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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STACIA STINER; HELEN CARLSON, by
and through her Guardian Ad Litem, JOAN
CARLSON; LAWRENCE QUINLAN, by and
through his Guardian Ad Litem, LORESIA
VALLETTE; EDWARD BORIS, by and
through his Guardian Ad Litem, MICHELE
LYTLE; RALPH SCHMIDT, by and through
his Guardian Ad Litem, HEATHER FISHER;
PATRICIA LINDSTROM, as successor-in-
interest to the Estate of ARTHUR
LINDSTROM; and BERNIE JESTRABEK-
HART; on their own behalves and on behalf of
others similarly situated,

Plaintiffs,

v.

BROOKDALE SENIOR LIVING, INC.;
BROOKDALE SENIOR LIVING
COMMUNITIES, INC.; and DOES 1 through
100,

Defendants.

Case No. 17-cv-03962-JD

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DAMAGES**

1. **Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.)**
2. **Unruh Civil Rights Act (Cal. Civ. Code §§ 51 et seq.)**
3. **Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.)**
4. **Elder Financial Abuse (Cal. Welf. & Inst. Code §§ 15610.30)**
5. **Unlawful, Unfair and Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 et seq.)**

INTRODUCTION

1
2 1. Plaintiffs and the proposed Classes bring this action for declaratory and
3 injunctive relief and damages to stop the unlawful and fraudulent practices of Brookdale Senior
4 Living, Inc. and Brookdale Senior Living Communities, Inc. (“BROOKDALE” or
5 “Defendants”).

6 2. Plaintiffs are elderly or dependent individuals living in California who have
7 significant care needs and disabilities. Plaintiffs and their families were overwhelmed by and
8 required assistance with their activities of daily living including, but not limited to, assistance
9 with managing and taking medication, housekeeping, laundry, dressing, bathing, toileting,
10 hygiene, food preparation, and transportation. Plaintiffs and their families and the classes they
11 seek to represent either chose a BROOKDALE facility or chose to stay in a facility purchased by
12 BROOKDALE because they believed BROOKDALE’s repeated promises to provide the care
13 and assistance that would allow them to age with dignity. Instead, Plaintiffs, their family
14 members, and the proposed class members have all encountered in BROOKDALE a system of
15 understaffed assisted living facilities that fails to consistently provide even the most basic level
16 of promised care.

17 3. Defendant BROOKDALE has engaged in a policy and practice of violating Title
18 III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq.*,
19 accompanying regulations, and the Unruh Civil Rights Act (“Unruh Act”), California Civil Code
20 §§ 51 *et seq.* Among other things, Defendant has violated the ADA by failing to make its
21 assisted living facilities readily accessible to and usable by persons with disabilities even though
22 both the ADA and the Unruh Act impose affirmative duties upon Defendants to make their
23 assisted living facilities accessible. As set forth below, Defendants have a policy and practice of
24 leaving physical access barriers in place in their newly constructed, altered and/or existing
25 facilities in violation of the ADA and the Unruh Act. Defendants have failed to perform new
26 construction and alterations in compliance with applicable federal and state disability access
27 standards, including but not limited to the 1991 Americans with Disabilities Act Accessibility
28 Guidelines (“ADAAG”) and the 2010 ADA Standards for Accessible Design, and have failed to

1 evaluate their newly constructed and/or altered assisted living facilities to identify and remediate
2 non-compliant and inaccessible construction and alterations therein. Defendants have also failed
3 and refused to identify and remove physical access barriers from their existing assisted living
4 facilities where such barrier removal was readily achievable within the meaning of the ADA. As
5 a result of Defendants' corporate policies and practices regarding disability access, Defendants'
6 assisted living facilities are characterized by multiple, pervasive physical access barriers that
7 limit or deny full and equal access to persons with disabilities.

8 4. Moreover, Defendant has failed to make reasonable modifications to its policies,
9 practices and procedures that are necessary for persons with disabilities to have full and equal
10 access to and enjoyment of the services, goods, facilities, privileges, advantages and
11 accommodations provided by BROOKDALE's facilities. Defendants' goods, services,
12 facilities, privileges, advantages, and/or accommodations include providing assistance with
13 activities of daily living (assistance with eating, housekeeping and laundry, bathing, grooming,
14 dressing, toileting, personal hygiene, provision of nutritious meals), medication management
15 (ordering and storage of medications, assistance taking medications), social and recreational
16 activities (group exercise, games, movies, scenic drives, happy hours and social mixers, and
17 assistance with arrangements for utilization of local resources), and transportation to and
18 coordination of off-site services. Plaintiffs have specifically requested that Defendant
19 BROOKDALE make reasonable modifications to its staffing policies, practices and procedures
20 for its assisted living facilities in order to ensure that there is staffing in sufficient numbers and
21 with adequate training to provide timely and effective assistance and care to residents with
22 disabilities. Despite the fact that such modifications are necessary to ensure that residents with
23 disabilities receive full and equal access to and enjoyment of Defendants' goods, services,
24 facilities, privileges, advantages, and/or accommodations, and despite the fact that such
25 modifications will not result in any fundamental alteration to BROOKDALE's public
26 accommodations, Defendant has refused to do so.

27 5. In addition, Defendant has violated the ADA by failing and refusing to provide
28 residents with mobility disabilities with full and equal access to and enjoyment of its

1 transportation services. Further, Defendant has discriminated against residents with disabilities
2 by failing to provide them with an emergency evacuation plan that is designed for and
3 reasonably calculated to ensure the prompt and effective evacuation of persons with disabilities
4 in the event of emergency.

5 6. Defendant BROOKDALE has also engaged in a policy and practice of violating
6 the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*, committing Elder
7 Financial Abuse, Cal. Welf. & Inst. Code § 15610.30, and Unlawful, Unfair and Fraudulent
8 Business Practices (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.* Defendants promise to
9 provide the elderly and disabled the “quality of life they’ve earned,” but Defendants instead
10 engage in a scheme to defraud seniors, persons with disabilities, and their family members. In
11 order to induce the elderly and disabled to move into and stay at its California assisted living
12 facilities, BROOKDALE makes misrepresentations and misleading statements and conceals
13 material facts about the quality and availability of care available at BROOKDALE. Reasonable
14 consumers are misled to believe, and reasonably expect, that BROOKDALE determines each
15 resident’s needs and staffs each facility accordingly to deliver personalized care to meet those
16 needs. Instead, BROOKDALE systemically understaffs its facilities, cuts caregiver hours, and
17 fails to train workers, all to boost its profitability, while the residents in BROOKDALE’s care
18 are forced to endure increasingly expensive monthly charges and worsening care. The results of
19 BROOKDALE’s callous and profit-driven approach are devastating: as multiple reports by state
20 regulators confirm, residents are left without assistance for hours after falling, they are given the
21 wrong medications, they are denied clean clothing, showers, and nutritious food, and they are
22 left in their own waste for long periods of time.

23 7. On any given day, residents of BROOKDALE’s many California facilities live
24 with a substantial risk that they will not receive the care and services they have paid for and that
25 they need. Scores of family and resident council meetings and hundreds of communications to
26 BROOKDALE management have failed to rectify these problems, leaving Plaintiffs and the
27 class no choice but to seek redress in this Court.

28 8. This lawsuit seeks to end this systemic discrimination against persons with

1 disabilities by requiring Defendant to provide them with full and equal access to and enjoyment
2 of BROOKDALE's facilities, services, goods, privileges, advantages and accommodations.
3 This action seeks to require that Defendants staff their facilities with a sufficient number of
4 adequately trained staff to ensure that residents with disabilities are provided with full and equal
5 access to and enjoyment of the services specified in BROOKDALE's own resident assessments.
6 In addition, this action seeks to require that Defendants provide assistive living facilities that are
7 readily accessible to and usable by persons with disabilities as required by the ADA. Further,
8 Plaintiffs seek injunctive relief requiring Defendants to provide full and equal access to and
9 enjoyment of Defendants' transportation services and activities. Plaintiffs also seek injunctive
10 relief requiring Defendants to provide adequate emergency planning and evacuation procedures
11 for residents with disabilities. With respect to the CLRA, the UCL and the Elder Financial
12 Abuse statute, this action seeks to require Defendant to disclose to prospective and current
13 residents, their family members or responsible parties, and the class that BROOKDALE's
14 existing staffing policies and procedures preclude it from providing its residents with all the care
15 and services they have been promised and are paying for. Further, this action seeks to enjoin
16 BROOKDALE from charging residents or their responsible parties monthly fees based on their
17 Personal Service Plans until BROOKDALE implements staffing policies and procedures that
18 enable it to deliver those services on a consistent basis.

19 9. Plaintiffs have no adequate remedy at law and, unless BROOKDALE is
20 preliminarily and permanently enjoined, Plaintiffs will continue to suffer irreparable harm as a
21 result of being denied full and equal access to and enjoyment of BROOKDALE's goods,
22 services, facilities, privileges, advantages, and/or accommodations. Plaintiffs seek declaratory
23 and injunctive relief and statutory and actual damages as set forth below against BROOKDALE
24 for its policy and practice of denying Plaintiffs full and equal access to and enjoyment of its
25 services and facilities and violating the ADA and its accompanying regulations, the Unruh Act,
26 and the CLRA, for committing Elder Financial Abuse, and for engaging in Unlawful, Unfair and
27 Fraudulent Business Practices. Plaintiffs also seek recovery of reasonable attorneys' fees, costs
28 and litigation expenses under federal and state law.

1 **EXHAUSTION OF PRE-LAWSUIT PROCEDURES FOR STATE LAW CLAIMS**

2 10. By letter dated June 2, 2017, Plaintiffs notified Defendants of Plaintiffs’ intent to
3 file suit against it based on violations of the Consumer Legal Remedies Act, as required by
4 California Civil Code § 1782. BROOKDALE received the letter on June 6, 2017. More than 30
5 days have passed since BROOKDALE’s receipt, and BROOKDALE has not corrected or
6 remedied the violations alleged in the notice and herein.

7 11. Though they were not required to do so, Plaintiffs also notified BROOKDALE of
8 its multiple violations of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 1201 *et*
9 *seq.*, the Unruh Civil Rights Act, California’s elder financial abuse law, and California’s Unfair
10 Competition Law.

11 **JURISDICTION**

12 12. This Court has subject matter jurisdiction of this action pursuant to
13 28 U.S.C. §§ 1331, 1343(a)(3)-(4). The Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et*
14 *seq.*, presents federal questions and confers jurisdiction on this Court over Plaintiffs’ claims
15 regardless of the amount in controversy. This Court also has subject matter jurisdiction of this
16 action pursuant to 28 U.S.C. § 1332(d)(2)(A) because this is a class action in which the proposed
17 class includes at least 100 members, the amount in controversy exceeds \$5,000,000, exclusive of
18 interests and costs, and at least one putative class member is a citizen of a state different from
19 one of the defendants. Plaintiffs seek damages in the amount of a minimum \$9,000 per class
20 member and believe that the class consists of over 5,000 persons, making the amount in
21 controversy well in excess of \$5,000,000. BROOKDALE is a Delaware corporation with its
22 principal place of business in Tennessee, making it a citizen of both Delaware and Tennessee,
23 and each of the named Plaintiffs are citizens of the State of California. Pursuant to 28 U.S.C.
24 § 1367, this Court has supplemental jurisdiction over Plaintiffs’ pendent claims under California
25 law.

26 13. Defendants are subject to personal jurisdiction in this Court because Defendants
27 have sufficient minimum contacts in California, or otherwise intentionally avail themselves of
28 the California market through ownership and/or management of assisted living facilities located

1 in California, derivation of substantial revenues from California, and other activities, so as to
2 render the exercise of jurisdiction over Defendants by the California courts consistent with the
3 traditional notions of fair play and substantial justice.

4 **VENUE**

5 14. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
6 § 1391(b), because the acts upon which this action is based occurred in part in this District
7 within the counties of Alameda, Contra Costa, Lake, Monterey, Napa, San Mateo, Santa Clara,
8 Santa Cruz, and Sonoma.

9 15. A substantial part of the events or omissions which gave rise to Plaintiffs' claims
10 arose in the County of Sonoma and thus, pursuant to Civil Local Rules 3-2(c) and (d),
11 assignment to the San Francisco Division of the District Court for the Northern District of
12 California is proper.

13 **THE PARTIES**

14 16. Plaintiff STACIA STINER is a qualified person with disabilities within the
15 meaning of the ADA and the Unruh Civil Rights Act. She is also a dependent adult pursuant to
16 Cal. Welf. & Inst. Code § 15610.23; a disabled person pursuant to Cal. Civ. Code § 1761(g); and
17 a consumer pursuant to Cal. Civ. Code § 1761(d). She needs assistance with the following
18 activities of daily living: housekeeping, laundry, dressing, bathing, managing medications,
19 toileting, and transportation. She uses a wheelchair for mobility. STACIA STINER has been a
20 resident of BROOKDALE San Ramon since approximately February 2016. She is a resident of
21 Contra Costa County in the State of California.

22 17. Plaintiff HELEN CARLSON is a qualified person with disabilities within the
23 meaning of the ADA and the Unruh Civil Rights Act. She is also an elder pursuant to Cal.
24 Welf. & Inst. Code § 15610.27; a senior citizen and a disabled person pursuant to Cal. Civ. Code
25 §§ 1761(f), 1761(g); and a consumer pursuant to Cal. Civ. Code § 1761(d). HELEN CARLSON
26 is 93 years old. She needs assistance with the following activities of daily living: managing
27 medications, transferring, toileting, bathing, dressing, grooming, transportation, food preparation
28 and meal setup, housekeeping, and laundry. She uses a wheelchair for mobility. HELEN

1 CARLSON is and has been a resident of BROOKDALE Fountaingrove since approximately
2 October 2011. She is a resident of Sonoma County in the State of California. JOAN
3 CARLSON is HELEN CARLSON's daughter-in-law and has had her power of attorney since
4 December 2006. This Court appointed JOAN CARLSON as the guardian ad litem of HELEN
5 CARLSON for the purposes of prosecuting this lawsuit on September 22, 2017.

6 18. Plaintiff LAWRENCE QUINLAN is a qualified person with disabilities within
7 the meaning of the ADA and the Unruh Civil Rights Act. He is also an elder pursuant to Cal.
8 Welf. & Inst. Code § 15610.27; a senior citizen and a disabled person pursuant to Cal. Civ. Code
9 §§ 1761(f), 1761(g); and a consumer pursuant to Cal. Civ. Code § 1761(d). LAWRENCE
10 QUINLAN is 87 years old. He uses a wheelchair for mobility and has dementia. LAWRENCE
11 QUINLAN stayed at the facility at BROOKDALE Hemet for respite on several occasions
12 between 2013 and 2015. He became a long-term resident of the assisted living at
13 BROOKDALE Hemet on approximately September 13, 2015 and left the facility on or about
14 April 30, 2017. He is a currently a resident of an unrelated assisted living facility in Riverside
15 County in the State of California. LORESIA VALLETTE is LAWRENCE QUINLAN'S
16 granddaughter. Since January 25, 2016, she and her uncle Phillip Quinlan—who is Mr.
17 QUINLAN's son—have shared power of attorney for Mr. QUINLAN. On September 22, 2017,
18 this Court appointed Ms. VALLETTE as Mr. QUINLAN's guardian ad litem for the purposes of
19 prosecuting this lawsuit.

20 19. Plaintiff EDWARD BORIS is a qualified person with disabilities within the
21 meaning of the ADA and the Unruh Civil Rights Act. He is also an elder pursuant to Cal. Welf.
22 & Inst. Code § 15610.27; a senior citizen and a disabled person pursuant to Cal. Civ. Code §§
23 1761(f), 1761(g); and a consumer pursuant to Cal. Civ. Code § 1761(d). EDWARD BORIS is 86
24 years old. He was an assisted living resident at BROOKDALE Fountaingrove from September
25 2015 through July 2016. He is currently a resident of the skilled nursing facility at
26 BROOKDALE Fountaingrove. During his time as an assisted living resident at BROOKDALE
27 Fountaingrove, EDWARD BORIS used a walker and wheelchair. He is a resident of Sonoma
28 County in the State of California. MICHELE LYTLE is EDWARD BORIS's daughter. Ms.

1 LYTLE has held Mr. BORIS's power of attorney since 2011 and has taken action on his behalf
2 as his attorney in fact since 2015. Simultaneous with the filing of this Second Amended
3 Complaint, Plaintiffs are filing a motion for the appointment of MICHELE LYTLE as the
4 guardian ad litem of EDWARD BORIS for the purposes of prosecuting this lawsuit.

5 20. Plaintiff PATRICIA "PAT" LINDSTROM is the wife of ARTHUR "ART"
6 LINDSTROM. ART LINDSTROM died on February 23, 2018, and PAT LINDSTROM is his
7 successor-in-interest. A successor-in-interest declaration is attached as Exhibit A to this
8 complaint. At all times relevant to this complaint, Mr. LINDSTROM was a qualified person
9 with disabilities within the meaning of the ADA and the Unruh Civil Rights Act. He was also
10 an elder pursuant to Cal. Welf. & Inst. Code § 15610.27; a senior citizen and disabled person
11 pursuant to Cal. Civ. Code §§ 1761(f), 1761(g); and a consumer pursuant to Cal. Civ. Code §
12 1761(d). Mr. LINDSTROM was 83 years old when he died. He suffered from diabetes, kidney
13 failure, heart disease, sleep apnea, and incontinence; used a cane to walk; and experienced
14 dementia-related cognitive impairment, including general memory loss, difficulty remembering
15 words, and difficulty speaking when under pressure. He needed assistance with the following
16 activities of daily living: bathing, shaving, administration of medication, dressing, laundry, and
17 preparing nutritious meals. He was a resident of BROOKDALE Scotts Valley from
18 approximately November 2015 until his death. PAT LINDSTROM is a resident of Santa Cruz
19 County in the State of California.

20 21. Plaintiff RALPH SCHMIDT is a qualified person with disabilities within the
21 meaning of the ADA and the Unruh Civil Rights Act. He is also a dependent adult pursuant to
22 Cal. Welf. & Inst. Code § 15610.23; a disabled person pursuant to Cal. Civ. Code § 1761(g); and
23 a consumer pursuant to Cal. Civ. Code § 1761(d). RALPH SCHMIDT is 53 years old, is blind,
24 and has significant cognitive impairments, including short-term memory loss. Both his
25 blindness and cognitive impairments are the result of a traumatic brain injury suffered more than
26 20 years ago. Mr. SCHMIDT has a court-appointed conservator who manages his financial,
27 medical, and legal affairs. He needs assistance with the following activities of daily living:
28 housekeeping, laundry, navigating when outside of his dwelling, preparing nutritious meals, and

1 transportation. Mr. SCHMIDT was an assisted living resident at the facility currently known as
2 BROOKDALE Tracy from approximately September 2011 through October 30, 2017. He
3 currently resides at an assisted living facility not affiliated with BROOKDALE and is a resident
4 of Stanislaus County in the State of California. HEATHER FISHER is a professional fiduciary
5 and has held a license from the California Professional Fiduciaries Bureau since March 14,
6 2014. On August 17, 2017, the Superior Court of San Joaquin County appointed Ms. FISHER
7 to serve as conservator for RALPH SCHMIDT, replacing Mary F. Gallagher who had been Mr.
8 SCHMIDT's conservator since approximately November 2011. Simultaneous with the filing of
9 this Second Amended Complaint, Plaintiffs are filing a motion for the appointment of
10 HEATHER FISHER as the guardian ad litem of RALPH SCHMIDT for the purposes of
11 prosecuting this lawsuit.

12 22. Plaintiff BERNIE JESTRABEK-HART is a qualified person with disabilities
13 within the meaning of the ADA and the Unruh Civil Rights Act. She is also an elder pursuant to
14 Cal. Welf. & Inst. Code § 15610.27; a senior citizen and disabled person pursuant to Cal. Civ.
15 Code §§ 1761(f), 1761(g); and a consumer pursuant to Cal. Civ. Code § 1761(d). BERNIE
16 JESTRABEK-HART is 72 years old. She needs assistance with the following activities of daily
17 living: dressing, bathing, food preparation, and transportation. She uses an electric wheelchair
18 and cane for mobility. BERNIE JESTRABEK-HART has been a resident of BROOKDALE
19 Scotts Valley since approximately October 2015. She is a resident of Santa Cruz County in the
20 State of California.

21 23. Defendant BROOKDALE SENIOR LIVING, INC. is a corporation organized
22 under the laws of the State of Delaware with its principal place of business in Brentwood,
23 Tennessee. Defendant BROOKDALE SENIOR LIVING COMMUNITIES, INC. is a
24 corporation organized under the laws of the State of Delaware with its principal place of
25 business in Brentwood, Tennessee. BROOKDALE SENIOR LIVING, INC. and BROOKDALE
26 SENIOR LIVING COMMUNITIES, INC. will be referred to collectively as "BROOKDALE"
27 or "Defendants." BROOKDALE owns, manages, and/or operates approximately eighty-nine
28 (89) assisted living facilities throughout California. It is the largest chain of senior living

1 facilities in California and the United States. BROOKDALE's operations are centralized,
2 hierarchical and standardized, and all of BROOKDALE's assisted living facilities in California
3 use the same uniform corporate policies, practices and procedures. These corporate policies,
4 practices and procedures control all aspects of the operations, staffing and staff training in its
5 assisted living facilities. All of BROOKDALE's assisted living facilities in California are
6 required to follow the uniform policies, practices and procedures established by
7 BROOKDALE's corporate headquarters.

8 24. BROOKDALE's unlawful conduct as alleged herein has been widespread,
9 repeated, and consistent at each of its locations. The operations of BROOKDALE's assisted
10 living facilities in California are standardized, if not identical. BROOKDALE's conduct, as
11 alleged herein, was and is part of a statewide plan, practice, course of conduct and scheme, and
12 affects all of the residents of BROOKDALE's assisted living facilities.

13 25. Defendants DOES 1-100 are sued herein under fictitious names because Plaintiffs
14 do not presently know their true names and capacities. Plaintiffs will seek leave to amend this
15 Complaint to allege their true names and capacities when such are discovered. Plaintiffs allege
16 that each of these Defendants was responsible in some capacity for the events alleged herein, or
17 is a necessary party for obtaining appropriate relief. Plaintiffs are informed and believe and
18 thereon allege that in carrying out each of the acts and violations alleged in this Complaint, each
19 Defendant acted as an agent, principal, and/or representative for each other Defendant.

20 **FACTUAL ALLEGATIONS**

21 26. BROOKDALE is the largest provider of assisted living for senior citizens and
22 persons with disabilities in the nation and has the largest number of assisted living facility
23 residents within the state of California. On information and belief, Plaintiffs allege that there are
24 more than 5,000 residents in Defendants' eighty-nine facilities in California.

25 27. Assisted living facilities, also called Residential Care Facilities for the Elderly
26 ("RCFEs"), offer room, board and daily assistance for seniors and persons with disabilities in
27 certain activities of daily living ("ADLs"), such as preparing meals, shopping, transportation,
28 preparing and taking medication, housekeeping, laundry, bathing, toileting, grooming, dressing,

1 and others.

