

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GREGORY WONG et al.,

Plaintiffs and Appellants,

v.

GLENDALÉ ADVENTIST
MEDICAL CENTER et al.,

Defendants and Respondents.

B270492

(Los Angeles County
Super. Ct. No. BC519258)

APPEAL from the judgment of the Superior Court of Los Angeles County. John P. Doyle, Judge. Affirmed.

Paul Kujawsky for Plaintiffs and Appellants.

Hester Law Group, Barbara M. Reardon and Cecille Hester for Defendant and Respondent Glendale Adventist Medical Center.

R.J. Ryan Law, Richard J. Ryan, Dawn Cushman and Aaron J. Weissman for Defendant and Respondent Jilbert D. Issai, M.D.

Robert B. Packer and Paul M. Corson for Defendant and Respondent Kin C. Wong, M.D.

* * * * *

Cecilia Hoh was just shy of her 90th birthday when she was admitted to Glendale Adventist Medical Center (Glendale Adventist), complaining of swelling and pain in her right foot. While at Glendale Adventist, Ms. Hoh was seen by Dr. Jilbert D. Issai and Dr. Kin C. Wong. After several days of treatment, Ms. Hoh passed away on August 27, 2011.

On August 23, 2013, Ms. Hoh's nephew, Gregory Wong, and her sister, Mabel Hoh (collectively plaintiffs), filed a complaint stating claims for wrongful death and fraud against Glendale Adventist, Dr. Issai and Dr. Wong (collectively defendants). That original complaint was never served. On January 5, 2015, plaintiffs filed and served a first amended complaint that abandoned plaintiffs' personal claims for wrongful death and fraud, and stated only a survivor claim on behalf of their decedent pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (hereafter the Act; Welf. & Inst. Code, § 15600 et seq.). Following demurrers by defendants, plaintiffs amended their pleading two more times. They filed their third amended complaint on October 30, 2015, alleging elder abuse and reasserting their claim for fraud.

On December 11, 2015, defendants' demurrers to the operative third amended complaint were sustained without leave to amend. Plaintiffs appealed from the judgment of dismissal.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On appeal from a judgment dismissing an action after the sustaining of a demurrer, our review is de novo. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) For the limited purpose of reviewing the propriety of the trial court's ruling, we accept as true all well-pled factual allegations in the

operative complaint, as well as any facts that may be reasonably implied or inferred from those expressly alleged. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We also consider any exhibits attached to the pleading, and to the extent the allegations conflict with the content of an exhibit, we rely on, and accept as true, the exhibit. (*Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.) We do not "however, assume the truth of contentions, deductions or conclusions of law." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.)

Our factual summary is drawn from the allegations of the operative third amended complaint, including the attached exhibit, according to this well-established standard.

On August 21, 2011, plaintiffs' decedent, Ms. Hoh, was admitted to Glendale Adventist because of swelling in her right foot. Ms. Hoh was treated by Drs. Issai and Wong. Defendants failed to perform the proper diagnostic tests, including an ultrasound, to rule out deep vein thrombosis. She was diagnosed with cellulitis (bacterial skin infection). Ms. Hoh also had a fever of 100 degrees, pneumonia and was septic. Defendants prescribed the wrong medication and gave Ms. Hoh a "strong" sleeping pill (Restoril) "which caused [her] to slip into a coma." The following day, Ms. Hoh was noted to be "extreme[ly] lethargic" but a rapid response team was not called as is customary medical practice. Defendants failed to properly monitor Ms. Hoh's condition. Defendants, after learning Ms. Hoh had a "history of lung mass," misrepresented to plaintiffs that she suffered from terminal lung cancer when they knew the mass was benign. Thereafter, defendants exhibited an "unsympathetic and contemptible attitude" toward Ms. Hoh's care, and essentially abandoned further treatment.

Defendants then learned Ms. Hoh had an advance directive, so they ceased providing any curative or palliative care, and assigned her to hospice care. Defendants misrepresented to plaintiffs that Ms. Hoh suffered from a terminal, incurable condition in order to secure their consent for the removal of Ms. Hoh's breathing tube. Defendants executed an incomplete "no code" form, attached as exhibit A to the pleading.

After removal of the breathing tube, defendants abandoned further care and, despite numerous requests from plaintiffs to provide water or other measures to abate Ms. Hoh's suffering, defendants refused to provide any palliative care. Plaintiff Wong made numerous requests to Glendale Adventist management, but they refused "to pursue any investigation into the matter." As a result of defendants' actions, Ms. Hoh suffered "virtual torture" until she passed away on August 27, 2011, at the age of 89.

