

**Superior Court of the State of California
County of Orange**

**Tentative Rulings
Law and Motion Calendar
Department C23
Honorable David J. Hesseltine**

Hearing Date and Time: May 20, 2024, at 2:00 p.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: [Civil Court Reporter Pooling](#). For additional information regarding court reporter availability, please visit the court's website at [Court Reporter Interpreter Services](#).

Tentative Rulings: The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case.

The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.

Submitting on Tentative Rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

<https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom’s Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court’s “Appearance Procedures and Information--Civil Unlimited and Complex” and “Guidelines for Remote Appearances” also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150 AND ORANGE COUNTY SUPERIOR COURT RULE 180.

#	Case Name	Tentative
1.	520 Capital, LLC v. 520 Fund I, LP	OFF CALENDAR based on the request for dismissal filed on May 3, 2024
2.	Diyar Irvine, LLC v. Elzoheiry	<p>Before the court is an unopposed motion to be relieved as counsel of record, filed by attorneys Berger Harrison, APC, as to the representation of defendant and cross-defendant Carlyle Capital, Inc.</p> <p>Although the motion generally complies with California Rule of Court, rule 3.1362, there is no evidence in the court’s file the client, Carlyle Capital, Inc., was given notice of the hearing date which the court specially set at the April 18, 2024 ex parte hearing. If moving counsel submits, prior to the hearing of this matter, a satisfactory declaration establishing the client was given statutory notice of the May 20, 2024 hearing, the motion will be GRANTED subject to a corrected proposed order being submitted which contains all pending hearing dates in paragraph 8. The order will become effective upon filing of a proof of service reflecting service of the signed order on the client.</p> <p>Additionally, Carlyle Capital, Inc. is a corporation. This entity cannot represent itself. (<i>Gamet v. Blanchard</i> (2001) 91 Cal.App.4th 1276, 1284 n.5.) Carlyle Capital, Inc. must obtain representation or</p>

		<p>risk forfeiting important rights through nonrepresentation. (<i>Ibid.</i>) Assuming the motion is granted the court sets a status conference regarding Carlyle Capital, Inc.'s representation for Monday, July 29, 2024, at 2:00 p.m., in Department C23.</p> <p>Moving counsel is ordered to give notice.</p>
3.	JP23 Hospitality Company, Inc. v. Velasquez	<p>Before the court is an unopposed motion to be relieved as counsel of record, filed by attorney Richard C. Giller of Greenspoon Marder LLP, as to the representation of plaintiff JP23 Hospitality Company, Inc.</p> <p>Although the motion generally complies with California Rule of Court, rule 3.1362, there is no evidence in the court's file the client, JP23 Hospitality Company, Inc. was given notice of the hearing date which the court specially set at the April 25, 2024 ex parte hearing. At that hearing, the court also ordered a representative of JP23 Hospitality Company, Inc. to appear at this hearing, but that is not possible without notice being given.</p> <p>If moving counsel submits, prior to the hearing of this matter, a satisfactory declaration establishing the client was given notice of the May 20, 2024 hearing, the motion will be GRANTED, with the order to become effective upon filing of a proof of service reflecting service of the signed order on the client.</p> <p>Additionally, JP23 Hospitality Company, Inc. is a corporation. This entity cannot represent itself. (<i>Gamet v. Blanchard</i> (2001) 91 Cal.App.4th 1276, 1284 n.5.) JP23 Hospitality Company, Inc. must obtain representation or risk forfeiting important rights through nonrepresentation. (<i>Ibid.</i>) Assuming the motion is granted the court sets a status conference regarding JP23 Hospitality Company, Inc.'s representation for Friday, June 21, 2024, at 9:30 a.m., in Department C23.</p> <p>Moving counsel is ordered to give notice.</p>
4.	NNN Capital Fund I, LLC v. Mikles	<p>Before the court is the unopposed petition of plaintiff NNN Capital Fund I, LLC (Plaintiff) to confirm arbitration award. The petition is GRANTED as set forth below.</p>

