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FRESNO COUNTY SUPERIOR COURT
By: M. Meza, Deputy

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
8 UNLIMITED CIVIL JURISDICTION

9 Alan MARCUM,

10 Plaintiff,

11 vs.

12 St. Agnes Medical Center, Dr. Chinnapa
13 Nareddy, Herbert Lee Thomas, Sharon
14 Wimberley, Wayne Thomas, Leisure Care
15 LLC, Does 1-10,

Defendants.

Case No. 15CECG01327

FIRST AMENDED COMPLAINT FOR
DAMAGES

JURY TRIAL DEMANDED

16 **GENERAL FACTUAL ALLEGATIONS RELEVANT TO ALL DEFENDANTS**

17 1. Plaintiff Alan Marcum brings his complaint for damages as against defendants St.
18 Agnes Medical Center, Dr. Chinnapa Nareddy, M.D., Herbert Lee Thomas ("Lee"), Sharon
19 Wimberley, Wayne Thomas, and Leisure Care LLC. Plaintiff has complied with all
20 statutory prerequisites regarding a professional negligence action as he caused to be served a
21 pre-claim notice on the medical professional entities on April 9, 2015.

22 2. Plaintiff is a resident of Sacramento County. The defendants except Wayne
23 Thomas are residents of Fresno County. Wayne resides in Alameda County. All acts
24 alleged herein occurred within Fresno County within the jurisdiction of the Fresno
25 County Superior Court. Therefore, Fresno County is the appropriate venue for this action
26 and the Fresno County Superior Court has jurisdiction over all defendants in this action in
27 light of their substantial contact with the jurisdiction and that all acts alleged herein occurred
28 within the boundary of the county.

1 3. Following the death of her first husband, Dorothy Marcum married her second
2 husband Herbert Lee Thomas. Following a divorce from his first wife, Herbert Lee
3 Thomas married his second wife Dorothy Marcum. Dorothy's first marriage produced
4 two children: Alan Marcum and Dan Marcum. Lee's first marriage produced three
5 children: Wayne Thomas, Sharon Wimberley (Sharon Thomas) and Suzanne Thomas
6 (Deceased). Lee and Dorothy had no children together. On October 25, 1990, Lee and
7 Dorothy created the Herbert L Thomas and Dorothy A Thomas trust. The beneficiaries of
8 that trust were the children of both Lee and Dorothy. The trust was restated June 21, 2007.
9 At that time, Wayne Thomas and Dan Marcum were added as co-successor trustees, with
10 Alan Marcum named as Dan's available replacement, and Wayne Thomas and Dan Marcum
11 as "co-disability panelists," again with Alan Marcum as Dan Marcum's available
12 replacement. Dan Marcum and Wayne Thomas are also co-personal representatives in
13 Dorothy Thomas' pour-over will (executed as part of the trust). Dorothy Thomas died on
14 April 30, 2013. Immediately after her death, Lee amended the trust. In his amendment, he
15 made sweeping changes, including the removal of Dan and Alan from *all* positions of
16 responsibility as successor trustees, and removing Dan and Alan from the disability panel.
17 Dan Marcum's removal required court approval, as per the terms of the trust, and service of
18 process on him. That did not occur. Notably, the original trust permitted removal of a
19 trustee only for cause and required court approval. Furthermore, Lee also altered the trust to
20 remove the requirement that capacity determinations be made based on the opinion of an
attending physician.

21 4. Lee and Dorothy Thomas resided in a single family residence at 532 W. Rialto,
22 Fresno CA 93705 until they moved to Fairwinds-Woodward, a residential care facility
23 pursuant to 22 CCR §87101(5), owned and operated by Leisure Care LLC. It is
24 regulated by the California Department of Social Services as facility number 107201156.
25 Lee was physically abusive toward Dorothy. Instances of abuse are documented throughout
26 Dorothy's medical records. They include Lee offering conflicting versions of events to
27 medical personnel regarding the circumstances surrounding Dorothy's injuries. Elsewhere
28 in the records medical personnel, including nurses, specifically indicate that abuse of

1 Dorothy is occurring in the home she shared with Lee. Indeed referral to local authorities
2 was even noted and recommended. For his part, Plaintiff also had personally witnessed
3 physical indicia of abuse to his mother. Indeed, Dan and Alan confronted Lee in 2012 at the
4 Rialto residence regarding physical abuse of their mother. In that meeting, they demanding
5 notification of *all* future ambulance incidents, hospitalizations, and emergency room visits.
6 In response, Lee capitulated, stating: " You have a right to know."