Defendants wrongfully sought to take Ms. Hoh's property by overcharging her for "unnecessary medical services" and by "impeding [her] right" to have life sustaining care. Defendants wrongfully extubated Ms. Hoh in order to save Glendale Adventist thousands of dollars in medical care and to conceal that defendants' substandard medical care was the true cause of her death.

It was not until November 2012 that plaintiffs first suspected defendants of wrongdoing, first learned Ms. Hoh had not suffered from an incurable condition, and first discovered that defendants had made the misrepresentations about their decedent's condition in order to conceal the true cause of her death.

Plaintiffs filed this action on August 23, 2013, stating two causes of action, wrongful death and fraud. Both claims were

individual claims seeking damages personal to plaintiffs for the loss of their decedent (“grief, anxiety, sorrow, mental, emotional and physical distress”). No claims were stated as survivor claims on behalf of plaintiffs’ decedent for predeath injuries, including no statutory claims pursuant to the Act. The original complaint was not served on any defendant.

On January 5, 2015, plaintiffs filed and served their first amended complaint. As plaintiffs concede, the first amended complaint deleted the individual claims originally stated by plaintiffs, and stated only one statutory survivor claim for elder abuse under the Act based on physical neglect and abuse of Ms. Hoh. The claim sought recovery for general damages based on Ms. Hoh’s predeath pain and suffering, as well as “enhanced remedies” under the Act, including punitive damages.

Defendants filed demurrers to the first amended complaint. Prior to the hearing on the demurrers, plaintiffs filed their second amended complaint on August 24, 2015. The second amended complaint realleged the survivor claim under the Act, reasserted the fraud claim which had been pled in the original complaint, and stated a new claim on behalf of both plaintiffs for intentional infliction of emotional distress.

All three defendants again filed demurrers, arguing the claims were time-barred and failed to state sufficient facts to allege any viable theory of recovery. At the demurrer hearing, the court stated its concern that the statutes of limitation appeared to be a significant problem for plaintiffs, but that plaintiffs should have a final opportunity to amend to attempt to cure any defects. The court sustained the demurrers with leave to amend.

On October 30, 2015, plaintiffs filed the operative third amended complaint, stating two causes of action, the survivor claim under the Act, and fraud. The survivor claim was brought by Plaintiff Wong as the successor in interest to Ms. Hoh and the successor trustee of her testamentary trust. The claim restated the allegations of physical abuse, and also added new allegations of financial elder abuse. The claim sought recovery of damages related to predeath suffering by Ms. Hoh and the enhanced remedies afforded under the Act, including punitive damages. The fraud claim was asserted by both plaintiffs in their individual capacity, and sought recovery of damages personal to them arising from the death of Ms. Hoh.

Defendants filed demurrers, arguing that plaintiffs' allegations demonstrated that both claims were time-barred, and failed to state sufficient facts to state any viable theory. The joint hearing on defendants' demurrers to the third amended complaint was held December 11, 2015. After entertaining argument, the court sustained the demurrers without leave to amend on the grounds stated in its written tentative, including that the claims were time-barred and that certain elements of the claims were not adequately pled.¹

¹ Plaintiffs contend the trial court sustained the demurrers only based on the time-bar and we should limit our review accordingly. Plaintiffs are mistaken. While the time-bar arguments were the main focus of oral argument, the court's written order of December 11, 2015, sustained the demurrers on both the time-bar and the substantive deficiencies in the claims as raised in the parties' briefing. In any event, we review the court's ruling, not its reasons. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) We may affirm the court's ruling, if it is correct "upon any theory of the law applicable to

The judgment of dismissal was entered December 28, 2015.
This appeal followed.

DISCUSSION

1. The Elder Abuse Cause of Action

The survivor claim, brought by Plaintiff Wong as Ms. Hoh's successor in interest, was first alleged in the first amended complaint filed January 5, 2015. The claim alleged physical neglect and abuse of Ms. Hoh by defendants arising from their failure to provide proper medical care to her, including palliative care, subsequent to the removal of the breathing tube, which resulted in severe pain and suffering to Ms. Hoh and her eventual death on August 27, 2011. The claim sought recovery for general damages and the "enhanced remedies" under the Act. The claim was restated on essentially the same facts in the second amended complaint. In the operative third amended complaint, filed October 30, 2015, plaintiffs added new allegations of financial elder abuse.

a. Physical abuse and neglect

A claim for physical abuse and neglect under the Act is governed by the two-year statute of limitations set forth in Code of Civil Procedure section 335.1. (*Benun v. Superior Court* (2004) 123 Cal.App.4th 113, 125-126.) The claim accrued upon Ms. Hoh's death on August 27, 2011. (*Larcher v. Wanless* (1976) 18 Cal.3d 646, 657-659 (*Larcher*).) Plaintiffs did not assert this claim until *almost three and a half years after Ms. Hoh's death*.

the case." (*Ibid.*; accord, *Williams v. Southern California Gas Co.* (2009) 176 Cal.App.4th 591, 604 ["We affirm . . . the trial court's decision and not the reason for that decision."]; *Fonseca v. Fong* (2008) 167 Cal.App.4th 922, 929 [same].)