		<p>Plaintiff has complied with the requirements of Code of Civil Procedure section 1285.4. The court will grant the petition pursuant to Code of Civil Procedure section 1286 and will confirm the full arbitration award amount of \$21,589,350 in damages, punitive damages, costs, and fees as awarded by arbitrator Hon. Victor E. Bianchini (Ret.) (Judge of the Superior Court, Ret., U.S. Magistrate Judge, Ret.)(Arbitrator). (Catanzarite Decl. at pp. 407-57 (Interim) and 466-84 (Final).)</p> <p>The court also will award prejudgment interest of \$1,085.90 per day for the 52-days between issuance of the award on March 29, 2024, to the May 20, 2024 hearing date, for a total of \$56,466.93. (Civ. Code § 3287.)</p> <p>The award is confirmed, and the Petition is granted.</p> <p>Plaintiff to give notice.</p>
5.	Talamantes v. Seal Beach Health and Rehabilitation Center	<p>Before the court is the demurrer of defendant Los Alamitos Medical Center, Inc. (LAMC) to the complaint of plaintiff Sophia Talamantes, by and through her guardian ad litem, Regina Regan (Plaintiff).</p> <p>The demurrer challenges each of the three causes of action alleged in Plaintiff’s complaint. LAMC challenges the first cause of action for negligence and the third cause of action for willful misconduct on the ground the claims are barred by the statute of limitations. LAMC challenges the second cause of action for elder abuse on the ground Plaintiff fails to allege sufficient facts to state this statutory cause of action. In the reply brief, however, LAMC withdraws the challenges to the first and third causes of action, and therefore only LAMC’s challenge to the second cause of action remains to be determined.</p> <p>“In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (<i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311, 318.)</p>

To plead and elder abuse cause of action, a plaintiff "must allege . . . 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 [Citation]; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [Citation]; and (3) denied or withheld goods or services necessary 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). [Citation] 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. [Citation] 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, 406-407 (*Carter*).)

Although the lengthy complaint includes many conclusory and boilerplate allegations, the court finds there are enough specific allegations sprinkled throughout the second cause of action and the allegations incorporated therein to adequately state a claim for neglect within the meaning of the Elder Abuse Act. (See Welf. & Inst. Code § 15610.57.) Plaintiff alleges Defendants (which includes LAMC) knew or should have known Plaintiff was at high risk for skin breakdown and infection and impaired skin integrity, and at high risk for developing pressure sores/ulcers/injuries, and/or worsening of pressure sores or ulcers, due to her prior medical and surgical histories and presenting symptoms at the facilities; Defendants failed to properly reposition the Plaintiff during her stays at the facilities, failed to keep Plaintiff clean and dry, failed to perform wound care and change her dressings and these failures caused the development and/or worsening of the pressure ulcers; notwithstanding the fact Defendants knew of Plaintiff's worsening condition, Defendants failed to report Plaintiff's

deteriorating and changing condition to her physician or family. (Compl., ¶¶ 55, 60, 62-63.) The complaint also specifically alleges the events that occurred at LAMC's facility as distinct from the events that occurred at defendant Seal Beach Health and Rehabilitation Center's facility. (Compl., ¶¶ 25-36, 47-54.)

Plaintiff further alleges Defendants' staff knew Plaintiff's pressure ulcers were getting worse, but Defendants continually failed to follow the patient care plan or reassess her condition and implement a new care plan based on her worsening condition. (Compl., ¶¶ 96, 108.) She also alleges "on frequent occasions, [she] was left lying in her own excrement and/or urine-soaked linens for excessively long periods which not only caused her severe emotional distress, but also . . . caused her to develop unnecessary pressure ulcers which went untreated such that the ulcers became severely infected and ate through multiple layers of soft tissue structures, exposing deep muscle tissue and bone. Defendants' staff failed to reposition or turn the Plaintiff, and the Plaintiff was not turned adequately even after the wound was demonstrated to extend into the subcutaneous tissues and eventually to the bone." (Compl., ¶ 106.)