2 28. Assisted living facilities are intended to provide a level of care appropriate for
3 those who are unable to live by themselves, but who do not have medical conditions requiring
4 more extensive nursing care.

5 29. In recent years, BROOKDALE has increasingly been accepting and retaining
6 more residents with conditions and care needs that were once handled almost exclusively in
7 skilled nursing facilities. This has allowed it to increase not only the potential resident pool but
8 also the amounts of money charged to residents and/or their family members.

9 30. At BROOKDALE facilities, residents are charged a base rate, which includes
10 room, board, basic maintenance, housekeeping, laundry, dining services, planned social and
11 recreational programs, scheduled transportation services, staffing 24 hours a day, observation
12 and consultation, and assistance with access to outside services. BROOKDALE uses its resident
13 assessment system to assess each resident before admission and then again periodically
14 throughout residency and/or whenever there is a change of the resident's condition. By
15 performing these assessments, BROOKDALE determines what additional services a resident
16 needs, such as assistance with ADLs, and develops a Personal Service Plan for the resident.
17 Each additional need, or service, is assigned a monthly Personal Service Rate, which is added
18 onto the resident's base rate. The more personal services determined by BROOKDALE to be
19 needed by a resident, the more money BROOKDALE charges that resident.

20 31. Every month, BROOKDALE sends each resident or his or her responsible party
21 an invoice for services that BROOKDALE represents it will provide in the following month.
22 These invoices reflect the monthly rate for the Basic Services set forth in BROOKDALE's
23 standard residency agreements, the Personal Service Rate that is based on each resident's
24 Personal Service Plan, and any adjustments. On information and belief, these monthly invoices
25 range from approximately \$4,000 to \$10,000 per person per month.

26 32. On information and belief, as of January 1, 2016, BROOKDALE increased the
27 Basic Service Rate and Personal Service Rate for residents in its California facilities by roughly
28 6%, and as of January 1, 2017, it raised these rates again by approximately 7%. In standard

1 form letters sent to residents attempting to explain these steep rate increases, BROOKDALE
2 attributed them to increases in “the operating costs of your community,” including costs for
3 “utility usage, insurance, supplies, and food.” But in fact the Consumer Price Index for the Bay
4 Area rose only 3.4% between approximately January 1, 2016 and December 31, 2016.

5
6 **BROOKDALE FAILS TO PROVIDE FULL AND EQUAL ACCESS TO AND**
7 **ENJOYMENT OF ITS FACILITIES AND SERVICES TO PERSONS WITH**
8 **DISABILITIES IN VIOLATION OF THE ADA**
9 **AND THE UNRUH CIVIL RIGHTS ACT**

10 **Physical Access Violations**

11 33. BROOKDALE has violated Title III of the ADA and the Unruh Civil Rights Act
12 by failing to provide full and equal access to its facilities and services. Rooms occupied by
13 persons with mobility disabilities and common areas at the BROOKDALE San Ramon,
14 Windsor, Fountaingrove, Scotts Valley, and likely other facilities, do not meet federal or state
15 accessibility standards. Under Title III, fifty percent of the residential rooms in long-term care
16 facilities must meet the requirements of the 1991 ADAAG or the 2010 ADA Standards.
17 BROOKDALE’s facilities do not meet these standards.

18 34. There is a pattern of physical access barriers in BROOKDALE facilities, as
19 described below:

- 20 a. Wheelchair users are placed in rooms that do not have sufficient turning
21 space in the bathrooms or the bedroom area. This means that they often
22 cannot even use their bathroom unless they are able to transfer out of their
23 wheelchair and enter without it. Those who can enter in their wheelchair
24 usually do not have enough space to transfer safely onto the toilet or into
25 the shower or to use the sink or vanity space. Some residents have given up
26 on using their inaccessible toilet and must rely on adult briefs and
27 caregiving staff to clean them.
- 28 b. There is no clearance for wheelchairs under the sinks and/or the sinks are
too high for a wheelchair user to reach them, preventing residents from
using them.

- 1 c. The grab bars that do exist in the bathrooms are not compliant with
2 applicable access standards, and there are no roll-in showers. Both of these
3 barriers are safety hazards, increasing the likelihood of falls. They also
4 prevent most persons with mobility disabilities from bathing as
5 independently as possible. Some wheelchair users have stopped using their
6 showers altogether and instead take sponge baths, hardly an adequate
7 substitute.
- 8 d. There are barriers to using the outdoor space for the residents' rooms,
9 including hard-to-open sliding doors, a lip at the threshold of the door, and
10 insufficient space to accommodate a wheelchair. This prevents persons
11 with mobility disabilities from using their outdoor space as persons without
12 disabilities can.
- 13 e. The closets do not have accessible hanging and storage space, in that they
14 are placed out of the reach of a wheelchair user. This prevents persons with
15 mobility disabilities from accessing their clothing and other personal items,
16 forcing them to rely on others for assistance.
- 17 f. Kitchen countertops and sinks are too high for a wheelchair user to access,
18 preventing those residents from fully using their kitchens.
- 19 g. Heavy doors in common areas cannot be used independently by and pose a
20 safety risk to many persons with disabilities.

21 35. These physical access barriers, which residents live with on a daily basis, prevent
22 them from having full and equal access to their rooms as required by law.

23 **Understaffing**

24 36. BROOKDALE does not schedule or provide sufficient numbers of trained staff to
25 deliver promised services and meet the needs of its residents. Plaintiffs allege on information
26 and belief that BROOKDALE staffs its facilities based on predetermined labor budgets and
27 desired profit margins. Pursuant to Defendants' corporate policies and procedures, the executive
28 directors who manage individual BROOKDALE facilities must request permission from

1 Defendants' corporate headquarters to deviate from these pre-determined budgets. Executive
2 directors have a disincentive to request increased labor budgets for their facilities because they
3 are not eligible for bonuses unless they meet earnings targets set by Defendants' corporate
4 headquarters. As a result of Defendants' corporate policies, practices and procedures
5 BROOKDALE's assisted living facilities are inadequately staffed.

6 37. Reports issued by California Department of Social Services' Community Care
7 Licensing Division ("Community Care Licensing"), the state agency that regulates assisted
8 living facilities, indicate that inadequate staffing pervades Defendants' California facilities. For
9 instance, Community Care Licensing recently issued a citation to BROOKDALE Corona after a
10 licensing inspector found "that there are not enough staff present" and observed five residents
11 sitting unsupervised in the dining room and 19 residents in the activity room with only one staff
12 member present. In March 2017, Community Care Licensing cited a BROOKDALE facility in
13 Santa Cruz County after a licensing inspector found that the facility did not have an adequate
14 amount of staff to meet residents' needs. In June 2016, BROOKDALE Oceanside received a
15 citation because it had only two caregivers on duty during daytime hours in the assisted living
16 part of its facility.

17 38. Plaintiffs allege on information and belief that BROOKDALE uses pre-
18 determined staffing schedules at its facilities and does not change these schedules or the number
19 of staff hours worked when the facility has more residents or residents with greater needs.
20 Community Care Licensing records demonstrate the inadequacy of Defendants' staffing to meet
21 even the most basic needs of residents. For instance, a personnel report that BROOKDALE
22 filed with Community Care Licensing in February 2017 indicates that BROOKDALE
23 Fountaingrove, a facility in Sonoma County, is understaffed for the night shift from 10:00 p.m.
24 to 6:00 a.m. That schedule lists only four resident caregivers assigned to the night shift, three of
25 whom work only three days a week, with the result that in many instances there are as few as
26 one resident caregiver on duty during the night shift to care for approximately 100 residents on
27 three floors. Moreover, the official numbers of caregivers on duty is often quite deceptive, as
28 BROOKDALE frequently pulls caregivers from their responsibilities in order to perform other

1 tasks, such as serving meals in the dining room.

2 39. As a direct result of Defendants' discriminatory staffing practices, residents with
3 disabilities have not received or run a substantial risk of not receiving the personal services,
4 emergency and evacuation response, dining services, housekeeping and laundry services,
5 transportation, and activities for which they are paying and that are necessary for full and equal
6 enjoyment of Defendants' goods, services, facilities, benefits, advantages and accommodations.

7 ***Impact of Understaffing on Personal Services***

8 40. The lack of sufficient numbers of trained staff at BROOKDALE means that
9 residents with disabilities who need and pay for assistance with bathing, dressing, brushing their
10 teeth, toileting, incontinence care, and other hygiene assistance do not receive it on a routine
11 basis. Scheduled showers are routinely skipped by staff who do not have time to bathe residents.
12 Staff often leave residents unattended on the toilet because another resident has activated their
13 call pendant, and there is no one else available to respond. Residents have been left on their bed
14 undressed by staff called away to attend to other residents in need.

15 41. Residents who need assistance getting to the bathroom often wait for long periods
16 of time for staff to respond to their call pendants. Because they must wait so long for assistance,
17 some residents have given up using the toilet altogether, instead relying on adult briefs and a
18 caregiver to clean and change them when they have time. Incontinent residents often wait for
19 thirty minutes or more for a staff member to help them change out of soiled briefs, raising the
20 risk of urinary tract infections and decubitus ulcers. For example, an inspector from Community
21 Care Licensing found in May 2016 that BROOKDALE San Pablo had insufficient staff to meet
22 the residents' needs, noting that "[i]ndividuals requiring incontinence care are not always
23 changed in a timely manner." In November 2016, a licensing inspector found that even though a
24 resident at BROOKDALE Cherry Hills was paying for regular incontinence checks, she was left
25 lying on the floor for an extended amount of time after a fall because staff failed to check on her.
26 In March of 2017, a licensing inspector cited BROOKDALE Palm Springs for not providing a
27 resident with those basic and personal care services—assistance with showering, dressing,
28 transportation and medication—that the resident needed and for which the facility was being

1 paid.

2 42. Insufficient staffing has also caused and continues to cause errors in medication
3 administration, including providing the wrong dosage or the wrong medication, untimely or
4 missed doses, and/or a failure to implement physicians' orders. Community Care Licensing has
5 documented several recent examples from BROOKDALE's Sonoma County facilities that
6 illustrate the broader problem. Community Care Licensing records show that the agency cited
7 BROOKDALE Chanate five times on consecutive visits between October 28, 2015 and October
8 13, 2016 for failing to give residents their prescribed medications. At BROOKDALE Windsor,
9 a resident recently received a double dose of medication because the nurse who administered the
10 first dose failed to document that it had been given. On a different occasion, staff gave a
11 resident at BROOKDALE Windsor a medication that had been prescribed for a different
12 resident. Meanwhile, at BROOKDALE Rohnert Park, licensing inspectors found that staff were
13 not properly trained on storing and administering residents' medication, leading to a narcotic pill
14 that went missing in August 2016 and staff's failure to administer medications in October 2016.
15 Numerous other reports issued by Community Care Licensing confirm that problems with
16 medication administration pervade Defendants' facilities throughout California. For example,
17 Community Care Licensing cited BROOKDALE Palm Springs when 20 residents missed their
18 medication doses on December 24, 2016 because there was no med tech on duty. At
19 BROOKDALE San Ramon, someone stole a number of residents' medication from the facility
20 during the overnight shift ("NOC SHIFT") between July 9 and 10, 2017. The facility did not
21 inform all of the residents' family members of the theft. When one resident's daughter-in-law,
22 who learned about the theft from the resident, asked the facility's acting Executive Director,
23 Shawn Cull, which employees were on duty during the NOC shift, he told her that there were
24 only two employees on duty to respond to all residents at the facility. The facility has an
25 occupancy of between approximately 70 to 80 residents. Because no one was immediately
26 available at the facility to pick up refills, at least one resident did not receive her pain medication
27 until later that evening and was extremely anxious until that time. Another resident's family was
28 not informed of the theft until almost 6 p.m., after the resident's physician's offices had closed

1 and the family could not obtain a refill. That resident was given an inadequate substitute pain
2 medication in the evening, which was distressing to the resident and her family members, who
3 had to reassure and calm her. The following day, although BROOKDALE was notified that the
4 refill was ready for pick-up at 10 a.m., the resident told her family that she did not receive her
5 prescribed pain medication until 4 p.m.

6 43. BROOKDALE's understaffing creates many dangerous situations for residents.
7 Among those are an increase in elopements from facilities by persons with cognitive
8 impairments, because the facilities do not hire staff in sufficient numbers or with the training
9 necessary to monitor residents and prevent escapes. For example, BROOKDALE Oceanside
10 was cited in April and September of 2016 for relying on delayed egress systems to compensate
11 for insufficient staffing, resulting in resident elopements. An informal conference was held by
12 Community Care Licensing with BROOKDALE Oceanside management in December 2016 as a
13 result of the elopements and other compliance failures. Subsequently, on April 26, 2017,
14 BROOKDALE staff failed to monitor residents on an outing, and one wandered away for
15 approximately an hour.

16 ***Impact of Understaffing on Pendant Call Systems and Medical Emergencies***

17 44. BROOKDALE'S failure to staff sufficiently results in caregivers' inability to
18 respond promptly to call pendants, if at all. BROOKDALE has represented that residents who
19 wear a call pendant, and pay a monthly fee for this service, may push a button to alert staff if
20 they have an emergency, and staff will immediately respond to provide assistance. Residents
21 with disabilities rely heavily on these call pendants for assistance with basic tasks and activities
22 of daily living, as well as for emergencies. However, the call pendants do not notify staff of the
23 resident's location should they not be in their room. In or about late 2016, a BROOKDALE San
24 Ramon resident fell and hit his head on the pavement in the facility parking lot and pressed his
25 pendant. No one responded. Bleeding profusely from his head, he used his mobile phone to call
26 the front desk. The son of another resident, a fire chief with emergency response training, found
27 the resident in the parking lot just as BROOKDALE's bookkeeper and maintenance director
28 responded to the resident's telephone call. Because those employees have no caregiver or

1 emergency response training, they would not even touch the resident. The fire chief had to call
2 911 and administer first aid while waiting.

3 45. Moreover, contrary to Defendants' representations, staff do not immediately
4 respond when residents use their call pendants. For instance, in November 2016, a resident in
5 the BROOKDALE Paso Robles facility pushed her emergency pendant after falling in her room
6 and waited 22 hours on the floor with broken bones until staff finally found her. That same
7 month, a resident at the BROOKDALE Fountaingrove fell, injured her head, pressed her call
8 pendant, and waited thirty minutes bleeding profusely from her head before staff arrived. She
9 died 10 days later. In January 2017, a former resident of BROOKDALE Fountaingrove waited
10 three hours for staff to respond to a call. BROOKDALE's policy and practice of not
11 maintaining its call pendant system properly and of not providing sufficient staff to respond to
12 call pendants deprives residents with disabilities of full and equal enjoyment of its goods,
13 services, facilities, and benefits.

14 46. Community Care Licensing records indicate lengthy emergency response times at
15 Defendants' facilities throughout California. For example, in February 2017 a licensing
16 inspector found that staff at BROOKDALE Riverside routinely took over 10 minutes to respond
17 to emergency pendant calls, and on one occasion took 36 minutes to respond. At
18 BROOKDALE Orangevale, a licensing inspector tested an emergency call pendant during a
19 January 2017 visit and found that it took over 45 minutes for facility staff to respond. At
20 BROOKDALE North Tarzana, a review of the facility's records revealed numerous response
21 times of over 30 minutes, including multiple response times of over an hour. A licensing
22 inspector who tested emergency pull cords at BROOKDALE Chatsworth found that it took staff
23 24 minutes to respond during a June 2016 inspection; during another visit, the inspector found
24 that it took staff 30 minutes to respond, and that they did so only after the inspector alerted the
25 facility administrators. At BROOKDALE Oceanside, an inspector found that as of April and
26 May 2016, there were times when staff did not answer residents' calls for 15 to 45 minutes. The
27 inspector's report noted that there were only two direct caregivers on duty during the day and
28 evening shifts at the facility, which has a capacity of 186 residents, and that those caregivers

1 were responsible for numerous tasks in addition to answering emergency calls on two floors.
2 Community Care Licensing cited BROOKDALE Fountaingrove at the end of March 2017 after
3 a review of the pendant system report revealed many instances of extremely lengthy response
4 times, noting in particular a pendant pressed at 5:23 p.m. which was not answered for over 39
5 minutes and a pendant set off at 5:45 p.m. to which staff did not respond for one hour and 27
6 minutes.

7 47. Even when Defendants' staff do respond within a reasonable amount of time to a
8 request for assistance, the response is often inadequate. In one case, staff at BROOKDALE
9 Fountaingrove failed to notify a resident's family after the resident had a fall and was sent to the
10 emergency room. Staff also failed to send identifying information or documents with the
11 resident, as required by Defendants' policies and procedures. As a result, the resident was listed
12 as a Jane Doe until the next morning. A doctor at the hospital told the resident's daughter that
13 he would have operated on the resident shortly after she was admitted, but had to wait until the
14 next morning because he had no family contact numbers to call. The Community Care
15 Licensing inspector who investigated this incident noted that she observed insufficient staffing at
16 BROOKDALE Fountaingrove to ensure that the facility's own policies and procedures were
17 being followed. On another occasion, a BROOKDALE Fountaingrove resident pressed the call
18 button on her pendant because she could tell she was going to have terrible diarrhea. While she
19 waited for a response, the resident headed for the toilet, but by the time she got there, she had
20 already soiled herself and her nightgown. Although a caregiver responded to the pendant call,
21 when the caregiver looked in the bathroom and saw the resident sitting on the toilet, she left
22 without providing assistance and never returned. The resident screamed for help and pressed the
23 emergency button next to the toilet, but no one responded until roughly an hour later, when a
24 new set of caregivers started their shifts.

25 48. Residents must resort to calling 911 for assistance when staff fail to promptly
26 respond to their call pendants. For example, public records kept by the Rincon Valley &
27 Windsor Fire Protection Districts revealed that in a one-year period from June 2016 through
28 May 2017, the agency responded to 83 emergency calls from 907 Adele Drive, the address of

1 BROOKDALE Windsor. Community Care Licensing records indicate that this facility has a
2 capacity of 80, but often has fewer than 70 residents, suggesting that BROOKDALE Windsor
3 residents averaged well over one 911 call per person over the past year. Many of these calls
4 were classified as “medical assists,” meaning the Rincon Valley & Windsor Fire Protection
5 Districts provided assistance to another group or agency that had primary responsibility for
6 medical care, such as assisting with moving a heavy patient. Several of these 911 calls were
7 classified as instances where a member of the public called the fire protection districts for
8 routine help, such as assisting a person in returning to a bed or chair, with no transport or
9 medical treatment given.

10 49. In other cases, Defendants’ staff failed to monitor residents’ health status as
11 promised, placing residents in danger and distress in situations where the resident was not able
12 to call for help. At BROOKDALE Fountaingrove, one resident was left in her wheelchair all
13 night because she requires staff assistance to get in and out of her wheelchair, but staff failed to
14 help her into bed and never checked on her during the night. In another case, a resident at
15 BROOKDALE Scotts Valley fell in his apartment and went without food or water for 24 to 30
16 hours because staff failed to check on him. The resident was taken to a hospital, where doctors
17 diagnosed him with dehydration and rhabdomyolysis, a condition in which damaged skeletal
18 muscle tissue breaks down and the damaged muscle cells are released into the bloodstream,
19 causing further injury. At BROOKDALE Riverside, a resident fell while outside and suffered
20 severe sunburns because staff failed to regularly check on him. In November 2016, Community
21 Care Licensing issued a citation to BROOKDALE Hemet based on an incident in which staff
22 left a resident with a known risk of falling unattended in a dining room chair. The resident fell
23 and hit his head, requiring ten stitches. Just three days later, Defendants’ staff again left the
24 resident unattended, and he fell and re-injured his head. The licensing inspector noted that this
25 resident had additional staff supervision as part of his care plan, but that BROOKDALE Hemet
26 lacked sufficient staff to meet the resident’s needs.

27 50. Because Defendants’ staff are stretched so thin responding to emergency calls
28 and attending to their other duties, they have attempted to dissuade residents from calling for

1 assistance. Residents have been told by overworked caregivers to use their call buttons “only in
2 an emergency,” despite the fact that, short of screaming for help, this is the only way to alert
3 caregivers that they need the assistance for which they are paying BROOKDALE. In many
4 instances, residents feel bad for overworked caregivers and attempt to perform tasks on their
5 own, despite paying BROOKDALE for these services. This has led to residents’ falling or
6 otherwise injuring themselves.

7 *Impact of Understaffing on Dining Services*

8 51. BROOKDALE’s policy and practice of understaffing has resulted in its cutting
9 staffing hours and eliminating positions in dining services. As a result, residents wait for long
10 periods of time to be served. Some residents give up in frustration. Food is often served cold,
11 and residents do not dare to make a special request, for fear that the wait will be extreme.
12 Moreover, the quality of the food has so deteriorated that it is in many cases nearly inedible.
13 Fresh ingredients are rare, meat of poor quality is hidden under sauces, and both residents and
14 licensing inspectors have encountered food beyond its expiration date. The understaffing also
15 prevents staff from maintaining a clean and hygienic dining area.

16 52. At BROOKDALE San Ramon, the hours of serving staff were cut, and servers
17 have left as a result, leaving the dining department severely understaffed. At breakfast, there is
18 often one server for 80 people. On at least one day during June 2017, there were no servers in
19 the dining room for breakfast, and the activities director was cleaning the tables while the chef
20 both cooked and served meals. At BROOKDALE Windsor, licensing inspectors found a single
21 staff member working morning shifts in the dining room, with dirty dishes and food droppings
22 strewn about because no other staff members were available to clean up. BROOKDALE
23 Riverside received a Community Care Licensing citation after investigators found that food was
24 served cold and residents had to wait an unreasonable amount of time for food to be served. The
25 investigator attributed this problem to understaffing, noting in her report that “[i]t was revealed
26 there is not enough servers for the number of residents in the dining room at one time.” On a
27 recent visit to BROOKDALE Corona, the licensing inspector found five residents sitting in the
28 dining room without supervision, and noted that caregivers were expected to serve lunch, clean

1 the dining room after meals, and sweep the floors in the dining room in addition to their other
2 duties. The same inspector found uncovered and dried-out ham and cheese sandwiches in the
3 refrigerator and unrefrigerated cartons of strawberry milk in a cupboard.

4 53. The long waits and substandard meals in the dining room mean that some
5 residents either purchase their own food or often forgo meals altogether, despite the fact that
6 residents are paying BROOKDALE for three meals per day and snacks. Residents' nutrition
7 needs are not being met, and to the extent that they look forward to meals as a pleasant social
8 experience, they are being deprived of that benefit as well. Residents have made numerous
9 complaints to Defendants about the dining service, individually and through the family and
10 resident councils. For example, the Resident Council at BROOKDALE San Ramon has been
11 complaining about the problems in dining services for over two years. Yet residents have seen
12 no durable improvements. There may be temporary improvements from time to time, but the
13 overall trend is actually downward.

14 *Impact of Understaffing on Housekeeping and Laundry*

15 54. BROOKDALE's policy and practice of understaffing extends to housekeeping
16 and laundry services. For example, on information and belief, BROOKDALE San Ramon went
17 for many months with only one housekeeper to clean approximately 80 rooms. As a result, the
18 maintenance director and the executive director also had to clean rooms and consequently had
19 less time to perform maintenance and administrative duties. Residents' rooms have been left in
20 deplorable and often unsanitary conditions, including toilet seats and showers covered in feces
21 and rooms which smell strongly of urine.

