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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 EDUARDO VALDOVINOS,
12 Plaintiff,
13 vs.
14 RANCHO SECO CARE CENTER, LLC;
15 SWEETWATER CARE RESOURCE, LLC;
16 and DOES 1-250, inclusive,
17 Defendants.

CASE NO.
[CLASS ACTION]
CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
1) Violations of the Consumer Legal Remedies Act (Civ. Code § 1750, et seq.)
2) Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.) Violations
3) Violations of Resident Rights (Health & Saf. Code, § 1430, subd. (b))
Action Filed:
Trial Date: None Set

22 COMES NOW EDUARDO VALDOVINOS on behalf of himself and a class of similarly
23 situated California consumers and alleges upon information and belief and the investigation of
24 counsel, except for information based on personal knowledge as follows:

25 **THE PARTIES**

- 26 1. Plaintiff Class.
27 The class sought to be represented is defined as follows:
28 a. Plaintiff Subclass One: “Private Pay Residents-First and Second Causes of Action

1 Only.”

2 The first subclass sought to be represented in this action as it relates to the First and Second
3 Causes of Action only, is defined as follows: all persons who resided in (or continue to reside in)
4 the California skilled nursing facility doing business as Rancho Seco Care Center, that is and was
5 owned, operated, and/or managed by the defendants named herein at any time within the four years
6 prior to the filing of this Complaint through the date of the final disposition of this action wherein
7 the defendants were reimbursed for services provided to a “class member” by private pay and/or
8 privately acquired insurance and/or any HMO or PPO. The subclass does not include: (a) any
9 officers, directors or employees of the Defendants; (b) any judge assigned to hear this case (or
10 spouse or family member of any assigned judge); (c) any juror selected to hear this case.

11 b. Plaintiff Subclass Two: “All Residents-All Causes of Action

12 The second subclass sought to be represented in this action as it relates to all causes of action,
13 is defined as follows: all persons who were resided in (or continue to reside in) the California skilled
14 nursing facility doing business as Rancho Seco Care Center that is and was owned, operated, and/or
15 managed by the defendants named herein at any time within the four years prior to the filing of this
16 Complaint through the date of the final disposition of this action. The class does not include: (a) any
17 officers, directors or employees of the Defendants; (b) any judge assigned to hear this case (or
18 spouse or family member of any assigned judge); (c) any juror selected to hear this case. This
19 subclass shall seek attorneys’ fees and costs only.

20 c. Plaintiff Subclass Three: “Health & Safety Code Section 1430(b) Violations”

21 The third subclass sought to be represented in this action as it relates to the Third Cause of
22 Action only, is defined as follows: all persons who were resided in (or continue to reside in) the
23 California skilled nursing facility doing business as Rancho Seco Care Center that is and was owned,
24 operated, and/or managed by the defendants named herein at any time within the three years prior
25 to the filing of this Complaint through the date of the final disposition of this action regardless of
26 the manner in which Defendants were reimbursed for services. The class does not include: (a) any
27 officers, directors or employees of the Defendants; (b) any judge assigned to hear this case (or
28 spouse or family member of any assigned judge); (c) any juror selected to hear this case.

1 2. Individual Plaintiff/Class Representative. Plaintiff EDUARDO VALDOVINOS
2 (hereinafter sometimes referred to as “PLAINTIFF”) was at all times relevant hereto a resident and
3 citizen of the State of California. EDUARDO VALDOVINOS was a resident in the skilled nursing
4 facility doing business as Rancho Seco Care Center owned, operated and/or controlled by the
5 defendants (the FACILITY) who entered into a standard admission agreement with the Defendants.
6 Plaintiff was at all times relevant hereto a “person,” and a “consumer” as defined by *Civil Code*
7 §1761 in that Plaintiff is an individual who sought or acquired, by purchase or lease, services for
8 personal purposes.

9 3. Defendants RANCHO SECO CARE CENTER, LLC, at all times relevant hereto a
10 citizen of the State of California in that at least one of its members is a California citizen as more
11 specifically alleged below, and DOES 1 through 50 (hereinafter referred to as the “FACILITY”),
12 were at all relevant times in the business of providing long-term custodial care as the licensee of a
13 99-bed, 24-hour skilled nursing facility operating under the fictitious name Rancho Seco Care
14 Center located at 144 F Street, Galt, CA 95632 in the County of Sacramento, and were subject to
15 the requirements of federal and state law regarding the operation of skilled nursing facilities
16 operating in the State of California.

17 4. Defendant RANCHO SECO CARE CENTER, LLC is and was at all times relevant
18 hereto a citizen of California in that its sole member, SWC CA OPCO 2 LLC, is and was at all times
19 relevant hereto a citizen of California.

20 5. SWC CA OPCO 2 LLC is and was at all times relevant hereto a citizen of California
21 in that one of its members is and was at all times relevant hereto James Gamett who is domiciled in,
22 and a citizen of, the State of California, County of San Diego, at 662 Encinitas Blvd., Encinitas, CA
23 92024.

24 6. Defendants SWEETWATER CARE RESOURCE, LLC and DOES 51 through 100
25 (sometimes referred hereto as the “MANAGEMENT DEFENDANTS”) were at all relevant times
26 the FACILITY’S owners, operators, parent company, and/or management company of the
27 FACILITY and actively participated and controlled the business of the FACILITY and thus
28 provided long-term professional and custodial care as a 24-hour skilled nursing facility (hereinafter

1 the FACILITY and the MANAGEMENT DEFENDANTS are collectively sometimes jointly
2 referred to as “DEFENDANTS”).

3 7. PLAINTIFF is ignorant of the true names and capacities of those Defendants sued
4 herein as DOES 1 through 250, and for that reason has sued such Defendants by fictitious names.
5 PLAINTIFF will seek leave of the Court to amend this Complaint to identify said Defendants when
6 their identities are ascertained.

7 **CLASS ACTION ALLEGATIONS**

8 8. Ascertainable Class. The proposed class is ascertainable. The litigation of the
9 questions of fact and law involved in this action will resolve the rights of all members of the class
10 and hence will have binding effect on all class members. These class members can be readily
11 identified from residency computer files of the defendants and other means readily available to the
12 defendants, and thus the plaintiffs, through minimally intrusive discovery. The class is numerous.
13 On information and belief, those class members number more than three thousand (3000). Joinder
14 of all class members is impracticable due to both a reluctance of class members to sue their current
15 caregivers and the relatively small monetary recovery for each class member in comparison to the
16 costs associated with separate litigation.