The court finds the foregoing allegations sufficient to allege egregious conduct by LAMC necessary to plead a cause of action for Elder Abuse. Moreover, a causal link between the neglect and the injury is sufficiently pled. (See *Carter, supra*, 198 Cal.App.4th at pp. 405-407.)

Based on the above, the demurrer to the second cause of action is **OVERRULED**, and the demurrer to the first and third causes of action was withdrawn. LAMC is ordered to file an answer to the complaint within 10 days of notice of this ruling.

LAMC's request for judicial notice is **DENIED** as said request was submitted in support of LAMC's statute of limitations argument regarding the first and third causes of action. Because the demurrer to said causes of action was withdrawn, the documents sought to be judicially noticed are no longer relevant to this demurrer.

		Counsel for Plaintiff is ordered to give notice of this ruling.
6.	Shah v. Lehner	Motion to be relieved as counsel of record OFF CALENDAR based on request for dismissal filed on May 16, 2024
7.	Whitworth v. Ford Motor Company	<p>On calendar is the continued hearing on the two motions filed by defendant Ford Motor Company (Ford) against plaintiff Jim O. Whitworth (Plaintiff): (1) motion for monetary sanctions pursuant to Code of Civil Procedure sections 128.7 and 1008, and (2) motion for monetary sanctions pursuant to Code of Civil Procedure section 128.5. Both motions are DENIED as set forth below.</p> <p>Code of Civil Procedure sections 128.5(f)(1)(B) and 128.7(c)(1) require each "motion shall be served as provided in section 1010." The proofs of service for both motions show they were served on Plaintiff by email at a time when Plaintiff was representing himself. Code of Civil Procedure section 1010.6(c) authorizes electronic service of an unrepresented party and states: "(c)(1) This subdivision applies to electronic service by consent of an unrepresented person in a civil action. [¶] (2) An unrepresented party may consent to receive electronic service. [¶] (3) Express consent to electronic service may be given by either of the following: [¶] (i) Serving a notice on all parties and filing the notice with the court. [¶] (ii) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent."</p> <p>Plaintiff previously has stated he has not agreed to accept electronic service. (See Plaintiff's Reply to Ford's Opposition to the Motion to Vacate, ROA No. 579). There also is no document in the court's file reflecting Plaintiff's consent and Ford's proofs of service do not reflect consent being obtained.</p> <p>These service defects were pointed out to Ford's counsel at the prior hearing on these motions conducted on March 4, 2024. The hearing was continued to allow Ford the opportunity to attempt to correct these service defects. Ford, however, has not filed any amended or new proofs of service,</p>

		<p>brief, or other document since the prior hearing to address these service defendants.</p> <p>Accordingly, based on the lack of proper service, the motions are DENIED.</p> <p>Counsel for Ford is ordered to give notice of this ruling.</p>
8.	Whitcomb v. Kia Motors America, Inc.	<p>Before the court is (1) the order to show cause hearing regarding proper venue, and (2) the motion of plaintiff Kristy Whitcomb (Plaintiff) to compel defendant Kia Motors America, Inc. (Defendant) to provide further responses to request for production of documents, set one, and request for monetary sanctions.</p> <p>On April 29, 2024, the court issues the order to show cause regarding venue explaining the complaint failed to allege sufficient facts showing this case was commenced in the proper superior court. Pursuant to Code of Civil Procedure section 396a, subdivision (a), the court ordered Plaintiff's counsel to file a declaration showing this case was commenced in the proper superior court under either Code of Civil Procedure section 395, subdivision (b), or Civil Code section 2984.4. The court also ordered counsel to attach a copy of the underlying lease agreement.</p> <p>The court ordered the declaration filed and served by May 13, 2024. Plaintiff's counsel failed to timely file any declaration or other response to the court's order to show cause.</p> <p>All counsel are ordered to appear at the hearing prepared to discuss the proper venue for this matter.</p>
9.	Stanford v. General Motors, LLC	<p>Originally on calendar were (1) the demurrer by defendant General Motors LLC (Defendant), (2) the motion to strike by Defendant, and (3) a case management conference.</p> <p>The demurrer and motion to strike are OFF CALENDAR based on the notice Defendant filed on May 8, 2024, withdrawing the motions.</p> <p>The case management conference remains on calendar and all counsel are ordered to appear to discuss the case.</p>