22 55. BROOKDALE routinely fails to wash residents' personal belongings and bed
23 linens. Even when BROOKDALE's staff take these items for laundering, residents' clothes and
24 linens are often lost, or they are given back other residents' clothing or linen instead of their
25 own. Residents are left in dirty and malodorous clothing. For example, Loresia Vallette, the
26 granddaughter of former BROOKDALE Hemet resident LAWRENCE QUINLAN observed that
27 her grandfather's clothes were never washed, and that staff continued to dress him in the same
28 pair of urine-stained pants. Some residents or their family members have despaired of waiting

1 and begun to perform these services on their own, despite BROOKDALE's promise to provide
2 them as part of their base rate.

3 **Discrimination in Transportation/Activities**

4 56. Due to chronic understaffing at Defendants' facilities, promised transportation
5 services and activities are often sporadic or nonexistent. Many residents rely on BROOKDALE
6 for transportation to medical and lab appointments, church, grocery shopping, banking and other
7 activities. Additionally, they expected and would enjoy both on- and off-site activities. Yet they
8 do not receive these services on a regular basis, if at all. Scheduled activities—such as poker,
9 bingo and movies—are frequently cancelled, and BROOKDALE regularly fails to provide the
10 promised transportation services to its residents. Residents are often told about cancellations at
11 the last minute for shuttles to planned events, such as church services. The lack of staffing at
12 BROOKDALE San Ramon means that its activities director must fulfill multiple duties. In
13 addition to her expected duties, she often works in the dining room serving food or cleaning and
14 at the front desk as a receptionist. She is frequently the only driver for facility-provided
15 transportation. On several occasions, residents of BROOKDALE San Ramon have been left
16 waiting outside a medical office or a church because BROOKDALE staff forgot to pick them up
17 and had to rely on others to take them back to the facility.

18 57. Additionally, BROOKDALE has implemented policies and practices regarding
19 its provision of transportation services that discriminate against persons with mobility
20 disabilities. Residents at BROOKDALE San Ramon who use wheelchairs must be able to
21 transfer from their chairs to a seat in the bus, despite the existence of a wheelchair lift and a
22 system for securing wheelchairs in at least one of BROOKDALE San Ramon's buses. Making
23 this transfer is impossible and/or unsafe for many wheelchair users. The facility also requires
24 wheelchair users to arrange for a family member or an outside care attendant to accompany them
25 on any off-site activity, which deters many wheelchair users from participating and imposes a
26 surcharge on those who do. The facility also limits the number of wheelchair users for each off-
27 site trip to two. At BROOKDALE Fountaingrove, wheelchair users are limited to two off-site
28 trips per month. At least one wheelchair user at BROOKDALE San Ramon was told that she

1 could not participate in regular Saturday trips to the grocery store and shopping, because the
2 driver “couldn’t handle her.”

3 **Emergency Evacuation Procedures**

4 58. BROOKDALE has emergency and evacuation policies and procedures in place
5 for at least some of its facilities, but these policies and procedures do not take into account the
6 needs of persons with disabilities, or if they do, Defendants have not informed the residents.
7 Residents with disabilities have been told to wait in their rooms for someone to come, and
8 although the facilities have emergency drills, staff have not demonstrated for residents what will
9 happen in the event of an actual emergency.

10 59. Plaintiffs are informed and believe, and on that basis allege, that these practices
11 have been and are an official policy and practice by which Defendants operate their businesses
12 and/or services.

13 60. Defendants’ failure and refusal to provide equal services to persons with
14 disabilities is humiliating and degrading to and creates a serious safety risk for the members of
15 the proposed class of persons with disabilities.

16 61. Defendants are responsible for their illegal operations and discriminatory policies
17 and practices as described herein. BROOKDALE residents, their family members, and staff
18 members have raised these issues repeatedly with members of BROOKDALE management to
19 no avail.

20 62. Defendants have been notified of the civil rights violations described herein, but
21 have refused to provide necessary reasonable modifications to its staffing policies, practices and
22 procedures to provide residents with disabilities full and equal enjoyment of their goods,
23 services, facilities, activities, benefits and accommodations and to comply with the requirements
24 of the ADA and the Unruh Civil Rights Act .

25 **Retaliation Against Family and Resident Councils and Their Members**

26 63. Plaintiff filed their original complaint on July 13, 2017. They filed a First
27 Amended Complaint on August 25, 2017. Since that time, BROOKDALE has retaliated against
28 Plaintiffs and members of the family or resident council in at least two of the facilities in which

1 the named Plaintiffs reside.

2 64. Pursuant to Cal. Health & Safety Code § 1569.158(a), residential care facilities
3 may not prohibit the formation of a family council. California law also requires that the facility
4 provide a meeting space for the family council, as well as a prominent, visible space for family
5 council announcements, such as meeting notices, minutes, and newsletters. Cal. H&S Code §
6 1569.158(d). Moreover, a facility must respond in writing to any written concerns or
7 recommendations submitted by the family council within 14 days. Cal. H&S Code §
8 1569.158(f).

9 65. California law also prohibits assisted living facilities from willfully interfering
10 with the “formation, maintenance, or promotion of a family council.” Cal. H&S Code §
11 1569.158(i). The law defines “willful interference” as including “discrimination or retaliation in
12 any way against an individual as a result of his or her participation in a family council, refusal to
13 publicize family council meetings or provide appropriate space for meetings or postings as
14 required . . . , or failure to respond to written requests by a family council in a timely manner.
15 Cal. H&S Code § 1569.158(i).

16 66. At the BROOKDALE San Ramon facility, the executive director has stopped
17 responding to many of the written inquiries from the family council. On July 26, 2017, the
18 executive director of BROOKDALE San Ramon, Shawn Cull, informed the family council by
19 email that he would not respond to the family council’s inquiries because of the lawsuit. Despite
20 a letter from Plaintiffs’ counsel to BROOKDALE’s counsel on August 17, 2017, informing
21 them of Brookdale’s obligations under the Health & Safety Code, the executive director has
22 continued to refuse to provide substantive responses to many of the family council’s inquiries.
23 On February 2, 2018, Mr. Cull responded to a request by family council and residents that he
24 address all of their questions by stating, “Unfortunately, due to a lawsuit, some questions I am
25 unable to answer.”

26 67. On or about February 2, 2018, a family council board member, Sharon Eidler,
27 posted family council flyers announcing an upcoming meeting in public announcement spots
28 near the facility elevators and on the residents’ doors. Two hours later, she discovered that

1 someone had removed the flyers placed near the elevators. The flyers posted on the resident
2 doors had been turned over and covered with a facility questionnaire. When questioned by Ms.
3 Eidler, Mr. Cull admitted to tampering with the flyers. When Ms. Eidler told Mr. Cull he could
4 not tamper with family council announcements, Mr. Cull ordered Ms. Eidler to leave the facility
5 and then called the police to come and remove her. After arriving at the facility and speaking
6 with witnesses, the police neither arrested Ms. Eidler nor did they ask her to leave the facility.

7 68. Pursuant to Cal. Health & Safety Code § 1569.157(a), residential care facilities
8 must assist the residents in establishing and maintaining a resident council. Moreover, a facility
9 must respond in writing to any written concerns or recommendations submitted by the resident
10 council within 14 days. Cal. H&S Code § 1569.157(c).

11 69. California law also prohibits assisted living facilities from willfully interfering
12 with the “formation, maintenance, or promotion of a resident council.” Cal. H&S Code §
13 1569.157(g). The law defines “willful interference” as including “discrimination or retaliation
14 in any way against an individual as a result of his or her participation in a resident council,
15 refusal to publicize resident council meetings or provide appropriate space for either meetings or
16 a bulletin board, or failure to respond to written requests by the resident council in a timely
17 manner.” Cal. H&S Code § 1569.157(g).

18 70. BROOKDALE has not responded in writing to at least four letters sent to its
19 corporate offices by Ms. JESTRABEK-HART in her capacity as chair of the BROOKDALE
20 Scotts Valley residents’ council. The letters addressed the lack of adequate staffing, facility
21 maintenance concerns, the lack of emergency signals in the laundry rooms, common room doors
22 that are difficult to open, and the high price of meals for visitors. The executive director at the
23 Scotts Valley facility responded to one of the letters orally, but BROOKDALE has not
24 responded in writing to any of the above-mentioned letters, in violation of Cal. H&S Code §
25 1569.157(c) and (g) .
26
27
28

BROOKDALE MISREPRESENTS, MAKES MISLEADING STATEMENTS, AND CONCEALS MATERIAL FACTS ABOUT THE QUALITY AND AVAILABILITY OF CARE IT PROVIDES TO ALL RESIDENTS

71. As a result of Defendants’ corporate policies and practices, BROOKDALE subjects all residents, regardless of disability, to a substantial risk that they will not receive the care and services they require and have paid for on any given day, as described in Paragraphs 36-60. BROOKDALE lures residents to move into or stay at its facilities by misrepresenting in various corporate written materials that it will provide the basic, personal, and therapeutic services each resident needs based on individualized assessments performed by BROOKDALE staff, and by failing to disclose and concealing that it cannot provide the promised services to all residents because its facilities are chronically understaffed.

Standardized Residency Agreements

72. In order to move in to one of BROOKDALE’s California facilities, residents must sign one of Defendants’ standardized Residency Agreements. In its standardized Residency Agreement, BROOKDALE represents to residents prior to move-in and throughout their residency that it will provide them with a standard set of basic services, additional personal services identified in the Personal Service Plan, and any select and therapeutic services for which the resident chooses to pay. At the time of signing the Residency Agreement, residents or their responsible parties are required to confirm that they have reviewed and understand the document.

73. In Section I.A of its standardized Residency Agreement, BROOKDALE affirmatively represents to prospective residents that “[i]n order to provide you with care, supervision and assistance with instrumental activities of daily living in order to meet your needs, we will provide you with the following Basic Services”: accommodations, including a residential suite and use of common areas; three meals a day plus snacks 24 hours a day; basic utilities; “light housekeeping once a week”; weekly laundry service of the resident’s “personal belongings and bed linens”; “planned social and recreational programs”; transportation services; and staffing by “Community associates ... available 24 hours a day, seven days a week.” Section I.A further represents that BROOKDALE will observe the resident’s “health status to

1 identify social and health care needs” and “will consult with you regarding social and health-
2 related issues.” In addition, BROOKDALE represents in Section I.A of its standardized
3 Residency Agreement that “[w]e will provide personal services that are included as part of the
4 personal service assessment.”

5 74. In Section I.B of its standardized Residency Agreement, BROOKDALE
6 represents that “[p]rior to moving in and periodically throughout your residency, we will use a
7 personal service assessment to determine the personal services you require. The personal
8 service assessment will be used to develop your Personal Service Plan.”

9 75. Defendants’ standardized price schedule for personal care services is attached to
10 the standardized Residency Agreement. This price schedule includes a variety of personal
11 services, such as staff assistance with ordering, storing, and taking medication; staff assistance
12 with eating, dressing, bathing, using the toilet, and other activities of daily living; escort and
13 mobility assistance to get around Defendants’ facilities; and help taking care of residents’ pets.
14 This price schedule lists the monthly costs of each service and details how Defendants’
15 caregivers and other staff will provide the services. For instance, a resident may require and
16 agree to pay for “[s]taff attention while you administer your insulin injections”; “additional staff
17 involvement” for residents who are reluctant to accept care; and bathroom assistance such as
18 “reminders to get to the bathroom,” “pulling up and down pants, handling toilet paper, wiping,
19 changing protective undergarments and getting onto and off of toilet,” as well as “weight-
20 bearing or balance assistance from one associate” for residents “unable to stand independently
21 while using the bathroom.”

22 76. BROOKDALE repeats these representations in the Personal Service Plan that it
23 prepares for each resident before the resident moves in and updates periodically throughout his
24 or her residency. The Personal Service Plan lists the types of staff assistance that the resident
25 requires and has agreed to pay for, along with the monthly fee for each. For example, the
26 Personal Service Plan for one former resident states that Defendants’ staff will “[p]rovide
27 physical assistance to and from the dining room and/or community activities as needed” for a
28 monthly fee of \$273. Standardized language in the Personal Service Plan states that “[t]he

1 Personal Service Assessment and the Physician Plan of Care are used to determine the personal
2 services that you require at move-in and periodically throughout your residency. The Personal
3 Service Assessment will be used to develop your Personal Service Plan.”

4 77. Pursuant to Sections I.B and III.F of its standardized Residency Agreement,
5 “[t]he results of the assessment, our method for evaluating your personal care needs, and the cost
6 of providing the additional personal services (the ‘Personal Service Rate’) will be shared with
7 you,” and a change in the Personal Service Plan be offered or required “when we determine
8 additional services are requested or required” and after 60 days’ written notice has been
9 provided.

10 78. In Section I.C of its standardized Residency Agreement, BROOKDALE
11 represents that it will make “Select Services and Therapeutic Services ... available to you at
12 your request,” but that the fees for these services are not included in the rates residents pay for
13 basic services and personal services. Defendants’ standardized Residency Agreement
14 incorporates by reference a standardized price list which features prices for the select and
15 therapeutic services that Defendants make available, many of which consist of staff assistance
16 with the resident’s activities of daily living. For example, residents may elect to pay for tray
17 service in their rooms for up to three meals a day or for additional laundry and housekeeping
18 services beyond what is provided in the basic service rate.

19 79. Every month, BROOKDALE sends each resident or his or her responsible party
20 an invoice for services that the company represents it will provide the following month. These
21 invoices list the monthly rate for basic services, the Personal Service Rate that is based on each
22 resident’s Personal Service Plan, and any rate adjustments.

23 80. BROOKDALE repeats these representations in the letters it periodically sends all
24 residents informing them of increases in the rates they owe for basic services, personal services,
25 and select and therapeutic services. Using standardized language, Defendants’ rate increase
26 letters notify the resident of changes to his or her monthly rates for these services, which
27 BROOKDALE attributes to increases in the cost of “providing the services you desire and
28 depend upon.”

Defendants' Communications Regarding the Merger and New Assessment System

1
2 81. In early 2014, Emeritus Senior Living (“Emeritus”), at the time a major chain of
3 senior living facilities, sent residents a standardized letter informing them of the merger between
4 BROOKDALE and Emeritus. The letter promised that residents would not be impacted by the
5 change but would “receive the same excellent care and service you expect at your community”
6 and would “continue to enjoy all the amenities of your community.” It further stated the merger
7 would create a “senior living company offering the most comprehensive set of senior care
8 solutions” with a commitment to “customer-focused cultures and a commitment to continuous
9 improvement and innovation.” Rather than inform residents that the merger would result in
10 even lower staffing levels and poorly trained staff, the letter promised a continuum of care with
11 likely improvements.

12 82. In or about October 2015, BROOKDALE sent residents a standardized letter
13 informing them of an upgrade to its community assessment and care planning system effective
14 December 1, 2015. The upgrade would involve a conversion to a “new personal service system”
15 which would “enhance our ability to match your needs and preferences with the right services at
16 the right time.” The letter promised “benefits from enhancements,” which included, *inter alia*,
17 “[p]ersonalized service planning and care systems.”

18 83. Based on these representations, Plaintiffs, and the putative class members
19 reasonably expected that the merger would result in improvements in care, or at the very least,
20 would not result in a decline in services. Additionally, they reasonably expected that the
21 conversion to the new assessment and care planning system would result in improved delivery of
22 basic services, personal services, and select and therapeutic services for which they were paying.

Defendants' Marketing Materials

23
24 84. Defendants' public website, www.brookdale.com, prominently features online
25 marketing materials directed at prospective residents. In a section of its website entitled “What
26 is Assisted Living?”, BROOKDALE claims that its “assisted living communities have staff and
27 programs in place that support and assist residents with daily living and basic care in a homelike
28 or apartment setting. Residents receive three meals a day, recreational and social activities,

1 housekeeping, linen service, apartment maintenance and transportation. That means your loved
2 one gets all the benefits of retired life, without the hassle of daily chores.”

3 85. Defendants’ online marketing materials also tout the personalized services that its
4 assisted living facilities provide. The company’s website explains that “[o]ur trained caregivers
5 provide attention and assistance with medication support, bathing, dressing, cooking and other
6 tasks throughout the day. Our staff will also coordinate services with outside healthcare
7 providers and monitor residents to ensure they are healthy. So your loved one gets the care they
8 need while enjoying the quality of life they’ve earned.”

9 86. Defendants’ online marketing materials promise a “Culinary Arts” program that
10 uses “only the freshest meat, seafood, produce, herbs and spices.”

11 87. Defendants’ online marketing materials further represent that “[a]t Brookdale, we
12 believe in delivering senior care that’s tailored to you and your loved one based on those unique
13 needs and desires. That’s why we provide a variety of options. This personalized approach
14 ensures that you and your family get exactly what you need without paying for what you don’t.”

15 88. BROOKDALE represents to prospective and current residents that it tailors its
16 services to residents’ personal needs. According to Defendants’ representations, the process
17 begins with an individualized assessment, which BROOKDALE uses to produce a Personal
18 Service Plan for each resident. The Personal Service Plan includes a list of services for which
19 the resident pays a monthly fee. Defendants’ affirmative representations give rise to a
20 reasonable expectation on the part of the reasonable consumer that BROOKDALE will
21 determine and then provide the amount of caregiver and other staff time that is necessary to
22 provide the personal services for which residents are paying.

23 89. BROOKDALE makes similar representations in the standardized marketing
24 folder it distributes to prospective and incoming residents. In this marketing folder,
25 BROOKDALE represents that at its facilities, “Carefully selected and trained associates do more
26 than assist with activities of daily living such as dressing, bathing and dispensing of
27 medications; they implement custom care plans designed to meet the individual needs of each
28 resident ... It all begins with a Personal Service Assessment. We take the time to listen to our

1 residents so that we understand how to establish clinical, dining and program support that works
2 for them in a meaningful way. We recognize their individual needs and preferences and respond
3 to them accordingly. So, whether it's a scented lotion, a unique snack, a favorite recipe or a
4 lifelong interest, we integrate everything we learn to create a truly individualized living
5 experience." Elsewhere in this marketing folder, BROOKDALE represents that it "provide[s]
6 customized care solutions to meet residents' unique needs and complement their vision for all
7 the places they would still like their lives to go. From our trained staff to our wide variety of
8 amenities and activities, we strive to offer personalized care and exceptional service at
9 competitive and affordable rates. Fees for care and services are based on each resident's needs
10 and preferences, as determined by the Living Accommodation selected and their Personal
11 Service Plan ... This provides customer value because **our residents only pay for what they**
12 **need and want.**" (Emphasis in original). BROOKDALE's marketing folder also promises an
13 industry-leading dining services program that "continue[s] to satisfy the preferences and
14 nutritional needs of residents with dining choices that offer mealtime fulfillment while meeting
15 dietary requirements."

16 90. Based on all of Defendants' representations, Plaintiffs, the putative class
17 members, and the general consuming public reasonably expect that BROOKDALE will ensure
18 adequate staffing to perform the services promised to residents, including by providing sufficient
19 levels of qualified and adequately trained staff to perform the services identified in each
20 resident's Personal Service Plan.

21 **Defendants' Failures to Disclose**

22 91. Contrary to Defendants' representations regarding its provision of services,
23 BROOKDALE has a corporate policy and practice of staffing its facilities according to a system
24 that ensures all BROOKDALE residents run the continuing risk of not receiving the services for
25 which they are paying, of not having their care needs met, and of suffering injury from the lack
26 of care.

27 92. In addition to the Community Care Licensing records described in Paragraphs 37-
28 38, 41-43, 46-49 and 52, current and former residents of BROOKDALE facilities confirm that

1 Defendants' staffing levels do not change when updates to personal service assessments show
2 that residents require additional personal services. BROOKDALE has in many cases modified
3 residents' Personal Service Plans—and raised monthly personal service fees accordingly—even
4 though BROOKDALE failed to conduct an updated personal service assessment, failed to
5 provide residents or their responsible parties with the results and method of the assessment,
6 and/or failed to provide 60 days' written notice. Despite paying higher fees as a result of these
7 changes to their Personal Service Plans, residents and their families have observed that neither
8 the services provided nor staffing levels increased and, in many cases, decreased.

9 93. Caregivers have informed residents that they would like to work a 40-hour week,
10 but BROOKDALE allows certain caregivers to work only 24 hours in a week. Residents and
11 their family members have also observed that BROOKDALE fails to ensure that all staff
12 members receive necessary training. At BROOKDALE Fountaingrove, the facility's interim
13 executive director admitted to residents' families that BROOKDALE has insufficient staff to
14 meet residents' needs.

15
16 **BROOKDALE'S MISREPRESENTATIONS AND**
17 **CONCEALED FACTS WERE MATERIAL**

18 94. BROOKDALE's misrepresentations and the facts it conceals are material to the
19 reasonable consumer. An important and significant factor in choosing to move oneself or one's
20 relative to a BROOKDALE facility, to stay there after the facility was purchased by
21 BROOKDALE, and/or to continue to agree to pay the amounts charged by BROOKDALE is the
22 provision of staffing that is necessary to provide the services its residents need and for which the
23 residents are paying.

24 95. BROOKDALE's misrepresentations, misleading statements and omissions
25 regarding its provision of staffing are material to prospective residents and their family
26 members. Assurances that a facility will provide the amount of staffing necessary to provide
27 basic services and meet the personal service needs of residents based on BROOKDALE's own
28 assessments is a substantial factor (and indeed often the most important factor) in deciding to

1 enter a certain facility. The named Plaintiffs would not have, and the members of the putative
2 class would in all reasonable probability not have, entered BROOKDALE's facilities or stayed
3 at these facilities after BROOKDALE purchased them from other companies, or they would
4 have insisted on paying a lower price, if they had known that, although BROOKDALE would
5 charge them based on the staffing associated with their Personal Service Plans, BROOKDALE
6 did not and does not provide adequate staffing to carry out the services identified in residents'
7 Personal Service Plans, nor does it provide adequate staffing to perform basic services and select
8 and therapeutic services.

9 96. This is true even for residents who currently are nearly independent. These
10 residents chose an assisted living facility as opposed to an independent living community or
11 remaining at home because they wish to "age in place." They may not need significant
12 assistance with the activities of daily living initially, but they will become more dependent as
13 they age and do not want to move again when that happens. Moreover, even the most
14 independent residents depend on the basic services that BROOKDALE promised them, such as
15 food, laundry, and housekeeping. A key factor for these residents in selecting BROOKDALE is
16 that the facility will provide the staffing that BROOKDALE itself has determined is necessary to
17 meet their assessed needs, both now and as those needs increase.

18 97. BROOKDALE has a duty to disclose that its staffing policies and procedures
19 preclude it from consistently providing basic services, personal services, and select and
20 therapeutic services, because of, among other things, the substantial safety risk to current and
21 future residents from BROOKDALE's conduct.