17 9. Community of Interest. The proposed class has a well-defined community of interest
18 in the questions of fact and law to be litigated. The common questions of law and fact are
19 predominant with respect to the liability issues, relief issues and anticipated affirmative defenses.
20 The named Plaintiff has claims typical of the class members. Without limitation, as a result of
21 defendants’ conduct alleged herein, Plaintiff and the class were deprived of the rights afforded to
22 all residents of skilled nursing facilities under *Health & Safety Code* §1599.1(a) and 22 C.C.R.
23 §72527(a)(25), most specifically the right to live in a facility that employs “an adequate number of
24 qualified personnel to carry out all of the functions of the facility.” The named Plaintiff can fairly
25 and adequately represent and protect the interests of the class in that there are no conflicts between
26 Plaintiff’s interest and the interests of other class members, this action is not collusive, the named
27 Plaintiff and Plaintiff’s counsel have the necessary resources to litigate this action, and counsel has
28 the experience and ability required to prosecute this case as a class action.

1 10. Superiority of Class Adjudication. The certification of a class in this action is
2 superior to the litigation of a multitude of cases by members of the putative class. Class adjudication
3 will conserve judicial resources and will avoid the possibility of inconsistent rulings. Moreover,
4 there are class members who are unlikely to join or bring an action due to, among other reasons,
5 their reluctance to sue their current nursing home provider and/or their inability to afford a separate
6 action. Finally, equity dictates that all persons who stand to benefit from the relief sought herein
7 should be subject to the lawsuit and hence subject to an order spreading the costs of the litigation
8 among the class members in relationship to the benefits received.

9 11. The MANAGEMENT DEFENDANTS and the FACILITY are “alter egos” of one
10 other and form a “Single Enterprise” as more fully alleged below and according to proof at trial.

11 12. Integrated into the scheme set forth by the DEFENDANTS through their Governing
12 Body is the objective to limit costs so as to maximize profit for DEFENDANTS’ individual
13 directors, officers, and managers at the expense of the health and safety of residents like EDUARDO
14 VALDOVINOS. Through such budgetary constraints, the DEFENDANTS systematically fail to
15 have the resources or the staff on hand to manage the care of residents like EDUARDO
16 VALDOVINOS.

17 13. The FACILITY and the MANAGEMENT DEFENDANTS operated in such a way
18 as to make their individual identities indistinguishable and are therefore the mere alter-egos of one
19 another. There was a unity of interest between the FACILITY and the MANAGEMENT
20 DEFENDANTS such that a failure to recognize the alter ego relationship between them would lead
21 to an inequitable result.

22 14. At all relevant times, the FACILITY and the MANAGEMENT DEFENDANTS and
23 each of their tortious acts and omissions, as alleged herein, were done in concert with one another
24 in furtherance of their common design and agreement to accomplish a particular result, namely
25 maximizing profits for DEFENDANTS’ individual directors, officers, and managers from the
26 operation of the FACILITY by underfunding and understaffing the FACILITY. Moreover, the
27 DEFENDANTS aided and abetted each other in accomplishing the acts and omissions alleged
28 herein. (See Restatement (Second) of Torts §876 (1979)).

1 15. The MANAGEMENT DEFENDANTS controlled the FACILITY to such a degree
2 that it was a “mere instrumentality” of the MANAGEMENT DEFENDANTS used for an improper
3 purpose.

4 16. Evidence for this reality exists in the exchange of directional documents and reports
5 shared amongst the DEFENDANTS as to issues including staffing, census, interaction of the
6 FACILITY with the State of California’s Department of Public Health, and regulatory compliance
7 which were utilized by the MANAGEMENT DEFENDANTS to make operational decisions as the
8 true owners, operators and managers of the FACILITY.

9 17. And for this effort, the MANAGEMENT DEFENDANTS siphon scarce funds and
10 assets away from residents of the FACILITY through “Administration” accounts under the guise of
11 artificially inflated payments for supplies, rent, and other non-clinical, illusory
12 management/administrative services. For instance, in the fiscal year ending December 31, 2022,
13 RANCHO SECO CARE CENTER, LLC paid SWEETWATER CARE RESOURCE, LLC
14 \$547,840 for “Administrative Services” which were for phantom services not actually rendered
15 and/or for services of nowhere near the value of the amount of consideration paid for them.

16 18. Because the funds that were improperly siphoned to the MANAGEMENT
17 DEFENDANTS for phantom services as alleged in the immediately preceding paragraph should
18 have instead gone to pay for labor costs to ensure that the FACILITY was sufficiently staffed to
19 meet the needs of the residents, failing to hold DEFENDANTS liable under an alter ego theory
20 would lead to an inequitable result.

21 19. In doing the wrongful acts and omissions alleged herein, RANCHO SECO CARE
22 CENTER, LLC; MANAGEMENT DEFENDANTS and DOES 1-250:

- 23 (1) commingled funds and other assets;
24 (2) failed to segregate funds of the separate entities, and the unauthorized diversion
25 of corporate funds or assets to other than corporate uses;
26 (3) treated the assets of each corporation as their own;
27 (4) held out that they are individually liable for the debts of each corporation;
28 (5) failed to maintain minutes or adequate corporate records;

- 1 (6) had sole ownership of all of the stock in a corporation by one individual or the
- 2 members of a family;
- 3 (7) failed to adequately capitalize the corporations;
- 4 (8) used the corporations as a mere shell, instrumentality or conduit for a single
- 5 venture or the business of an individual or another corporation;
- 6 (9) disregarded legal formalities and the failure to maintain arm's length
- 7 relationships among related entities;
- 8 (10) diverted of assets from a corporation by or to a stockholder or other person or
- 9 entity, to the detriment of creditors, or the manipulation of assets and liabilities
- 10 between entities so as to concentrate the assets in one and the liabilities in
- 11 another;
- 12 (11) the contracting with another with intent to avoid performance by use of a
- 13 corporate entity as a shield against personal liability, or the use of each
- 14 corporation as a subterfuge of illegal transactions.

11 And thus RANCHO SECO CARE CENTER, LLC; SWEETWATER CARE RESOURCE, LLC;
12 and DOES 1-250 acted as alter egos of one another.

13 20. In doing the wrongful acts and omissions alleged herein, RANCHO SECO CARE
14 CENTER, LLC; SWEETWATER CARE RESOURCE, LLC; and DOES 1-250:

- 15 (1) participated in a common venture or in a similar or functionally reciprocal
- 16 business (e.g., one corporation builds houses upon land owned by the other);
- 17 (2) had identical equitable ownership;
- 18 (3) had common directors, officers and employees;
- 19 (4) had the same business location, telephone numbers and e-mail systems;
- 20 (5) pooling of assets and revenues, or use of one corporation's financial resources
- 21 to pay or guaranty the other's obligations (especially if the other corporation is
- 22 undercapitalized); and
- 23 (6) the corporations tend to benefit jointly from transactions entered into by one of
- 24 them.