7 5. Primary care physician Dr. Garry Steven Sevel even noted in his August 6, 2012,
8 report that Lee was incapable of continuing as Dorothy's primary health caregiver.
9 Specifically, he wrote: "Pt's husband is very confused as to meds pt should be taking, and in
10 my opinion is not giving her needed meds or in my opinion able to be primary care giver."
11 A second letter of similar substance from Dorothy's new primary care physician Dr.
12 Kirandeep Kaur Batth, M.D., was written on 12/4/2012. However, Lee concealed this report
13 from plaintiff. Moreover, Dorothy's medical records from 2012 reveal a woman who was
14 consistently malnourished and dehydrated, with bed sores and other injuries consistent with
15 domestic abuse including a broken rib and black eyes. Lee consistently delayed Dorothy's
16 medical treatment for days or weeks at a time. He deliberately withheld Dorothy's son
17 Dan's contact information from Leisure Care LLC to prevent the facility from contacting
18 him about her care. He resisted and refused efforts to provide in-home caregivers for
19 Dorothy. He failed to take adequate action to ensure that Dorothy's walker could fit through
20 the bathroom door of the home. He rendered himself incommunicado from health caregivers
21 during times when Dorothy was in their care and communication needed to occur with her
22 personal representative/contact. He withheld information from Dan and Alan Marcum,
23 including when she was admitted to the St. Agnes Emergency Room on 4/14/2013 and again
24 on 4/29/2013. He failed to provide nutrition and feeding for Dorothy, often forcing her to go
25 nine to twelve hours at a time without food. He failed to pick up her necessary prescription
26 medication or would cancel them altogether. He repeatedly and consistently allowed her to
27 develop debilitating bedsores. Lee isolated Dorothy from her sons, relatives, and
28 friends she had prior to the marriage. Lee controlled every aspect of Dorothy's life.
When Dan and Alan called Dorothy, Lee listened in on all phone calls. When Dan

1 and Alan visited Dorothy, Lee listened to all conversations. Lee and Dorothy rarely
2 visited Dan and Alan. The hospital records revealed this abuse.

3 6. At one juncture in 2012, plaintiff and Dan and Alan hired an in-home caregiver to
4 assist with his mother's care. A-Plus was the in-home care service business. Alan and
5 Dan employed A-Plus in 2012 to provide care to Lee and Dorothy Thomas in their
6 home. However, Lee refused to allow the caregiver to perform its duties, instead relegating
7 them to light housework. At another point in time, Dorothy was enrolled in Horizon Health
8 Care center. Her condition improved. A 1/4/2013 email from Ginger McMurchie stated that
9 Lee had declined training for the family on caring for Dorothy. This was prior to the move to
10 Fairwinds. Next, Wayne was complicit with the Horizon assessment and ratified it without
11 notifying co-trustee Dan Marcum on 1/27/2013. Wayne signed a service contract with a
12 level of care which was insufficient for the level of care Dorothy required. Wayne Thomas
13 purchased virtually the most inexpensive care Fairwinds provided. At the time Dorothy's
14 net worth exceeded two million dollars.

15 7. Dr. A.P.S. Sidhu M .D., completed Form LIC 602A, a separate interdisciplinary
16 discharge summary that Lee signed on January 30, 2013, the day Dorothy was
17 transferred from Horizon to Fairwinds. Dorothy moved into Fairwinds on January 30,
18 2013, at 11:30am. Yet Lee did not sign off on her intake form until much later that same
19 day, therefore the form could not possibly have been utilized/considered in the
20 admission appraisal process by the caregiver.

21 8. Further records demonstrate that Lee was "tired" of his responsibility as caregiver to
22 Dorothy. Thus, it was unsurprising that Dorothy was taken to the Emergency Room at St.
23 Agnes Medical Center on April 14, 2013, after having suffered a fall on 4/13/2013 while
24 getting out of bed. Unfortunately, the fall caused her to break her back. Lee did not
25 accompany her to the hospital, nor could he be reached by telephone at any time during
26 Dorothy's stay there. Indeed even after she had received medical treatment and was ready
27 for discharge, Lee refused the calls of hospital staff and allowed Dorothy to languish at the
28 hospital.