They contend the relation back doctrine operates to render the claim timely. The argument lacks merit.

Ordinarily, the relation back doctrine results in an amended pleading being deemed to relate back, for purposes of the statute of limitations, to a timely filed original pleading, so long as the amended claims are based on the same set of facts, and seek recovery for the same injury based on the same instrumentality. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1278 (*Quiroz*)). “The relation-back doctrine deems a later-filed pleading to have been filed at the time of an earlier complaint which met the applicable limitations period, thus avoiding the bar.” (*Ibid.*)

The filing of plaintiffs’ original complaint within two years of Ms. Hoh’s death is of no benefit to plaintiffs’ survivor claim. The only claims pled in the original complaint were wrongful death and fraud, both of which were individual claims seeking damages personal to plaintiffs arising from the death of their decedent (“grief, anxiety, sorrow, mental, emotional and physical distress”). There were no allegations supporting or requesting damages for predeath injuries suffered by Ms. Hoh, nor were there allegations of plaintiff Wong’s or plaintiff Hoh’s standing as a successor in interest to Ms. Hoh to bring the elder abuse claim.

Quiroz aptly concluded, on nearly identical facts, that the relation back doctrine does not apply in such circumstances. “The survivor cause of action was asserted by a technically different plaintiff asserting an independent and greater liability against defendants. This new claim was first asserted after the running of the statute of limitations, and because the injuries to be compensated by the two claims are different, the relation-back doctrine does not apply.” (*Quiroz, supra*, 140 Cal.App.4th at

p. 1279; accord, *Dominguez v. City of Alhambra* (1981) 118 Cal.App.3d 237, 243; see also *Bartalo v. Superior Court* (1975) 51 Cal.App.3d 526, 533 [where an amended pleading, filed after expiration of the relevant statute of limitations, seeks to add a new party plaintiff enforcing an independent right, “the amended pleading does not relate back”].)

Just as in *Quiroz*, plaintiffs’ survivor cause of action was first raised in January 2015 after the expiration of the two-year statute of limitations. It was an independent claim distinct from the personal claims original pled by plaintiffs in August 2013. The survivor claim was asserted by a different plaintiff (plaintiff Wong in a representative capacity and not an individual capacity), seeking compensation for entirely separate injuries and damages (pain and suffering damages experienced by Ms. Hoh prior to death and not damages personal to plaintiffs arising as a result of her death).

Plaintiffs’ effort to distinguish *Quiroz* is not persuasive. Plaintiffs argue that the filing of the first amended complaint was rendered “irrelevant” by the subsequent second and third amended complaints which reasserted personal claims on behalf of plaintiffs for their own damages which did relate back to the original complaint. Plaintiffs contend the plaintiffs in *Quiroz* never attempted to reassert claims related to the original complaint and, in fact, voluntarily dismissed their personal claims. Plaintiffs appear to argue that since their personal claims in the second and third amended complaints relate back to the original complaint, the survivor claim necessarily relates back as well.

Even assuming plaintiffs’ personal claim for fraud was timely reasserted after being abandoned in the first amended

complaint such that it relates back to the original complaint, it is of no consequence to the viability of the wholly separate and independent survivor claim. Plaintiffs fail to acknowledge that the survivor claim is an entirely separate theory of recovery, for separate damages by a different plaintiff that was first raised after expiration of the statute of limitations. To accept plaintiffs' position would stand the relation back doctrine on its head.

The survivor claim based on physical elder abuse and neglect was filed almost two years too late. It is time-barred as a matter of law and the trial court correctly sustained defendants' demurrers on that basis.

b. Financial abuse

A claim for financial elder abuse under the Act is governed by a four-year statute of limitations. (Welf. & Inst. Code, § 15657.7.) The financial elder abuse allegations were stated for the first time in the third amended complaint filed October 30, 2015, more than four years from the date of the decedent's death on August 27, 2011. Plaintiffs alleged that defendants wrongfully sought to take Ms. Hoh's property by overcharging her for "unnecessary medical services," by "impeding [her] right" to have life sustaining care, and by wrongfully extubating her in order to save thousands of dollars in medical care and to conceal the true cause of her death which was defendants' substandard medical care.²

² The allegations are confusing as it is not clear how defendants could be simultaneously withholding and abandoning care and treatment and overcharging for unnecessary medical procedures at the same time. We nonetheless analyze the allegations giving them the most reasonable construction possible.

