BIRTH STATE/FOREIGN COUNTRY
PRTO RICO

10. SOCIAL SECURITY NUMBER
[REDACTED]

11. EVER IN U.S. ARMED FORCES?
☐ YES ☒ NO ☐ UNK

12. MARITAL STATUS/SRDP* (at Time of Death)
MARRIED

13. EDUCATION – Highest Level/Degree
(see worksheet on back)
HS GRADUATE

14/15. WAS DECEDENT HISPANIC/LATINO(A)/
SPANISH? (If yes, see worksheet on back)
☒ YES PUERTO RICAN ☐ NO

16. DECEDENT'S RACE – Up to 3 races may be listed
(see worksheet on back).
BLACK, HISPANIC

66a

Appendix P

17. USUAL OCCUPATION – Type of work for most of
life. DO NOT USE RETIRED
SANITATION ENGINEER

18. KIND OF BUSINESS OR INDUSTRY
(e.g., grocery store, road construction, employment
agency, etc.)
CITY GOVERNMENT

19. YEARS IN OCCUPATION
23

USUAL RESIDENCE

20. DECEDENT'S RESIDENCE (Street and number, or
location)
1543 6TH AVENUE

21. CITY	22. COUNTY/PROVINCE
LOS ANGELES	LOS ANGELES

23. ZIP CODE	24. YEARS IN COUNTY
90019	67

25. STATE/FOREIGN COUNTRY
CA

INFORMANT

26. INFORMANT'S NAME, RELATIONSHIP
ALEJANDRO ALERS JR, SON

67a

Appendix P

27. INFORMANT'S MAILING ADDRESS (Street and
number, or rural route number, city or town, state
and zip)
611 NORTH PARK AVENUE, INGLEWOOD, CA
90302

SPOUSE/SRDP AND PARENT INFORMATION

28. NAME OF SURVIVING SPOUSE/SRDP*-FIRST
HAZEL

29. MIDDLE 30. LAST (BIRTH NAME)
- DAVIS

31. NAME OF FATHER/PARENT-FIRST
EPIFANIO

32. MIDDLE 33. LAST 34. BIRTH STATE
- AERS PRTO RICO

35. NAME OF MOTHER/PARENT-FIRST
CRISTINA

36. MIDDLE 37. LAST 38. BIRTH STATE
- (BIRTH NAME) PRTO RICO
 ALERS

FUNERAL DIRECTOR/LOCAL REGISTRAR

39. DISPOSITION DATE mm/dd/ccyy
05/24/2019

68a

Appendix P

40. PLACE OF FINAL DISPOSITION
HOLY CROSS CEMETERY
5835 WEST SLAUSON AVENUE, CULVER CITY,
CA 90230

41. TYPE OF DISPOSITION(S)
BU

42. SIGNATURE OF EMBALMER
CARLOS SUAREZ

43. LICENSE NUMBER
EMB9403

44. NAME OF FUNERAL ESTABLISHMENT
HOLY CROSS MORTUARY

45. LICENSE NUMBER
FD1711

46. SIGNATURE OF LOCAL REGISTRAR
MUNTU DAVIS, M.D.

47. DATE mm/dd/ccyy
05/22/2019

PLACE OF DEATH

101. PLACE OF DEATH
RESIDENCE

102. IF HOSPITAL, SPECIFY ONE
☐ IP ☐ ER/OP ☐ DOA

Appendix P

103. IF OTHER THAN HOSPITAL, SPECIFY ONE

- ☐ Hospice ☐ Nursing Home/LTC
☒ Decedent's Home ☐ Other

104. COUNTY

LOS ANGELES

105. FACILITY ADDRESS OR LOCATION WHERE
FOUND (Street and number, or location)

1543 6TH AVENUE

106. CITY

LOS ANGELES

CAUSE OF DEATH

107. CAUSE OF DEATH

Enter the chain of events --- diseases, injuries, or complications --- that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE.

IMMEDIATE CAUSE (Final disease or condition resulting in death) (A) CARDIOPULMONARY FAILURE

Sequentially, list conditions, if any, leading to cause on Line A. (B) PNEUMONIA

Enter UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST (C) CEREBROVASCULAR ACCIDENT

(D)

70a

Appendix P

Time interval
Between Onset
and Death

(AT)
MINS

(BT)
WKS

(CT)
YRS

(DT)

108. DEATH REPORTED TO
CORONER?
☐ YES ☒ NO

REFERRAL NUMBER

109. BIOPSY PERFORMED?
☐ YES ☒ NO

110. AUTOPSY PERFORMED?
☐ YES ☒ NO

111. USED IN DETERMINING
CAUSE?
☐ YES ☐ NO

112. OTHER SIGNIFICANT CONDITIONS
CONTRIBUTING TO DEATH BUT NOT RESULTING
IN THE UNDERLYING CAUSE GIVEN IN 107
NONE

113. WAS OPERATION PERFORMED FOR ANY
CONDITION IN ITEM 107 OR 112? (If yes, list type of
operation and date.)
NO

113A. IF FEMALE, PREGNANT IN LAST YEAR?
☐ YES ☐ NO ☐ UNK

71a

Appendix P

PHYSICIAN'S CERTIFICATION

114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.

