

2012 WL 8504819 (Cal.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of California,
Central District.
Los Angeles County

Parvin PIRZADEH, by and through her representative and attorney
in fact Neda Ghods and Neda Ghods individually, Plaintiffs,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and Does 1 through 75, inclusive, Defendants.

No. BC503200.
May 7, 2012.

**Plaintiffs' Opposition to Defendants' Motion to Strike Portions of
Complaint; Memorandum of Points and Authorities in Support Thereof**

Law Offices of Ben Yeroushalmi, APC, [Ben Yeroushalmi](#) (SBN 232540), Tanaz Rostami (SBN 253184), Rodney Tolentino (SBN 273727), 3600 Wilshire Blvd., Suite 1407, Los Angeles, CA 90010, Tel: 213-384-2626, Fax: 213-384-2226, Attorneys for Plaintiffs Parvin Pirzadeh, by and fact Neda Ghods and Neda Ghods individually.

Hon. [Amy D. Hogue](#).

Date: May 20, 2012

Time: 1:30 p.m.

Assigned for all purposes to Dept. 92

Action Filed: August 24, 2012

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiffs PARVIN PIRZADEH, by and through her representative and attorney in fact NEDA GHODS, and NEDA GHODS individually ("Plaintiffs") hereby oppose Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S Motion to Strike Portions of Complaint for Damages.

Dated: May 7, 2013

Respectfully submitted,

LAW OFFICES OF BEN YERUSHALMI

By: <<signature>>

BEN YERUSHALMI RODNEY TOLENTINO, Attorney for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 18, 2013, Plaintiffs Parvin Pirzadeh, by and through her representative and attorney in fact, Neda Ghods and Neda Ghods, individually, brought suit against Defendants The Regents of the University of California (“Defendants”). The Complaint alleges **Elder Abuse**, Negligence, Willful Misconduct, and Negligent Infliction of Emotional Distress based on the treatment and care that Ms. Pirzadeh received at Ronald Reagan UCLA Medical Center (“UCLA Medical Center” or “Facility”) between December 8, 2012 and January 8, 2013. UCLA Medical Center is a subsumed entity of Defendants. *See* Complaint.

While at UCLA Medical Center for treatment of a **pulmonary embolism**, Ms. Pirzadeh developed severe medical problems, including a deplorable Stage IV sacral **pressure ulcer**. UCLA Medical Center did not give Ms. Pirzadeh the care necessary to prevent, monitor, and treat her **pressure ulcer**. In fact, staff encouraged Ms. Pirzadeh's premature discharge from the Facility, despite the fact that her **pressure ulcer** had not been resolved, which further contributed to its improper treatment and healing. Complaint, ¶ 10.

Ms. Pirzadeh to this day still suffers extreme physical and emotional pain due to the severe **pressure ulcer** she contracted at UCLA Medical Center, and is in consultation with reconstructive surgeons to repair the damage done. Ms. Pirzadeh's daughter, Neda Ghods, also suffered severe emotional distress in observing Defendants' abject lack of care for Ms. Pirzadeh's **pressure ulcer**, and the resulting worsening of the **pressure ulcer**.

Ms. Pirzadeh would have received essential care and treatment for her Stage IV sacral **pressure ulcer** had Defendants simply adhered to applicable rules, laws, and regulations, as well as the acceptable standards of practice governing the operation of an acute care hospital. Defendants had advance knowledge that due to Ms. Parvin's condition, she would need assistance turning and repositioning in order to prevent the formation of **pressure ulcers**. Complaint, ¶ 33. When her **pressure ulcer** ultimately developed, Defendants did not take proper measures to prevent its worsening, including the frequent changing of the wound dressing and the continuous treatment by a specialized wound doctor. Complaint, ¶ 10. As a direct result of Defendants' practice of deliberately understaffing the Facility with undertrained nursing and medical staff, the Facility was unable to meet Ms. Pirzadeh's overall needs, and she consequently suffered (and still considers to suffer) tremendous pain and mental anguish. Complaint, ¶ 48. Had Defendants simply provided the level of care that they promised and claimed to have provided, and which the applicable regulations required, Ms. Pirzadeh would not have suffered, as **pressure ulcers** - especially those that escalate to a Stage IV - are preventable.

