

No. S241431

IN THE SUPREME COURT  
FOR THE STATE OF CALIFORNIA

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JANICE JARMAN,

*Plaintiff and Appellant,*

vs.

HCR MANORCARE, INC. and  
MANOR CARE OF HEMET CA, LLC,

*Defendants and Appellants.*

SUPREME COURT  
**FILED**

NOV 06 2018

Jorge Navarrete Clerk

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Deputy

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**DEFENDANTS'/APPELLANTS' OPPOSITION TO MOTION FOR  
JUDICIAL NOTICE OF AMICI CURIAE AARP ET AL.**

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After a Published Opinion  
of the Fourth District Court of Appeal, Division Three  
Case No. G051086

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Superior Court of the State of California  
County of Riverside  
Hon. Phrasel Shelton and Hon. John Vineyard  
Case No. RIC10007764

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HCR ManorCare, Inc. and Manor Care of Hemet CA, LLC (collectively ManorCare) hereby oppose in part the Motion for Judicial Notice filed by amici curiae AARP, AARP Foundation, Center for Medicare Advocacy, Consumer Attorneys of California, Justice in Aging, The Long Term Care Community Coalition, and the National Consumer Voice for Quality Long-Term Care (collectively AARP).

This Court has explained that “only *relevant* material may be [judicially] noticed. ‘But judicial notice, since it is a substitute for proof, is always confined to those matters which are relevant to the issue at hand.’” (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257 [citations omitted; emphasis in original]); 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) § 47.1, p. 1749 [“Matters otherwise subject to judicial notice must be relevant to an issue in the action.”].) Thus, a “reviewing court need not take judicial notice of irrelevant court records.” (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 295, fn.21 [citation omitted]; *Hailey v. California Physicians’ Service* (2008) 158 Cal.App.4th 452, 463, fn. 4 [declining to take judicial notice of irrelevant court records from another case].)

Exhibits 2 and 3 of AARP’s motion are plainly of no relevance to any issue in this action.<sup>1</sup> Exhibit 2 is a complaint in an unrelated trial court proceeding. Exhibit 3 is an order preliminarily approving a class action settlement of an unrelated trial court proceeding. AARP cites these exhibits in its brief only for the point that Section 1430(b) claims have been brought in other cases to address various types of residents’ rights violations.

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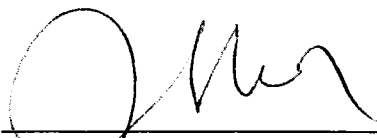
<sup>1</sup> Exhibits 1 and 4 are legislative history that is duplicative of the legislative history of which ManorCare sought judicial notice.

(AARP Br. 12.) AARP’s motion asserts that the records “are relevant to show the interests of the *amici* as well as the manner in which Health & Safety Code section 1430, subdivision (b) may be used to improve the lives of seniors.” (AARP MJN p. 3.)

With respect to the interests of amici, AARP does not even cite to either exhibit in its description of amici’s interest. (See AARP Application for Leave to File Amici Curiae Brief.) As for the purported usage of Section 1430(b), this case is not about the types of rights that may be asserted in a Section 1430(b) claim. Rather, it is a pure issue of statutory interpretation relating to the remedies authorized by the statute. Statutory interpretation poses a pure question of law. (See, e.g., *Association of Cal. Ins. Cos. v. Jones* (2017) 2 Cal.5th 376, 389-390 [interpretation of statutes “is a question of law on which this court exercises independent judgment”].) That amici and others are aware of or have been involved in other lawsuits in which Section 1430(b) claims have been asserted is not relevant and will not assist the Court in its interpretative task here.

For these reasons, ManorCare respectfully requests that the Court deny AARP’s Motion for Judicial notice of Exhibits 2 and 3.

Dated: November 5, 2018      MANATT, PHELPS & PHILLIPS, LLP

By:   
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PROOF OF SERVICE

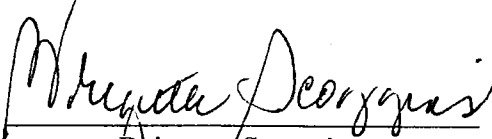
I, Brigette Scoggins, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On **November 5, 2018**, I served the within: **DEFENDANTS'/APPELLANTS' OPPOSITION TO MOTION FOR JUDICIAL NOTICE OF AMICI CURIAE AARP ET AL.** on the interested parties in this action addressed as follows:

See Attached Service List

- (BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that the foregoing is true and correct. Executed on **November 5, 2018**, at Los Angeles, California.

  
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