<u>Decedent Attended Since</u>	<u>Decedent Last Seen Alive</u>
(A) mm/dd/ccyy	(B) mm/dd/ccyy
04/25/2019	04/30/2019

115. SIGNATURE AND TITLE OF CERTIFIER
PEJMAN NAGHDECHI M.D.

116. LICENSE NUMBER	117. DATE mm/dd/ccyy
A112981	05/17/2019

118. TYPE ATTENDING PHYSICIAN'S NAME,
MAILING ADDRESS, ZIP CODE
PEJMAN NAGHDECHI M.D.
320 ARDEN AVENUE, SUITE 100, GLENDALE,
CA 91203

CORONER'S USE ONLY

119. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.

MANNER OF DEATH ☐ Natural ☐ Accident
☐ Homicide ☐ Suicide ☐ Pending Investigation
☐ Could not be determined

72a

Appendix P

120. INJURED AT WORK?

☐ Yes ☐ No ☐ UNK

121. INJURY DATE mm/dd/ccyy

122. HOUR (24 Hours)

123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)

124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)

125. LOCATION OF INJURY (Street and number, or location, and city, and zip)

126. SIGNATURE OF CORONER/DEPUTY CORONER

127. DATE mm/dd/ccyy

128. TYPE NAME, TITLE OF CORONER/DEPUTY CORONER

73a

**APPENDIX Q — 59-047946
CERTIFICATE OF REGISTRY OF MARRIAGE**

**STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD**

**STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH**

**59-047946
CERTIFICATE OF REGISTRY OF MARRIAGE
(PERSONAL DATA, LICENSE TO MARRY,
CERTIFICATION OF MARRIAGE)**

LOCAL REGISTRAR'S NUMBER 19304

DATE ISSUED SEP 27 2019

GROOM PERSONAL DATA			
1A NAME OF GROOM FIRST NAME	1B MIDDLE NAME	1C LAST NAME	2. AGE OF GROOM (LAST BIRTHDAY)
Alejandro		Alers	29 YEARS
3A USUAL RESIDENCE OF GROOM -- STREET ADDRESS IF RURAL GIVE LOCATION:	3B CITY OR TOWN (IF OUTSIDE CORPORATE LIMITS WRITE <u>RURAL</u> AND NAME OF NEAREST TOWN)	3C COUNTY (IF OUTSIDE CALIFORNIA GIVE STATE)	4 COLOR OR RACE
2622 S Orchard Ave	Los Angeles County-Los Angeles	Los Angeles	Negro

74a

Appendix Q

5 NEVER MARRIED WIDOWED DIVORCED MARRIAGE ANNULLED never married	6 NUMBER OF TIMES PREVIOUSLY MARRIED (EXCLUDING THIS MARRIAGE) 0	7 BIRTH-PLACE (STATE OR FOREIGN COUNTRY) Puerto Rico	8A NAME OF FATHER OF GROOM Epifanio Alers
8B BIRTH-PLACE OF FATHER (STATE OR FOREIGN COUNTRY) P R	9A. MAIDEN NAME OF MOTHER OF GROOM Cristina Gonzales	9B. BIRTHPLACE OF MOTHER (STATE OR FOREIGN COUNTRY) P R	
BRIDE PERSONAL DATA			
10A NAME OF BRIDE FIRST NAME Hazel	10B MIDDLE NAME 	10C LAST NAME Davis	11 AGE OF BRIDE (LAST BIRTHDAY) 23 YEARS

75a

Appendix Q

12A USUAL RESIDENCE OF BRIDE -- STREET ADDRESS IF RURAL GIVE LOCATION: 4225 S Van Ness Ave	12B CITY OR TOWN (IF OUTSIDE CORPORATE LIMITS WRITE <u>RURAL</u> AND NAME OF NEAREST TOWN) Los Angeles County-Los Angeles	12C COUNTY (IF OUTSIDE CALIFORNIA GIVE STATE) Los Angeles	13 COLOR OR RACE Negro
14 NEVER MARRIED WIDOWED DIVORCED MARRIAGE ANNULLED never married	15 NUMBER OF TIMES PREVIOUSLY MARRIED (EXCLUDING THIS MARRIAGE) 0	16 BIRTH-PLACE (STATE OR FOREIGN COUNTRY) South Carolina	17A NAME OF FATHER OF BRIDE James Davis
17B BIRTH-PLACE OF FATHER (STATE OR FOREIGN COUNTRY) S C	18A MAIDEN NAME OF MOTHER OF BRIDE Maurie Fant	18B. BIRTHPLACE OF MOTHER (STATE OR FOREIGN COUNTRY) S C	
19 MAIDEN NAME OF BRIDE IF PREVIOUSLY MARRIED			

Appendix Q

LICENSE TO MARRY	
We, the bride and groom named in this certificate, each for himself, state that the foregoing information is correct to the best of our knowledge and belief, that no legal objection to the marriage nor to the issuance of a license to authorize the same if known to us, and hereby apply for license to marry	
20A BRIDE (SIGN FULL NAME) /s/ Hazel Davis	20B GROOM (SIGN FULL NAME) /s/ Alejandro Alers
21A [Illegible]	
SUBSCRIBED AND SWORN TO BEFORE ME ON 2-20-57	21B COUNTY CLERK Harold J. Ostly BY /s/ <u>J. Bohrman</u> DEPUTY
21c COUNTY OF ISSUE OF LICENSE Los Angeles	21d DATE LICENSE ISSUED Feb. 20 1957
21e LICENSE NUMBER 2365	
CERTIFICATION OF PERSON PERFORMING CEREMONY AND WITNESS	
22 I hereby certify that the above named bride and groom were joined by me in marriage in accordance with the laws of the State of California on <u>July 11, 1959</u> at <u>Los Angeles</u> , California.	