22 98. The non-disclosure is material because, among other things, BROOKDALE
23 knows that its conduct risks the safety of its residents. In addition to individual complaints made
24 by residents and family members, family and resident councils send regular correspondence to
25 Executive Directors of BROOKDALE facilities, as well as regional and national managers
26 regarding the problems outlined above. In the case of BROOKDALE San Ramon and
27 BROOKDALE Fountaingrove, local and regional management employees have attended
28 numerous meetings of the Family and Resident Councils and have made unfulfilled promises to

1 address the concerns outlined above. Moreover, Community Care Licensing has conducted
2 numerous licensing inspections which are delivered to BROOKDALE executives and managers
3 of California facilities, describing the failure of various facilities to meet state laws and
4 regulations.

5 99. BROOKDALE is fully aware of the facts alleged above. Yet, BROOKDALE has
6 failed to disclose and actively concealed from residents, prospective residents and their family
7 members the true facts about how staffing is provided at BROOKDALE's California facilities.

8 **Barriers to Moving Out**

9 100. BROOKDALE's misrepresentations, misleading statements, and material
10 omissions affect not only the decision of residents to enter the facility but also the decision to
11 stay at a BROOKDALE facility.

12 101. In choosing assisted living in general and a BROOKDALE facility in particular,
13 the resident forgoes other options such as their former home, an independent living community,
14 or other facilities. Once in a facility, there are significant physical, emotional and other burdens
15 for the residents that are triggered if they terminate residency, including impacts such as
16 "transfer trauma." BROOKDALE knows and relies on this fact. As BROOKDALE notes on its
17 website "[a]s a resident's health needs increase, they may transition from one level to the next—
18 all within the same community. This provides a permanent link to friends and families for them
19 by assuring they remain in a single location."

20 102. BROOKDALE puts great effort into increasing and maintaining building
21 occupancy to the detriment of their current and future residents. Plaintiffs allege on information
22 and belief that when residents or their family members complain about staffing and/or
23 conditions at a BROOKDALE facility, employees are instructed to reassure them that things will
24 improve and that the incident or incidents are temporary snags. For example, the Family
25 Council of BROOKDALE Fountaingrove has been meeting every month for many months to
26 address the inadequate staffing, slow response times to call buttons, and other health and safety
27 issues faced by the Fountaingrove residents. BROOKDALE representatives, including Vice
28 President of Regional Operations Sharyl Ronan and Interim Executive Director Dan Devine,

1 have appeared at many meetings, listened to the numerous complaints, and assured those present
2 that they are looking into the problems and all will be well. Notwithstanding these claims,
3 members of the Family Council report little to no changes or action items undertaken by
4 BROOKDALE staff after these meetings.

5 103. Similarly, residents and family members at BROOKDALE San Ramon hold
6 monthly Family Council and Resident Council meetings and have informed facility
7 management, as well as Rick Flynn, District Director of Operations, former Executive Director
8 Steve Millard, Executive Director Shawn Cull, and former Acting Director Bill Grady of the
9 problems described above. In January 2017, Mr. Flynn, Mr. Grady and Mr. Cull attended a
10 Family Council meeting at which family members and residents demanded answers to their
11 questions about understaffing, poorly trained staff, undelivered services, food and dining
12 deficiencies, cancelled activities, and problems with call pendants. They were reassured at the
13 meeting and subsequently told by email correspondence that BROOKDALE was working
14 “diligently” on solutions and had reached out to the District Vice President of Operations Sheila
15 Garner, who would be helping to resolve the problems. BROOKDALE also represented that
16 management had “made progress in our hiring process for clinical and dining,” and was
17 monitoring the call pendant system and providing additional training to staff. Since that time,
18 BROOKDALE announced the hiring of additional employees but concealed from residents that
19 it was simultaneously cutting the hours of its current employees, cuts which have led to
20 significant staff turnover. Residents and family members report that the problems described
21 above have in fact worsened.

22 104. Such reassurances from BROOKDALE are common when residents and family
23 members raise concerns about the quality of care and services they are receiving. On
24 information and belief, Regional Vice Presidents and Executive Directors are instructed to
25 minimize potential move-outs. Executive Directors are regularly told by upper management to
26 do everything they can to “save” the move-out.

27 105. BROOKDALE thereby unjustly continues to profit from the original fraud by
28 perpetuating the misrepresentations, misleading statements, and failures to disclose.

NAMED PLAINTIFFS' EXPERIENCES IN BROOKDALE FACILITIES**Stacia Stiner**

106. STACIA STINER has been a resident at BROOKDALE San Ramon since approximately February 13, 2016. On or about February 12, 2016, STACIA STINER's mother, Rita Stiner, read, reviewed, and signed an agreement with BROOKDALE as STACIA STINER's legal representative and power of attorney. As part of this "RESIDENCY AGREEMENT", BROOKDALE stated that "[i]n order to provide you with care, supervision and assistance with instrumental activities of daily living in order to meet your needs, we will provide you with the following Basic Services, which are included in the Basic Service Rate," which included, among other things, the room, three daily meals and snacks on demand, weekly room cleaning, weekly laundry and linen service, planned activities, transportation, observation, and the availability of staff "24 hours a day, seven days a week." This standard residency agreement also stated that:

[p]rior to moving in and periodically throughout your residency, we will use a personal service assessment to determine the personal services you require. The personal service assessment will be used to develop your Personal Service Plan. The results of the assessment, our method for evaluating your personal care needs, and the cost of providing the additional personal services (the "Personal Service Rate") will be shared with you.

The Personal Service Plan lists the types of staff assistance that Ms. STINER requires and has agreed to pay for, along with the monthly fee for each type of staff assistance. In addition, Ms. STINER's mother Rita Stiner has received and reviewed, as enclosures to BROOKDALE's rate increase letters, a personal service schedule and list of select and therapeutic services. These documents describe a variety of available services, list the monthly or per-occurrence fee for each service, and detail how BROOKDALE's caregivers or other staff will provide the service. Every month, BROOKDALE sends Ms. STINER, through Rita Stiner, an invoice for services that the company impliedly represents it will provide in the following month. These invoices list the monthly rate for

1 the basic services set forth in BROOKDALE's standardized residency agreements, the
2 Personal Service Rate that is based on Ms. STINER's Personal Service Plan, and any rate
3 adjustments.

4 107. Ms. STINER, through her legal representative and power of attorney, Rita Stiner,
5 read and reasonably understood BROOKDALE's representations as statements that
6 BROOKDALE would perform assessments to determine needed services and staff
7 BROOKDALE San Ramon in a manner that would allow it to consistently provide the services
8 that BROOKDALE promised and Ms. STINER was paying for. Ms. STINER, through Rita
9 Stiner, relied on these representations in making the decision to enter BROOKDALE San
10 Ramon. BROOKDALE did not disclose to STACIA or Rita STINER at any time prior to her
11 admission nor has it disclosed since that time that its corporate policy and procedure of
12 providing pre-determined staffing at its facilities precludes BROOKDALE from providing the
13 care and services residents have been promised and places all residents at a substantial risk that
14 they will not receive the care and services they have paid for on any given day. If
15 BROOKDALE had disclosed this material fact to STACIA and/or Rita STINER prior to or early
16 in Ms. STINER's residency, RITA STINER would have looked for another facility for STACIA
17 or would have told BROOKDALE that her daughter would not agree to pay the rates charged by
18 BROOKDALE.

19 108. Beginning in October 2016, BROOKDALE initiated increases in Ms. STINER's
20 basic service and personal service rates. Ms. STINER and her mother Rita Stiner have been
21 unable to decipher the changes in Ms. STINER's bills. On or about October of 24, 2016, Rita
22 Stiner received a letter from BROOKDALE's Executive Director informing her that
23 Ms. STINER's basic service rate would increase from \$3,205 to \$3,429 per month and that her
24 personal service rate would increase by approximately 6%. During an in-person meeting in
25 January of 2017, BROOKDALE staff told Rita Stiner that Ms. STINER's personal service rates
26 would rise as follows: the monthly medication management fee would rise from \$567 to \$631;
27 the monthly fee for staff assistance with dressing and grooming tasks would rise from \$454 to
28 \$505; the monthly fee for assistance with two showers per week would rise from \$113 to \$631

1 per week (a significant increase because STACIA STINER was purportedly requiring more than
2 the allotted 20 minutes of caregiver time per shower); and the monthly fee for assistance with
3 toileting would increase from \$397 to \$442. Rita Stiner had conversations with Shawn Cull, the
4 acting Executive Director, during which he told her that BROOKDALE would not charge the
5 full amount of the increases listed above. Despite numerous communications with Mr. Cull and
6 the billing department, the monthly bills remain confusing and BROOKDALE has sent Rita
7 Stiner notices of late payment and even a “30-DAY FINAL DEMAND TO PAY” in December
8 2016, stating that “[i]n order to provide the care our residents expect and deserve and at the same
9 time support the professional staff we employ, it’s imperative that we receive our monthly rent
10 and any additional charges in a timely fashion.” Brookdale subsequently withdrew the demand,
11 but the bills remain confusing, and every time there is an increase in Ms. STINER’s monthly
12 rates, the rate on Ms. STINER’s bills does not correspond to the information given to her or her
13 mother by Mr. Cull about the increase.

14 109. Although Ms. STINER is a wheelchair user, BROOKDALE has not provided her
15 with a room that has any physical access features. It does not have sufficient turning space in
16 the bathroom area, making it difficult for Ms. STINER to enter the bathroom in her wheelchair
17 and impossible for Ms. STINER to turn around in the bathroom. The bathroom does not have a
18 roll-in shower, and the grab bars do not comply with applicable access standards, preventing her
19 from bathing independently and creating a serious safety hazard. Ms. STINER cannot reach
20 most of the hanging or the storage space in her closet and therefore cannot access her clothing or
21 other personal items without assistance from others. Ms. STINER’s room has a balcony, but a
22 two-inch lip leading out to the balcony and insufficient turning space once outside makes it
23 inaccessible to Ms. STINER. She once tried to enter and exit the balcony by herself, but has not
24 attempted to do so since because the experience scared her. The complete lack of accessible
25 features in Ms. STINER’s room prevents her from being as independent as possible and causes
26 her to rely on personal assistance from BROOKDALE staff. In fact, Ms. STINER is charged
27 more than \$400 per month for toilet assistance because “resident is unable to use the bathroom
28 on their own.” BROOKDALE charges Ms. STINER an elevated rate of over \$600 for two

1 showers per week because, according to BROOKDALE management, she requires more than
2 the allotted 20 minutes per shower. Compounding this problem is BROOKDALE's
3 understaffing in care services, which means that Ms. STINER must wait to accomplish most of
4 her activities of daily living, if at all. This puts Ms. STINER in humiliating, frustrating and
5 hazardous situations on a daily basis.

6 110. Despite STACIA STINER's paying approximately \$600 per month for
7 BROOKDALE to "order and coordinate medications between family, health care providers and
8 pharmacy," Rita Stiner must pick up medication for her daughter at least once per week,
9 frequently with only one-day notice from BROOKDALE. Rita Stiner also does the majority of
10 her daughter's laundry because BROOKDALE frequently loses her clothing or returns the
11 wrong clothing to her.

12 111. Understaffing in the dining services department means that Ms. STINER has had
13 to wait up to 45 minutes just to order breakfast.

14 112. On some days, there is only one caregiver available in the mornings, causing
15 Ms. STINER to wait anywhere from 10 minutes to one hour for assistance getting dressed. At
16 night, Ms. STINER requires assistance if she needs to use the toilet. She waits anywhere from
17 10 minutes to an hour for staff to respond and will occasionally have to urinate in her bed when
18 assistance takes too long to arrive. She frequently resorts to using her mobile phone to call the
19 outside line when staff do not respond to her call pendant. Due to short-staffing, caregivers
20 often attempt to leave Ms. STINER in the middle of assisting her with bathing or toileting
21 because they must respond to call pendants from other residents or because they left another
22 resident on the commode to respond to Ms. STINER. Ms. STINER objects and insists that the
23 caregivers finish assisting her before they leave, but she knows that other residents are too afraid
24 to speak up for themselves and are often stranded by caregivers.

25 113. Ms. STINER enjoys getting out of the facility and participating in off-site
26 activities. However, BROOKDALE requires that, because she is a wheelchair user, she be
27 accompanied by a family member or a private personal caregiver. Although she has been able to
28 participate in scenic drives or lunches by herself, Ms. STINER had to pay approximately \$180

1 for a personal assistant to participate in a trip to a casino in Cache Creek in approximately
2 August 2016. Ms. STINER enjoys outings to the casino, but BROOKDALE still requires that
3 she take her mother or a private caregiver on those trips. Outings are also limited to two
4 wheelchair users per outing on a first come, first served basis. If Ms. STINER does not sign up
5 immediately, she will lose her ability to participate on a particular outing. This is true of other
6 wheelchair users in the facility.

7 114. In case of fire and other emergencies, BROOKDALE staff has told Ms. STINER
8 to remain in her room until they come and get her. However, staff members have not come to
9 get Ms. STINER when fire alarms go off at the facility, nor have they given her any additional
10 instructions about how they would assist her in exiting the facility.

11 **Helen Carlson**

12 115. HELEN CARLSON has been a resident at BROOKDALE Fountaingrove since
13 October 2011. When Ms. CARLSON moved into the facility, it was owned and operated by
14 Emeritus and was known as Emeritus at Santa Rosa. Prior to move-in, CARLSON's daughter-
15 in-law JOAN CARLSON, acting as Ms. CARLSON's legal representative and power of
16 attorney, read, reviewed, and signed a standardized residency agreement with Emeritus. In this
17 agreement, Emeritus promised to provide a list of "core services" that are substantially similar to
18 the basic services enumerated in Defendants' standardized residency agreement. Emeritus also
19 agreed to "perform a comprehensive Resident Evaluation prior to your admission in the
20 Community, regularly thereafter, and as your condition warrants, in order to determine the level
21 of Personal Care Services that you need. We will develop your Service Plan, based on your
22 Resident Evaluation, that describes how we will provide these services. You will receive
23 services appropriate to your individual needs, as described in your Service Plan." The
24 agreement reserved Emeritus's right to assign the agreement to any successor-in-interest selected
25 by Emeritus.

26 116. Ms. CARLSON, through her legal representative and power of attorney JOAN
27 CARLSON, read and reasonably understood Emeritus's representations in the residency
28 agreement as statements that Emeritus used its resident assessment system and results generated

1 by it to determine and provide staffing levels necessary to meet residents' needs.
2 Ms. CARLSON also reasonably understood and expected that Emeritus would staff Emeritus at
3 Santa Rosa in a manner that would allow it to consistently provide the services that Emeritus
4 promised and Ms. CARLSON would be paying for. Ms. CARLSON, through JOAN
5 CARLSON, read and relied on the representations in the residency agreement in making the
6 decision to enter Emeritus at Santa Rosa. As Ms. CARLSON's legal representative and power
7 of attorney, JOAN CARLSON read and signed the agreement acknowledging that she
8 understood and agreed to all of the terms contained in the agreement. In or about February
9 2014, JOAN CARLSON received and read a letter from Emeritus informing residents about the
10 merger between BROOKDALE and Emeritus. The letter promised that residents would not be
11 impacted by the change but would "receive the same excellent care and service you expect at
12 your community" and would "continue to enjoy all the amenities of your community." It further
13 stated the merger would create a "senior living company offering the most comprehensive set of
14 senior care solutions" with a commitment to "consumer-focused cultures and a commitment to
15 continuous improvement and innovation."

16 117. JOAN CARLSON, as her mother-in-law's power of attorney and legal
17 representative, read the letter and reasonably understood that the care her mother-in-law received
18 would be no worse than the care she had received under Emeritus, and possibly improve.
19 BROOKDALE did not inform JOAN or HELEN CARLSON nor did they have any reason to
20 believe that BROOKDALE would not staff the facility with sufficient staff in numbers and
21 training to provide the services for which Ms. CARLSON and the other residents were paying.

22 118. In 2015, BROOKDALE merged with Emeritus, and Emeritus at Santa Rosa
23 became BROOKDALE Fountaingrove. Plaintiffs are informed and believe, and on that basis
24 allege, that Emeritus assigned its residency agreements with existing residents to
25 BROOKDALE, and that BROOKDALE assumed any liability arising from those agreements.

26 119. On November 17, 2015, JOAN CARLSON read, reviewed, and signed an
27 agreement with BROOKDALE as Ms. CARLSON's legal representative and power of attorney.
28 This agreement, entitled "AMENDMENT TO CONTINUING CARE RESIDENCE AND

1 SERVICES AGREEMENT,” amended the residency agreement that Ms. CARLSON signed
2 with Emeritus and that was assigned to BROOKDALE after the merger with Emeritus. Pursuant
3 to this amendment, references to “core services” and “personal care services” were replaced with
4 the terms “basic services” and “personal services,” and Emeritus’s price schedules for various
5 services were replaced with BROOKDALE’s standardized personal services price schedule and
6 lists of select and therapeutic services. The parties agreed that except as otherwise amended, the
7 terms of the prior residency agreement would remain in full force and effect.

8 120. BROOKDALE has also prepared and periodically updated a Personal Service
9 Plan for Ms. CARLSON. Ms. CARLSON’s Personal Service Plan lists the type of staff
10 assistance that Ms. CARLSON requires and has agreed to pay for, along with the monthly fee
11 for each type of staff assistance. In addition, Ms. CARLSON has received and reviewed as
12 enclosures to BROOKDALE’s rate increase letters a personal service price schedule and list of
13 select and therapeutic services. These documents describe a variety of available services, list the
14 monthly or per-occurrence fee for each service, and detail how BROOKDALE’s caregivers or
15 other staff will provide the service. Every month, BROOKDALE sends Ms. CARLSON,
16 through JOAN CARLSON, an invoice for services that the company impliedly represents it will
17 provide in the following month. These invoices list the monthly rate for the basic services set
18 forth in BROOKDALE’s standardized residency agreements, the Personal Service Rate that is
19 based on Ms. CARLSON’s Personal Service Plan, and any rate adjustments.

20 211. Ms. CARLSON, through her legal representative and power of attorney JOAN
21 CARLSON, read and reasonably understood BROOKDALE’s representations—as well as
22 Emeritus’s representations in the agreement that was assigned to BROOKDALE and expressly
23 incorporated into BROOKDALE’s November 17, 2015 agreement with Ms. CARLSON—as
24 statements that BROOKDALE would perform assessments to determine needed services and
25 staff BROOKDALE Fountaingrove in a manner that would allow it to consistently provide the
26 services that BROOKDALE promised and that Ms. CARLSON was paying for.

27 Ms. CARLSON, through JOAN CARLSON, read and relied on these representations in making
28 the decision to stay at the facility despite the change in ownership.

1 122. In December 2017, BROOKDALE told JOAN CARLSON that Ms. CARLSON
2 would need to move into the memory care section of BROOKDALE Fountaingrove. When Ms.
3 CARLSON moved, BROOKDALE presented JOAN CARLSON with a new RESIDENCY
4 AGREEMENT. On or about December 18, 2017, JOAN CARLSON read, reviewed, and signed
5 an agreement with BROOKDALE as Ms. CARLSON's legal representative and power of
6 attorney. As part of this RESIDENCY AGREEMENT, BROOKDALE stated that "[i]n order to
7 provide you with care, supervision and assistance with instrumental activities of daily living in
8 order to meet your needs, we will provide you with the following Basic Services, which are
9 included in the Basic Service Rate," which included, among other things, the room, three daily
10 meals and snacks on demand, weekly room cleaning, weekly laundry and linen service, planned
11 activities, transportation, observation, and the availability of staff "24 hours a day, seven days a
12 week." This standard residency agreement also stated that:

13 [p]rior to moving in and periodically throughout your residency, we will use a
14 personal service assessment to determine the personal services you require. The
15 personal service assessment will be used to develop your Personal Service Plan.

16 The results of the assessment, our method for evaluating your personal care needs,
17 and the cost of providing the additional personal services (the "Personal Service
18 Rate") will be shared with you.

19 The Personal Service Plan lists the types of staff assistance that Ms. CARLSON requires and has
20 agreed to pay for, along with the monthly fee for each type of staff assistance. In addition,
21 JOAN CARLSON has received and reviewed, as enclosures to BROOKDALE's rate increase
22 letters, a personal service schedule and list of select and therapeutic services. These documents
23 describe a variety of available services, list the monthly or per-occurrence fee for each service,
24 and detail how BROOKDALE's caregivers or other staff will provide the service.

25 123. Ms. CARLSON, through her legal representative and power of attorney, JOAN
26 CARLSON, read and reasonably understood BROOKDALE's representations as statements that
27 BROOKDALE would perform assessments to determine needed services and staff
28 BROOKDALE Fountaingrove in a manner that would allow it to consistently provide the

1 services and supervision that BROOKDALE promised she would receive in their memory care
2 unit and for which Ms. CARLSON was paying. Ms. CARLSON, through JOAN CARLSON,
3 relied on these representations in making the decision to move into the memory care unit of
4 BROOKDALE Fountaingrove. BROOKDALE has never disclosed to Ms. CARLSON or JOAN
5 CARLSON that its corporate policy and procedure of providing pre-determined staffing at its
6 facilities precludes BROOKDALE from providing the supervision, care and services residents
7 have been promised and places all residents at a substantial risk that they will not receive the
8 care and services they have paid for on any given day.

9 124. BROOKDALE currently charges Ms. CARLSON a Basic Service Rate of \$5,290
10 per month, plus a Personal Service Rate of \$4,173 per month and a Select and Therapeutic
11 Services rate of \$105 per month, minus a loyalty credit of \$529 per month. Ms. CARLSON's
12 Personal Service Rate includes, among other things, a \$580 monthly fee for staff assistance with
13 ordering, storing, and taking medications; a \$811 monthly fee for staff assistance with dressing
14 and grooming; a \$637 monthly fee for assistance with her oxygen and respiratory equipment; a
15 \$1,507 monthly fee for help setting up, cleaning and assistance with nebulizer treatments; a \$116
16 monthly fee for staff assistance with showering; a \$927 monthly fee for staff assistance with
17 using the bathroom; a \$522 monthly fee for staff assistance with accomplishing and/or
18 participating in daily routines due to memory loss or cognitive impairment; a \$290 monthly fee
19 for help going to and from the dining room and/or community activities; and a \$290 monthly fee
20 for "additional staff involvement because of demonstrating anxious, disruptive or obsessive
21 behavior requiring additional attention." Ms. CARLSON also pays \$100 per month for
22 incontinence supplies, which BROOKDALE represents its staff will order and stock.

23 125. Beginning in early 2016, JOAN CARLSON and her husband Ralph Carlson
24 began to observe a decline in the quality of care provided to Ms. CARLSON. On one occasion,
25 JOAN discovered that despite promising to fax certain paperwork to Ms. CARLSON's primary
26 care physician in advance of a scheduled appointment, BROOKDALE's staff never did so. In
27 addition, JOAN and Ralph CARLSON stopped receiving phone calls to notify them of
28 Ms. CARLSON's injuries and other noteworthy incidents.

1 126. In June 2016, Ms. CARLSON was admitted to the hospital after falling while
2 attempting to get out of bed. BROOKDALE's staff failed to call JOAN or Ralph CARLSON,
3 even though they are listed as Ms. CARLSON's emergency contacts. As a result,
4 Ms. CARLSON spent several hours in the emergency room without a family member present,
5 and she was charged for ambulance transport back to BROOKDALE Fountaingrove because no
6 family member was present to give her a ride.