23 And thus, RANCHO SECO CARE CENTER, LLC; and SWEETWATER CARE RESOURCE,
24 LLC; and DOES 1-250 acted as a joint enterprise with one another.

25 **FACTUAL ALLEGATIONS**

26 21. In owning, operating, managing, administrating, controlling, and/or supervising the
27 FACILITY, DEFENDANTS were required to comply with California statutory and regulatory law
28 governing the operation of skilled nursing facilities. In owning, operating, managing,

1 administrating, controlling, and/or supervising the FACILITY, DEFENDANTS were also subject
2 to the authority of licensing and other governmental agencies, including but not limited to the
3 California Department of Public Health (“DPH”), the California Department of Health Care
4 Services (“DHCS”), and the federal Centers for Medicare & Medicaid Services (“CMS”).

5 22. It is alleged that Plaintiff and each class member were admitted to the FACILITY
6 pursuant to the utilization of the “California Standard Admission Agreement”¹ as mandated by Title
7 22 of the California *Code of Regulations*, §72516. *Health & Safety Code* §1599.74 mandates that
8 every California skilled nursing facility admission agreement shall contain a complete copy of the
9 statutory and regulatory bill of rights in legible print of no less than 12-point type and that every
10 resident shall sign a separate written acknowledgement that the resident has been informed of the
11 Resident Bill of Rights.² California *Health & Safety Code* §1599.74 mandates in relevant part:

12 (b) Every contract of admission shall contain a complete copy of both the statutory
13 and regulatory Patients’ Bill of Rights. Notwithstanding any other provision of
14 law, the text of the Patients’ Bill of Rights shall be in legible print of no less than
15 12-point type. If a translation has been provided by the department, the text given
16 to non-English-speaking residents shall be in their language.

17 (c) The contract shall also contain a separate written acknowledgement that the
18 resident has been informed of the Patients’ Bill of Rights. Written
19 acknowledgement by the resident or the resident's representative must be made
20 either on a separate document or in the agreement itself next to the clause
21 informing the resident of these regulatory rights. Written acknowledgement by
22 use of the signature on the agreement as a whole does not meet this requirement.

23 California *Health & Safety Code* §1599.74(b)–(c).

24 23. Pursuant to this uniform representation that the services provided by the Defendants
25 would meet the standards as set forth in the Resident Bill of Rights attached to the uniform
26 Admission Agreement, the DEFENDANTS were to provide all residents of the FACILITY services
27 consistent with the mandatory requirements of California *Health & Safety Code* §1599.1(a) as set
28 forth in Title 22 C.C.R. §72527(a)(25). Specifically, the services represented by the DEFENDANTS

25 ¹ A true and correct copy of an exemplar of the “California Standard Admission Agreement for Skilled Nursing Facilities
26 and Intermediate Care Facilities” obtained from the California Department of Public Health’s website at the self-
27 authenticating link <https://www.cdph.ca.gov/CDPH%20Document%20Library/ControlledForms/cdph327.pdf>.

28 ² A true and correct copy of an exemplar of the Resident Bill of Rights (Attachment F to the Standard Admission
Agreement) obtained from the California Department of Public Health website at the self-authenticating link
<https://www.cdph.ca.gov/CDPH%20Document%20Library/ControlledForms/cdph327.pdf> (at Attachment F)

1 that they would provide to each resident, via the contractual Admission Agreement arrangement
2 with each resident, was explicitly stated by the DEFENDANTS to include the obligation, and
3 representation as to the standard of care to be provided, that the FACILITY would ensure the rights
4 afforded to all residents of skilled nursing facilities under *Health & Safety Code* §1599.1(a) and 22
5 C.C.R. §72527(a)(25), most specifically the right to live in a facility that employs “an adequate
6 number of qualified personnel to carry out all of the functions of the facility” including, and as to
7 that which this lawsuit references, “Direct Caregivers” as that term is defined in 22 *Code of*
8 *Regulations* §72038.³ These uniform representations of the DEFENDANTS in the Admission
9 Agreement as to the nature of their services in this regard as to “Direct Caregivers” as defined in 22
10 *Code of Regulations* §72038, while performing nursing services as described in Sections 72309,
11 72311, and 72315 of Title 22 of the California *Code of Regulations*, as those sections read as of July
12 1, 2017, and specifically, in accordance with the mandate of Title 22 of the California *Code of*
13 *Regulations* § 72329.1(a) which mandates, in pertinent part, that the FACILITY maintain “Nursing
14 service personnel shall be employed and on duty in at least the number and with the qualifications
15 determined by the Department to provide the necessary nursing services for patients admitted for
16 care. The staffing requirements required by this section are minimum standards only...” were false
17 and actually known to be false when made by the DEFENDANTS when made. And in fact, the
18 allegations in this action are specifically limited to an analysis of the failure to comply with
19 applicable regulations and laws as to “Direct Caregivers” as defined in 22 *Code of Regulations*
20 §72038, only.

21 24. For, and as known to the DEFENDANTS at the time of and prior to the admission
22 of EDUARDO VALDOVINOS and a class of similarly situated California consumers, at all relevant
23

24 ³ Throughout this Complaint when the term “Direct Caregiver” is referenced it is meant to be as that term is defined in
25 22 *Code of Regulations* §72038 which is as follows:

26 “Direct caregiver” means a registered nurse, as referred to in Section 2732 of the Business and Professions
27 Code, a licensed vocational nurse, as referred to in Section 2864 of the Business and Professions Code, a
28 psychiatric technician, as referred to in Section 4516 of the Business and Professions Code, and a certified
nurse assistant, or a nursing assistant participating in an approved training program, as defined in Section
1337 of the Health and Safety Code, while performing nursing services as described in sections 72309,
72311 and 72315. A person serving as the director of nursing services in a facility with 60 or more licensed
beds cannot be a direct caregiver.

1 times hereto the FACILITY did not have on duty at all times sufficient “direct caregivers” to meet
2 the needs of EDUARDO VALDOVINOS and a class of similarly situated California consumers.

3 25. During the admissions process and/or prior to becoming residents of the FACILITY,
4 representatives of the FACILITY presented Plaintiff and each class member, and/or each’s legal
5 representative, with a standard admission agreement containing the resident bill of rights as an
6 attachment to the admission agreement as mandated by *Health & Safety Code* §1599.74. Plaintiff
7 and each member of the class, and/or each’s legal representative, read and understood the standard
8 admission agreement and relied upon the material terms contained therein. In reliance on the terms
9 of the standard admission agreement, Plaintiff and each member of the class, and/or each’s legal
10 representative, decided that Plaintiff and each member of the class would become and/or remain
11 residents of the FACILITY, and signed the admission agreement and became residents of the
12 FACILITY. Each and every putative class member, and most specifically the named Plaintiff, and/or
13 their legal representatives acting on their behalf, justifiably relied on these false written
14 representations in agreeing to the terms and obligations of the written admission agreement to their
15 detriment and as more fully set forth below.