77a

Appendix Q

23A SIGNATURE OF WITNESS /s/ Inez Mundell	24A SIGNATURE OF PERSON PERFORMING CEREMONY /s/ Charles S. Mundell
23b ADDRESS OF WITNESS STREET ADDRESS 4030 So. Broadway	24B OFFICIAL TITLE AND DENOMINATION IF PRIEST OR MINISTER Congregation Minister
23c ADDRESS OF WITNESS (RURAL TOWN AND STATE) Los Angeles 37, Calif.	24c ADDRESS OF PERSON PERFORMING CEREMONY 4030 S. Bdng, L.B. 37 Calif.
LOCAL REGISTRAR (COUNTY RECORDER)	
25. DATE RECEIVED BY LOCAL REGISTRAR [ILLEGIBLE] JUL 13 1959	26. LOCAL REGISTRAR (COUNTY RECORDER) Ray E. Lee Los Angeles County by /s/ [Illegible] DEPUTY

**APPENDIX R — OPINION OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF
LOS ANGELES, FILED SEPTEMBER 28, 2020**

HAZEL ALERS (IN PRO PER)
ALEJANDRO ALERS, JR (IN PRO PER)
611 NORTH PARK AVENUE
INGLEWOOD, CALIFORNIA 90302
310-672-0369
alalersjr@att.net

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
TORRANCE COURTHOUSE

CASE NO. 20STCV36943

HAZEL ALERS; ALEJANDRO ALERS, JR

Plaintiffs,

vs.

OLYMPIA MEDICAL CENTER; RONALD LANG,
M.D.; SARA KOSSUTH, D.O., M.D.; HEALTHCARE
PARTNERS AFFILIATES MEDICAL GROUP;
MARY JEAN LOCKARD, NP; N. ISABEL
KIEFER, M.D.; KELLY WINER, S.W.; WINDSOR
TERRACE HEALTHCARE CENTER, SNF;
HAGOP SARKISSIAN, M.D.; SEASONS HOSPICE
& PALLIATIVE CARE OF CALIFORNIA, LLC;
PEJMAN NAGHDECHI, M.D.;
PHILIP ROHRBACHER, R.N.; THOMAS
(TOM) CARMODY; GARY ZIMNY, R.N.;
ARMAN AHANGARZADEH, L.V.N.; DOES 1-100.

Defendants.

79a

Appendix R

PLAINTIFFS' SECOND AMENDED COMPLAINT
FOR DAMAGES AGAINST DEFENDANTS.

JURY TRIAL DEMANDED.

DEPARTMENT: B
Judge: TANAKA
ACTION FILED: 9/28/2020
TRIAL DATE: NONE SET

**APPENDIX S — CALIFORNIA PROBATE CODES
DATED OCTOBER 10, 2019**

California Code, Probate Code – PROB § 4459

In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

- (a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.
- (b) Bring an action to determine adverse claims, intervene in litigation, and act as *amicus curiae*.
- (c) In connection with litigation:
 - (1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.
 - (2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

Appendix S

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization proceeding, or with respect to an assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value.

(g) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Appendix S

**CALIFORNIA GENERAL DURABLE
POWER OF ATTORNEY**

**THE POWERS YOU GRANT BELOW
ARE EFFECTIVE EVEN IF YOU BECOME
DISABLED OR INCOMPETENT**

CAUTION: A DURABLE POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BY SIGNING THE DURABLE POWER OF ATTORNEY, YOU ARE AUTHORIZING ANOTHER PERSON TO ACT FOR YOU, THE PRINCIPAL. BEFORE YOU SIGN THIS DURABLE POWER OF ATTORNEY, YOU SHOULD KNOW THESE IMPORTANT FACTS: YOUR AGENT (ATTORNEY-IN-FACT) HAS NO DUTY TO ACT UNLESS YOU AND YOUR AGENT AGREE OTHERWISE IN WRITING. THIS DOCUMENT GIVES YOUR AGENT THE POWERS TO MANAGE, DISPOSE OF, SELL, AND CONVEY YOUR REAL AND PERSONAL PROPERTY, AND TO USE YOUR PROPERTY AS SECURITY IF YOUR AGENT BORROWS MONEY ON YOUR BEHALF. THIS DOCUMENT DOES NOT GIVE YOUR AGENT THE POWER TO ACCEPT OR RECEIVE ANY OF YOUR PROPERTY, IN TRUST OR OTHERWISE, AS A GIFT, UNLESS YOU SPECIFICALLY AUTHORIZE THE AGENT TO ACCEPT OR RECEIVE A GIFT. YOUR AGENT WILL HAVE THE RIGHT TO RECEIVE REASONABLE PAYMENT FOR SERVICES PROVIDED UNDER THIS DURABLE POWER OF ATTORNEY UNLESS YOU PROVIDE OTHERWISE IN THIS POWER OF ATTORNEY. THE POWERS YOU

Appendix S

GIVE YOUR AGENT WILL CONTINUE TO EXIST FOR YOUR ENTIRE LIFETIME, UNLESS YOU STATE THAT THE DURABLE POWER OF ATTORNEY WILL LAST FOR A SHORTER PERIOD OF TIME OR UNLESS YOU OTHERWISE TERMINATE THE DURABLE POWER OF ATTORNEY.