Defendants move to strike portions of the Complaint that request punitive damages under the **Elder Abuse** cause of action. Even though Defendants are exempt from the imposition of damages primarily for the sake of punishment under **Government Code 818**, the statutory damages authorized under **Welfare and Institutions Code section 15657** is not purely punitive in nature and therefore should not be stricken. *See Kizer v. San Mateo* (1991) 53 Cal. 3d 139; *Gov. Code* § 818. **Welfare and Institutions Code section 15657** was added to the **Elder Abuse** and Dependent Adult Civil Protection Act (“**Elder Abuse Act**”) in order to manifest the intent of the Legislature to encourage attorneys to take up the cause of **abused elderly** and dependent adults. *Welf. & Inst. Code* §§ 15600(j), 15657. The heightened remedies under **Welfare and Institutions Code section 15657** therefore, are not purely punitive, but serve the purpose of encouragement to interested parties to seek relief under the **Elder Abuse Act**. Furthermore, Plaintiff has already sufficiently alleged Defendants' ratification of the alleged wrongful conduct for which they seek punitive damages in satisfaction of **Civil Code section 3294**.

Defendants also move to strike portions of the Complaint that request punitive damages under the Willful Misconduct cause of action. Plaintiff's Willful Misconduct claim arises from Plaintiff's **Elder Abuse** cause of action, and therefore the procedural prerequisites pursuant to **Code of Civil Procedure section 425.13** does not apply.

This Honorable Court should not allow Defendants to avoid culpability to any degree of their egregious behavior by striking from the Complaint remedies that are not only authorized, but also address the statutory purposes for which they were created.

II. GOVERNMENT CODE SECTION 818 DOES NOT APPLY IN THIS CASE

Defendants claim that [Government Code section 818](#) prohibits the imposition of punitive damages on public entities. However, the damages that Plaintiffs are seeking for the first and third causes of action are not “damages imposed *primarily* for the sake of example and by way of punishing the defendant.” *Gov. Code, § 818*, emphasis added.

In their complaint, Plaintiffs are asserting that Defendant committed **elder abuse** under the **Elder Abuse** Act, which entitles Plaintiffs to enhanced remedies. *Welf. & Inst. Code, § 15657*. One of these remedies is for punitive damages. *Id. at § 15657, subd. (c)*. However, under the **Elder Abuse** Act, punitive damages are not primarily for punishing the defendant, such that [Government Code section 818](#) would apply, but to encourage attorneys to take up the cause of the **elderly**. “[D]amages which are punitive in nature, but are not simply or solely punitive in that they fulfill legitimate and fully justified compensatory functions, have been held *not* to be punitive damages within the meaning of [Government Code section 818](#).” *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 145. In this case, the punitive damages allowed under the **Elder Abuse** Act are not solely punitive. Rather, they were designed to encourage attorneys to file cases where the **elderly** suffered egregious **abuse**.

The remedies enumerated in [Welfare & Institutions Code section 15657 \(a\)-\(c\)](#) are heightened remedies that a plaintiff who can prove especially egregious **elder abuse** to a high standard can *elect* to seek. *Covenant Care, Inc. v. Sup. Ct.* (2004) 32 Cal. 4th 771, 779 (“*Covenant Care*”). The California Legislature enacted the **Elder Abuse** Act's heightened civil damage remedies (as codified in [W & I C section 15657\(a\)-\(c\)](#)) nine years after it was created in 1982 in order to encourage the private, civil enforcement of laws against **elder abuse** and neglect. *Id. at p. 784*. The Legislature contemplated the obstacles of vulnerable and dependent adults and their families in finding attorneys to handle an **abuse** case where punitive damages, attorneys' fees, and costs may not be awarded. After analyzing the text, legislative history, and statutory purposes of both Civil Code section 425.13 and the **Elder Abuse** Act, the Supreme Court did not find anything to suggest that the Legislature intended to afford **elder** care custodians who egregiously **abused elders** in their custody, the same protections against punitive damages that they afforded health care providers in negligence actions. *Covenant Care, supra*, 32 Cal. 4th at pp. 787-88. Therefore, *Covenant Care* allows **Elder Abuse** plaintiffs to plead punitive damages without special leave to amend by a court order. Implicit in deciding *how* a plaintiff should plead punitive damages is the understanding that a plaintiff can recover punitive damages for **Elder Abuse** in the first place.