10.	King v. Christiansen	<p>Attorney Jason D. Annigian and Annigian Ryan LLP seek to be relieved as counsel of record for defendants Chris Co Family of Companies LLC and Stargreen Enterprises LLC (collectively, Defendants). The motion is CONTINUED to June 24, 2024, at 2:00 p.m., in this department.</p> <p>There is no indication Defendants were served with the moving papers or received notice of the advanced hearing date on this motion. Although counsel's declaration in support of the motion states Defendants were served with the motion papers by mail at Defendants' last known address, no proof of service on Defendants was filed. The statements in counsel's declaration regarding service are not a proper or adequate proof of service. (See Code Civ. Proc., § 1013a.) Counsel did file a proof of service indicating Plaintiff was served with the motion (ROA 201), but no proof of service as to Defendants was filed.</p> <p>In addition, on April 26, 2024, the court advanced the hearing date on this motion to May 20, 2024, and ordered Mr. Annigian to give notice. A notice of the advancement was filed May 1, 2024, but the proof of service does not reflect Defendants were served with said notice. (ROA 236.) The proof of service lists only Plaintiff's counsel and defendant James Christiansen. To the extent Mr. Christiansen was served as the agent or representative of Defendants, the proof of service must clearly state that fact.</p> <p>Based on the foregoing, the court will CONTINUE the hearing to the above date.</p> <p>Moving counsel is ordered to file a proof of service forthwith showing Defendants were properly served with the moving papers, with notice of the May 20, 2024 hearing date, and with notice of the June 24th hearing date.</p> <p>Moving counsel is to give notice of this ruling.</p>
11.	Pursley v. Fountain Valley Regional Hospital and Medical Center	<p>Before the court are the following eight discovery motions seeking to compel plaintiff Joyce Ann Pursley (Plaintiff) to provide further discovery responses: (1) motion of defendant Edmond Chu, M.D. (Chu), to compel further responses to special interrogatories, set one, (2) motion of Chu to compel further responses to requests for</p>

admissions, set one, (3) motion of defendant Daniel P. Hilton, M.D. (Hilton), to compel further responses to form interrogatories, set one, (4) motion of Hilton to compel further responses to requests for admissions, set one, (5) motion of Hilton to compel further responses to special interrogatories, set one, (6) motion of defendant Hung Nguyen, D.O. (Nguyen), to compel further responses to request for admissions, set one, (7) motion of Nguyen to compel further responses to special interrogatories, set one, and (8) motion of Nguyen to compel further responses to form interrogatories, set one.

A party may move to compel further responses to interrogatories on the grounds an answer is evasive or incomplete, an exercise of the option to produce document is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. (Code Civ. Proc., § 2030.300, subd. (a).) A party may move to compel further responses to requests for admissions if the responses are evasive or incomplete or if an objection to a particular request is without merit or too general. (Code Civ. Proc., § 2033.290, subd. (a).)

A motion to compel further responses must be made within 45 days after service of the verified responses or supplemental responses, or within any specific later date stipulated to in writing by the parties. (Code Civ. Proc., §§ 2030.300, subd. (c), 2033.290, subd. (c).) The motion must be accompanied by a meet and confer declaration. (Code Civ. Proc., §§ 2030.300, subd. (b)(1), 2033.290, subd. (b)(1).)

If a timely motion to compel further responses has been filed, the burden is on the responding party to justify any objection or failure to fully answer the interrogatories. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.) The same burden applies to a motion to compel further responses to requests for admissions. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 8:1382; see *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.)