THE POWERS YOU GIVE YOUR AGENT IN THIS DURABLE POWER OF ATTORNEY WILL CONTINUE TO EXIST EVEN IF YOU CAN NO LONGER MAKE YOUR OWN DECISIONS RESPECTING THE MANAGEMENT OF YOUR PROPERTY. YOU CAN AMEND OR CHANGE THIS DURABLE POWER OF ATTORNEY ONLY BY EXECUTING A NEW DURABLE POWER OF ATTORNEY OR BY EXECUTING AN AMENDMENT THROUGH THE SAME FORMALITIES AS AN ORIGINAL. YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS DURABLE POWER OF ATTORNEY AT ANY TIME, SO LONG AS YOU ARE COMPETENT.

THIS DURABLE POWER OF ATTORNEY MUST BE DATED AND MUST BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR SIGNED BY TWO WITNESSES. IF IT IS SIGNED BY TWO WITNESSES, THEY MUST WITNESS EITHER (1) THE SIGNING OF THE POWER OF ATTORNEY OR (2) THE PRINCIPAL'S SIGNING OR ACKNOWLEDGMENT OF HIS OR HER SIGNATURE. A DURABLE POWER OF ATTORNEY THAT MAY AFFECT REAL PROPERTY SHOULD BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC SO THAT IT MAY EASILY BE RECORDED.

Appendix S

YOU SHOULD READ THIS DURABLE POWER OF ATTORNEY CAREFULLY. WHEN EFFECTIVE, THIS DURABLE POWER OF ATTORNEY WILL GIVE YOUR AGENT THE RIGHT TO DEAL WITH PROPERTY THAT YOU NOW HAVE OR MIGHT ACQUIRE IN THE FUTURE. THE DURABLE POWER OF ATTORNEY IS IMPORTANT TO YOU. IF YOU DO NOT UNDERSTAND THE DURABLE POWER OF ATTORNEY, OR ANY PROVISION OF IT, THEN YOU SHOULD OBTAIN THE ASSISTANCE OF AN ATTORNEY OR OTHER QUALIFIED PERSON.

NOTICE TO PERSON ACCEPTING THE APPOINTMENT AS ATTORNEY-IN-FACT BY ACTING OR AGREEING TO ACT AS THE AGENT (ATTORNEY-IN-FACT) UNDER THIS POWER OF ATTORNEY YOU ASSUME THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. THESE RESPONSIBILITIES INCLUDE:

1. THE LEGAL DUTY TO ACT SOLELY IN THE INTEREST OF THE PRINCIPAL AND TO AVOID CONFLICTS OF INTEREST.
2. THE LEGAL DUTY TO KEEP THE PRINCIPAL'S PROPERTY SEPARATE AND DISTINCT FROM ANY OTHER PROPERTY OWNED OR CONTROLLED BY YOU. YOU MAY NOT TRANSFER THE PRINCIPAL'S PROPERTY TO YOURSELF WITHOUT FULL AND ADEQUATE CONSIDERATION OR ACCEPT A GIFT OF THE PRINCIPAL'S PROPERTY UNLESS THIS POWER OF ATTORNEY SPECIFICALLY

Appendix S

AUTHORIZES YOU TO TRANSFER PROPERTY TO YOURSELF OR ACCEPT A GIFT OF THE PRINCIPAL'S PROPERTY. IF YOU TRANSFER THE PRINCIPAL'S PROPERTY TO YOURSELF WITHOUT SPECIFIC AUTHORIZATION IN THE POWER OF ATTORNEY, YOU MAY BE PROSECUTED FOR FRAUD AND/OR EMBEZZLEMENT. IF THE PRINCIPAL IS 65 YEARS OF AGE OR OLDER AT THE TIME THAT THE PROPERTY IS TRANSFERRED TO YOU WITHOUT AUTHORITY, YOU MAY ALSO BE PROSECUTED FOR ELDER ABUSE UNDER PENAL CODE SECTION 368. IN ADDITION TO CRIMINAL PROSECUTION, YOU MAY ALSO BE SUED IN CIVIL COURT. I HAVE READ THE FOREGOING NOTICE AND I UNDERSTAND THE LEGAL AND FIDUCIARY DUTIES THAT I ASSUME BY ACTING OR AGREEING TO ACT AS THE AGENT (ATTORNEY-IN-FACT) UNDER THE TERMS OF THIS POWER OF ATTORNEY.