7 127. In December 2016, Ms. CARLSON's doctor took her off the blood thinner
8 Coumadin. Nonetheless, in January and February 2017, staff at BROOKDALE Fountaingrove
9 continued to order and stock Coumadin for Ms. CARLSON. BROOKDALE charged
10 Ms. CARLSON a monthly fee for staff assistance with ordering and storing medications, even
11 though BROOKDALE's staff failed to adequately perform that service.

12 128. JOAN and Ralph CARLSON have also observed numerous failures by staff to
13 assist Ms. CARLSON with using the bathroom, even though Ms. CARLSON pays a monthly fee
14 for that service. In addition, even though Ms. CARLSON pays a monthly fee for staff to order
15 and stock incontinence products, she has often run out of such products because
16 BROOKDALE's staff do not check whether supplies are running low or if orders need to be
17 adjusted.

18 129. Ms. CARLSON was unable to use the bathroom sink and kitchenette sink in her
19 previous suite because they are installed at a height that makes them inaccessible for wheelchair
20 users. Ms. CARLSON requires glasses to see and dentures to eat, but BROOKDALE staff
21 frequently misplace or lose these assistive devices.

22 130. JOAN and Ralph CARLSON have complained to managers at BROOKDALE
23 Fountaingrove about these problems on numerous occasions. Although BROOKDALE
24 management repeatedly reassured JOAN and Ralph CARLSON that BROOKDALE would
25 address their concerns, they did not see any improvement when Ms. CARLSON resided in
26 assisted living. Since Ms. CARLSON has resided at BROOKDALE Fountaingrove,
27 BROOKDALE has never disclosed that its staffing policies and procedures preclude it from
28 providing its residents all of the care and services they have been promised and places all

1 residents at an inherent and substantial risk that they will not receive the care and services they
2 have paid for on any given day. If BROOKDALE had disclosed this material fact to JOAN
3 CARLSON early in Ms. CARLSON's residency, she would have looked for another facility for
4 Ms. CARLSON and would have told BROOKDALE that Ms. CARLSON would not agree to
5 pay the rates charged by BROOKDALE.

6 131. In December 2017, BROOKDALE told JOAN and Ralph CARLSON that
7 HELEN CARLSON needed to move to memory care, and that she would receive additional
8 supervision and care if she moved to the memory care unit and paid additional
9 fees. BROOKDALE told them that if they did not move Ms. CARLSON into memory care at
10 BROOKDALE Fountaingrove, Ms. CARLSON would have to move out of Fountaingrove
11 entirely, and gave JOAN CARLSON only a little over a week to decide. Because of the short
12 time frame, JOAN CARLSON was unable to investigate whether there were comparable
13 facilities in the area that might have accepted Ms. CARLSON. JOAN CARLSON ultimately
14 felt she had no choice but to move Ms. CARLSON into the memory care unit at BROOKDALE
15 Fountaingrove. Her decision was based on BROOKDALE's representations about additional
16 supervision and care, her fear that Ms. CARLSON would suffer severe trauma if she were to be
17 transferred to an entirely new facility, and the lack of time to investigate other options. In the
18 memory care unit, just as in assisted living, Ms. CARLSON is housed in a room with multiple
19 inaccessible features, including a sink, toilet, and closet that are not wheelchair-accessible.

20 **Lawrence Quinlan**

21 132. LAWRENCE QUINLAN stayed at the facility at BROOKDALE Hemet for
22 short-term respite on several occasions between 2013 and 2015. On approximately July 14,
23 2015, he was admitted to BROOKDALE Hemet for a "respite stay" following a hospitalization
24 and rehabilitation for a broken leg. On July 10, 2015, BROOKDALE gave his granddaughter,
25 LORESIA VALLETTE, a Residency Agreement for LAWRENCE QUINLAN. Ms.
26 VALLETTE read, reviewed, and signed the agreement with BROOKDALE on behalf of
27 LAWRENCE QUINLAN. BROOKDALE did not ask LAWRENCE QUINLAN whether he
28 could sign the document or whether LORESIA VALLETTE held Power of Attorney for him.

1 BROOKDALE did not ask Ms. VALLETTE for documentation showing that she had the legal
2 authority to sign the Residency Agreement on behalf of LAWRENCE QUINLAN.

3 133. LAWRENCE QUINLAN left BROOKDALE Hemet for his home on or about
4 September 5, 2015. On September 13, 2015, he was re-admitted to BROOKDALE Hemet as a
5 long-term resident. Prior to LAWRENCE QUINLAN's move-in, on or about September 13,
6 2015, BROOKDALE gave his son, Phillip Quinlan, a Residency Agreement for LAWRENCE
7 QUINLAN. Phillip Quinlan read, reviewed, and signed the agreement with BROOKDALE on
8 behalf of LAWRENCE QUINLAN. BROOKDALE did not ask LAWRENCE QUINLAN
9 whether he could sign the document or whether Phillip Quinlan held Power of Attorney for him.
10 BROOKDALE did not ask Phillip Quinlan for documentation showing that he had the legal
11 authority to sign the Residency Agreement on behalf of LAWRENCE QUINLAN. In fact, on
12 page 15 of the Residency Agreement, under his signature, Phillip Quinlan filled in the name and
13 contact information of his niece and LAWRENCE QUINLAN's granddaughter, LORESIA
14 VALLETTE, under the section titled "LEGAL REPRESENTATIVE/RESPONSIBLE PARTY
15 ADDRESS." In its Resident Information/Emergency Contact Sheet, BROOKDALE listed
16 LORESIA VALLETTE as Mr. QUINLAN's "Legally Responsible Party" for both "Financial"
17 and "Health Care."

18 134. As part of the "RESIDENCY AGREEMENT" provided first to Ms. VALLETTE
19 and then to Phillip Quinlan, BROOKDALE stated that "[i]n order to provide you with care,
20 supervision and assistance with instrumental activities of daily living in order to meet your
21 needs, we will provide you with the following Basic Services, which are included in the Basic
22 Service Rate." These included, among other things, the room, three daily meals and snacks on
23 demand, weekly room cleaning, weekly laundry and linen service, planned activities,
24 transportation, observation, and the availability of staff "24 hours a day, seven days a week."
25 This standard residency agreement also stated that:

26 [p]rior to moving in and periodically throughout your residency, we will use a
27 personal service assessment to determine the personal services you require. The
28 personal service assessment will be used to develop your Personal Service Plan.

1 The results of the assessment, our method for evaluating your personal care
2 needs, and the cost of providing the additional personal services (the “Personal
3 Service Rate”) will be shared with you.

4 The Personal Service Plan listed the types of staff assistance that Mr. QUINLAN required and
5 had agreed to pay for, along with the monthly fee for each type of staff assistance.

6 135. Mr. QUINLAN’s son, Phillip Quinlan, and his granddaughter, LORESIA
7 VALLETTE, read the agreement on LAWRENCE QUINLAN’s behalf and reasonably
8 understood BROOKDALE’s representations as statements that BROOKDALE would perform
9 assessments to determine needed services and staff BROOKDALE Hemet in a manner that
10 would allow it to consistently provide the services that BROOKDALE promised and for which
11 Mr. QUINLAN was paying. Ms. VALLETTE and Phillip Quinlan relied on these
12 representations in making the decision to place Mr. QUINLAN at BROOKDALE Hemet and to
13 pay BROOKDALE the monthly fees from Mr. QUINLAN’s accounts. BROOKDALE did not
14 disclose to LAWRENCE QUINLAN, Phillip Quinlan, or LORESIA VALLETTE at any time
15 prior to his admission nor has it disclosed since that time that its corporate policy and procedure
16 of providing pre-determined staffing at its facilities precludes BROOKDALE from providing the
17 care and services residents have been promised and places all residents at a substantial risk that
18 they will not receive the care and services they have paid for on any given day. If
19 BROOKDALE had disclosed this material fact to LAWRENCE QUINLAN, Phillip Quinlan, or
20 LORESIA VALLETTE, they would have looked for another facility for Mr. QUINLAN and
21 would not have agreed to pay the rates charged by BROOKDALE from LAWRENCE
22 QUINLAN’s accounts.

23 136. Mr. QUINLAN is a wheelchair-user. He has right hemiparesis and aphasia due
24 to past strokes. He has mild dementia. During the time Mr. QUINLAN was a resident at
25 BROOKDALE Hemet, he required assistance with the following activities of daily living:
26 bathing, personal hygiene, dressing, laundry, housecleaning, taking medication, preparing meals,
27 toileting, and transfers to and from his wheelchair. During Mr. QUINLAN’s long-term stay at
28 BROOKDALE Hemet, he paid for but was not consistently provided that assistance.

1 137. Although he was paying for assistance with laundry, dressing and showering, Mr.
2 QUINLAN's granddaughter and son noticed that he smelled horrible and wore dirty clothing.
3 When Ms. VALLETTE asked BROOKDALE staff why Mr. QUINLAN smelled so bad, they
4 blamed him for refusing to take a shower. BROOKDALE then raised Mr. QUINLAN's monthly
5 personal care rate by \$700, even though they were not giving him the promised showers,
6 because he was "resistant." Ms. VALLETTE requested that BROOKDALE's staff call her if
7 Mr. QUINLAN refused to shower or change his clothing so that she could speak with her
8 grandfather and try to convince him to cooperate. BROOKDALE staff rarely called Ms.
9 VALLETTE, but the facility continued to charge Mr. QUINLAN a premium for showers and
10 dressing assistance they were not providing.

11 138. Over time, BROOKDALE continued to increase Mr. QUINLAN's monthly care
12 rates, blaming his resistance to care. Ms. VALLETTE accepted the care rate increases with the
13 expectation that Mr. QUINLAN would actually receive the services for which BROOKDALE
14 was charging him. Despite the increased fees, BROOKDALE staff rarely provided the promised
15 assistance with showering, dressing or toileting to Mr. QUINLAN. Toward the end of Mr.
16 QUINLAN's stay at BROOKDALE Hemet, the Executive Director told Ms. VALLETTE that
17 they would need to move Mr. QUINLAN to the memory care unit and take away his motorized
18 scooter in order to care for him. This would result in another increase in his monthly rate. In
19 April 2017, frustrated by BROOKDALE's failure to provide the assistance her grandfather
20 needed and for which he was paying increasingly higher fees, Ms. VALLETTE told
21 BROOKDALE that Mr. QUINLAN would be moving out. Prior to the move-out date, Ms.
22 VALLETTE and Phillip Quinlan took Mr. QUINLAN to a physician's office to get a
23 tuberculosis test. When he transferred out of his wheelchair, they saw that the seating pad was
24 soaked with urine and that the plastic was breaking down as a result. It was clear that neither the
25 seating pad nor Mr. QUINLAN had been washed for a very long time. Although Mr.
26 QUINLAN's move-out date was scheduled for early May 2017, Ms. VALLETTE moved him
27 out on April 30, 2017. Mr. QUINLAN is a currently a resident of an unrelated assisted living
28 facility in Riverside, California.

Edward Boris

1 **Edward Boris**
2 139. EDWARD BORIS was a resident at BROOKDALE Fountaingrove’s assisted
3 living facility from approximately September 10, 2015 to approximately July 21, 2016. On or
4 about September 10, 2015, EDWARD BORIS’s daughter MICHELE LYTLE, read, reviewed,
5 and signed a “RESIDENCY AGREEMENT” with BROOKDALE as EDWARD BORIS’s legal
6 representative and power of attorney. As part of this “RESIDENCY AGREEMENT,”
7 BROOKDALE stated that “[i]n order to provide you with care, supervision and assistance with
8 instrumental activities of daily living in order to meet your needs, we will provide you with the
9 following Basic Services, which are included in the Basic Service Rate.” These included,
10 among other things, the room, three daily meals, planned activities, transportation, and the
11 availability of staff “24 hours a day, seven days a week.” This standard residency agreement
12 also stated that:

13 [p]rior to moving in and periodically throughout your residency, we will use a personal
14 service assessment to determine the personal services you require. The personal service
15 assessment will be used to develop your Personal Service Plan. The results of the
16 assessment, our method for evaluating your personal care needs, and the cost of providing
17 the additional personal service (the “Personal Service Rate”) will be shared with you.

18 140. Among the personal services Mr. BORIS required and agreed to pay for were
19 catheter care, changing, and emptying; toileting assistance; assistance going to and from the
20 dining room and other activities; medication administration; pharmacy services, including
21 medication pick-up; assistance bathing; and application of topical anti-fungal medication. On
22 top of a \$4,545 monthly Basic Service Rate, BROOKDALE charged Mr. BORIS a \$2,697
23 monthly personal service fee. In addition to the residency agreement’s promises of adequate
24 care and service provision, Ms. LYTLE received and reviewed a variety of rate increase letters
25 and invoices that listed the fees for services BROOKDALE agreed its caregivers and other staff
26 would provide to Mr. BORIS. Mr. BORIS, through his legal representative and power of
27 attorney, MICHELE LYTLE, read and reasonably understood BROOKDALE’s representations
28 as statements that BROOKDALE would perform assessments to determine needed services and

1 staff BROOKDALE Fountaingrove in a manner that would allow it to consistently provide the
2 services that BROOKDALE promised and for which Mr. BORIS was paying. Mr. BORIS,
3 through MICHELE LYTLE, relied on these representations in making the decision to enter
4 BROOKDALE Fountaingrove and to pay BROOKDALE the monthly fees it charged him.

5 141. BROOKDALE did not disclose to Mr. BORIS or his legal representative at any
6 time prior to his admission nor has it disclosed since that time that its corporate policy and
7 procedure of providing pre-determined staffing at its facilities precludes BROOKDALE from
8 providing the care and services residents have been promised and places all residents at a
9 substantial risk that they will not receive the care and services they have paid for on any given
10 day. If BROOKDALE had disclosed this material fact to Mr. BORIS or his legal representative
11 prior to or early in his residency, they would have looked for another facility for Mr. BORIS and
12 would not have agreed to pay the rates charged by BROOKDALE.

13 142. BROOKDALE staff failed to regularly monitor Mr. BORIS's catheter, even
14 though Mr. BORIS required and paid for that service. On one occasion in May 2016, Mr.
15 BORIS's catheter overflowed, disconnected, and spilled urine all over his room. On July 20,
16 2016, Mr. BORIS's catheter developed a blockage, but BROOKDALE's staff failed to identify
17 or address the problem for about 24 hours. Mr. BORIS's girlfriend, who visited Mr. BORIS at
18 BROOKDALE Fountaingrove on the evening of July 20, noticed blood in the catheter bag and
19 reported it to BROOKDALE's staff. Staff came to Mr. BORIS's room, but they were rushed,
20 failed to identify the blockage, and did nothing to assist Mr. BORIS. Instead, they told Mr.
21 BORIS's girlfriend not to worry. The next day, Mr. BORIS was in extreme pain; there was still
22 a blockage and very little urine appeared in the catheter bag. Mr. BORIS's condition continued
23 to deteriorate and eventually his girlfriend took him to a local hospital, where doctors diagnosed
24 the blocked catheter. As a result of the blockage, Mr. BORIS suffered a urinary tract infection
25 and kidney failure, and had to stay in intensive care for several days. After his discharge from
26 the hospital, Mr. BORIS's condition was so bad that he had to be transferred out of assisted
27 living and into skilled nursing.

28 143. Aware that BROOKDALE's failure to adequately provide the care and services it

1 had promised contributed to Mr. BORIS's declining health, Ms. LYTLE sought to move him out
2 of BROOKDALE's custody. Ms. LYTLE conducted significant research and held onsite
3 interviews with at least three other skilled nursing facilities. However, because Mr. BORIS's
4 condition had deteriorated so significantly, she was unable to find any facility willing to accept
5 Mr. BORIS as a resident. Thus, the same inadequate care that contributed to Mr. BORIS's
6 illness prevented Ms. LYTLE from moving Mr. BORIS into a different facility.

7 144. From February 2016 through the end of his time in BROOKDALE's assisted
8 living facility, Mr. BORIS had a recurring fungal infection on his legs and in his groin area. His
9 doctor ordered him to keep the area clean and apply a topical medication twice a day. Even
10 though Mr. BORIS paid thousands of dollars per month for necessary personal services,
11 including help with bathing and administering medications, BROOKDALE staff failed to bathe
12 Mr. BORIS or apply his topical medication regularly. As a result, the infection persisted for
13 months. At times, the infected area was bloody and emitted a foul odor that pervaded Mr.
14 BORIS's room.

15 145. Mr. BORIS takes a blood thinning medication as well as several other
16 medications. When he was in assisted living at BROOKDALE Fountaingrove, he paid \$726 per
17 month for staff assistance with ordering, storing, and administering his medications, but
18 BROOKDALE staff regularly failed to perform these tasks. At one point in May 2016,
19 BROOKDALE staff failed to give Mr. BORIS his blood thinning medication for three days
20 straight. The problem was discovered only after Mr. BORIS's girlfriend noticed the lapse. On
21 several other occasions, staff failed to refill Mr. BORIS's prescriptions, so his girlfriend had to
22 pick them up herself. One time, Mr. BORIS's medication for his fungal infection ran out and
23 staff failed to replace it for several days.

24 146. One of the main reasons MICHELE LYTLE sought out an assisted living facility
25 for her father was that Mr. BORIS needed regular staff assistance to prevent and respond to falls.
26 However, on numerous occasions during his stay in the BROOKDALE Fountaingrove assisted
27 living facility, Mr. BORIS fell in his room and was left on the ground for extended periods of
28 time because the facility was so understaffed employees could not regularly check on him.

1 When Ms. LYTLE reported this problem to staff at BROOKDALE Fountaingrove, they
2 dismissed the falls as minor even though Mr. BORIS had bruises on his body. Other times, even
3 though BROOKDALE had agreed to provide Mr. BORIS with toileting assistance multiple
4 times per day and charged him a substantial monthly fee for that service, he was left sitting in
5 his own feces because BROOKDALE staff failed to check on him or help him use the bathroom.
6 When he resided in assisted living, Mr. BORIS had difficulty getting around on his own, even
7 with the assistance of a walker or wheelchair. He is also very introverted. As a result, he
8 seldom left his room for meals unless prompted by staff. Although BROOKDALE charged Mr.
9 BORIS a monthly fee for help going to and from the dining room, staff frequently failed to
10 prompt Mr. BORIS at mealtimes or bring him food from the dining room, so he often missed
11 meals. BROOKDALE charged Mr. BORIS \$5 per meal when meals were supposedly brought
12 to his room. However, when Ms. LYTLE asked BROOKDALE staff how often her father had
13 been eating, they were unable to answer. Because BROOKDALE often failed to prompt Mr.
14 BORIS to attend meals or to supply them in his room, Mr. BORIS relied on his girlfriend to take
15 prepared food to him.

16 147. Even though BROOKDALE promises weekly laundry service in its residency
17 agreement, staff frequently failed to wash Mr. BORIS's clothes and laundry on a weekly basis.
18 In addition, staff often dumped Mr. BORIS's clean laundry in a pile in his room, even though he
19 was not capable of putting it away himself. MICHELE LYTLE brought these problems to the
20 attention of managers at BROOKDALE Fountaingrove. BROOKDALE management assured
21 Ms. LYTLE that they were working to address her concerns, but she never saw significant
22 improvement during the time that Mr. Boris resided in assisted living. Mr. BORIS ultimately
23 had to move out of assisted living precisely because of a serious infection he developed due to
24 BROOKDALE staff's failure to monitor his catheter. BROOKDALE has never disclosed to Mr.
25 BORIS or Ms. LYTLE that its staffing policies and procedures preclude it from consistently
26 providing its residents the care and services they have been promised and places all residents in
27 an inherent and substantial risk that they will not receive the care and services they have paid for
28 on any given day. However, several low-level, non-managerial BROOKDALE employees

1 admitted to Ms. LYTLE that the BROOKDALE Fountaingrove assisted living facility was
2 understaffed, that caregivers' hours were being cut, and that they did not have enough time or
3 resources to adequately attend to Mr. BORIS and the other residents.

4 **Ralph Schmidt**

5 148. RALPH SCHMIDT is 53 years old, is blind, and has significant cognitive
6 impairments, including short-term memory loss. Both his blindness and cognitive impairments
7 are the result of a traumatic brain injury suffered more than 20 years ago. Mr. SCHMIDT has a
8 court-appointed conservator who manages his financial, medical, and legal affairs. He needs
9 assistance with the following activities of daily living: housekeeping, laundry, navigating when
10 outside of his dwelling, preparing nutritious meals, and transportation.

11 149. RALPH SCHMIDT was a resident at the assisted living facility currently known
12 as BROOKDALE Tracy from approximately September 2011 to October 30, 2017. The
13 BROOKDALE Tracy facility was operated by Emeritus when Mr. SCHMIDT moved in.
14 However, BROOKDALE took over operation of the facility following its merger with Emeritus.

15 150. In or about April 2014, Emeritus announced that it would merge with
16 BROOKDALE. At the time of the merger, Mr. SCHMIDT's then-conservator and legal
17 representative, Ms. Gallagher, had no reason to believe that the care Mr. SCHMIDT would
18 receive from BROOKDALE would be any worse than the care he had received under Emeritus.
19 BROOKDALE did not inform Mr. SCHMIDT or his conservator nor did they have any reason
20 to believe that BROOKDALE would not staff the facility with sufficient staff in numbers and
21 training to provide the services for which Mr. SCHMIDT and the other residents were paying.

22 151. After taking over operations at the Tracy assisted living facility, BROOKDALE,
23 on or about July 5, 2016, required Ms. Gallagher, Ms. FISHER's predecessor as RALPH
24 SCHMIDT's conservator, to execute an updated Residency Agreement with BROOKDALE on
25 Mr. SCHMIDT's behalf. As part of this "RESIDENCY AGREEMENT," BROOKDALE stated
26 that "[i]n order to provide you with care, supervision and assistance with instrumental activities
27 of daily living in order to meet your needs, we will provide you with the following Basic
28 Services, which are included in the Basic Service Rate." These included, among other things,

1 the room, three daily meals, housekeeping, laundry and linen service, planned social activities,
2 transportation, and the availability of staff “24 hours a day, seven days a week.” This standard
3 residency agreement also stated that:

4 [p]rior to moving in and periodically throughout your residency, we will use a personal
5 service assessment to determine the personal services you require. The personal service
6 assessment will be used to develop your Personal Service Plan. The results of the
7 assessment, our method for evaluating your personal care needs, and the cost of providing
8 the additional personal service (the “Personal Service Rate”) will be shared with you.

9 Among the personal services Mr. SCHMIDT required were assistance navigating from his
10 second-floor room to the dining room at meal times and to other community spaces, prompts to
11 engage in community and social activities, and medication management. In exchange for these
12 necessary services, as of July 2016, Mr. SCHMIDT payed a monthly fee of over \$1,000 in
13 addition to his basic service rate.