Just like the Supreme Court held in *Kizer* that [Government Code section 818](#) did not apply to statutory civil penalties at issue because they were not solely punitive, the punitive damages Plaintiffs seek in this case for the first and third causes of action are designed to compensate the Plaintiffs by encouraging attorneys to file suit to seek vindication for the **abuse** Ms. Pirzadeh suffered.

III. THE NON-APPLICABILITY OF CODE OF CIVIL PROCEDURE SECTION 425.13 TO CAUSES OF ACTION ARISING FROM **ELDER ABUSE** VIOLATIONS AFFIRMS THAT PLAINTIFFS CAN RECOVER PUNITIVE DAMAGES

Defendant claims that Plaintiffs did not comply with the provisions of [Code of Civil Procedure section 425.13 \(CCP § 425.13\)](#) before including a claim for punitive damages in the Complaint. However, since Plaintiffs' Willful Misconduct cause of action arises from Plaintiffs' **Elder Abuse** cause of action, [CCP §425.13](#) does not apply in this case.

Country Villa Claremont Healthcare Center, Inc. v. Sup. Ct. (2004) 120 Cal.App.4th 426 (“*Country Villa*”) is instructive. In *Country Villa*, the appellate court stated that when the “gravamen” of a complaint is **elder abuse** under the **Elder Abuse** and Dependent Adult Civil Protection Act (“**Elder Abuse** Act”), then [CCP §425.13](#) does not apply to the common law intentional

torts also alleged. *Id.* at p. 434, citing *Covenant Care, Inc. v. Sup. Ct.* (2004) 32 Cal.4th 771. This is because **Elder Abuse** cases are based on custodial neglect rather than professional negligence. *Id.* at p. 432, citing *Welf. & Inst. Code*, §§ 15610.57, 15657.2. In support of this proposition, the appellate court cited to *Covenant Care, Inc. v. Sup. Ct.* (2004) 32 Cal. 4th 771 (“*Covenant Care*”). See *Country Villa, supra*, 120 Cal.App.4th at p. 433.

In *Covenant Care*, the California Supreme Court held that the procedural prerequisites to seeking punitive damages in an action arising out of professional negligence of a health care provider pursuant to Civil Code section 425.13 did not apply to punitive damage claims alleging **Elder Abuse**. *Covenant Care, supra*, 32 Cal. 4th 771. CCP §425.13 requires that in any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court first enters an order allowing the pleading of punitive damages. *Code Civ. Proc.* § 425.13. After analyzing the text, legislative history, and statutory purposes of both Civil Code section 425.13 and the **Elder Abuse** Act, the Supreme Court did not find anything to suggest that the Legislature intended to afford **elder** care custodians who egregiously **abused elders** in their custody, the same protections against punitive damages that they afforded health care providers in negligence actions. *Covenant Care, supra*, 32 Cal. 4th at pp. 787-88. Therefore, *Covenant Care* allows plaintiffs alleging **Elder Abuse** to plead punitive damages without special leave to amend by a court order. Implicit in deciding *how* a plaintiff should plead punitive damages is the understanding that a plaintiff can recover punitive damages for **Elder Abuse** in the first place.

The plaintiffs in *Country Villa* alleged, in addition to **Elder Abuse**, alleged the common law cause of action of willful misconduct and prayed for punitive damages for this cause of action. *Country Villa, supra*, 120 Cal.App.4th at p. 431. The court in *Country Villa* held that because the gravamen of the action was **elder abuse**, meaning that the allegations of willful misconduct arose from the violations of **elder abuse**, then CCP §425.13 does not apply to the willful misconduct cause of action. *Id.* at p. 435.

The same applies in this case. Plaintiffs are alleging that Defendant violated the **Elder Abuse** Act by not providing Ms. Pirzadeh the care necessary to prevent the development and treat her stage IV **pressure ulcer**--the most severe stage. *Complaint*, ¶¶ 10, 33. Defendant even strongly encouraged Ms. Pirzadeh's discharge from UCLA Medical Center even though they did not sufficiently address the **pressure ulcer**. *Ibid.* Plaintiffs' allegation of willful misconduct arises out of these same **Elder Abuse** allegations surrounding the development of Ms. Pirzadeh's **Stage IV pressure ulcer**. Defendant knew that Ms. Pirzadeh was prone to developing **pressure ulcers**, yet intentionally failed to prevent these injuries by not providing enough properly trained staff who could prevent and treat Ms. Pirzadeh's **Stage IV pressure ulcer**. *Complaint*, ¶¶ 33, 45-47. Since Plaintiffs' Willful Misconduct claim arises from their **Elder Abuse** claim, Plaintiffs were not required to comply with CCP §425.13 before praying for punitive damages in the Complaint.