16 26. Before, during, and after the admissions processes of Plaintiff and each class
17 member, the DEFENDANTS actively and intentionally concealed from Plaintiff and class members
18 that at all times relevant hereto the FACILITY did not employ “an adequate number of “Direct
19 Caregivers”, as the term “Direct Caregivers” is defined 22 *Code of Regulations* §72038, to carry out
20 all of the functions of the facility” in violation of Health & Safety Code §1599.1(a) (as expressly
21 incorporated by Title 22 C.C.R. §72527(a)(25)) as mandated by Title 22 of the California *Code of*
22 *Regulations* §72329.1(a).

23 27. It is alleged that the concealments by DEFENDANTS alleged in the immediately
24 preceding paragraph were intended to deceive Plaintiff and members of the class into believing that
25 the FACILITY were properly operated to induce Plaintiff and class members into becoming and/or
26 remaining residents of the FACILITY. Plaintiff and members of the class, all in infirm health,
27 elderly, and/or in need of skilled nursing care and members of one of the most vulnerable segments
28 of our society, were unsophisticated and unknowledgeable in the operation of skilled nursing

1 FACILITY in the State of California and had no knowledge of the facts concealed by
2 DEFENDANTS and could not have discovered those concealed facts due to, among other things,
3 their extremely vulnerable status. Had the concealed facts been disclosed to Plaintiff and members
4 of the class, they would not have become and/or remained residents of the FACILITY and would
5 not have paid, or had monies paid on their behalf, for the substandard skilled nursing care at the
6 FACILITY.

7 28. Before, during, and after the admissions processes of Plaintiff and each class
8 member, the DEFENDANTS actively and intentionally concealed from Plaintiff and class members
9 that DEFENDANTS chronically understaffed the FACILITY with an inadequate number of “Direct
10 Caregivers” to carry out the function of the FACILITY as more fully alleged herein, and in so doing
11 and as a result thereof, the DEFENDANTS have violated the rights afforded to all residents of
12 skilled nursing facilities under Health & Safety Code §1599.1(a) and 22 Code of Regulations
13 §72527(a)(25) as mandated by Title 22 of the California *Code of Regulations* §72329.1(a), most
14 specifically the right to live in a facility that employs “an adequate number of ‘Direct Caregivers’
15 to carry out all of the functions of the facility.” It is alleged that this concealment by DEFENDANTS
16 was intended to deceive Plaintiffs and members of the class into believing that the FACILITY was
17 properly staffed to induce Plaintiff and class members into becoming and/or remaining residents of
18 the FACILITY. Plaintiff and members of the class, all in infirm health, elderly, and/or in need of
19 skilled nursing care and members of one of the most vulnerable segments of our society, were
20 unknowledgeable and unsophisticated in the operation of skilled nursing facilities in the State of
21 California and had no knowledge of the facts concealed by DEFENDANTS and could not have
22 discovered those concealed facts due to, among other things, their extremely vulnerable status. Had
23 the concealed facts been disclosed to Plaintiff and members of the class, they would not have
24 become and/or remained residents of the FACILITY and would not have paid, or had monies paid
25 on their behalf, for the substandard skilled nursing care at the FACILITY.

26 29. In reality, in direct contradiction to the representation in their uniform admission
27 agreement that the FACILITY would “employ an adequate number of qualified personnel to carry
28 out all functions of the facility” and to meet the needs of their residents, DEFENDANTS chronically

1 understaffed the FACILITY as to “Direct Caregivers” in violation of the Resident Bill of Rights set
2 forth in *Health & Safety Code* §1599.1(a) and Title 22 C.C.R. §72527(a)(25) as mandated by Title
3 22 of the California *Code of Regulations* §72329.1(a), which confer upon residents the right to live
4 in an adequately staffed facility, and relating to the requirements of Title 22 C.C.R. § 72329.(a).
5 Thus, DEFENDANTS have misrepresented in their admission agreement that entering into the
6 admission agreement with DEFENDANTS conferred or involved rights, remedies, or obligations
7 which the transaction did not have or involve, or which was prohibited by law, in violation of *Civil*
8 *Code* §1770(a)(14).

9 30. Plaintiff and the class members, as persons unknowledgeable and unsophisticated in
10 the operation of skilled nursing facilities in the State of California and having no knowledge of the
11 material concealments by DEFENDANTS alleged herein, justifiably relied on the material terms of,
12 and the representations set forth in, the DEFENDANTS’ uniform Admission Agreement in entering
13 into the admission agreement and becoming and/or remaining residents of the FACILITY thereby
14 assuming the obligation of payment to the DEFENDANTS. Most specifically, Plaintiff and the Class
15 relied on the following material term of the California Standard Admission Agreement relating to
16 resident rights:

17 IV. Your Rights as a Resident. Residents of this Facility keep all their basic rights
18 and liberties as a citizen or resident of the United States when, after, they are
19 admitted. Because these rights are so important, both federal and state laws and
regulations describe them in detail, and state law requires that a comprehensive
Resident Bill of Rights be attached to this Agreement.

20 Attachment A, entitled “Resident Bill of Rights,” lists your rights as set forth in
21 State and Federal law. For your information, the attachment also provides the
location of your rights in statute.

22 You should review the attached “Resident Bill of Rights” very carefully. To
23 acknowledge that you have been informed of the “resident Bill of Rights,” please
sign here: _____.

24 In requiring their residents to specifically and separately acknowledge receipt of DEFENDANTS’
25 representations regarding the minimum standards of care as set forth in the Resident Bill of Rights,
26 DEFENDANTS knew, or should have known, that their residents were reasonably and justifiably
27 relying on said representations.

28 31. It is alleged that Plaintiffs and members of the Class suffered injury in fact and

1 concrete harm in that they relied on the representations of the DEFENDANTS that they would be
2 provided with minimum standards of care consistent with the requirements of *Health & Safety Code*
3 §1599.1(a) as incorporated into Title 22 C.C.R. §72527(a)(25) and as mandated by Title 22 of the
4 California *Code of Regulations* §72329.1(a), yet did not receive this promised standard of care and
5 suffered pecuniary harm by being deprived of the value of payments made for skilled nursing
6 services when these services were not actually rendered consistent with the DEFENDANTS’
7 representations.