Plaintiffs again invoke the relation back doctrine to no avail. In this variation of their relation back argument, plaintiffs contend the financial abuse claim is timely because it relates back to the filing of the first amended complaint which was filed within four years of Ms. Hoh's death.

Under the Act, financial elder abuse is defined as the taking, secreting, appropriating, obtaining or retention of the real or personal property of an elder or dependent adult for a "wrongful use," or assisting another in such acts. (Welf. & Inst. Code, § 15610.30; see also *Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 528.)

Plaintiffs' allegations of financial elder abuse cannot reasonably be construed as stating a claim for the wrongful appropriation of real or personal property from Ms. Hoh within the meaning of the Act. The allegations are, at best, additional allegations attempting to cast defendants' alleged care and treatment of Ms. Hoh as bad faith acts designed to conceal their allegedly substandard medical care or to avoid undertaking expensive treatment on a hospice patient. To the extent these allegations are relevant at all, they can only be construed as part and parcel of the claim for physical abuse and neglect. As already explained above, the survivor claim for physical abuse and neglect is time-barred as a matter of law under the two-year statute. No viable claim for financial abuse is pled and therefore the four-year statute is not applicable.

2. The Fraud Cause of Action

The fraud cause of action was asserted by both plaintiffs in their individual capacities. Plaintiffs alleged defendants misrepresented that their decedent suffered from an irreversible, terminal condition, and that her death was imminent. Based on

these misrepresentations, plaintiffs gave their consent for Ms. Hoh to be extubated and she passed away without receiving any further curative treatment or palliative care. Defendants also misrepresented that Ms. Hoh died from lung cancer, when she in fact had only a benign lung mass and had been suffering from a treatable condition. Plaintiffs alleged that defendants made these representations to conceal the fact that their substandard medical care of Ms. Hoh was the true cause of her death.

The first amended complaint abandoned the fraud claim (as well as the wrongful death claim based on the same facts), and asserted only the survivor claim under the Act. (*Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 808 [a material amendment of a complaint that “change[s] the cause of action, or add[s] a new one . . . constitutes an abandonment of the original issues”].) The fraud claim was then reasserted in the second and third amended complaints based on essentially the same facts as originally pled.

The third amended complaint added some new facts, including the conclusory allegation that plaintiffs did not learn of the true cause of their decedent’s death, or defendants’ wrongdoing, until November 2012. There are no further allegations supporting their alleged delayed discovery.

Plaintiffs argue they have alleged a common law cause of action for fraud against defendants that is timely under the three-year statute of limitations set forth at Code of Civil Procedure section 338. We disagree.

“[W]hen a plaintiff asserts a claim against a health care provider on a legal theory other than professional negligence, courts must determine whether the claim is nonetheless *based on the health care provider’s professional negligence* When, as

here, the question presented concerns which limitations period applies, courts also must focus on the nature or gravamen of the claim, not the label or form of action the plaintiff selects.” (*Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 347.)

Plaintiffs have labeled their cause of action as one for fraud. But, the material allegations upon which the claim is based are that defendants improperly obtained their consent to have Ms. Hoh’s breathing tube removed without disclosing all of the true facts of her condition, and misrepresented her cause of death in order to conceal that she had passed away from their substandard medical care. Even if we afford these allegations a liberal construction, the gravamen of the claim remains wrongful death arising from medical negligence, with fraudulent concealment alleged as a basis for tolling the statute of limitations. (See, e.g., *Weinstock v. Eissler* (1964) 224 Cal.App.2d 212, 216-220, 226-228 [statute of limitations for negligence applies where doctor failed to obtain informed consent for medical procedure, and failed to disclose to patient or note in medical chart that procedure was performed in order to conceal that procedure was performed negligently; such a claim “has always been treated as one for malpractice”]; *Cobbs v. Grant* (1972) 8 Cal.3d 229, 241 [failure to disclose all facts and obtain informed consent is a failure to meet duty of care and sounds in negligence].)

