

TENTATIVE RULINGS

FOR: April 21, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 858 9787 4559 **Password:** 704959

Dept. B Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 899 0261 1018 **Password:** 776773

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Lucille Johnson, et al. v. Wayne Panchesson, et al.

21CV000023

(1) DEMURRER TO THE COMPLAINT

TENTATIVE RULING: Defendants The Meadows of Napa Valley, PRS Management, Inc., Pacific Retirement Services, and Wayne Panchesson’s demurrer to the first cause of action for elder abuse/neglect on the ground of failure to state sufficient facts is **OVERRULED**.¹ To establish a claim for neglect under the Act, a plaintiff “must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care [citations]; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [citations]; and (3) denied or withheld goods or services necessary

¹ Moving defendant Odd Fellows Home of California, Inc. was dismissed as a defendant on April 2, 2021.

to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness) [citations]. The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering. [Citations.] Finally, the facts constituting the neglect and establishing the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing statutory claims. [Citation.]" (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 406-07.)

Defendants argue plaintiffs have not adequately alleged with particularity that defendants neglected decedent. The Court disagrees. Plaintiffs allege the neglect arose not only from a failure to provide medical care, but also from the failure to protect decedent from health and safety hazards at the facility. Specifically, plaintiffs allege defendants left decedent alone on the floor of her room for days without anyone from the facility ever physically checking on her as promised in violation of defendants' policies and procedures. The failure to do so was despite decedent failing to answer messages, failing to push her button or call in on five consecutive mornings, failing to pick-up dinner outside her door, failing to let housekeeping in to clean, and failing to appear for a scheduled COVID-19 test.

Defendants contend plaintiffs have not adequately alleged with particularity that defendants acted recklessly. The contention is belied by the complaint where there are ample allegations going toward recklessness. (See, e.g., Compl., ¶¶ 24, 28, 34, 36, 43, 45, 54.)

Panchesson's demurrer to the second cause of action for negligence, third cause of action for wrongful death, and fourth cause of action for survivorship on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Plaintiffs allege Panchesson was the administrator of the facility. (Compl., ¶ 6.) The subsequent allegations regarding the incident with decedent and the facility indicate Panchesson was acting in the course and scope of his employment. In that capacity, there are no allegations that Panchesson was involved in setting staffing levels or training staff at the facility. To the extent the claims are targeted toward Panchesson in his personal capacity, there are not sufficient facts pled showing he had responsibility for the injuries and damages alleged or is directly liable for his own tortious conduct.

Defendants' request for judicial notice is GRANTED as to Nancy Lee Sterling's death certificate stating the cause of death was determined to be atherosclerotic cardiovascular disease.

If plaintiffs elect to do so, they shall file their first amended complaint within 10 calendar days of service of notice of entry of order.

(2) MOTION TO STRIKE

TENTATIVE RULING: Defendants The Meadows of Napa Valley, PRS Management, Inc., Pacific Retirement Services, and Wayne Panchesson's motion to strike paragraph 54 as well

as paragraphs 4 and 6 from the prayer for relief is DENIED.² Because the first cause of action for elder abuse/neglect survived demurrer, the motion attacking the remedies for that claim necessarily fails.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Daniela Farina v. Victor N. Alam

20CV001250

(1) MOTION TO COMPEL DEPOSITION

TENTATIVE RULING: Defendant/cross-complainant Victor Alam’s motion to compel plaintiff/cross-defendant Daniela Farina’s deposition and production of documents pursuant to Code of Civil Procedure section 2025.450 is GRANTED. Section 2025.450 applies only in the case of a deposition of a party, who, without serving a valid objection, fails to appear for a noticed deposition, proceed with the deposition after appearing, or produce documents described in the deposition notice. (Code Civ. Proc., § 2025.450, subd. (a).) Under such circumstances, the party noticing the deposition may seek an order compelling the deponent to appear for her deposition, provide testimony, and produce all documents requested in the notice. (*Ibid.*)

Farina appeared for a deposition via Zoom on March 18, 2021. (Modica Reply Decl., ¶ 25.) However, applying the word “appeared” to what transpired is not accurate or appropriate. Farina’s actions leading up to the deposition and during the deposition necessitate a conclusion that she did not appear within the meaning of the statute or, alternatively, proceed with the deposition after appearing. (See *id.*, ¶¶ 16-34, 41 [detailing attempts to frustrate the deposition and discourage it from occurring].) Despite these actions, Farina has agreed to attend another day of deposition, albeit she wants to attend with new counsel hopefully in mid-May. (See Opp. at p. 6:11-14.)

Farina, therefore, shall appear for her deposition at Alam’s counsel’s law office in Santa Rosa and produce documents within 30 calendar days of service of notice of entry of order. The Court generally provides less time to sit for a deposition upon the granting of a motion to compel, but the Court wants to accommodate Farina’s request and give her an opportunity to obtain new counsel. Farina’s deposition must move forward even if she is unable to locate new counsel considering she filed this litigation and Alam has the right under the Discovery Act to investigate the basis of the claims alleged against him. As plaintiff was not able to properly utilize Zoom on her cell phone, computer, or other electronic device during the previous attempt at a deposition, the deposition must – by default and necessity – occur in person. Alam’s request for a referee is not properly before the Court at this time. The Court would consider a request in the future if Farina disrupts the court-ordered deposition.

Alam’s request for monetary sanctions for bringing his motion to compel is GRANTED IN PART against Farina in the amount of \$5,110, payable to Alam’s counsel within 30 calendar days of service of notice of entry of order. (Code Civ. Proc., § 2025.450, subd. (g).) Farina was

² Moving defendant Odd Fellows Home of California, Inc. was dismissed as a defendant on April 2, 2021.

not substantially justified in opposing the motion to compel based on the ruling above. No other circumstances make the imposition of sanctions unjust against Farina. Monetary sanctions against Farina's counsel, however, would be unjust considering it was Farina's actions as described in the Modica reply declaration that disrupted the deposition, not her counsel's. The amount awarded is based on the 4.5 hours attorney Jaimee Modica spent preparing the motion and reply at \$400 per hour, the 10 hours attorney Danielle Podshadley spent at \$325 per hour preparing the motion and reply, plus the \$60 filing fee (\$1,800 + \$3,250 + \$60). (Modica Decl., ¶ 16; Modica Reply Decl., ¶ 46.) The Court does not award for meet and confer efforts and has reduced Modica's hours accordingly.

Plaintiff's request for monetary sanctions is DENIED.

The case management conferences in the instant litigation and in Case No. 20CV001167, are continued to June 11, 2021, at 8:30 a.m. in Dept. B to give Farina time to find new counsel and to allow for the deposition to occur.

(2) MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF

TENTATIVE RULING: The motion is MOOT. On April 14, 2021, a substitution of attorney was filed indicating plaintiff Daniela Farina has consented to the substitution and now is representing herself.

(3) MOTION TO BE RELIEVED AS COUNSEL FOR CROSS-DEFENDANT

TENTATIVE RULING: The motion is GRANTED. The April 14, 2021 substitution of attorney is silent as to whether cross-defendant Daniela Farina consented to the substitution.