IV. PLAINTIFFS HAVE COMPLIED WITH CIVIL CODE SECTION 3294 BY SUFFICIENTLY ESTABLISHING THAT DEFENDANTS AUTHORIZED OR RATIFIED EMPLOYEES' WRONGFUL CONDUCT

Defendants argue that Plaintiffs failed to satisfy the standards set forth under **Civil Code section 3294** (establishing the employer's liability for the acts of an employee) before seeking the imposition of punitive damages under **Welfare and Institutions Code section 15657**. Under **Civil Code section 3294**, for an employer to be liable for damages for the acts of an employee, the employer must have: a) had advance knowledge of the unfitness of the employee and employed him with conscious disregard of the rights or safety of others or b) authorized or ratified the employee's wrongful conduct for which the damages are being awarded. *Civ. Code* § 3294.

As stated in Defendants' Motion to Strike, the Regents of the University of California is an entity unable to act but for its employees, representatives, and agents. (Motion to Strike, 5: 9-12.) In their Complaint, Plaintiffs adequately address this fact by alleging Defendants' direct and vicarious liability as to the acts of its employees and agents. For example, Plaintiffs sufficiently establish that Defendant authorizes or ratifies the wrongful conduct of the employees by specifically stating:

1. Through the operation of UCLA MEDICAL CENTER, the REGENTS operated the FACILITY in such a way as to make their individual identities indistinguishable, and they are, therefore, the mere alter-egos and/or managing agents of one another. The REGENTS either make or approve key decisions concerning UCLA MEDICAL CENTER'S day-to-day operations. Complaint, ¶ 11.

2. Defendant, through UCLA MEDICAL CENTER governed and controlled the care and medical services provided to patients, and voluntarily and intentionally assumed responsibility for and provided medical treatment to PARVIN while she was a patient of the FACILITY. Complaint. ¶ 12.

3. The term “managing agent” means “one who exercises substantial discretionary authority over decisions that ultimately determine corporate policy.” (*White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 573.) UCLA MEDICAL CENTER'S managing agents were hired by its governing bodies, which were also legally responsible for establishing and implementing policies regarding the management and operation of the FACILITY, including the staffing, the budgeting, and the training of employees, pursuant to Federal Regulations. Defendant performed, ratified, and approved the reckless and malicious conduct at each respective facility. Complaint, ¶ 13.

4. At all relevant times, THE REGENTS, through its managers, directors, officers and other agents created and authorized the budgets, policies and procedures that these employees were required to implement and follow at their respective facilities. At all relevant times, UCLA MEDICAL CENTER and each of its tortuous acts and omissions, as alleged herein, was done in furtherance of its common design and agreement to accomplish a particular result, namely maximizing gross revenues from the operation of UCLA MEDICAL CENTER at the expense of patient care. Complaint, ¶ 15.

Plaintiffs allege that Defendants' agents and employees implement the policies regarding the operation of the Facility in furtherance of Defendants' goal of maximizing gross revenues, and incorporates this vicarious liability specifically as to the **Elder Abuse** cause of action. Complaint, ¶ 28. In allowing its agents and employees to act on behalf of them, Plaintiffs allege that Defendants ratified the malicious and reckless conduct for which she seeks punitive damages, including UCLA'S failure to prevent, monitor, and treat Plaintiff's horrific stage IV sacral **pressure ulcer**. Complaint, ¶¶ 31-38.

Plaintiffs request for punitive damages in the **Elder Abuse** cause of action and the corresponding prayer, have therefore been brought in conformity with **Civil Code section 3294** and should not be stricken from the Complaint.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court deny Defendants' Motion to Strike the prayer for punitive damages under the First and Third Causes of Action. However, should this Court find any deficiency in the facts pleaded to support a request for enhanced remedies, Plaintiff respectfully requests leave to amend. *Grieves v. Superior Court* (1984) 157 Cal. App. 3d 159, 168 (recognizing that leave to amend should be freely granted if a motion to strike is granted and if the defect may be cured by supplying omitted allegations).

Dated: May 7, 2013

Respectfully submitted,

LAW OFFICES OF BEN YEROUSHALMI

By: <<signature>>

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RODNEY TOLENTINO, Attorney for Plaintiffs

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