The statute of limitations for actions arising from medical negligence is set forth in Code of Civil Procedure section 340.5. Courts have allowed claims for fraud and other intentional torts to proceed against a health care provider and have concluded that section 340.5 does not apply. (See, e.g., *Unruh-Haxton v.*

Regents of University of California (2008) 162 Cal.App.4th 343, 355-356 [gravamen of complaint against fertility doctor was not based on allegation that egg harvesting procedure had been negligently performed, but that patient's eggs and genetic material had been fraudulently stolen for financial gain and implanted in other women].) We need not discuss these cases at length because the core allegations of plaintiffs' claim are medical negligence. No amount of artful pleading can change the fundamental nature of plaintiffs' claim. Section 340.5 applies here.³

Code of Civil Procedure "[s]ection 340.5 provides that the time for commencement of an action for injury or death based on alleged professional negligence by a health care provider 'shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever [time period expires] first.' "

(*Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 896 (*Gutierrez*)). As

³ Plaintiffs' reliance on *So v. Shin* (2013) 212 Cal.App.4th 652 for a different result is misplaced. In *So*, the plaintiff alleged that after she underwent a procedure following a miscarriage, and while she was still in the recovery room, the anesthesiologist became angry at her questions, spoke in a loud voice, and brought a container into the room filled with blood and possible fragments of body parts of plaintiff's dead baby, causing plaintiff to scream and nearly faint; afterward, the doctor grabbed plaintiff's hand and told her to keep quiet about what had just happened, and later tried to bribe plaintiff in exchange for her silence. (*Id.* at p. 657-658.) We agree with the court in *So* that the doctor's actions in that case were not undertaken for the purpose of delivering medical care to a patient. Plaintiffs here do not allege any misconduct untethered to the delivery of medical care to their decedent.

relevant here, the three-year period may be tolled upon proof of fraud or intentional concealment. (*Ibid.*) “The statute makes clear, however, that the one-year period is not similarly extended. Thus, regardless of extenuating circumstances, the [plaintiff] must bring his suit within one year after he *discovers, or should have discovered*, his ‘injury.’” (*Ibid.*, italics added; accord, *Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 99-101 [“It has long been established that the defendant’s fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it.”]) When a plaintiff’s “‘reasonably founded suspicions [have been aroused],’ and she has actually ‘become alerted to the necessity for investigation and pursuit of her remedies,’ the one-year period for suit begins.” (*Gutierrez, supra*, at p. 897.)

Here, plaintiffs allege facts demonstrating they had some suspicion about the nature and quality of the care being received by Ms. Hoh prior to her death. They alleged they made numerous requests to Glendale Adventist management to investigate what was going on, but that Glendale Adventist refused to pursue their concerns. They allege Ms. Hoh passed away on August 27, 2011, at the age of 89. Plaintiffs then allege the conclusory statement that they first became aware of the true cause of Ms. Hoh’s death and defendants’ wrongdoing in November 2012.

A cause of action for wrongful death ordinarily accrues on the date of the death of the decedent. (*Larcher, supra*, 18 Cal.3d at pp. 657-659; *Kleefeld v. Superior Court* (1994) 25 Cal.App.4th 1680, 1684.) In order to secure the benefit of the delayed

discovery rule, plaintiffs were required to state the facts supporting their claim of fraudulent concealment and providing a reasonable factual basis for why they did not file this action within one year of Ms. Hoh's death. "In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.' [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808; accord, *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397-398.)

Despite having multiple opportunities to amend, plaintiffs stated no facts in support of their claim that defendants' alleged fraudulent concealment tolled the statute. There is no explication of any kind as to why plaintiffs could not have reasonably discovered their cause of action prior to November 2012. Plaintiffs do not allege what facts they discovered in November 2012 that they could not have discovered earlier. Indeed, plaintiffs alleged facts indicating they had reasonable suspicions about the care Ms. Hoh was receiving, *prior* to her death. Plaintiffs alleged they raised their concerns to management at Glendale Adventist to no avail. These facts undercut their conclusory and inadequate claim of delayed discovery in November 2012. The complaint, reasonably construed, demonstrates that plaintiffs' suspicions about the nature and quality of Ms. Hoh's care were aroused in August

2011, and that the one-year statute was triggered no later than the date of her death on August 27, 2011. Plaintiffs' failure to timely investigate and pursue their remedies within one year thereafter is fatal to their claim. (*Gutierrez, supra*, 39 Cal.3d at p. 897.)⁴

DISPOSITION

The judgment of dismissal entered December 28, 2015, in favor of defendants and respondents Glendale Adventist Medical Center, Jilbert D. Issai, M.D., and Kin C. Wong, M.D. is affirmed. Defendants and respondents shall recover costs of appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

HALL, J.*

⁴ In briefing before this court, plaintiffs state they obtained Ms. Hoh's medical records in October 2011 and that "started the clock." Even by plaintiffs' date of accrual, the claim is time-barred because it was not filed within one year thereafter.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.