9. On several occasions Dorothy has signed advance healthcare directives (AHCD) and

1 physician's order for life sustaining treatment (POLST). On each and every occasion, she
2 stated her desire that everything be done to save her in the event medical intervention
3 became necessary. Lee failed to notify Dan of this AHCD and also failed to provide the
4 AHCD to St. Agnes. The Fairwinds AHCD named two specific health care agents, Lee
5 Thomas and Dan Marcum, and it included detailed contact information for both.

6 10. On April 29, 2013, Dorothy was admitted to the Emergency Room at St. Agnes
7 Medical Center. Upon arrival she is in possession of her POLST and the records so indicate
8 that a Dr. Vallapu confirmed having received and reviewed same. Again, Lee did not
9 accompany her to the hospital. Nor did he respond to numerous calls from hospital staff and
10 was never mentioned as being reasonably available by phone or at St. Agnes. For his part,
11 plaintiff was never informed that Dorothy had been hospitalized or had visited the
12 Emergency Room in 2013.

13 11. Regardless, even after being admitted to St. Agnes Medical Center, Dorothy again
14 was presented with forms regarding her wishes in the event life-saving medical care and
15 treatment became necessary. She consistently indicated that everything should be done to
16 save her life, including full resuscitation.

17 12. Inexplicably, defendant Sharon Wimberley, a healthcare professional herself with
18 twenty years of experience in the industry, approached Dr. Nareddy and informed him that
19 Dorothy should not receive any lifesaving treatment whatsoever. Sharon had never had any
20 authorization to act on Dorothy's behalf or even Lee's behalf. Instead she appears to have
21 simply materialized as the angel of death at Dorothy's side. Sharon knew that Dorothy
22 wanted her AHCD mandating full resuscitation to be followed, yet she disregarded
23 Dorothy's wishes.

24 13. For his part, Dr. Nareddy did nothing to confirm whether Sharon had any such
25 authorization to change Dorothy's AHCD or POLST. Instead, he simply alters the
26 records/chart and physician's orders requiring full resuscitation to indicate that Dorothy
27 should not be resuscitated or receive any therapies in the event she needed such medical
28 intervention to stay alive and never mentioned that Dorothy had lost capacity. Thus at
4:47:50 all 7-9 medical procedures were halted along with medications "allowing a natural

1 death" as stated in Dr. Nareddy's notes. All therapies were specifically removed, and no
2 further efforts were made to help her stay alive. A subsequent expert witness review of the
3 records concluded that it was reasonably probable that Dorothy would have continued living
4 had she been taken to intensive care. Thus, in a very real sense Sharon, Lee, Wayne, and Dr.
5 Nareddy killed her.

6 14. Sharon had departed the hospital and Dorothy died alone of acute respiratory failure
7 at 5:45 p.m. on April 30, 2013, with no family at her bedside. Also, Lee is inexplicably
8 never mentioned as being in the hospital or being in contact with any of the staff in 2013.

9 15. Less than an hour after Dorothy expired, Wayne resurfaced at 6:40 authorizing release
10 of Dorothy's health information and ordered no autopsy to be performed on Dorothy's
11 corpse. Wayne lacked the authority to make such a decision on her behalf. Indeed, on
12 information and belief it is alleged that Wayne also engaged in a pattern of making financial
13 decisions which were not in Dorothy's best interest and which were not ratified by co-trustee
14 Dan Marcum. These decisions were intended not to benefit Dorothy, but rather to save as
15 much of his potential inheritance for himself and for his sister Sharon. They include
16 consistently denying or cancelling necessary healthcare for Dorothy because he deemed it
17 too expensive for her.

18 16. Finally, two days after her death, Dr. Nareddy made retroactive alterations to
19 Dorothy's medical records to indicate that the patient's wish was for DNAR (Do Not
20 Attempt Resuscitation) and DNR/DNI (Do Not Resuscitate/Do Not Intubate). All of these
21 actions either violated St. Agnes Medical Center proper best practices and procedures
22 regarding the verification of authority to alter health care directives or the medical center
23 simply failed to have such necessary and appropriate best practices and procedural
24 safeguards in place. On information and belief, St. Agnes Medical Center failed to follow its
25 protocols by allowing Dr. Nareddy to disregard the physician's order for life sustaining
26 treatment thereby ignoring the POLST and AHCD. The nursing staff who are hospital
27 employees found Dorothy not breathing and were unable to even check patient's status
28 because of Dr. Nareddy's instructions (DNAR). The nurses are mandated reporters who
failed to report the crime. According to a subsequent expert analysis, had Dorothy simply