8 32. In addition, these class members made monetary payments to the DEFENDANTS in
9 return for skilled nursing services of the standard promised by the DEFENDANTS in the uniform
10 Admission Agreement and its attachments which are incorporated into the Admission Agreement
11 as alleged above. The class has suffered pecuniary harm in that the DEFENDANTS did not provide
12 such services of the standard represented. In addition, Plaintiff and class members have suffered
13 pecuniary harm in that DEFENDANTS misrepresented that entering into an admission agreement
14 with DEFENDANTS conferred the statutory resident right under *Health & Safety Code* §1599.1 of
15 Plaintiffs and class members to reside in a facility that employs “an adequate number of qualified
16 personnel to carry out all of the functions of the facility” as mandated by Title 22 of the California
17 *Code of Regulations* §72329.1(a) when in fact the transaction of entering into an admission
18 agreement with DEFENDANTS did not confer such right.

19 33. It is specifically alleged that the regulations enacted pursuant to the California *Health*
20 *and Safety Code*⁴ also require that a skilled nursing facility maintain staffing at levels sufficient to
21 meet the needs of residents, even if that required staffing level is more than the bare minimum
22 numeric ratio of 3.5 direct NHPPD required by *Health & Safety Code* §1276.65. “The direct care
23 service hour requirements to be developed pursuant to this section shall be minimum standards only.
24 Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality
25

26 ⁴ These regulations set the standard of care with which skilled nursing FACILITY must comply. See Cal. *Health & Saf.*
27 *Code* §1276(a) (“The building standards published in the State Building Standards Code by the Office of Statewide
28 Health Planning and Development, and the regulations adopted by the state department shall, as applicable, prescribe standards of adequacy, safety, and sanitation of the physical plant, of staffing with duly qualified licensed personnel, and of services, based on the type of health facility and the needs of the persons served thereby.”).

1 resident care based on the needs of individual residents and to ensure compliance with all relevant
2 state and federal staffing requirements.” (Health & Saf. Code, § 1276.65.)

3 34. It is alleged that minimum staffing of personnel in the FACILITY is dependent by
4 law upon the acuity (need) level of the residents of the FACILITY. As alleged more fully below,
5 the FACILITY’S resident acuity levels during the class period were so high such that the
6 “minimum” staffing ratios exceeded the numeric minimum of *Health & Safety Code* §1276.65
7 pursuant to the provisions of Title 22 *California Code of Regulations* §§72515(b), 72329.1(a) and
8 42 C.F.R. §483.30.

9 35. The methodology of determination of the DEFENDANTS’ violations and
10 knowledge regarding the intentional/fraudulent concealment and misrepresentation, is easily
11 obtainable and provable on a facility-wide, not resident-specific basis, as follows:

- 12 A. The DEFENDANTS’ Medicare & Medicaid annual cost reports submitted
13 under penalty of perjury and at the risk of criminal prosecution for inaccuracy,
14 establishes what was spent on a facility wide basis.
- 15 B. The first step in the analysis is to determine the collective resident acuity and
16 care needs using resident assessment data and overall resident care plans. Data
17 are available from (1) facility assessments of the staffing resources needed to
18 provide care; (2) data from aggregate Minimum Data Set (“MDS” resident
19 assessments); (3) Resource Utilization Group (“RUG”) scores and HIPPS
20 billing codes; (4) Centers for Medicare & Medicaid Services (“CMS”) Form
21 672 summary of resident needs and costs reports; (5) resident ADL summaries;
22 and (6) the new Patient-Driven Payment Model (“PDPM”) scores.
- 23 C. The second step is to determine the actual staffing levels for Registered Nurses
24 (“RN”), Licensed Practical Nurses (“LPN”), and Certified Nurse Aides
25 (“CNA”). This step involves analyzing data from facility internal staffing
26 reports and payroll data, payroll-based journal (“PBJ”) data that facilities
27 submit to CMS (since 2017 to replace CMS Form 671 data), and Medicare and
28 Medicaid cost report data and/or time cards.
- D. The third step is to determine appropriate nurse staffing levels based on resident
acuity. Sources of information include (1) research studies, expert opinions,
and professional recommendations on the minimum staffing levels; (2) CMS
1995 to 1997 staff time measurement (“STM”) study; and (3) new research to
calculate minimum CNA Staffing.
- F. The fourth step is to compare the actual facility staffing to the appropriate
nursing staffing levels based on acuity for each facility to identify gaps. The
goal of the guide is to assist directors of nursing and administrators in nursing
homes to ensure adequate nursing home staffing levels to protect resident
health, safety and well-being.

36. The staffing analysis described above is done at a facility-level. Thus, it does not

1 require any individualized inquiry into how many hours of direct nursing care any specific resident
2 received on any given day. Rather, the proper analysis is whether the *facility as a whole* employed
3 an adequate number of qualified staff to competently care for the collective needs of its residents. It
4 is specifically alleged that the United States Centers for Medicare & Medicaid Services (“CMS”)
5 has already developed a methodology for determining the level of staffing required to meet the needs
6 of residents based on the collective acuity levels of the residents via the CMS Agency Patient-
7 Related Characteristics Report (formerly the Case Mix Report), which is the average resident need
8 score based on resident assessment data that CMS *has already collected and calculated*. A self-
9 authenticating link to a portion of this staffing information is at: [https://data.cms.gov/provider-
10 data/archived-data/nursing-homes](https://data.cms.gov/provider-
10 data/archived-data/nursing-homes).

11 37. It is specifically alleged that if a skilled nursing facility’s staffing levels are lower
12 than the level of staffing of “Direct Caregivers” required to meet the needs of residents as determined
13 by their collective acuity, that facility has violated its residents’ statutory, affirmative and actionable
14 right to reside in a skilled nursing facility that employs “an adequate number of qualified personnel
15 to carry out all of the functions of the facility” and as mandated by Title 22 of the California *Code*
16 *of Regulations* §72329.1(a). California *Health & Safety Code* §1599.1(a). Upon information and
17 belief, it is alleged that the FACILITY were inadequately staffed in violation of Title 22 of the
18 California *Code of Regulations* §72329.1(a) and hence *Health & Safety Code* §1599.1(a).

19 38. In fact, the reported hours and staffing ratios by the DEFENDANTS are a complete
20 and intended fraud in two ways. First, this intended fraud to be perpetrated upon the public and the
21 government by these DEFENDANTS is vibrantly illustrated by the staffing records of the
22 FACILITY used by the FACILITY to report hours to the DPH, in which DEFENDANTS include
23 non-direct caregivers in violation of 22 *Code of Regulations* §72038 and Health & Safety Code
24 §1276.65 in their computation of staffing ratios reported to the public and the government. That is,
25 DEFENDANTS artificially and fraudulently inflate the reported nursing staff ratios by unlawfully
26 and fraudulently including the hours of employees not providing direct nursing care, including but
27 not limited to administrative, supervisory, and/or maintenance employees who do not provide direct
28 patient care.