14 152. Mr. SCHMIDT, through his conservator, read and reasonably understood
15 BROOKDALE’s representations as statements that BROOKDALE would perform assessments
16 to determine needed services and staff BROOKDALE Tracy in a manner that would allow it to
17 consistently provide the services that BROOKDALE promised and for which Mr. SCHMIDT
18 was paying. Mr. SCHMIDT, through his conservator, relied on these representations in making
19 the decision to remain at BROOKDALE Tracy and to pay BROOKDALE the monthly fees it
20 charged him. BROOKDALE did not disclose to Mr. SCHMIDT or his legal representative at
21 any time that its corporate policy and procedure of providing pre-determined staffing at its
22 facilities precludes BROOKDALE from providing the care and services residents have been
23 promised and places all residents at a substantial risk that they will not receive the care and
24 services they have paid for on any given day. If BROOKDALE had disclosed this material fact
25 to Mr. SCHMIDT or his legal representative, they would have looked much sooner for another
26 facility for Mr. SCHMIDT and would not have agreed to pay the rates charged by
27 BROOKDALE from Mr. SCHMIDT’s estate’s funds.

28 153. During his time with BROOKDALE, Mr. SCHMIDT lived in a second-floor

1 room. Because of his blindness, short-term memory loss, and other cognitive impairments,
2 Mr. SCHMIDT was unable to navigate to the dining room or other public areas from the second
3 floor, which would have required him to use stairs or operate an elevator. Placement on the
4 second floor caused Mr. SCHMIDT to require the assistance of BROOKDALE staff for escort
5 services he would not have needed had he been on the first floor, and BROOKDALE mandated
6 that Mr. SCHMIDT pay for the escort services he received. Thus the second-floor placement
7 both unnecessarily reduced Mr. SCHMIDT's autonomy and increased the fees he paid to
8 BROOKDALE. A first-floor room would have provided Mr. SCHMIDT greater autonomy and
9 would have reduced BROOKDALE's charges for escort services. However, when Ms.
10 Gallagher asked if Mr. SCHMIDT could be moved to an apartment that would accommodate his
11 needs, BROOKDALE responded that a first-floor room would be more expensive and would
12 thus negate any savings from the elimination of escort fees.

13 154. Because Mr. SCHMIDT required staff assistance to navigate from his second-
14 floor room to the dining room and other common areas, he frequently waited for staff to come
15 and assist him. Mr. SCHMIDT used a call button to summon an escort for each meal and
16 typically waited twenty to thirty minutes before a BROOKDALE staff member would arrive.
17 Mr. SCHMIDT faced similarly lengthy waits when he wanted to return to his room. These waits
18 greatly frustrated Mr. SCHMIDT.

19 155. BROOKDALE responded to Mr. SCHMIDT's frustration and need for
20 appropriate accommodations in shockingly inappropriate ways. Professing to be concerned that
21 Mr. SCHMIDT might harm someone with his tapping cane, BROOKDALE staff once took it
22 away from him for several weeks. This rendered Mr. SCHMIDT unable to safely navigate
23 around even the first floor of the BROOKDALE Tracy facility. BROOKDALE staff did not
24 return Mr. SCHMIDT's tapping cane until his conservator personally intervened. On other
25 occasions, BROOKDALE staff failed to provide Mr. SCHMIDT with a tapping cane or notify
26 his conservator of his need for one when his previous cane was broken and unusable.
27 BROOKDALE's response to Mr. SCHMIDT's frustration with slow staff responses to calls for
28 assistance simply rendered Mr. SCHMIDT more dependent on BROOKDALE staff.

1 156. Several times during Mr. SCHMIDT's years at BROOKDALE, he formed
2 relationships with other residents who would assist him in navigating from his apartment to the
3 dining room at meals times. During these periods in which Mr. SCHMIDT had the assistance of
4 other residents, he did not rely on BROOKDALE staff as frequently for escort services.
5 Nevertheless, BROOKDALE continued to charge Mr. SCHMIDT the same escort fee.

6 157. Because of his short-term memory loss and other cognitive impairments, Mr.
7 SCHMIDT occasionally lost the key to the door of his apartment during his time at
8 BROOKDALE Tracy. On one occasion, rather than replace his key, BROOKDALE staff gave
9 Mr. SCHMIDT a blank, uncut key, and told him that it was the key to his apartment. Mr.
10 SCHMIDT believed what BROOKDALE staff told him and could not understand why the key
11 would not unlock his door. This caused Mr. SCHMIDT great distress and made him
12 unnecessarily reliant on BROOKDALE staff to open his apartment door when he wanted to
13 enter his room.

14 158. On several occasions the toilet in Mr. SCHMIDT's apartment overflowed.
15 BROOKDALE responded by locking Mr. SCHMIDT out of the bathroom in his apartment
16 altogether. Rather than fix the problems with the toilet, BROOKDALE gave Mr. SCHMIDT,
17 via his conservator, HEATHER FISHER, the option of a portable toilet in Mr. SCHMIDT's
18 room or paying for a full-time personal caretaker at the additional cost of \$250 per day. Mr.
19 SCHMIDT's estate was unable to bear the expense of a full-time personal caretaker, so Ms.
20 FISHER reluctantly accepted the option of a portable toilet. However, BROOKDALE failed to
21 regularly empty the toilet, which caused Mr. SCHMIDT's room to have an unpleasant odor. Mr.
22 SCHMIDT responded by routinely emptying the portable toilet himself, directly onto the roof
23 outside of his window. Aware of the problem and Mr. SCHMIDT's response, BROOKDALE
24 failed to remove fecal matter sitting just outside of Mr. SCHMIDT's window.

25 159. Mr. SCHMIDT also disliked using the portable toilet as he found it too small for
26 him to comfortably sit on. He would have preferred to use a toilet outside of his room, but staff
27 responded so slowly to his call button that calling for an escort to a bathroom was not a realistic
28 option. On one occasion, he pressed his call button to use the bathroom around 11:00 p.m., and

1 no staff member ever responded.

2 160. Denial of access to his bathroom also meant that Mr. SCHMIDT could not
3 shower without the assistance of BROOKDALE staff. Having locked him out of his bathroom,
4 BROOKDALE staff allowed Mr. SCHMIDT to shower only twice per week, usually at night.
5 This too distressed Mr. SCHMIDT, as he preferred to shower more frequently and to do so in
6 the morning. Moreover, if Mr. SCHMIDT was engaged in an activity and declined to shower at
7 the moment the opportunity was offered, he could shower only once per week.

8 161. Although BROOKDALE promised to provide housekeeping among its basic
9 services, Mr. SCHMIDT's apartment was not well cared for and was rarely clean. His carpets
10 were covered with stains and frequently dirty. The windows to his room had no blinds, and the
11 screens had been almost completely torn off. Before BROOKDALE locked Mr. SCHMIDT out
12 of the bathroom in his apartment, BROOKDALE also failed to keep it clean. The bathroom was
13 frequently dirty and unhygienic.

14 **Art Lindstrom**

15 162. ART LINDSTROM was a resident of BROOKDALE Scotts Valley from
16 approximately November 2015 until his death on February 23, 2018. His wife, PAT
17 LINDSTROM, has also been a resident of BROOKDALE Scotts Valley from approximately
18 November 2015 and remains a resident of the facility. On or about October 31, 2015, ART
19 LINDSTROM and his wife PAT LINDSTROM read, reviewed, and signed a "RESIDENCY
20 AGREEMENT" with BROOKDALE. As part of this "RESIDENCY AGREEMENT,"
21 BROOKDALE stated that "[i]n order to provide you with care, supervision and assistance with
22 instrumental activities of daily living in order to meet your needs, we will provide you with the
23 following Basic Services, which are included in the Basic Service Rate." These included,
24 among other things, the room, three daily meals, planned activities, transportation, ongoing
25 observation and consultation regarding social and health care needs, and the availability of staff
26 "24 hours a day, seven days a week."

27 163. BROOKDALE also provided a standard form further elaborating on the
28 "Services and Care Covered by [the] Basic Service Rate." These services and care described

1 included “housekeeping,” “routine wellness monitoring,” “consultation with [a] Brookdale
2 clinical team,” and “signature dining programs with nutritious meals and snacks planned by a
3 registered dietician.”

4 164. Mr. and Ms. LINDSTROM read and reasonably understood BROOKDALE’s
5 representations in the RESIDENCY AGREEMENT and other standard documents as statements
6 that BROOKDALE would staff the Scotts Valley facility in a manner that would allow it to
7 consistently provide them with the care, supervision and assistance they needed and for which
8 they were paying BROOKDALE, which included the services and care covered by the Basic
9 Service Rate. Mr. and Ms. LINDSTROM relied on these representations in making the decision
10 to enter BROOKDALE Scotts Valley. BROOKDALE did not disclose to Mr. and Ms.
11 LINDSTROM at any time prior to their admission nor has it disclosed since that time that its
12 corporate policy and procedure of providing predetermined staffing at its facilities precludes
13 BROOKDALE from providing the care and services residents have been promised and places all
14 residents at a substantial risk that they will not receive the care and services they have paid for
15 on any given day. If BROOKDALE had disclosed this material fact to Mr. and Ms.
16 LINDSTROM prior to or early in their residency, they would have looked for another facility
17 and would not have agreed to pay the rates charged by BROOKDALE.

18 165. When Mr. and Ms. LINDSTROM moved in to BROOKDALE, their “basic
19 service rate” was approximately \$5,900 per month plus an additional \$400 monthly second-
20 resident fee. In addition to these recurring charges, Mr. and Ms. LINDSTROM were made to
21 pay move-in fees totaling more than \$8,000. When Mr. and Ms. LINDSTROM moved from
22 their initial two-bedroom suite into a studio apartment, their rate decreased to \$4,295 per month
23 plus the \$400 monthly second-resident fee.

24 166. During his residency at BROOKDALE Scotts Valley, Mr. LINDSTROM was
25 diabetic; used a cane to walk; suffered from kidney failure, heart disease, and sleep apnea; had a
26 dementia-related cognitive impairment; and had difficulty controlling his weight. He required
27 assistance with the following activities of daily living: bathing, shaving, administration of
28 medication, dressing, laundry, and preparing nutritious meals. Because Mr. and Ms.

1 LINDSTROM could not afford the additional care fees related to many of these activities, Ms.
2 LINDSTROM assisted Mr. LINDSTROM with most of these tasks. However, Mr. and Ms.
3 LINDSTROM sought and BROOKDALE promised to provide assistance with preparing
4 nutritious meals and snacks planned by a registered dietician and to personally assess and
5 provide necessary health and social services. These promises were among the principal reasons
6 Mr. and Ms. LINDSTROM decided to live at BROOKDALE Scotts Valley. Although
7 BROOKDALE promised to prepare meals appropriate for Mr. LINDSTROM's personal
8 condition as part of its basic services, it failed to do so.

9 167. After they moved in to BROOKDALE Scotts Valley, Mr. and Ms. LINDSTROM
10 discovered that there was no registered dietician on staff to make sure Mr. LINDSTROM
11 received meals appropriate for his condition. Mr. and Ms. LINDSTROM also discovered that
12 BROOKDALE's policy and practice of understaffing prevented kitchen staff from preparing and
13 serving Mr. LINDSTROM meals appropriate for someone with diabetes. Because there were
14 too few staff to pay attention to individual residents' dietary needs, those who were unfamiliar
15 with Mr. LINDSTROM's condition and personal health requirements often served him
16 oversized portions of foods unsuitable for a diabetic when they noticed he was a large man.
17 Mr. LINDSTROM's cognitive impairment made it especially difficult for him to resist tempting
18 but unhealthy food once it was on his plate.

19 168. The lack of adequate staffing left Mr. LINDSTROM without the individualized
20 nutritional attention and assistance he required. As a result, after moving into BROOKDALE,
21 Mr. LINDSTROM gained 20 pounds, which exacerbated his difficulty walking and put him at
22 increased risk of complications from diabetes. Because his dementia was also exacerbated by
23 his diabetes, Mr. LINDSTROM's cognitive decline may have accelerated.

24 169. When the Mr. and Ms. LINDSTROM moved in to BROOKDALE Scotts Valley,
25 there was an onsite physical therapist available to advise and assist residents with recovery from
26 injuries. The availability of a physical therapist was attractive to Mr. and Mrs. LINDSTROM,
27 and they relied on BROOKDALE's representation that the onsite physical therapist would be
28 available to them. They also understood that BROOKDALE's promise to provide continuous

1 monitoring and consultation on health would include keeping an onsite physical therapist on
2 staff.

3 170. Approximately six months after Mr. and Ms. LINDSTROM arrived at
4 BROOKDALE Scotts Valley, however, the physical therapist left, and BROOKDALE has failed
5 to hire a replacement. After entering BROOKDALE, Mr. LINDSTROM suffered a knee injury
6 and would have used the onsite physical therapist's services during his recovery had that been an
7 option. Instead, Mr. LINDSTROM had to seek less convenient physical therapy services outside
8 of the BROOKDALE facility.

9 **Bernie Jestrabek-Hart**

10 171. BERNIE JESTRABEK-HART has been a resident of BROOKDALE Scotts
11 Valley since approximately October 17, 2015. On or about September 30, 2015, BERNIE
12 JESTRABEK-HART read, reviewed, and signed a "RESIDENCY AGREEMENT" with
13 BROOKDALE. As part of this "RESIDENCY AGREEMENT," BROOKDALE stated that
14 "[i]n order to provide you with care, supervision and assistance with instrumental activities of
15 daily living in order to meet your needs, we will provide you with the following Basic Services,
16 which are included in the Basic Service Rate." These included, among other things, the room,
17 three daily meals, planned activities, transportation, and the availability of staff "24 hours a day,
18 seven days a week." This standard residency agreement also stated that:

19 [p]rior to moving in and periodically throughout your residency, we will use a personal
20 service assessment to determine the personal services you require. The personal service
21 assessment will be used to develop your Personal Service Plan. The results of the
22 assessment, our method for evaluating your personal care needs, and the cost of
23 providing the additional personal service (the "Personal Service Rate") will be shared
24 with you.

25 The Personal Service Plan lists the types of staff assistance that Ms. JESTRABEK-HART
26 requires and has agreed to pay for, along with the monthly fee for each type of staff assistance.
27 Ms. JESTRABEK-HART has also received and reviewed a variety of rate increase letters and
28 invoices that list the fees for services BROOKDALE agreed its caregivers and other staff would

1 provide to her.

2 172. Ms. JESTRABEK-HART read and reasonably understood BROOKDALE's
3 representations in the RESIDENCY AGREEMENT, invoices and rate increase letters as
4 statements that BROOKDALE would perform assessments to determine needed services and
5 staff BROOKDALE Scotts Valley in a manner that would allow it to consistently provide the
6 services that BROOKDALE promised and for which Ms. JESTRABEK-HART was paying.
7 Ms. JESTRABEK-HART relied on these representations in making the decision to enter
8 BROOKDALE Scotts Valley. BROOKDALE did not disclose to Ms. JESTRABEK-HART at
9 any time prior to her admission nor has it disclosed since that time that its corporate policy and
10 procedure of providing predetermined staffing at its facilities precludes BROOKDALE from
11 providing the care and services residents have been promised and places all residents at a
12 substantial risk that they will not receive the care and services they have paid for on any given
13 day. If BROOKDALE had disclosed this material fact to Ms. JESTRABEK-HART prior to or
14 early in her residency, she would have looked for another facility and would not have agreed to
15 pay the rates charged by BROOKDALE.

16 173. When Ms. JESTRABEK-HART moved in to BROOKDALE, her "basic service
17 rate" was approximately \$3,700 per month. In addition, Ms. JESTRABEK-HART would pay a
18 monthly fee of \$750 for assistance showering at least four times per week and daily dressing and
19 undressing. These personal care services were among the principal reasons Ms. JESTRABEK-
20 HART sought to live in an assisted-living setting. Over and above these monthly payments,
21 BROOKDALE required Ms. JESTRABEK-HART to pay approximately \$1,350 in move-in
22 fees.

23 174. Despite these hefty monthly rates and move-in fees, BROOKDALE began to
24 increase Ms. JESTRABEK-HART's basic service rate just months after her arrival and at least
25 annually thereafter. By January 2018, BROOKDALE had increased Ms. JESTRABEK-HART's
26 basic service rate to \$4,477, a 21% increase above her initial rate of \$3,700 in just over two
27 years. In January 2018, BROOKDALE increased Ms. JESTRABEK-HART's fee for assistance
28 with dressing and showering from \$750 to \$834 per month, an 11.2% increase.

1 175. Ms. JESTRABEK-HART uses an electric wheelchair and cane for mobility, and
2 many common areas at BROOKDALE Scotts Valley are difficult or dangerous for her and
3 others with mobility disabilities to access. A number of doors that connect common indoor
4 space to outdoor courtyards are heavy and difficult to open. Several doors to laundry rooms and
5 bathrooms in common spaces are also heavy and difficult to open. Attempting to open these
6 doors is dangerous for Ms. JESTRABEK-HART, as the weight of the door could injure her
7 directly or cause her to fall.

8 176. Lack of safety precautions in laundry rooms at BROOKDALE Scotts Valley
9 present unreasonable risk to residents with mobility disabilities. On one occasion, Ms.
10 JESTRABEK-HART tripped getting up from her wheelchair and fell onto the floor of the
11 laundry room. This laundry room is in a secluded corner of the facility enclosed by a heavy door
12 and lacks emergency pull cords for residents to use in case of a fall. Accordingly, Ms.
13 JESTRABEK-HART had no way to summon help. Fortunately, another individual whom Ms.
14 JESTRABEK-HART believes to have been a resident was nearby and found Ms. JESTRABEK-
15 HART on the floor. Ms. JESTRABEK-HART informed BROOKDALE of the need for
16 emergency pull cords in the laundry after her fall, but BROOKDALE has taken no action.
17 Ms. JESTRABEK-HART continues to do her own laundry. BROOKDALE's failure to remedy
18 the dangerous conditions in the laundry rooms at BROOKDALE Scotts Valley puts Ms.
19 JESTRABEK-HART at continuing risk of serious injury.

20 177. Ms. JESTRABEK-HART enjoys getting out of the BROOKDALE Scotts Valley
21 facility and participating in off-site activities. She had been able to take her electric wheelchair
22 on a bus provided by her previous assisted-living residence. Prior to moving into
23 BROOKDALE Scotts Valley, Ms. JESTRABEK-HART looked at BROOKDALE's website
24 and saw that BROOKDALE offered free bus transportation to doctor's visits, social outings and
25 other offsite activities. That service was among the major selling points for Ms. JESTRABEK-
26 HART, and she relied on BROOKDALE's representations that she would be able to participate
27 in outings on the bus. After moving in, she was surprised to learn that the transportation
28 schedule was very limited and that BROOKDALE would not allow her to take her electric

1 wheelchair on the bus. Her electric wheelchair is Ms. JESTRABEK-HART's primary means of
2 personal transportation and is necessary for her to participate on shopping trips and other outings
3 that require mobility upon arrival. BROOKDALE has proposed that Ms. JESTRABEK-HART
4 use a non-motorized wheelchair on these outings, but that would leave Ms. JESTRABEK-HART
5 stranded upon arrival because she needs an electric wheelchair for mobility.

6 178. BROOKDALE's understaffing and failure to plan for emergencies has also
7 negatively affected Ms. JESTRABEK-HART. On one occasion, a power outage caused the
8 elevators to cease to function, stranding Ms. JESTRABEK-HART, whose room is on the
9 facility's second floor, on a lower level. BROOKDALE staff helped some residents get up to
10 their rooms, but were unable to help Ms. JESTRABEK-HART and other residents who are
11 wheelchair users. She and other residents with mobility disabilities waited for three to four
12 hours before firefighters arrived to assist those who could not walk up the stairs. Because of
13 BROOKDALE's inadequate staffing and emergency planning, many residents were stranded
14 away from their rooms late into the night.

15 179. While the power was out, Ms. JESTRABEK-HART was unable to use her
16 continuous positive airway pressure ("CPAP") machine, which she requires to sleep due to sleep
17 apnea. BROOKDALE Scotts Valley had only one electrical outlet that was generator-powered,
18 which was located on the first floor near the nurse's office. As a result, the outlet was not
19 accessible to Ms. JESTRABEK-HART. BROOKDALE staff did not attempt to connect
20 Ms. JESTRABEK-HART's CPAP machine to a generator-powered outlet.

21 180. While Ms. JESTRABEK-HART does not require assistance to get to and from
22 meals, she has witnessed those who do need assistance wait for long periods before a staff
23 member is available to help. On one occasion, Ms. JESTRABEK-HART and others waited with
24 a resident who was left in the lunchroom for over an hour and a half following the end of the
25 meal before she received the assistance she needed to return to her room.

26 181. Ms. JESTRABEK-HART requires assistance with dressing and bathing and
27 currently pays BROOKDALE \$834 per month for these services. When deciding whether to
28 move in to BROOKDALE Scotts Valley, among the items most important to Ms. JESTRABEK-

1 HART was that she receive assistance showering at least four times per week, and she relied on
 2 BROOKDALE's representation that it would be able to meet this need. Ms. JESTRABEK-
 3 HART usually informs BROOKDALE staff after dinner that she is ready to shower. She
 4 frequently waits for two to three hours before a staff member can assist her. On multiple
 5 occasions, Ms. JESTRABEK-HART has waited so long that she has gone to sleep only to be
 6 awakened by a staff member who has finally come to provide the necessary assistance. Other
 7 times, BROOKDALE has canceled a previously scheduled shower altogether.

8 182. With respect to assistance dressing, Ms. JESTREBEK-HART has asked for
 9 BROOKDALE staff to come to help her around the time she wakes at 7:00 a.m. Often,
 10 however, she will wait until 8:30 a.m. or 9:00 a.m. before staff arrive to assist her. Similarly,
 11 she often waits for long periods for assistance undressing in the evenings. On several occasions
 12 when help has not come, Ms. JESTREBEK-HART has slept in her clothes and shoes, which can
 13 cause pain in her feet and make it otherwise difficult to get comfortable. BROOKDALE staff
 14 has told her, often in the evening around 8:30 p.m. and sometimes in the morning around 7:00
 15 a.m., that these delays occur because only one staff member is on duty to meet the needs of 150
 16 residents.

17 CLASS ALLEGATIONS

18 183. The named Plaintiffs bring this action on behalf of themselves and all persons
 19 similarly situated and seek class certification pursuant to Federal Rule of Civil Procedure
 20 23(b)(2) and/or (b)(3) as set forth below.

21 184. **Class Definitions.**

22 Plaintiffs STACIA STINER, HELEN CARLSON, LAWRENCE QUINLAN; EDWARD
 23 BORIS; RALPH SCHMIDT; PATRICIA LINDSTROM as successor-in-interest to the Estate of
 24 ARTHUR LINDSTROM; and BERNIE JESTRABEK-HART seek to represent the following
 25 three classes:

26 RESIDENTS WITH MOBILITY OR VISUAL DISABILITIES CLASS: All persons with
 27 disabilities who use wheelchairs, scooters, canes or other mobility aids or who have visual
 28 disabilities and who reside or have resided at a residential care facility for the elderly

1 located in California and owned, operated and/or managed by BROOKDALE during the
2 CLASS PERIOD, including their successors-in-interest if deceased.