The court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully

makes or opposes a motion to compel further responses unless it finds that the one subject to the sanction acted with substantial justification or other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., §§ 2030.300, subd. (d), 2033.290, subd. (d).) "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though . . . the requested discovery was provided to the moving party after the motion was filed." (Rules of Court, rule 3.1348(a).)

Chu's Motions

Chu's motions seek to compel further responses to special interrogatories nos. 3, 4, 9, 12, 20-23, 26, 28, 32, 37, 41, 45, 48-51, and 56, and requests for admissions nos. 1-5, and 7. Chu's motions are **GRANTED**. The motions were timely filed and served, and Plaintiff did not file an opposition to justify her responses. Plaintiff is ordered to serve verified responses to these discovery requests, without objections, within 25 days.

Plaintiff and her counsel of record are ordered to pay \$2,370 in monetary sanctions to Chu, through his counsel of record (Creason Tucker & Associates LL), within 30 days of service of notice of ruling. That is the combined total amount of sanctions for Chu's two motions together.

Hilton's Motions

Hilton's motions seek to compel further responses to special interrogatories nos. 3, 4, 9, 12, 20-23, 26, 28, 32, 37, 41, 45, 48-51, and 56, requests for admissions nos. 1-5, and 7, and form interrogatories no. 17.1. Hilton's motions are **DENIED AS MOOT**. Plaintiff's notice of non-opposition states that she served amended, verified responses, and the reply acknowledges those further responses.

Hilton's requests for monetary sanctions, however, are **GRANTED**. Sanctions are permitted even though Plaintiff served further responses. Furthermore, Plaintiff failed to demonstrate she acted with substantial justification, or the imposition of sanctions would be unjust. Plaintiff's counsel made vague statements as to what steps his predecessor took to address defense counsel's

		<p>meet and confer efforts. Plaintiff's counsel did not explain any efforts made between October 25, 2023 to May 2, 2024 to resolve this discovery dispute before finally serving the further responses on May 7, 2024.</p> <p>Plaintiff and her counsel of record are ordered to pay \$3,555 in monetary sanctions to Hilton, through his counsel of record (Creason Tucker & Associates LL), within 30 days of service of notice of ruling. That is the combined total amount of sanctions for the Hilton's three motions together.</p> <p style="text-align: center;"><u>Nguyen's Motions</u></p> <p>Nguyen's motions seek to compel further responses to special interrogatories nos. 3, 4, 9, 12, 20-23, 26, 28, 32, 37, 41, 45, 48-51, and 56, requests for admissions nos. 1-5, and 7, and form interrogatories no. 17.1. Nguyen's motions are GRANTED. The motions were timely filed and served, and Plaintiff did not file an opposition to justify her responses. Plaintiff is ordered to serve verified responses to these discovery requests, without objections, within 25 days.</p> <p>Plaintiff and her counsel of record are ordered to pay \$3,555 in monetary sanctions to Nguyen, through his counsel of record (Creason Tucker & Associates LL), within 30 days of service of notice of ruling. That is the combined total amount of sanctions for the Nguyen's three motions together.</p> <p>Defendants shall serve notice of ruling.</p>
12.	Birch Gold Group v. Alexander	<p>Before the court is the continued hearing on the applications of William A. Rome and Michael A. Eisenberg for pro hac vice admission to appear on behalf of plaintiff Birch Gold Group, LP (Plaintiff). The court conducted the originally hearing on May 8, 2024, and continued the hearing to this date for Plaintiff to submit supplemental application providing the additional information identified in the court's prior ruling.</p> <p>The supplemental applications provide the information that was lacking in the original applications, and when read in conjunction with the supplemental filings, the applications now comply with California Rules of Court, rule 9.40.</p>

		Both applications therefore are GRANTED , and attorneys Rome and Eisenberg are hereby admitted pro hac vice to appear on Plaintiff's behalf in this action. Plaintiff's counsel is ordered to give notice of this ruling.
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