1 39. Second, the fraud perpetrated on the public can be seen from DEFENDANTS’ own
2 time-keeping records which do not take into account rest breaks required by *Labor Code* §226.7 and
3 8 *California Code of Regulations* §§ 11010-11150, ¶ 12 and §11160, ¶ 11. Thus, for example, for a
4 nurse working an eight-hour shift, the DEFENDANTS report the full eight hours to DPH even
5 though in reality that nurse was only on the floor providing direct patient care for seven hours and
6 forty minutes (7.66 hours) due to taking the two 10-minute breaks required by the *Labor Code*.
7 While the fraudulent reporting of eight hours as opposed to 7.66 hours may seem inconsequential
8 with only one nurse involved, when it is extrapolated on a facility wide-basis, its effects are
9 dramatic.

10 40. For example, if on a given day the FACILITY had 35 nurses working eight-hour
11 shifts with a total patient census of 80 for that day, the FACILITY as a systemic policy and practice
12 reports a total of 280 hours worked for that day, divided by 80 residents for a total of 3.5 nursing
13 hours per patient day (“NHPPD”), which is the bare minimum numeric staffing ratio required by
14 Health & Safety Code §1276.65. However, in reality and contrary to the fraudulent reporting of
15 DEFENDANTS to DPH, each of the 35 nurses worked only 7.66 hours due to taking two required
16 10-minute breaks for a total of 268.1 hours actually worked. 268.1 hours divided by 80 residents
17 results in a total of 3.35 NHPPD, well *below* the minimum numeric ratio of 3.5 hours required by
18 Health & Safety Code §1276.65.

19 41. It is alleged that at all relevant times hereto, the DEFENDANTS as a systemic policy
20 and practice always reported to DPH total nursing hours and NHPPD ratios which did not take into
21 account the rest breaks required by Labor Code §226.7 and 8 California Code of Regulations
22 §§ 11010–11150, ¶ 12 and §11160, ¶ 11. It is further alleged that at all times relevant hereto
23 DEFENDANTS failed to take into account required rest breaks in determining the amount of staff
24 the FACILITY required to ensure the rights afforded to PLAINTIFF, members of the class, and all
25 residents of skilled nursing facilities under *Health & Safety Code* §1599.1(a) and 22 C.C.R.
26 §72527(a)(25), most specifically, the right to live in a facility that employs “an adequate number of
27 qualified personnel to carry out all of the functions of the facility” pursuant to Health & Safety Code
28 §1599.1(a) (as expressly incorporated by Title 22 C.C.R. §72527(a)(25). That in failing to take into

1 account the required rest breaks, DEFENDANTS failed to adequately staff the FACILITY to meet
2 the needs of the residents, thereby violating PLAINTIFF’S and each class member’s rights set forth
3 in *Health & Safety Code* §1599.1(a) and 22 C.C.R. §72527(a)(25).

4 **FIRST CAUSE OF ACTION**
5 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
6 **[By EDUARDO VALDOVINOS on his behalf and on behalf of others similarly situated**
7 **Against All DEFENDANTS]**

8 42. EDUARDO VALDOVINOS hereby incorporates the allegations asserted
9 hereinabove as though set forth at length below.

10 43. The DEFENDANTS make representations to prospective residents and their
11 families, and others similarly situated via their uniform admission agreements as set forth more fully
12 hereinabove. Pursuant to this uniform representation that the services provided by the Defendants
13 would meet the particularized standards as set forth in the Resident Bill of Rights attached to the
14 uniform Admission Agreement, the DEFENDANTS were to provide all residents of the FACILITY
15 services consistent with the mandatory requirements of California *Health & Safety Code* §1599.1(a)
16 as set forth in Title 22 C.C.R. §72527(a)(25) and as mandated by Title 22 of the California *Code of*
17 *Regulations* §72329.1(a). Specifically, the services represented by the DEFENDANTS that they
18 would provide to each resident, via the contractual Admission Agreement arrangement with each
19 resident, was explicitly stated by the DEFENDANTS to include the obligation, and representation
20 as to the standard of care to be provided, that the FACILITY would ensure the rights afforded to all
21 residents of skilled nursing facilities under *Health & Safety Code* §1599.1(a) and 22 C.C.R.
22 §72527(a)(25), most specifically the right to live in a facility that employs “an adequate number of
23 qualified personnel to carry out all of the functions of the facility” as mandated by Title 22 of the
24 California *Code of Regulations* §72329.1(a) as to “Direct Caregivers.” These uniform
25 representations of the DEFENDANTS in the Admission Agreement as to the nature of their services
26 in this regard as to “Direct Caregivers” were false and actually known to be false when made by the
27 DEFENDANTS.
28

44. These representations by DEFENDANTS were intended to induce and lure elderly
and infirm residents (and their representatives) into agreeing to be admitted to the FACILITY based

1 on false and misleading representations without disclosing that DEFENDANTS cannot and do not
2 provide the represented level and quality of care to residents. Before, during, and after the
3 admissions processes of Plaintiff and each class member, the DEFENDANTS actively and
4 intentionally concealed from Plaintiff and class members, and/or each's legal representative, that
5 DEFENDANTS have a long history of being serial violators of skilled nursing industry laws.

6 45. It is alleged that the concealments by DEFENDANTS alleged in the immediately
7 preceding paragraph were intended to deceive Plaintiff and members of the class, and/or each's legal
8 representative, into believing that the FACILITY was properly operated to induce Plaintiff and class
9 members into becoming and/or remaining residents of the FACILITY. That Plaintiff and members
10 of the class, all in infirm health, elderly, and/or in need of skilled nursing care and members of one
11 of the most vulnerable segments of our society, and/or each's legal representative, were
12 unsophisticated and unknowledgeable in the operation of skilled nursing facilities in the State of
13 California and had no knowledge of the facts concealed by DEFENDANTS and could not have
14 discovered those concealed facts due to, among other things, their extremely vulnerable status. Had
15 the concealed facts been disclosed to Plaintiff and members of the class, they would not have
16 become and/or remained residents of the FACILITY and would not have paid, or had monies paid
17 on their behalf, for the substandard skilled nursing care at the FACILITY.

18 46. The representations DEFENDANTS made in their uniform admission agreement as
19 to "Direct Caregivers" were false and known to be false when made as set forth more fully
20 hereinabove.

21 47. Plaintiff and the class relied on these misrepresentations into becoming and/or
22 remaining residents of the FACILITY. In reliance of these misrepresentations, the Plaintiff and the
23 class made payments to the DEFENDANTS in return for these services as promised. Plaintiff and
24 the class suffered pecuniary harm in the form of lost payments and lost services when the
25 DEFENDANTS actually failed to provide these promised skilled nursing services as represented.