3 RESIDENTS WITH DISABILITIES CLASS: All persons with disabilities who require
4 assistance with activities of daily living and who reside or have resided at a residential care
5 facility for the elderly located in California and owned, operated and/or managed by
6 BROOKDALE during the CLASS PERIOD, including their successors-in-interest if
7 deceased.

8 FALSE OR MISLEADING STATEMENTS CLASS: All persons who resided or reside at
9 one of the residential care facilities for the elderly located in California and owned,
10 operated, and/or managed by BROOKDALE during the CLASS PERIOD and who
11 contracted with BROOKDALE or another assisted living facility for services for which
12 BROOKDALE was paid money, including their successors-in-interest if deceased.

13 185. The CLASS PERIOD is defined as commencing three years prior to the filing of
14 this action for the RESIDENTS WITH MOBILITY OR VISUAL DISABILITIES CLASS and
15 commencing on May 16, 2015 for the RESIDENTS WITH DISABILITIES CLASS and the
16 FALSE OR MISLEADING STATEMENTS CLASS.

17 186. Excluded from the above-referenced class are the officers, directors, and
18 employees of BROOKDALE, and any of Defendants' shareholders or other persons who hold a
19 financial interest in BROOKDALE. Also excluded is any judge assigned to hear this case (or
20 any spouse or family member of any assigned judge), or any juror selected to hear this case.

21 187. This action is brought as a class action and may properly be so maintained
22 pursuant to Federal Rule of Civil Procedure 23 and applicable case law. In addition to
23 declaratory and injunctive relief, this action seeks class-wide damages pursuant to California
24 Civil Code § 52(a) in the amount of \$4,000 per class member based on Defendants' wrongful
25 policy and practice of failing to provide residents with disabilities with full and equal access to
26 and enjoyment of the services, goods, facilities, privileges, and/or advantages of
27 BROOKDALE's assisted living facilities as alleged herein. It also seeks class-wide statutory
28 and punitive damages based on Defendants' misrepresentations, misleading statements, and

1 material omissions, including \$5,000 per class member pursuant to California Civil Code
2 § 1780(b). This action also seeks treble damages pursuant to both California Civil Code § 52(a)
3 and California Civil Code § 3345(b)(2) and (3). This action does not seek recovery for personal
4 injuries or emotional distress that may have been caused by Defendants' conduct alleged herein.

5 188. **Ascertainability.** Members of the proposed Class are identifiable and
6 ascertainable. BROOKDALE retains admission contracts, resident service plans, and billing
7 statements for all persons who currently reside or resided at BROOKDALE facilities during the
8 CLASS PERIOD.

9 189. **Impracticability of Joinder (Numerosity of the Class).** The members of the
10 proposed class are so numerous that joinder of all such persons is impracticable and the
11 disposition of their claims in a class action is a benefit both to the parties and to this Court. On
12 information and belief, the number of persons in this case exceeds 5,000 persons. The number
13 of persons in the class and their identities and addresses may be ascertained from Defendants'
14 records.

15 190. **Questions of Fact and Law Common to the Class.** All members of the class
16 have been and continue to be denied their civil rights to full and equal access to, and use and
17 enjoyment of, the services and facilities operated by the BROOKDALE because of the
18 violations of disability nondiscrimination laws, the CLRA, and Elder Abuse laws alleged herein.
19 There are numerous questions of law and fact common to the class, including, but not limited to,
20 the following:

- 21 a. Whether BROOKDALE's assisted living facilities are public
22 accommodations within the meaning of Title III of the ADA;
- 23 b. Whether BROOKDALE and its assisted living facilities are business
24 establishments within the meaning of the Unruh Civil Rights Act;
- 25 c. Whether BROOKDALE constructed or altered any of its assisted living
26 facilities after January 26, 1993;
- 27 d. Whether BROOKDALE's facilities that were newly constructed or altered
28 between January 26, 1993 and March 15, 2012 comply with the

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requirements of the Americans with Disabilities Act Accessibility Guidelines;

- e. Whether BROOKDALE constructed or altered any of its facilities after March 15, 2012;
- f. Whether BROOKDALE’s facilities that were constructed or altered after March 15, 2012 comply with the 2010 ADA Standards for Accessible Design;
- g. Whether BROOKDALE has removed physical access barriers where doing so was readily achievable as required by Title III of the ADA;
- h. Whether Plaintiffs are being denied full and equal access to and enjoyment of BROOKDALE’s goods, services, facilities, privileges, advantages or accommodations;
- i. Whether Plaintiffs requested that BROOKDALE make reasonable modifications in policies, practices and/or procedures by providing its facilities with a sufficient number of adequately trained staff to ensure that residents with disabilities receive full and equal access to and enjoyment of the services specified in BROOKDALE’s own resident assessments;
- j. Whether Plaintiffs’ requested modification in policies, practices or procedures is reasonable;
- k. Whether Plaintiffs’ requested modification in policies, practices or procedures is necessary to ensure that residents with disabilities have full and equal access to and enjoyment of BROOKDALE’s goods, services, facilities, privileges, advantages and accommodations as required by Title III of the ADA;
- l. Whether BROOKDALE has provided Plaintiffs with full and equal access to and enjoyment of its transportation services and activities as required by Title III of the ADA;
- m. Whether BROOKDALE has provided Plaintiffs with full and equal access

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to and enjoyment of its services and facilities with respect to emergency planning and evacuation;

- n. Whether BROOKDALE, by its actions and omissions alleged herein, has engaged in a pattern and practice of discriminating against Plaintiffs and other residents with disabilities in violation of the ADA and the Unruh Civil Rights Act;
- o. Whether BROOKDALE has violated and continues to violate the Consumer Legal Remedies Act, California Civil Code §§ 1750 *et seq.*, by promising residents that it will provide care and services including those identified by resident assessments, when BROOKDALE knows that its corporate policy and procedure of providing pre-determined staffing at its facilities precludes BROOKDALE from providing the care and services residents have been promised and places all residents at a substantial risk that they will not receive the care and services they have paid for on any given day;
- p. Whether BROOKDALE’s misrepresentations, misleading statements and omissions regarding the staffing of its facilities as alleged herein were and are material to the reasonable consumer;
- q. Whether by making the misrepresentations, misleading statements and material omissions alleged in this Complaint, BROOKDALE violated and continues to violate California Business & Professions Code §§ 17200, *et seq.* (“UCL”);
- r. Whether BROOKDALE had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs and the class;
- s. Whether the Plaintiffs, the class, and the consuming public were likely to be deceived by the foregoing concealment and omission;
- t. Whether the Plaintiffs, the class, and the consuming public have a reasonable expectation that BROOKDALE will provide staffing at its facilities to meet the aggregate care needs of the residents at its facilities;

- 1 u. Whether BROOKDALE’s misrepresentations, its misleading statements, its
- 2 failures to disclose and its concealment of its true policies, procedures, and
- 3 practices regarding how it staffs its facilities violated the CLRA and the
- 4 UCL;
- 5 v. Whether BROOKDALE has engaged and continues to engage in a pattern
- 6 and practice of unfair and deceptive conduct in connection with the
- 7 management, administration, and operation of its California assisted living
- 8 facilities;
- 9 w. Whether BROOKDALE has violated and continues to violate the UCL by
- 10 violating the CLRA, ADA, Unruh Civil Rights Act, California Welfare and
- 11 Institutions Code § 15610.30, and Cal. Health & Safety Code §§ 1569.157
- 12 and 1569.158 during the CLASS PERIOD;
- 13 x. Whether BROOKDALE has committed financial elder abuse under
- 14 California Welfare and Institutions Code § 15610.30 by taking, secreting,
- 15 appropriating, obtaining, and/or retaining money from elders and dependent
- 16 adults for a wrongful use and/or with the intent to defraud them;
- 17 y. Whether the Plaintiffs and the putative class members have been injured;
- 18 z. Whether the Plaintiffs and the members of the putative class are entitled to
- 19 damages, and the nature of such damages; and,
- 20 aa. Whether the Plaintiffs and the members of the putative class are entitled to
- 21 declaratory and/or injunctive relief, and the nature of such relief.

22 191. **Typicality.** The claims of the named Plaintiffs are typical of those of the

23 proposed classes. Plaintiffs’ claims are typical of the claims of the proposed classes in the

24 following ways: 1) Plaintiffs are members of the proposed classes; 2) Plaintiffs’ claims arise

25 from the same uniform corporate policies, procedures, practices and course of conduct on the

26 part of BROOKDALE; 3) Plaintiffs’ claims are based on the same legal and remedial theories as

27 those of the proposed classes and involve similar factual circumstances; 4) the injuries suffered

28 by the named Plaintiffs are similar to the injuries suffered by the proposed class members; and

1 5) the relief sought herein will benefit the named Plaintiffs and all class members alike.

2 192. **Adequacy.** The named Plaintiffs will fairly and adequately represent the
3 interests of the classes. They have no interests adverse to the interests of other members of the
4 class and have retained counsel who are competent and experienced in litigating complex class
5 actions, including large-scale disability rights and senior care class action cases.

6 193. **Predominance.** With respect to Plaintiffs' claims under the ADA, the Unruh
7 Civil Rights Act, the CLRA, the UCL, and the Elder Abuse Act, class certification is appropriate
8 under Federal Rule of Civil Procedure 23(b)(3) because questions of law or fact common to the
9 class members predominate over any questions affecting individual members of the putative
10 classes.

11 194. **Superiority.** A class action is superior to other methods for the fair and efficient
12 adjudication of this controversy because, *inter alia*: 1) individual claims by the class members
13 would be impracticable because the costs of pursuit of such claims would far exceed what any
14 individual class member has at stake; 2) relatively little individual litigation has been
15 commenced over the controversies alleged in this Complaint and individual class members are
16 unlikely to have an interest in separately prosecuting and controlling individual actions; 3) the
17 concentration of litigation of these claims in one forum will achieve efficiency and promote
18 judicial economy; 4) the proposed classes are manageable, and no difficulties are likely to be
19 encountered in the management of this class action that would preclude its maintenance as a
20 class action; 5) the proposed class members are readily identifiable from Defendants' own
21 records; and 6) prosecution of separate actions by individual members of the proposed class
22 would create the risk of inconsistent or varying adjudications with respect to individual members
23 of the proposed classes that would establish incompatible standards of conduct for
24 BROOKDALE.

25 195. **The Class Meets the Requirements of Federal Rule of Civil Procedure**
26 **23(b)(2).** BROOKDALE has acted and refused to act on grounds generally applicable to the
27 class, making the declaratory and injunctive relief sought on behalf of the class as a whole
28 appropriate.

1 **FIRST CLAIM FOR RELIEF**

2 **(Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*)**
3 **(On behalf of Plaintiffs, the RESIDENTS WITH MOBILITY OR VISION**
4 **DISABILITIES CLASS and the RESIDENTS WITH DISABILITIES CLASS)**

5 196. Plaintiffs incorporate by reference as though fully set forth herein the preceding
6 paragraphs of this Complaint.

7 197. Congress enacted the ADA upon finding, among other things, that “society has
8 tended to isolate and segregate individuals with disabilities” and that such forms of
9 discrimination continue to be a “serious and pervasive social problem.” 42 U.S.C. § 12101(a)
10 (2).

11 198. Congress explicitly stated that the purpose of the ADA is to provide “a clear and
12 comprehensive national mandate for the elimination of discrimination against individuals with
13 disabilities” and “clear, strong, consistent, enforceable standards addressing discrimination
14 against individuals with disabilities.” 42 U.S.C. § 12101(b)(1)-(2).

15 199. Title III of the ADA provides in pertinent part: “[N]o individual shall be
16 discriminated against on the basis of disability in the full and equal enjoyment of the goods,
17 services, facilities, privileges, advantages, or accommodations of any place of public
18 accommodation by any person who owns, leases, or leases to, or operates a place of public
19 accommodation.” 42 U.S.C. § 12182.

20 200. At all times relevant to this action, Plaintiffs STACIA STINER, HELEN
21 CARLSON, LAWRENCE QUINLAN; EDWARD BORIS; RALPH SCHMIDT; ARTHUR
22 LINDSTROM; and BERNIE JESTRABEK-HART were and remain qualified individuals with
23 disabilities within the meaning of the ADA.

24 201. Defendants are each a “private entity,” as defined under 42 U.S.C. § 12181(6).
25 They own, operate and/or manage approximately 89 assisted living facilities in California.

26 202. Brookdale’s assisted living facilities provide services to its residents, including
27 but not limited to, assistance with managing and taking medication, housekeeping, laundry,
28 dressing, bathing, toileting, hygiene, food preparation, and transportation. BROOKDALE staff
include caregivers, certified nursing assistants (CNAs), and a licensed nurse working in the

1 facility or on-call 24 hours per day, seven days per week, to allow ongoing monitoring of
2 residents' health status. These facilities are "public accommodations" pursuant to 42 U.S.C.
3 § 12181(7). BROOKDALE is subject to Title III of the ADA and its corresponding regulations.

4 203. As alleged above in greater detail, BROOKDALE has violated Title III of the
5 ADA in the following ways.

6 **Failure to Provide Reasonable Modifications in Staffing Policies, Practices and Procedures**

7 204. BROOKDALE has a policy and practice of staffing its assisted living facilities
8 based on pre-set corporate labor budgets and profit margins without regard for residents' needs.
9 BROOKDALE's policy and practice of understaffing its assisted living facilities in order to
10 minimize its labor expenses and maximize its corporate profits has resulted in facilities that are
11 chronically understaffed, and in which skeletal levels of staffing make it commonplace for
12 residents with disabilities to go without the services, goods, facilities, privileges, advantages or
13 accommodations for which they have paid. For example, staff are often unavailable or unable to
14 assist residents with disabilities with activities of daily living including, *inter alia*, bathing,
15 showering, toileting, transferring, taking medications, dressing, dining, and housekeeping. In
16 addition, residents with disabilities are often denied full and equal access to and enjoyment of
17 social and recreational activities, as well as transportation to off-site locations for appointments
18 and other activities, because of the lack of a sufficient number of trained staff to assist residents
19 with disabilities to participate in these activities.

20 205. Plaintiffs have requested that BROOKDALE make reasonable modifications in
21 policies, practices, or procedures as required by Title III of the ADA. Plaintiffs have requested
22 that BROOKDALE provides its facilities with a sufficient number of adequately trained staff to
23 ensure that residents with disabilities are provided with full and equal access to and enjoyment
24 of the services specified in BROOKDALE's own resident assessments. Among other things,
25 and without limitation, BROOKDALE should increase its level of trained staff in its assisted
26 living facilities such that residents with disabilities are not required to wait for more than five
27 minutes for a substantive response to their call pendants. A substantive response means actual
28 action taken to address the resident's need, rather than a staff member passing by the resident's

1 room to say that they will return later.

2 206. Such reasonable modifications in BROOKDALE's policies, practices and
3 procedures are necessary to ensure that Plaintiffs and the members of the putative Residents with
4 Disabilities Class receive full and equal access to and enjoyment of BROOKDALE's services,
5 including assistance with, *inter alia*, bathing, showering, toileting, transferring, taking
6 medications, dressing, dining, and housekeeping. In addition, such modifications are necessary
7 to ensure that Plaintiffs and the members of the putative Residents with Disabilities Class have
8 full and equal access to and enjoyment of BROOKDALE's social and recreational activities, and
9 transportation to off-site locations for appointments and other activities. Unless and until
10 BROOKDALE makes this requested reasonable modification in policies, practices, and
11 procedures, Plaintiffs and the members of the putative Residents with Disabilities Class will
12 continue to be denied full and equal access to and enjoyment of the services, goods, facilities,
13 privileges, advantages and accommodations that BROOKDALE claims to provide to all of its
14 residents, whether disabled or nondisabled.

15 207. Plaintiffs' requested modification in policies, practices or procedures is eminently
16 reasonable in that BROOKDALE already charges residents with disabilities for, and residents
17 with disabilities pay to receive, the services specified in BROOKDALE's own resident
18 agreements and resident assessments, including *inter alia*, assistance with activities of daily
19 living such as mobility, bathing, showering, toileting, transferring, taking medications, dressing,
20 dining, and housekeeping, as well as participating in BROOKDALE's social and recreational
21 activities whether on-site or off-site.

22 208. The requested modification in policies, practices or procedures will not make any
23 alteration (much less a fundamental alteration) in the nature of BROOKDALE's goods and
24 services. Rather, Plaintiffs merely seek to ensure that BROOKDALE provides a sufficient
25 number of adequately trained staff to provide its residents with disabilities with full and equal
26 access to and enjoyment of the types of services and goods that BROOKDALE already promises
27 to provide to its residents in its normal course of business. Thus, the requested reasonable
28 modification in policy, practice or procedure would not change the nature or type of services and

1 goods that BROOKDALE sells to the public.

2 209. The requested reasonable modification would impose only a minimal burden on
3 BROOKDALE. Plaintiffs allege on information and belief that the staff who provide
4 BROOKDALE's services are hourly employees who are paid an average of \$10 to \$14 per hour.
5 Increasing BROOKDALE's skeletal night staffing and its minimal level of daytime staffing will
6 only result in a moderate increase in BROOKDALE's labor budget. BROOKDALE will
7 continue to be able to realize substantial gross profits each year in the multibillion dollar range.

8 210. Plaintiffs have repeatedly requested that BROOKDALE make reasonable
9 modifications in policies, practices, or procedures by increasing the number of trained staff that
10 it provides in its facilities. Notwithstanding the reasonableness and necessity of such
11 modifications, and notwithstanding the fact that BROOKDALE could significantly increase its
12 staffing without changing the nature of its services, goods, facilities, privileges, advantages or
13 accommodations, and could make such modifications without undue financial or administrative
14 burdens, BROOKDALE has failed and refused to make any such modifications.

15 211. Plaintiffs' claims under the ADA and the Unruh Act based on BROOKDALE's
16 failure to make reasonable modifications in policies, practices, or procedures in staffing policies
17 and practices are limited to circumstances and facts occurring on or after May 16, 2015.

18 **Physical Access Barriers**

19 212. Plaintiffs allege on information and belief that many of Defendants' facilities
20 were designed and constructed after January 26, 1993, thus triggering access requirements under
21 Title III of the ADA. The ADA prohibits designing and constructing facilities for first
22 occupancy after January 26, 1993 that are not readily accessible to and usable by individuals
23 with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).
24 BROOKDALE has violated the ADA by designing and constructing their facilities in a manner
25 that does not comply with federal disability access design standards including the Americans
26 with Disabilities Act Accessibility Guidelines ("ADAAG") and the 2010 ADA Standards for
27 Accessible Design ("2010 ADA Standards") even though it was structurally practicable to do so.

28 213. Plaintiffs allege on information and belief that Defendants' facilities were altered

1 after January 26, 1993, thus triggering access requirements under Title III of the ADA. The
2 ADA prohibits altering facilities after January 26, 1993 in a manner that is not readily accessible
3 to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42
4 U.S.C. § 12183(a)(2). Here, Defendants violated the ADA by altering its assisted living
5 facilities after January 26, 1993 in a manner that did not comply with the ADAAG or the 2010
6 ADA Standards even though it was structurally practicable to do so. Specifically, Defendants
7 have failed to ensure that the areas of alteration complied with the ADAAG or the 2010 ADA
8 Standards, and that the path of travel to the areas of alteration complied with the ADAAG or the
9 2010 ADA Standards.

10 214. Additionally, Defendants have failed to remove physical access barriers in their
11 facilities which existed prior to January 26, 1993 when removal of those barriers was “readily
12 achievable,” in violation of 42 U.S.C. § 12182(b)(2)(A)(iv).

13 215. The removal of each of the barriers complained of by Plaintiffs herein was at all
14 times “readily achievable” under the standards of §§ 12181 and 12182 of the ADA.
15 BROOKDALE could have removed each of the barriers alleged herein without much difficulty
16 or expense within the meaning of Title III. Notwithstanding the foregoing, BROOKDALE has
17 failed and refused to do so.

18 **Transportation and Activities**

19 216. BROOKDALE has violated Title III of the ADA by failing and refusing to
20 provide Plaintiffs with full and equal access to and enjoyment of its transportation services to
21 off-site activities and appointments. BROOKDALE has a policy and practice of limiting the
22 number of wheelchair users who may use transportation to off-site activities. This limitation is
23 not imposed on residents who do not use wheelchairs. In addition, BROOKDALE has required
24 residents with mobility disabilities to transfer from their wheelchairs into the seats in its shuttles,
25 and has not permitted residents to remain in their wheelchairs. BROOKDALE has done so
26 despite the fact that many residents with mobility disabilities have great difficulty in transferring
27 from their wheelchairs into the passenger seats in shuttles, and doing so is time consuming,
28 physically exhausting and sometimes dangerous. Further, on numerous occasions residents with

1 mobility disabilities have been completely denied access to medical appointments, and other off-
 2 site appointments and activities, because BROOKDALE has failed to provide any accessible
 3 transportation to those appointments and activities.

4 **Evacuation Procedures**

5 217. BROOKDALE has failed to provide or communicate to its residents with
 6 disabilities any specific or definitive emergency evacuation plan in the event of earthquake, fire
 7 or other emergency. Defendants' failure to do so constitutes a denial of full and equal access to
 8 and enjoyment of the services and facilities provided by BROOKDALE in violation of Title III
 9 of the ADA. Many of BROOKDALE's residents with disabilities are unable to exit the building
 10 without assistance from staff. While some residents have been advised to remain in their rooms
 11 in the event of an emergency, in those instances in which an alarm has sounded, no one has
 12 come to their rooms to assist them or to inform them as to whether there is an emergency or just
 13 a drill.

14 218. The acts and omissions alleged herein constitute violations of Title III of the
 15 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 *et seq.*, and the regulations
 16 promulgated thereunder. Defendants' discriminatory conduct alleged herein includes, *inter alia*:

- 17 a. Failing to provide residents with disabilities the opportunity to participate in
 18 or benefit from BROOKDALE's goods, services, facilities, privileges,
 19 advantages, and/or accommodations at its assisted living facilities in
 20 California, in violation of 42 U.S.C. § 12182(b)(1)(A)(i);
- 21 b. Failing to provide residents with disabilities the opportunity to participate in
 22 or benefit from the goods, services, facilities, privileges, advantages and/or
 23 accommodations that are equal to that afforded to individuals without
 24 disabilities, in violation of 42 U.S.C. § 12182(b)(1)(A)(ii);
- 25 c. Failing to provide the goods, services, facilities, privileges, advantages,
 26 and/or accommodations at its assisted living facilities in California to
 27 residents with disabilities in the most integrated setting possible, in
 28 violation of 42 U.S.C. § 12182(b)(1)(B);

- 1 d. Utilizing standards, criteria and methods of administration that have the
- 2 effect of discriminating against residents on the basis of their disabilities, in
- 3 violation of 42 U.S.C. § 12182(b)(1)(D);
- 4 e. Imposing eligibility criteria that screen out or tend to screen out residents
- 5 with disabilities from fully and equally enjoying BROOKDALE’s assisted
- 6 living facilities’ goods, services, facilities, privileges, advantages, and/or
- 7 accommodations, in violation of 42 U.S.C. § 12182(b)(2)(A)(i);
- 8 f. Failing to make reasonable modifications in its policies, practices, and
- 9 procedures which are necessary for its residents with disabilities to enjoy
- 10 and access BROOKDALE’s assisted living facilities’ goods, services,
- 11 facilities, privileges, advantages and/or accommodations, in violation of 42
- 12 U.S.C. § 12182(b)(2)(A)(ii);
- 13 g. Failing to remove architectural barriers in those facilities constructed prior
- 14 to January 26, 1993 and not altered after that date where such removal is
- 15 readily achievable, in violation of 42 U.S.C. § 12182(b)(2)(A)(iv);
- 16 h. Failing to design and construct facilities first occupied after January 26,
- 17 1993 such that they are readily accessible to and usable by persons with
- 18 disabilities, in violation of 42 U.S.C. § 12183(a)(1);
- 19 i. Performing alterations after January 26, 1993 that affect the usability of its
- 20 facilities or a part of its facilities, while failing to ensure that the altered
- 21 portions and the path of travel to those altered portions are readily
- 22 accessible to and usable by persons with disabilities, in violation of 42
- 23 U.S.C. § 12183(a)(2); and
- 24 j. Failing to operate BROOKDALE’s transportation services such that they
- 25 ensure a level of service to persons with disabilities that is equivalent to that
- 26 provided to persons without disabilities, in violation of 42 U.S.C.
- 27 § 12182(b)(2)(C)(i).