DATE: 10-10-19

/s/ Alejandro Alers Jr.
(SIGNATURE OF AGENT)

ALEJANDRO ALERS JR
(PRINT NAME OF AGENT)

Appendix S

**CALIFORNIA GENERAL DURABLE
POWER OF ATTORNEY**

**THE POWERS YOU GRANT BELOW
ARE EFFECTIVE EVEN IF YOU BECOME
DISABLED OR INCOMPETENT**

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE TO BE EFFECTIVE EVEN IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

I HAZEL ALERS, 1543 6TH AVENUE,
LOS ANGELES, CALIFORNIA 90019, appoint
ALEJANDROALERSJR, 611 NORTH PARK AVENUE,
INGLEWOOD [insert your name and address] appoint
CALIFORNIA, as my Agent, attorney in fact [insert the
name and address of the person appointed] as my Agent
(attorney-in-fact) to act for me in any lawful way with
respect to the following initialed subjects:

Appendix S

TO GRANT ALL OF THE FOLLOWING POWERS,
INITIAL THE LINE IN FRONT OF (N) AND IGNORE
THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL,
OF THE FOLLOWING POWERS. INITIAL THE LINE
IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE
LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT,
CROSS OUT EACH POWER WITHHELD.

**Note: If you initial Item A or Item B, which follow, a
notarized signature will be required on behalf of the
Principal.**

INITIAL

___ (A) **Real property transactions.** To lease, sell,
mortgage, purchase, exchange, and acquire, and to
agree, bargain, and contract for the lease, sale, purchase,
exchange, and acquisition of and to accept, take, receive,
and possess any interest in real property whatsoever, on
such terms and conditions, and under such covenants,
as my Agent shall deem proper; and to maintain, repair,
tear down, alter, rebuild, improve manage, insure, move,
rent, lease, sell, convey, subject to liens, mortgages, and
security deeds, and in any way or manner deal with all
or any part of any interest in real property whatsoever,
including specifically, but without limitation, real property
lying and being situated in the State of California, under
such terms and conditions, and under such covenants,

Appendix S

as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt.

___ **(B) Tangible personal property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of the State of California or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper.

___ **(C) Stock and bond transactions.** To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me.

Appendix S

___ **(D) Commodity and option transactions.** To organize or continue and conduct any business which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability.

___ **(E) Banking and other financial institution transactions.** To make, receive, sign, endorse, execute, acknowledge, deliver and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments

Appendix S

from time to time in whole or in part. To have free access at any time or times to any safe deposit box or vault to which I might have access.

___ **(F) Business operating transactions.** To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in.

___ **(G) Insurance and annuity transactions.** To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts.

___ **(H) Estate, trust, and other beneficiary transactions.** To accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control, establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could exercise if present and under no disability; provided, however, that the Agent may

Appendix S

not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the Agent unless specific authority to that end is given.

___ **(I) Claims and litigation.** To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper.

___ **(J) Personal and family maintenance.** To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper.

___ **(K) Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service.** To prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or

Appendix S

foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service, and governmental benefits, including but not limited to Medicare and Medicaid, which the principal could exercise if present and under no disability.

___ **(L) Retirement plan transactions.** To contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

___ **(M) Tax matters.** To prepare, to make elections, to execute and to file all tax, social security unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent

Appendix S

shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable.

HA (N) ALL OF THE POWERS LISTED ABOVE.
YOU NEED NOT INITIAL ANY OTHER LINES IF
YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE
SPECIAL INSTRUCTIONS LIMITING OR
EXTENDING THE POWERS GRANTED TO YOUR
AGENT.

THIS POWER OF ATTORNEY IS EFFECTIVE
IMMEDIATELY AND WILL CONTINUE UNTIL IT
IS REVOKED.

Appendix S

THIS POWER OF ATTORNEY SHALL BE CONSTRUED AS A GENERAL DURABLE POWER OF ATTORNEY AND SHALL CONTINUE TO BE EFFECTIVE EVEN IF I BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

(YOUR AGENT WILL HAVE AUTHORITY TO EMPLOY OTHER PERSONS AS NECESSARY TO ENABLE THE AGENT TO PROPERLY EXERCISE THE POWERS GRANTED IN THIS FORM, BUT YOUR AGENT WILL HAVE TO MAKE ALL DISCRETIONARY DECISIONS. IF YOU WANT TO GIVE YOUR AGENT THE RIGHT TO DELEGATE DISCRETIONARY DECISION-MAKING POWERS TO OTHERS, YOU SHOULD KEEP THE NEXT SENTENCE, OTHERWISE IT SHOULD BE STRICKEN.)

Authority to Delegate. My Agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my Agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

YOUR AGENT WILL BE ENTITLED TO REIMBURSEMENT FOR ALL REASONABLE EXPENSES INCURRED IN ACTING UNDER THIS POWER OF ATTORNEY. STRIKE OUT THE NEXT SENTENCE IF YOU DO NOT WANT YOUR AGENT TO ALSO BE ENTITLED TO REASONABLE COMPENSATION FOR SERVICES AS AGENT.)

Appendix S

Right to Compensation. My Agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAME(S) AND ADDRESS(ES) OF SUCH SUCCESSOR(S) IN THE FOLLOWING PARAGRAPH.)

