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7 and Tania Noval

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10 HECTOR A. NOVAL, individually; and as an
11 heir of VICTORINO NOVAL,

12 Plaintiff,

13 vs.

14 LOURDES A. FROST; TANIA NOVAL;
15 VICTOR NOVAL (nominal defendant) a.k.a.
16 VICTORINO NOVAL; and DOES 1 through
17 50,

18 Defendants.

Case No. 30-2012-00620923
UNLIMITED CIVIL
Assigned to: Hon. Frederick Aguirre
Department C23
Case Filed: December 28, 2012

**ANSWER TO COMPLAINT FOR
PHYSICAL ELDER ABUSE, ETC.**

19 Defendants Lourdes Frost ("Frost") and Tania Noval ("Noval"), for themselves, and for no
20 other Defendant, answer the "Complaint for Physical Elder Abuse, etc. filed by Hector Noval on or
21 about December 28, 2012, as follows:

22 1. Pursuant to CCP § 431.30, Frost and Noval generally and specifically deny each an
23 every allegation of the complaint, and specifically deny that Plaintiff has been damaged in the
24 manner or amount alleged, or at all, and specifically deny that Plaintiff is entitled to the relief alleged
25 or to any other relief.

26 **First Affirmative Defense**

27 2. The Complaint, and each cause of action therein, fails to allege facts suffiecent to state
28 a cause of action as to either Frost or Noval.

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Second Affirmative Defense

3. The complaint, and each cause of action therein, is so vague, ambiguous and uncertain so as to fail to allege facts sufficient to state a cause of action as to either Frost or Noval.

Third Affirmative Defense

4. The first cause of action, labeled “Physical Elder Abuse,” is barred as to both Frost and Noval by the applicable statute of limitations, including, but not limited to, CCP § 335.1, in that the wrongful acts are alleged to have occurred no later than May 7, 2010, whereas the complaint was filed December 28, 2012.

Fourth Affirmative Defense

5. The second cause of action, labeled “Neglect,” is barred as to both Frost and Noval by the applicable statute of limitations, including, but not limited to, CCP § 335.1, in that the wrongful acts are alleged to have occurred no later than May 7, 2010, whereas the complaint was filed December 28, 2012.

Fifth Affirmative Defense

6. The claims alleged in the third cause of action, labeled “Financial Elder Abuse,” concerning events that took place in 2008 (specifically paragraphs 36-39) are barred as to Frost by the applicable statutes of limitations, including, but not limited to CCP §§ 337, 338, 339, and 343, and Welfare & Institutions Code § 15657.7 because the complaint was filed more than four years after the allegedly wrongful acts occurred. To the extent such claims are asserted against Noval, such claims are also barred as to Noval for the same reasons based on the same statutes of limitations.

Sixth Affirmative Defense

7. The fourth cause of action, labeled “Wrongful Death,” is barred as to both Frost and Noval by the applicable statute of limitations, including, but not limited to, CCP § 335.1, in that the wrongful acts are alleged to have occurred no later than May 7, 2010, whereas the complaint was filed December 28, 2012.

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Seventh Affirmative Defense

8. The fifth cause of action, labeled “Conspiracy,” is barred by the applicable statute of limitations, including, but not limited to, CCP § 335.1, in that the wrongful acts are alleged to have occurred no later than May 7 2010, whereas the complaint was filed December 28, 2012.

Eighth Affirmative Defense

9. The fifth cause of action, labeled “Conspiracy,” is barred by the applicable statute of limitations, including, but not limited to, CCP §§ 337, 338, 339, and 343, and Welfare & Institutions Code § 15657.7.

Ninth Affirmative Defense


10. At all relevant times, Plaintiff Hector Noval: was aware of the existence of the DPOA alleged in the complaint, was aware that he was named as a “health care agent” for Victorino Noval in the DPOA, was aware that Victorino Noval was going to be “extubated” on May 7, 2010, and that there was a probability that he would not survive being “extubated,” and agreed to Victorino Noval being “extubated” on May 7, 2010. Accordingly, Plaintiff’s claims are barred by waiver, consent, and laches. Furthermore, Plaintiff is estopped to assert the claims alleged in the complaint.

Wherefore, Noval and Frost pray judgment as follows:

1. That Plaintiff take nothing by his complaint, and that the complaint be dismissed with prejudice.
2. For costs of suit.
3. For such other and further relief as the Court deems just and equitable.

Dated: April 24, 2015

BIDNA & KEYS, APLC

By: 
Richard D. Keys
Attorneys for Defendants Lourdes A. Frost and Tania Noval

PROOF OF SERVICE

Check method of service (only one):

By Personal Service

By Mail

By Overnight Delivery

By Messenger

By Facsimile

By Electronic Service

Case Name: Noval v. Frost et al.

Court of Appeal Case No.

Superior Court Case No. 30-2012-00620923

1. At the time of service I was over 18 years of age and not a party to this legal action.
2. My business address is 5120 Campus Drive, Newport Beach, California 92660.
3. The facsimile or electronic notification address from which I served the documents is (*complete if service as by fax or electronic service*):
Facsimile No. _____ Email: _____
4. On April 27, 2015 I served the following document(s):
ANSWER TO COMPLAINT FOR PHYSICAL ELDER ABUSE, ETC.

The documents are listed in the *Attachment to Proof of Service (Documents Served)*

5. I served the documents on the person(s) below, as follows:

- a. (*Complete if service was by personal service, mail, overnight delivery or messenger*) Name/Address of person(s) served:

Casey Young, Esq.
260 Newport Center Drive, Suite 100
Newport Beach, CA 92660

- b. (*Complete if service as by fax or electronic service*)

(1) Fax number or electronic notification address where served: ctyoung@ctylaw.com

(2) Time of service: _____.

The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service (Persons Served)*.

6. The documents were served by the following means (specify):

- a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2)

For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

- b. **By United States Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in Item 5 and (specify one):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.


I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Newport Beach, California 92677.

- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained below.)*
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. **By electronic service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 27, 2015

Kristi Lothian
(Print Name of Declarant)


(Signature of Declarant)