

EXHIBIT 9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [REDACTED]

-----X
[REDACTED] Attorney-in-fact of [REDACTED]
[REDACTED]

Index No.: [REDACTED]

Plaintiffs,

NOTICE OF MOTION

against

[REDACTED] "JOHN/JANE DOE,
R.N." (said name being fictitious but intended to represent
the Registered Nurse who examined and provided medical
care to Plaintiff [REDACTED] on January 11, 2015 at
[REDACTED]

[REDACTED], "JOHN/JANE DOE, NP" (said name being
fictitious but intended to represent the Nurse Practitioner who
examined, provided medical care and/or order x-rays to
Plaintiff [REDACTED] on January 11, 2015 at
[REDACTED]

[REDACTED], and [REDACTED]
[REDACTED]

Defendants.

-----X

PLEASE TAKE NOTICE, that upon the annexed affirmation of WALTER OSUNA, and
exhibits annexed hereto, plaintiff will move this Court, at the Motion Support Office, of the
Supreme Court, [REDACTED]

[REDACTED] at 9:30 o'clock on the forenoon of that day, or as soon thereafter as counsel can be
hears, for an Order:

1. Pursuant to CPLR 3403(a)(4) granting this action a Trial Special Preference due to the
advanced age of plaintiff [REDACTED] and
2. For such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
[REDACTED]

Yours, etc.

The Jacob D. Fuchsberg Law Firm, LLP



By: Walter Osuna, Esq.
Attorneys for the Plaintiffs
500 Fifth Avenue, 45th Floor
New York, New York 10110
(212) 869-3500

TO:

[REDACTED]

[REDACTED]

[REDACTED]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [REDACTED]

-----X
[REDACTED] Attorney-in-fact of [REDACTED]
[REDACTED]

Index No. [REDACTED]

Plaintiffs,

against

**AFFIRMATION IN
SUPPORT**

[REDACTED] "JOHN/JANE DOE,
R.N." (said name being fictitious but intended to represent
the Registered Nurse who examined and provided medical
care to Plaintiff [REDACTED] T on January 11, 2015 at
[REDACTED]

[REDACTED] "JOHN/JANE DOE, NP" (said name being
fictitious but intended to represent the Nurse Practitioner who
examined, provided medical care and/or order x-rays to
Plaintiff [REDACTED] on January 11, 2015 at
[REDACTED]

[REDACTED] and [REDACTED]
[REDACTED]

Defendants.

-----X

WALTER OSUNA, an attorney admitted to practice before the Courts of the State of New
York affirms the following under the penalty of perjury:

1. I am an associate with the Jacob D. Fuchsberg Law Firm, LLP, attorneys for the
plaintiff [REDACTED], Attorney-in-fact of [REDACTED] in the above-entitled
action, and, as such, I am familiar with the facts and prior proceedings had herein by virtue of a
review of the litigation file maintained in this action.

2. This affirmation, together with the exhibits annexed hereto, is submitted in support
of plaintiff's application for an Order pursuant to CPLR 3403(a)(4), granting plaintiff [REDACTED]
[REDACTED] special preference based upon her advance age in this action that alleges medical
malpractice.

3. This motion is made with filing of the Note of Issue and Certificate of Readiness in accordance with CPLR § 3403.

FACTUAL AND PROCEDURAL BACKGROUND

4. This cause of action arises out of the negligence and medical malpractice of Defendants, which caused injuries to [REDACTED], including a right hip fracture, pain and suffering, a surgical hip replacement, and the need to be hospitalized, upon sustaining a fall at defendant [REDACTED] [REDACTED] on or about January 11, 2015 while under their care. The allegations against Defendants include, among others, failing to provide adequate supervision and functioning fall safety precaution mechanisms, such as a working bed alarm, failing to properly assess and reassess the resident, and delaying treatment.

5. Plaintiff [REDACTED] was born on [REDACTED], and was 82 years old at the time of her admission to defendant [REDACTED] facility. [REDACTED] is currently a resident at the nursing home [REDACTED].

6. Plaintiff commenced the instant action with the filing of a complaint on [REDACTED] [REDACTED] (see Exhibit "A"). Defendant [REDACTED], served a Verified Answer on [REDACTED] and Defendant [REDACTED] [REDACTED], served a Verified Answer on [REDACTED] (see Exhibit "B").

7. Plaintiff served a Bill of Particulars as to [REDACTED] and a Bill of Particulars as to defendant [REDACTED].

██████████ on ██████████ Copies of the Bill of Particulars are collectively enclosed herein as **Exhibit "C"**.

8. The depositions of all parties were completed by ██████████. A certification conference was held on ██████████ and the case was certified. Plaintiff's Note of Issue was filed on ██████████ (see **Exhibit "D"**).

9. It is respectfully submitted that this application be granted in its entirety and thus, for a trial date to promptly be scheduled.

ARGUMENT

10. Although generally civil cases must be tried in the order in which the notes of issue have been filed, CPLR 3403(a)(4) expressly provides that the Court should grant a trial preference in "in any action upon the application of a party who has reached the age of seventy years" (*see Tytel v. Battery Beer Distribs.*, 194 A.D.2d 330 [1st Dept. 1993]). Plaintiff ██████████ fits this criteria as she was born on ██████████ making her eighty-four (84) years of age as of the date of application for this relief. Enclosed is a copy of ██████████ Certificate of Naturalization annexed hereto as **Exhibit "E"**.

11. Therefore, as CPLR 3403(a)(4) requires that a trial preference be granted, as a matter of law, for "a party who has reached the age of seventy years," and as plaintiff on behalf of her mother, has shown, through the submission of ██████████ Certificate of Naturalization, that she is eighty-four years of age, which is corroborated by Defendant ██████████ records this Court should grant a trial preference as set forth in CPLR 3403(a)(4). Regardless of the obligatory language of such statute, defendants will not be prejudiced if the trial preference is granted.

CONCLUSION

12. In light of the foregoing, this action is indisputably entitled to a trial preference set forth in CPLR 3403(a)(4).

13. No previous request for the relief requested herein has been made.

WHEREFORE, it is respectfully and urgently submitted that plaintiff's application be granted in its entirety; that the special statutory preference based upon the advanced age of plaintiff be granted; and that this action therefore be placed at the forefront of the trial calendar in accordance with CPLR 3403[a][4]; together with such other and further relief as the Court deems just, proper and equitable.

Dated: New York, New York
[REDACTED]



WALTER OSUNA