Successor Agent. If any Agent named by me shall die, become incompetent, resign or refuse to accept the office of Agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such Agent:

NONE

Choice of Law. THIS POWER OF ATTORNEY WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD FOR CONFLICTS OF LAWS PRINCIPLES. IT WAS EXECUTED IN THE STATE OF CALIFORNIA AND IS INTENDED TO BE VALID IN ALL JURISDICTIONS OF THE UNITED STATES OF AMERICA AND ALL FOREIGN NATIONS.

I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my Agent.

Appendix S

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this 10th day of October, 2019

/s/ Hazel Alers
[Your Signature]

 -8539
[Your Social Security Number]

**CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC**

STATE OF CALIFORNIA
COUNTY OF _____

This document was acknowledged before me on _____
[Date] by _____ [name of principal].

[Notary Seal, if any]:

(Signature of Notarial Officer)

Notary Public for the State of
California

My commission expires: _____

Appendix S

ACKNOWLEDGMENT OF AGENT

BY ACCEPTING OR ACTING UNDER THE
APPOINTMENT, THE AGENT ASSUMES
THE FIDUCIARY AND OTHER LEGAL
RESPONSIBILITIES OF AN AGENT.

ALEJANDRO ALERS JR
[Typed or Printed Name of Agent]

/s/ Alejandro Alers Jr.
[Signature of Agent]

PREPARATION STATEMENT

This document was prepared by the following individual:

ALEJANDRO ALERS JR
[Typed or Printed Name]

/s/ Alejandro Alers Jr.
[Signature]

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT
(CALIFORNIA CIVIL CODE § 1189)**

A notary public or other officer completing this certificate
verifies only the identity of the individual who signed the
document to which this certificate is attached, and not
the truthfulness, accuracy, or validity of that document.

Appendix S

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On October 10, 2019 before me, Byron Williams, Notary Public
(Date) (Here Insert Name and
Title of the Officer)

personally appeared Hazel Alers, Alejandro Alers Jr.,
who proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/
she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws
of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

/s/ Byron Williams
Signature of Notary Public (Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: _____ Document Date: ____
Number of Pages: _____ Signer(s) Other Than Named
Above: _____

Additional Information: _____

**APPENDIX T — APPELLATE COURTS CASE
INFORMATION, DATED JUNE 13, 2024**

Appellate Courts Case Information

2nd Appellate District

Disposition

Alers et al. v. Kossuth et al.
Division 5
Case Number B322634

Description:	Dismissed by motion
Date:	08/28/2023
Disposition Type:	Partial As to Olympia Medical Center, “Seasons” parties and Ronald Lang, M.D., only. See the order dated 08/28/23.
Publication Status:	
Author:	
Participants:	
Case Citation:	none
Description:	Affirmed in Part, etc. (See Opinion)
Date:	06/13/2024
Disposition Type:	Partial As to the check marked par- ties only. Windsor Terrace re- mains as last respondent.

100a

Appendix T

Publication Status:	Signed Unpublished
Author:	Lee, Corey G.
Participants:	Kim, Dorothy C. (Concur) Moor, Carl H. (Concur)
Case Citation:	none

Trial Court

Alers et al. v. Kossuth et al.
Division 5
Case Number B322634

Trial Court Name: Los Angeles County
Superior Court
County: Los Angeles
Trial Court Case Number: 20STCV36943
Trial Court Judge: Tanaka, Gary
Trial Court Judgment Date: 07/27/2022

Appendix T

DEPARTMENT 28 LAW AND MOTION RULINGS

In light of the COVID-19 pandemic, you are urged to meet and confer with all parties concerning this tentative ruling to see if you can reach an agreed-upon resolution of your matter.


If you are able to reach an agreement, please notify the courtroom staff in advance of the hearing if you wish to submit on the tentative ruling rather than argue the motion. The email address is SSCDEPT28@lacourt.org. **COPY THIS EMAIL ADDRESS INTO A NEW EMAIL TO THE COURT. DO NOT CLICK ON THE LINK.** If you click on the link your message will be sent to an old email address, and will not be received in the Dept. 28 email box. Do not use any other email address. Include the word “SUBMISSION” in all caps in the Subject line and include the date and time of the hearing, your name, contact information, the case number, and the party you represent, whether that party is a plaintiff, defendant, cross-complainant, cross-defendant, claimant, or non-party in the body of the email. You must include the other parties on the email by “cc.”

Please be advised that if you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear at the hearing and argue the matter, so work this out with the other side. If you submit, but one or both parties still intend to appear, include the words “SUBMISSION BUT WILL APPEAR” in the Subject line.

Appendix T

If you submitted a courtesy copy of your papers containing media (such as a DVD or thumbdrive), unless you request the return of the media, the court will destroy it following the hearing your matter.

If you cannot reach an agreed upon resolution of your matter and wish to argue your matter, you are urged to do so remotely, via Court-Connect.



Case Number: 20STCV36943

Hearing Date: March 17, 2021 Dept: 28

The demurrer hearing will not take place in Department 28, Spring Street Courthouse. No further proceedings will take place in Department 28, Spring Street Courthouse. Do not appear for the demurrer hearing or any further hearings in Dept. 28, Spring Street Courthouse, regardless of whether or not the matters appear on Department 28's docket. The dates are left on the docket, in the event the newly assigned courtroom wants to use the entries to re-schedule hearings.