26 48. As a result, Defendants have violated and continue to violate the Consumer Legal
27 Remedies Act, *Civil Code* §1770 et seq. ("CLRA") in at least the following respects:

28 a. In violation of section 1770(a)(5), the defendants' acts and practices constitute

- 1 misrepresentations that the skilled nursing care that they purport to provide had
- 2 characteristics, standards, performance and level of quality which it did not
- 3 have; and
- 4 b. In violation of section 1770(a)(7), the defendants have misrepresented that the
- 5 skilled nursing care that they purport to provide is of a particular standard,
- 6 quality and/or grade, when it is not.
- 7 c. In violation of section 1770(a)(9), the defendants have misrepresented the
- 8 nature of their skilled nursing services with the intent not to sell them as
- 9 represented.
- 10 d. In violation of section 1770(a)(14), the defendants have misrepresented that the
- 11 transaction of entering into admission agreement with Defendants conferred or
- 12 involved rights, remedies, or obligations which the transaction did not have or
- 13 involve, or which was prohibited by law.

14 49. Pursuant to Section 1782, in conjunction with the filing of this complaint, Plaintiff

15 shall notify DEFENDANTS in writing of the asserted violations of Section 1770 and demand that

16 DEFENDANTS rectify the conduct described above. If DEFENDANTS fail to take appropriate

17 corrective or remedial action or fail to agree to take such action within 30 days after receipt of the

18 notice, Plaintiff will amend this complaint to request actual damages, plus punitive damages, interest

19 and attorneys' fees. Pursuant to Section 1782(2), Plaintiff seeks an order enjoining the above-

20 described wrongful acts and practices of defendants, plus costs and attorneys' fees, and any other

21 relief which the Court deems proper.

22 50. It is alleged that Plaintiffs and members of the Class suffered injury in fact and

23 concrete harm in that they relied on the representations of the DEFENDANTS that they would be

24 provided with minimum standards of care consistent with the requirements of *Health & Safety Code*

25 §1599.1(a) as incorporated into Title 22 C.C.R. §72527(a)(25), yet did not receive this promised

26 standard of care and suffered pecuniary harm by being deprived of the value of payments made for

27 skilled nursing services when these services were not actually rendered consistent with the

28 DEFENDANTS' representations.

51. In addition, these class members made monetary payments to the DEFENDANTS in

return for skilled nursing services of the standard promised by the DEFENDANTS in the uniform

Admission Agreement and its attachments which are incorporated into the Admission Agreement

as alleged above. The class has suffered pecuniary harm in that the DEFENDANTS did not provide

1 such services of the standard represented. In addition, Plaintiff and class members have suffered
2 pecuniary harm in that DEFENDANTS misrepresented that entering into an admission agreement
3 with DEFENDANTS conferred the statutory resident right under *Health & Safety Code* §1599.1 of
4 Plaintiffs and class members to reside in a facility that employs “an adequate number of qualified
5 personnel to carry out all of the functions of the facility” when in fact the transaction of entering
6 into an admission agreement with DEFENDANTS did not confer such right.

7 52. Plaintiff and members of the class are “senior citizens” as defined by Section 1761(f)
8 and meet the requirements of Section 1780(b) to each be entitled to an award of \$5,000 in addition
9 to the other remedies available under the CLRA.

10 53. As the direct and proximate result of these violations of law EDUARDO
11 VALDOVINOS, and others similarly situated, suffered economic loss in the form of unearned
12 payments to the DEFENDANTS in an amount to be proven at time of trial.

13 54. The defendants’ conduct as alleged in this cause of action was, and is, malicious,
14 oppressive and/or fraudulent.

15 **SECOND CAUSE OF ACTION**
16 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 AGAINST ALL**
17 **DEFENDANTS**

18 55. Plaintiffs refer to, and incorporate herein by this reference all paragraphs set forth
19 hereinabove as though fully set forth at his point.

20 56. The conduct of the DEFENDANTS, as alleged, is part of a general business practice
21 of the DEFENDANTS, and all facilities owned, managed and/or operated by these DEFENDANTS,
22 in the State of California, conceived and implemented by DEFENDANTS. This practice exists in
23 part because the Defendants unreasonably expect few adverse consequences will flow from the
24 mistreatment of their elderly and vulnerable clientele, and DEFENDANTS made a considered
25 decision to promote profit at the expense of their statutory and regulatory obligations, as well as
26 their moral, legal and ethical obligations to their residents. This practice exists so as to maximize
27 profit by retaining monies that were paid to the DEFENDANTS for the care and services to be
28 provided to residents of DEFENDANTS’ facilities. That is, DEFENDANTS, for a period of four

1 years preceding the filing of the complaint in this matter, received payment from, and/or on behalf
2 of, Plaintiffs and class members for services which were not rendered as represented, granting
3 DEFENDANTS a windfall of profit derived from violation of law.

4 57. It has been expressly acknowledged by the California State Legislature that elder and
5 infirm adults are a disadvantaged class of citizens. It serves an important and vital State interest to
6 protect these elders from financial abuse and pecuniary as defined in California law.

7 58. In their misconduct more specifically alleged herein which caused injury in fact and
8 loss of money or property to the Plaintiff and the class, the DEFENDANTS violated, without
9 limitation to that adduced through the discovery process, Title 22 of the California *Code of*
10 *Regulations* §72329.1(a). The DEFENDANTS failed to meet these duties to Plaintiffs and class
11 members, in violation of law. These practices constitute unfair, unlawful and fraudulent business
12 practices within the meaning of *Business and Professions Code* §§17200, et seq.

13 **THIRD CAUSE OF ACTION**
14 **VIOLATION OF RESIDENT RIGHTS (Health & Saf. Code §1430(b))**
15 **[By EDUARDO VALDOVINOS on his behalf and on behalf of others similarly situated**
16 **Against All DEFENDANTS]**

17 59. EDUARDO VALDOVINOS hereby incorporates the allegations asserted
18 hereinabove as though set forth below.

19 60. *Health & Safety Code* §1430(b) creates a private right of action for any resident or
20 patient of a skilled nursing facility against the licensee of the facility that violates any rights of the
21 resident or patient as set forth in the Patients’ Bill of Rights.

22 61. *Health & Safety Code* §1430(b) also provides that “a current or former resident or
23 patient of a skilled nursing facility as defined in subdivision (c) of section 1250 may bring a civil
24 action against the licensee of a facility who violates any applicable regulatory rights of the resident
25 or patient here to include the right to sufficient staff to meet the residents needs as required by Title
26 22 of the California *Code of Regulations* §72329.1(a).