The Court finds that this case is not a Personal Injury Case under the First Amended Standing Order Re: Personal Injury Procedures, at the Spring Street Courthouse. This case is referred to the Supervising Judge in Department 1, Stanley Mosk Courthouse for determination whether this case should be transferred and reassigned to an Independent Calendar Court. The case alleges elder abuse, discrimination, intentional misrepresentation, concealment, and patient dumping.

103a

Appendix T

The Supervising Judge in Department 1, Stanley Mosk Courthouse will transfer this case to an Independent Calendar Court.

It will be up to the newly assigned department whether to vacate or reschedule the hearing dates. Counsel may contact the receiving courtroom after receiving notice of the new court assignment.

**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

ONLINE SERVICES

Tentative Rulings

DEPARTMENT B LAW AND MOTION RULINGS

Case Number: 20STCV36943

Hearing Date: November 5, 2021 **Dept:** B

**LOS ANGELES SUPERIOR COURT –
SOUTHWEST DISTRICT**

Honorable Gary Y. Tanaka Friday, November 5, 2021

Department B

Calendar No. 5

Appendix T

PROCEEDINGS

Estate of Alejandro Alers, Sr., et al. v. Olympia Medical Center, et al.

20STCV36943

1. HealthCare Partners Affiliates Medical Group, Mary Jean Lockard, N.P., N. Isabel Kiefer, M.D., Hagop Sarkissian, M.D., and Kelly Winer, S.W.'s (collectively "HCP") Demurrer to First Amended Complaint
2. Seasons Hospice and Palliative Care of California, LLC, Arman Ahangarzadeh, LVN, Gary Zimny, R.N., Thomas (Tom) Carmody, Philip Rohrbacher, R.N., and Pejman Naghdechi, M.D.'s (collectively "Seasons") Demurrer to First Amended Complaint
3. Seasons Hospice and Palliative Care of California, LLC, Arman Ahangarzadeh, LVN, Gary Zimny, R.N., Thomas (Tom) Carmody, Philip Rohrbacher, R.N., and Pejman Naghdechi, M.D.'s Motion to Strike Portions of First Amended Complaint
4. Olympia Health Care, LLC dba Olympia Medical Center's ("Olympia") Demurrer to First Amended Complaint
5. Olympia Health Care, LLC dba Olympia Medical Center's Motion to Strike Portions of First Amended Complaint

Appendix T

TENTATIVE RULING

Defendants' Demurrers to First Amended Complaint are sustained with 20 days leave to amend.

Defendants' Motions to Strike are deemed moot.

Background

Plaintiffs filed their Complaint on September 28, 2020. Plaintiffs' First Amended Complaint was submitted on January 19, 2021, but never officially filed. On August 24, 2021, the parties stipulated that the First Amended Complaint was deemed filed on January 19, 2021. Plaintiffs allege numerous causes of action in relation to the death of Plaintiffs' decedent Alejandro Alers, Sr. The Plaintiffs in this action are the Estate of Alejandro Alers, Sr., Alejandro Alers, Jr., and Hazel Alers. Each of the Plaintiffs bring this action in pro per.

Meet and Confer

Defendants HCP set forth a meet and confer declaration in sufficient compliance with CCP § 430.41. (Decl., Brenda Ligorsky, ¶¶ 3-5.)

Defendants Seasons set forth a meet and confer declaration in sufficient compliance with CCP § 435.5. (Decl., Brian T. Katoozi, ¶¶ 3-5.) Defendants Seasons did not submit a declaration in compliance with CCP § 430.41. However, in connection with the declaration submitted in compliance with CCP § 435.5, declarant

Appendix T

attached a copy of the meet and confer correspondence as Exhibit A which demonstrates an attempt to meet and confer pursuant to CCP § 430.41.

Defendant Olympia set forth a meet and confer declaration in sufficient compliance with CCP §§ 430.41 and 435.5. (Decl., Laura G. Lopez, ¶¶ 2-5.)

Demurrer

A demurrer tests the sufficiency of a complaint as a matter of law and raises only questions of law. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.) In testing the sufficiency of the complaint, the court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The Court may not consider contentions, deductions, or conclusions of fact or law. (*Moore v. Conliffe* (1994) 7 Cal.App.4th 634, 638.) Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. (*Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should sustain the demurrer. (C.C.P., § 430.10(e); *Zelig v. County of Los Angeles* (2002) 27 Cal.App.4th 1112, 1126.)

Sufficient facts are the essential facts of the case “with reasonable precision and with particularity sufficiently

Appendix T

specific to acquaint the defendant with the nature, source, and extent of his cause of action.” (*Gressley v. Williams* (1961) 193 Cal.App.2d 636, 643-644.) “Whether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer.” (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 609-610.) Under Code Civil Procedure § 430.10(f), a demurrer may also be sustained if a complaint is “uncertain.” Uncertainty exists where a complaint’s factual allegations are so confusing they do not sufficiently apprise a defendant of the issues it is being asked to meet. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Demurrer of HCP Defendants

HCP’s demurrer is sustained with 20 days leave to amend.