27 62. As more specifically set forth hereinabove, the liability of all of the DEFENDANTS
28 under *Health & Safety Code* §1430(b) arises from the DEFENDANTS joint enterprise in that there
was a such a unity of interest and ownership between the DEFENDANTS such that the individual

1 distinctions between them had ceased and that the facts as alleged herein are such that an adherence
2 to the fiction of the separate existence of the DEFENDANTS would, under the particular
3 circumstances alleged herein, sanction a fraud and/or promote injustice. The MANAGEMENT
4 DEFENDANTS controlled the FACILITY to such a degree that it was a “mere instrumentality” of
5 the MANAGEMENT DEFENDANTS used for an improper purpose.

6 63. At all relevant times, the DEFENDANTS, and each of their tortious acts and
7 omissions, as alleged herein, were done in concert with one another in furtherance of their common
8 design and agreement to accomplish a particular result, namely maximizing profits for
9 DEFENDANTS’ individual directors, officers, and managers from the operation of the FACILITY
10 by underfunding and understaffing the FACILITY despite the mandates of law in violation of
11 PLAINTIFF’s and the class’ resident’s rights.

12 64. Upon information and belief, it is alleged that the misconduct of the DEFENDANTS,
13 which led to the violation of the rights of Plaintiff and the class as alleged herein, was the direct
14 result and product of the financial and control policies and practices forced upon the FACILITY by
15 the financial limitations imposed upon the FACILITY by the DEFENDANTS, by and through the
16 officers, directors and/or managing agents enumerated in hereinabove and others presently unknown
17 to PLAINTIFF and according to proof at time of trial.

18 65. The DEFENDANTS systematically and systemically violated 22 *Code of*
19 *Regulations* § 72329.1(a) by failing to have “Direct Caregivers” employed and on duty in at least
20 the number to provide the necessary nursing services for patients admitted for care. In doing so the
21 DEFENDANTS have run afoul of the provisions of *Health & Safety Code* §1430(b).

22 66. As a result of the systematic and systemic violations of 22 *Code of Regulations* §
23 72329.1(a) by failing to have “Direct Caregivers” employed and on duty in at least the number to
24 provide the necessary nursing services for patients admitted for care, Plaintiff, as well as others
25 similarly situated.

26 67. Among other remedies, *Health & Safety Code* §1430(b) authorizes the recovery of
27 statutory damages up to \$500.00 per cause of action, attorneys’ fees and costs. *Health & Safety Code*
28 §1430(b). These remedies are cumulative to any other remedies provided by law. *Health & Safety*

1 Code §1430(c). Given that the violation involves elderly residents, the statutory damage award is
2 subject to trebling under *Civil Code* §3345.

3 **WHEREFORE**, plaintiffs prays for judgment as follows:

4 1. For a Court order certifying that the action may be maintained as a class and/or
5 representative action;

6 2. For an Order permanently enjoining defendants, and each of them, from violating
7 residents' rights pursuant to *Health & Safety Code* §1430(b). For an injunction, requiring that:

8 a. That the FACILITY maintain actual nursing hours (as that term is defined in
9 *Health & Safety Code* §1276.65 of 3.94 nursing hours per patient day;

10 b. the Defendants report to DPH all incidents of actual or suspected abuse or
11 neglect (as defined by law) of which it has learned in the last three (3) years at
the FACILITY, which were not reported to DPH, Adult Protective Services
and/or Law Enforcement;

12 c. the Defendants provide proof to the Court of compliance with the reporting
13 requirements over the last three (3) years for any and all such incidents in the
form of a copy of the report submitted to DPH;

14 d. the FACILITY conduct quarterly, confidential surveys of *all* residents and
15 residents' representatives inquiring whether any conduct which may be deemed
16 suspected abuse and/or neglect, and/or a violation of residents' rights has
17 occurred (with a clear, court approved definition of these terms included, with
18 examples), and requiring that the responses to these surveys be turned over to
the Long Term Care Ombudsman assigned to the pertinent facility for review.
19 Further, after providing confidential surveys in unredacted form to the
20 Ombudsman, the FACILITY shall than redact only the name of the individual
residents who completed the survey (or on whose behalf the survey was
completed) from the surveys, and maintain copies of those surveys for a period
of five (5) years, and that the surveys be made available (with names redacted)
to any prospective resident, or their representative, any current resident, or their
representative, or any past resident, or their representative, within 24 hours of a
request;

21 e. the FACILITY notify all current residents of this injunction by providing a copy
22 of the injunction to them and their power of attorney/responsible party and/or
personal representative, if any;

23 f. the FACILITY notify all future residents (at the time the admission agreement
24 is signed) by providing a copy of this injunction during the period for which
this injunction is in force to any new resident and to his or her power of
25 attorney/responsible party and/or personal representative, if any;

26 g. That this injunction shall remain in full force and effect until the earlier of either
27 of the following; (1) ten years from the date of entry of judgment, or (2) five
years if no other violations of the injunction have been found by this or any
28 other Court of competent jurisdiction regarding the FACILITY. The burden of
proof to obtain the shorter period shall be on the Defendants;

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- h. This injunction shall be enforced by the Court upon motion of any interested party (i.e., plaintiffs or any other current or former resident (and/or their power of attorney/responsible party and/or personal representative, if any, or any employee of the FACILITY) and/or the filing of a new action of any such interested party. Each separately identifiable violation of this injunction shall be punishable by a \$5,000 fine payable to the person filing the motion or bringing the action and a payment of all reasonable attorney’s fees and costs incurred by the person bringing the motion or action against the Facility for violation of the injunction. A separate, identifiable violation includes for example, each giving of a dose of medication that is not prescribed is a separate violation that each resident may demand, separately;
- i. the FACILITY shall draft a policy and procedure to the satisfaction of the Court covering the handling of suspected abuse and neglect reporting as well as the obligation to asses and document patients’ needs *immediately* upon arrival and when an emergency occurs; and on staffing; and
- j. the FACILITY shall prepare a training program to the satisfaction of the Court to train its staff on the new policies and procedures; and shall submit verification, under oath, of compliance with that training program by all employees of each of the FACILITY within 12 months, and then repeated annually during the term of this judgment;

3. For attorneys’ fees and costs as allowed by law according to proof at the time of trial, including, but not limited to attorneys’ fees pursuant to *Code of Civil Procedure* §1021.5 and *Health & Safety Code* §1430(b);

- 4. For statutory damages and penalties pursuant to *Health & Safety Code* §1430(b);
- 5. For such other and further relief as the Court may deem just and proper.

DATED: December 21, 2023

GARCIA & ARTIGLIERE

By: 
 Stephen M. Garcia
 Attorneys for Plaintiff