Plaintiff Estate of Alejandro Alers, Sr. has asserted the ninth through fourteenth causes of action against HCP. However, the Estate of Alejandro Alers, Sr. has brought these causes of action in pro per. The Estate of Alejandro Alers, Sr. must be represented by counsel.

“A person who is unlicensed to practice law and who represents a decedent’s estate cannot appear in propria persona on behalf of the estate in matters outside the probate proceedings. Since the passage of the State Bar Act in 1927, persons may represent their own interests in legal proceedings, but may not represent the interests of another unless they are active members of the State

Appendix T

Bar. In line with that prohibition, courts have held, among other examples, that ... [citation] ... [citation] ... a nonlawyer representing his mother's estate as conservator and executor cannot appear in propria persona on behalf of the estate." *Hansen v. Hansen* (2003) 114 Cal.App.4th 618, 621 (internal citations and quotations omitted).

The cases Plaintiffs rely on in their supplemental opposition are distinguishable as, in each case, the pro per Plaintiff brought causes of action on behalf of himself or herself, and not on behalf of the Estate, or was a duly appointed administrator authorized to assert a cause of action on behalf of the Estate. *See, Kockelman v. Segal* (1998) 61 Cal.App.4th 491; *See, Lattimore v. Dickey* (2015) 239 Cal.App.4th 959; *See, Lamont v. Wolfe* (1983) 142 Cal.App.3d 375.

Therefore, HCP's Demurrer to the ninth through fourteenth causes of action is sustained with 20 days leave to amend.

Demurrer of Seasons Defendants

Seasons' demurrer is sustained with 20 days leave to amend.

Plaintiff Estate of Alejandro Alers, Sr. has asserted the fifteenth through twenty first causes of action against Seasons. However, the Estate of Alejandro Alers, Sr. has brought these causes of action in pro per. As discussed above, the Estate of Alejandro Alers, Sr. must be represented by counsel.

Appendix T

The Court further notes that the fifteenth cause of action for “No Contract was Formed” and sixteenth cause of action for “Unconscionable Contract” are not recognizable causes of action.

Therefore, the demurrer to the fifteenth through twenty first causes of action is sustained with 20 days leave to amend.

Defendants’ demurrer to Plaintiff Hazel Alers’ twenty second cause of action for Wrongful Death, Plaintiff Hazel Alers’ twenty third cause of action for Professional Negligence & Malicious Behavior, and Plaintiff Alejandro Alers, Jr.’s twenty fourth cause of action for Professional Negligence & Malicious Behavior is sustained with 20 days leave to amend.

Code Civ. Proc., § 340.5 states, in relevant part:

“In an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.”

Here, the allegations of the First Amended Complaint reveal a bar based on the applicable statute of limitations as the factual allegations demonstrate that Plaintiffs knew of the alleged injury or through reasonable diligence should have discovered the injury beginning on the date

Appendix T

of decedent's death on April 30, 2019. The Complaint was filed more than one year later on September 28, 2020.

In addition, as to the twenty third and twenty fourth causes of action, Plaintiffs have not alleged facts to support the existence of a physician/patient relationship to state a cause of action for professional negligence. In addition, there is no recognized cause of action for "Malicious Behavior."

Therefore, the demurrer to the twenty second through twenty fourth causes of action is sustained with 20 days leave to amend.

Demurrer of Olympia Defendant

Olympia's demurrer is sustained with 20 days leave to amend.

Plaintiff Estate of Alejandro Alers, Sr. has asserted the first through sixth causes of action against Olympia. However, the Estate of Alejandro Alers, Sr. has brought these causes of action in pro per. As discussed above, the Estate of Alejandro Alers, Sr. must be represented by counsel.

Therefore, Olympia's demurrer to the first through sixth causes of action is sustained with 20 days leave to amend.

Defendant's demurrer to Plaintiff Hazel Alers' seventh cause of action for Wrongful Death and eighth

Appendix T

cause of action for Professional Negligence is sustained with 20 days leave to amend.

Code Civ. Proc., § 340.5 states, in relevant part:

“In an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered the injury, whichever occurs first.”

Here, the allegations of the First Amended Complaint reveal a bar based on the applicable statute of limitations as the factual allegations demonstrate that Plaintiff knew of the alleged injury or through reasonable diligence should have discovered the injury beginning on the date of decedent’s death on April 30, 2019. The Complaint was filed more than one year later on September 28, 2020.

In addition, as to the eighth cause of action for professional negligence, Plaintiff has not alleged facts to support the existence of a physician/patient relationship to state a cause of action for professional negligence.

Motions to Strike

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading. CCP § 436(a). The court may also strike all or

Appendix T

any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. CCP § 436(b). The grounds for a motion to strike are that the pleading has irrelevant, false or improper matter, or has not been drawn or filed in conformity with laws. CCP § 436. The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. CCP § 437.

Defendants Seasons' and Olympia's Motions to Strike are moot.

Defendants ordered to give notice of this ruling.

The Court sets an OSC re: Status of Representation of the Estate of Alejandro Alers, Sr. for December 9, 2021.