28 219. As a direct and proximate result of the aforementioned acts, Plaintiffs have

1 suffered, and continue to suffer irreparable harm including humiliation, hardship and anxiety due
2 to Defendants' failure to provide full and equal access to and enjoyment of Defendants'
3 facilities, services, goods, privileges, advantages and/or accommodations.

4 220. WHEREFORE Plaintiffs pray for judgment as set forth below, including
5 declaratory and injunctive relief, as well as reasonable attorneys' fees, costs and expenses
6 incurred in bringing this action.

7 **SECOND CLAIM FOR RELIEF**

8 **(Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*)**
9 **(On behalf of Plaintiffs, the RESIDENTS WITH MOBILITY OR VISION DISABILITIES**
10 **CLASS and the RESIDENTS WITH DISABILITIES CLASS)**

11 221. Plaintiffs incorporate by reference as though fully set forth herein the preceding
12 paragraphs of this Complaint.

13 222. California Civil Code § 51(b) provides in pertinent part that "All persons within
14 the jurisdiction of this state are free and equal, and no matter what their...disability or medical
15 condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or
16 services in all business establishments of every kind whatsoever."

17 223. Pursuant to California Civil Code § 51(f), a violation of the ADA also constitutes
18 a violation of California Civil Code §§ 51 *et seq.*

19 224. Defendants own, operate and/or manage business establishments within the
20 meaning of the Unruh Civil Rights Act. Defendants are each a public accommodation whose
21 services and facilities are open to the general public.

22 225. Defendants provide services, privileges, advantages and accommodations to the
23 general public. Defendants have failed and refused to provide Plaintiffs with full and equal
24 access to and enjoyment of the benefits of their goods, services, facilities, benefits, advantages,
25 and accommodations, and have done so by reason of Plaintiffs' disabilities.

26 226. Defendants have discriminated against persons with disabilities in violation of
27 California Civil Code §§ 51 *et seq.* by failing to operate their facilities and services in full
28 compliance with the requirements of the ADA as set forth above.

29 227. Defendants, by their actions and inactions alleged in this Complaint, have directly

1 discriminated against persons with disabilities.

2 228. Plaintiffs' claims under the Unruh Act based on BROOKDALE's failure to make
3 reasonable modifications in policies, practices, or procedures in staffing policies and practices
4 are limited to circumstances and facts occurring on or after May 16, 2015.

5 229. The actions of Defendants were and are in violation of the Unruh Civil Rights
6 Act, Cal. Civ. Code §§ 51 *et seq.*, and therefore Plaintiffs are also entitled to statutory damages,
7 injunctive relief and reasonable attorneys' fees, costs and expenses.

8 **THIRD CLAIM FOR RELIEF**

9 **(Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*)**
10 **(On behalf of Plaintiffs and the FALSE OR MISLEADING STATEMENT CLASS)**

11 230. Plaintiffs incorporate by reference as though fully set forth herein the preceding
12 paragraphs of this Complaint.

13 231. Plaintiffs and the members of the putative False or Misleading Statements Class
14 are "consumer[s]" within the meaning of California Civil Code § 1761(d). They are also "senior
15 citizen[s]" and/or "[d]isabled person[s]" within the meaning of California Civil Code § 1761(f)
16 and (g).

17 232. Defendants are each a "person" as defined under California Civil Code § 1761(c).
18 The assisted living services that Defendants have promised to provide Plaintiffs are "[s]ervices"
19 within the meaning of the California Civil Code § 1761(b). The agreement by Defendants to
20 provide assisted living services in return for payment of monthly fees by each of the Plaintiffs
21 constitutes a "transaction" under California Civil Code § 1761(e).

22 233. In Defendants' uniform resident contracts presented to prospective residents and
23 their family members, Defendants represented and continue to represent that BROOKDALE will
24 assess each resident and provide the basic services, personal services, and select and therapeutic
25 services it has determined are needed. That same representation is made in BROOKDALE's re-
26 evaluation of residents, rate increase letters, letters regarding the merger, letters regarding the
27 conversion to a new personal assessment system, corporate website statements, invoices, and
28 other standardized corporate promotional materials. These uniform corporate representations are

1 false and misleading, and likely to deceive the reasonable consumer. As alleged herein,
2 Plaintiffs and the putative class members reasonably expected based on these representations
3 that BROOKDALE would provide sufficient levels of qualified and adequately trained staff at
4 its facilities to ensure that all residents receive the services they have been promised and for
5 which they are paying.

6 234. Contrary to its representations regarding the provision of basic services, personal
7 services, and select and therapeutic services, BROOKDALE knows that the policies and
8 practices it uses to staff its facilities—most notably, its policy and practice of using
9 predetermined labor budgets designed to meet corporate profit targets, goals, and margins
10 without regard to residents’ needs—preclude it from providing its residents all of the care and
11 services they have been promised and places all residents at a substantial risk that they will not
12 receive the care and services they have paid for on any given day. BROOKDALE did not intend
13 to provide and has no intention of providing sufficient levels of qualified and adequately trained
14 staff at its facilities to ensure that all residents receive these services. BROOKDALE does not
15 disclose and conceals this material fact from the residents, their family members, and the general
16 public.

17 235. The named Plaintiffs, their family members and powers of attorney, the putative
18 class members, and reasonable consumers considered material BROOKDALE’s
19 misrepresentations and misleading statements that it will provide residents the basic services,
20 personal services, and select and therapeutic services they need and for which they are paying.
21 If the named Plaintiffs had known the true facts about BROOKDALE’s staffing policies and
22 procedures, they would not have agreed to enter or stay in a BROOKDALE facility or to place
23 their relatives in a BROOKDALE facility, or would have paid less money. If the putative class
24 members had known the true facts, they would in all reasonable probability not have agreed to
25 enter or remain in a BROOKDALE facility or to place their relatives in a BROOKDALE
26 facility, or would have paid less money to BROOKDALE.

27 236. The facts that BROOKDALE misrepresents, fails to disclose and actively
28 conceals are material and are likely to deceive the reasonable consumer. Reasonable consumers,

1 including the residents and their family members herein, consider of great importance the
2 staffing levels provided by the assisted living facility they select, and such consumers also attach
3 great importance to BROOKDALE's claims regarding its provision of basic services, personal
4 services, and select and therapeutic services.

5 237. Residents and their family members would consider material BROOKDALE's
6 uniform corporate policy and procedure of basing its staffing on fixed budgets and profit
7 margins resulting in staffing that is inadequate to meet residents' needs, as identified by
8 BROOKDALE itself through periodic personal service assessments. Residents and their family
9 members could not reasonably have been expected to learn or discover these non-disclosed facts,
10 and in fact, BROOKDALE has affirmatively concealed them.

11 238. Since May 16, 2015, BROOKDALE has violated and continues to violate the
12 CLRA, Cal. Civ. Code §§ 1750 *et seq.*, in at least the following respects:

- 13 a. In violation of § 1770(a)(5), BROOKDALE has misrepresented, failed to
14 disclose and concealed the true characteristics and/or quantities of services
15 provided at its facilities in California;
- 16 b. In violation of § 1770(a)(7), BROOKDALE has misrepresented, failed to
17 disclose and concealed the true standard, quality and/or grade of services
18 provided at its facilities in California;
- 19 c. In violation of § 1770(a)(9), in BROOKDALE's standard resident
20 admission contracts and elsewhere, BROOKDALE has falsely advertised
21 that it will provide basic services and the assistance specified by each
22 resident's personal service assessment and which corresponds to that
23 resident's Personal Service Plan, knowing that BROOKDALE does not
24 intend to provide the services as advertised; and
- 25 d. In violation of § 1770(a)(14), BROOKDALE has represented that the
26 agreement signed by residents and/or their responsible parties, and under
27 which they pay their monthly rate, confers on residents the right to reside in
28 a facility that provides the basic services, personal services, and select and

1 therapeutic services that residents have been promised and are paying for,
2 when in fact, BROOKDALE knows that the policies and practices it uses to
3 staff its facilities preclude it from providing its residents all of the care and
4 services they have been promised and places all residents in an inherent and
5 substantial risk that they will not receive the care and services they have
6 paid for on any given day.

7 239. These misrepresentations, misleading statements, acts, practices, and omissions
8 by BROOKDALE are and were intended to induce and lure elderly and dependent adult
9 residents and their family members into agreeing to be admitted to BROOKDALE's facilities
10 and to pay community and monthly fees.

11 240. BROOKDALE made the misrepresentations and misleading statements alleged
12 herein through various uniform means of communication, including without limitation, the
13 admission agreement; subsequent agreements based on updated Personal Service Plans; letters to
14 residents regarding the merger between BROOKDALE and Emeritus, the implementation of
15 BROOKDALE's new personal service system, and rate increases; standardized corporate
16 marketing and promotional materials; Defendants' website; invoices; and other written corporate
17 materials disseminated to the public in connection with Defendants' services. These
18 representations and misleading statements were made directly to the named Plaintiffs, putative
19 class members and their family members and/or responsible parties by BROOKDALE in the
20 uniform means of communication listed above.

21 241. BROOKDALE failed to disclose and concealed from Plaintiffs, the putative class
22 members, and their family members, that BROOKDALE staffs its facility using predetermined
23 labor budgets designed to meet corporate profit targets, goals, and margins without regard to
24 residents' needs; that these policies and practices preclude it from providing its residents all of
25 the care and services they have been promised and places all residents at an inherent and
26 substantial risk that they will not receive the care and services they have paid for on any given
27 day; and that BROOKDALE did not intend to provide and has no intention of providing
28 sufficient qualified and adequately trained staff at its facilities to ensure that all residents receive

1 these services.

2 242. BROOKDALE had exclusive and superior knowledge of materials facts not
3 known to the named Plaintiffs, class members or the general public at the time of the subject
4 transactions and actively concealed those material facts.

5 243. BROOKDALE had exclusive and superior knowledge that its corporate policy
6 and procedure of providing pre-determined staffing at its facilities preclude BROOKDALE from
7 providing the care and services for which it charges its residents and places all residents at a
8 substantial risk that on any given day they will not receive the care and services for which they
9 have paid. BROOKDALE had exclusive and superior knowledge that its policies and
10 procedures for staffing its facilities pose a heightened health and safety risk to the named
11 Plaintiffs and class members. Defendants intentionally concealed, suppressed and/or failed to
12 disclose the true facts with the intent to defraud the named Plaintiffs and putative class members.
13 The named Plaintiffs and putative class members did not know these material undisclosed facts
14 and could not reasonably have been expected to discover them.

15 244. As a direct and proximate result of Defendants' conduct, Plaintiffs, the class
16 members, and members of the general public (including without limitation persons admitted to
17 and/or residing in the facilities, and their family members and/or responsible parties) have been
18 harmed and continue to be harmed. Among other things, they paid money to Defendants to
19 enter the facilities and/or for services that were not provided or that were substandard to those
20 promised by Defendants.

21 245. Plaintiffs sent BROOKDALE a notice to cure under California Civil Code
22 § 1782(a), which was received by BROOKDALE on June 6, 2017. More than 30 days have
23 passed since BROOKDALE's receipt, and BROOKDALE has not corrected or remedied the
24 violations alleged in the notice and herein.

25 246. Accordingly, Plaintiffs and the False or Misleading Statements Class members
26 are entitled to no less than \$1,000 in statutory damages pursuant to California Civil Code
27 § 1780(a). Moreover, as senior citizens and/or disabled persons, Plaintiffs and the False or
28 Misleading Statements Class members are also entitled to statutory damages of \$5,000 per class

1 member pursuant to California Civil Code § 1780(b), as well as actual damages and restitution
2 in an amount to be proven at trial.

3 247. Plaintiffs and each of the putative False or Misleading Statements Class members
4 are seniors and/or disabled persons as defined by California Civil Code § 1761(f) and (g).
5 Plaintiffs and the putative False or Misleading Statements Class members have each suffered
6 substantial economic harm. Defendants knew that their conduct negatively impacted seniors and
7 disabled persons. Defendants' conduct caused the named Plaintiffs and the putative False or
8 Misleading Statements Class members to lose property set aside for personal care and
9 maintenance and assets essential to their health and welfare. Further, Plaintiffs and the putative
10 False or Misleading Statements Class members are substantially more vulnerable than other
11 members of the public to Defendants' conduct because of their age, poor health, impaired
12 understanding, restricted mobility and/or disabilities.

13 248. Plaintiffs additionally seek treble damages under California Civil Code § 3345,
14 punitive damages, reasonable attorneys' fees and costs, and all other relief the Court deems just
15 and proper. Excluded from Plaintiffs' request are damages related to any personal injuries,
16 emotional distress or wrongful death suffered by any member of the class.

17 249. Defendants' conduct presents a continuing threat of substantial harm to the public
18 in that, among other things, Defendants continue to make misleading statements about and
19 conceal material facts about whether and how they provide basic, personal care, and select and
20 therapeutic services at BROOKDALE facilities in California, as well as the fact that their
21 staffing policies and procedures preclude them from providing residents the services they have
22 been promised. Despite these misrepresentations, BROOKDALE continues to induce elderly
23 and vulnerable citizens to enter and remain in its facilities, which conduct irreparably harms
24 Plaintiffs and the putative False or Misleading Statements Class. Accordingly, Plaintiffs seek an
25 injunction that requires that BROOKDALE immediately cease the CLRA violations alleged
26 herein regarding BROOKDALE's misrepresentations, misleading statements, and material
27 omissions, and to enjoin it from continuing to engage in any such acts or practices in the future.
28 Specifically, Plaintiffs seek an injunction requiring BROOKDALE to disclose to Plaintiffs, the

1 putative False or Misleading Statements Class members and the consuming public that
2 BROOKDALE’s staffing policies and procedures preclude it from providing its residents the
3 care and services they have been promised and places all residents at an inherent and substantial
4 risk that they will not receive the care and services they have paid for on any given day.
5 Plaintiffs also seek an injunction prohibiting BROOKDALE from charging residents or their
6 responsible parties monthly fees based on their Personal Service Plans until BROOKDALE
7 implements staffing policies and procedures that enable it to deliver those services on a
8 consistent basis.

9 250. Plaintiffs claims for violations of the CLRA are limited to misrepresentations,
10 misleading statements, and failures to disclose that occurred on or after May 16, 2015.

11 251. WHEREFORE Plaintiffs pray for judgment as set forth below, including
12 declaratory and injunctive relief as well as reasonable attorneys’ fees, costs and expenses
13 incurred in bringing this action.

14
15 **FOURTH CLAIM FOR RELIEF**

16 **(Elder Financial Abuse, Cal. Welf. & Inst. Code § 15610.30)**
17 **(On behalf of PLAINTIFFS and the FALSE OR MISLEADING STATEMENTS CLASS)**

18 252. Plaintiffs incorporate by reference as though fully set forth herein the preceding
19 paragraphs of this Complaint.

20 253. Plaintiffs and the putative False or Misleading Statements Class members are and
21 at all times were “elders” as defined under California Welfare & Institutions Code § 15610.27 or
22 “dependent adults” as defined under California Welfare & Institutions Code § 15610.23.

23 254. BROOKDALE represented to the named Plaintiffs, and/or their responsible
24 parties, and the putative False or Misleading Statements Class members, and/or their responsible
25 parties, in standard agreements, service updates, monthly invoices, standardized corporate letters
26 to residents and/or their responsible parties, and/or annual notification of rate increases, that
27 BROOKDALE would provide care and assistance with activities of daily living, including but
28 not limited to staffing 24 hours a day, dining services, housekeeping, laundry, transportation,
and other basic services in exchange for community fees and monthly payments that it received

1 from the named Plaintiffs and the putative False or Misleading Statements Class members.
2 However, BROOKDALE did not and has no intention of providing sufficient levels of qualified
3 and adequately trained staff at its facilities to ensure that all residents receive these services. As
4 a result, residents do not consistently receive all of the basic services BROOKDALE has
5 promised them and for which they are paying BROOKDALE.

6 255. BROOKDALE further represented through these same corporate materials that
7 BROOKDALE would provide personal services, including but not limited to assistance with
8 bathing, toileting, grooming, dressing, transferring, and mobility, for additional monthly fees.
9 BROOKDALE represented that it would perform an assessment of each resident to identify
10 needed personal services and an individualized service plan to deliver those services. Yet
11 BROOKDALE did not intend to and does not provide adequate staffing for personal services at
12 its facilities. Rather, it has a policy and practice of providing pre-determined facility staffing
13 that does not change with increases in residents' personal service needs. This policy and
14 practice precludes BROOKDALE from providing facility residents with all of the personal
15 services BROOKDALE has promised them and for which they are paying BROOKDALE.

16 256. BROOKDALE further represented through these same corporate materials that
17 BROOKDALE would provide select and therapeutic services to residents, including but not
18 limited to emergency call pendants and associated services. However, BROOKDALE did not
19 and has no intention of providing sufficient levels of qualified and adequately trained staff at its
20 facilities to ensure that all residents receive these services. As a result, facility residents do not
21 consistently receive all of the select and therapeutic services BROOKDALE has promised them
22 and for which they are paying BROOKDALE.

23 257. BROOKDALE knew or should have known that such conduct would likely be
24 harmful to Plaintiffs and the putative False or Misleading Statements Class members.

25 258. BROOKDALE knew or should have known that Plaintiffs and the putative False
26 or Misleading Statements Class members had a right to the funds used to pay new resident
27 community fees and monthly fees to BROOKDALE.

28 259. As such, BROOKDALE took, secreted, appropriated, obtained and/or retained

1 money belonging to Plaintiffs and putative class members for a wrongful use and/or with the
2 intent to defraud.

3 260. BROOKDALE's conduct was despicable, fraudulent, reckless, and carried out
4 with a willful and conscious disregard for the rights and safety of Plaintiffs and the members of
5 the putative False or Misleading Statements Class.

6 261. Plaintiffs and putative False or Misleading Statements Class members also seek
7 compensatory damages, reasonable attorneys' fees, costs and expenses, punitive damages, treble
8 damages pursuant to California Civil Code § 3345, and all other remedies permitted by law.
9 Plaintiffs do not seek certification of any claims for damages related to any personal injuries,
10 emotional distress, or wrongful death suffered by any member of the class.

11 262. Plaintiffs' claims under Cal. Welf. & Inst. Code § 15610.30 are limited to
12 circumstances and facts occurring on or after May 16, 2015.

13 263. WHEREFORE Plaintiffs pray for judgment as set forth below, including
14 declaratory and injunctive relief as well as reasonable attorneys' fees, costs and expenses
15 incurred in bringing this action.

16 **FIFTH CLAIM FOR RELIEF**

17 **(Unlawful, Unfair and Fraudulent Business Practices,**
18 **Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**
19 **(On behalf of Plaintiffs and all Proposed Classes)**

20 264. Plaintiffs incorporate by reference as though fully set forth herein the preceding
21 paragraphs of this Complaint.

22 265. BROOKDALE has engaged in unlawful business acts and practices. Such acts
23 and practices constitute unfair business practices in violation of California Business and
24 Professions Code §§ 17200 *et seq.*

25 266. In particular, Defendants have engaged in unlawful business acts and practices by
26 violating numerous laws, statutes and regulations including but not limited to:

- 27 a. Systematically and uniformly representing to the residents of its assisted
28 living facilities in California, family members, and the public that
Defendants will assess residents to determine their needs, and will provide

1 residents specified basic services, personal services, and select and
2 therapeutic services based on those needs, when in fact, Defendants use
3 staffing policies and procedures that preclude them from providing their
4 residents all of the care and services they have been promised and that place
5 all residents in an inherent and substantial risk that they will not receive the
6 care and services they have paid for on any given day, in violation of
7 California Civil Code §§ 1750 *et seq.*;

- 8 b. Failing to provide residents with disabilities full and equal enjoyment of
9 BROOKDALE's goods, services, facilities, privileges, advantages, and/or
10 accommodations at its assisted living facilities in California; failing to
11 remove architectural barriers in those facilities constructed prior to January
12 26, 1993 and not altered after that date where such removal is readily
13 achievable; failing to design and construct facilities first occupied after
14 January 26, 1993 such that they are readily accessible to and usable by
15 persons with disabilities; and performing alterations after January 26, 1993
16 that affect the usability of its facilities or a part of its facilities, while failing
17 to ensure that the altered portions and the path of travel to those altered
18 portions are readily accessible to and usable by persons with disabilities, all
19 in violation of 42 U.S.C. § 12182 and Cal. Civ. Code § 51 *et seq.*;
- 20 c. Taking, secreting, appropriating, obtaining, and retaining the funds of elders
21 and dependent adults for a wrongful use and/or with the intent to defraud in
22 violation of California Welfare and Institutions Code § 15610.30;
- 23 d. Willfully interfering with the maintenance and promotion of a family
24 council in violation of Cal. H&S Code § 1569.158; and
- 25 e. Willfully interfering with the maintenance and promotion of a resident
26 council in violation of Cal. H&S Code § 1569.157.

27 267. By virtue of the conduct alleged herein, Defendants have also engaged in
28 fraudulent business practices. Members of the general public (including without limitation

1 persons admitted to and/or residing in BROOKDALE's California assisted living facilities
2 during the CLASS PERIOD, and their family members and/or responsible parties) have been
3 and are likely to be deceived by Defendants' misrepresentations and failures to disclose as
4 alleged herein.

5 268. The acts and practices of Defendants also constitute unfair business acts and
6 practices within the meaning of California Business & Professions Code §§ 17200 *et seq.*, in that
7 the conduct alleged herein is immoral, unscrupulous, and contrary to public policy, and the
8 detriment and gravity of that conduct outweighs any benefits attributable to such conduct.

9 269. Defendants' misrepresentations, misleading statements, acts, practices, and
10 omissions were intended to induce and lure elderly and dependent adult residents and their
11 family members into agreeing to be admitted to and remain at Defendants' facilities and to pay a
12 community fee and monthly rates to live in an assisted living facility that features sufficient
13 levels of qualified and adequately trained staff to ensure that all residents receive the basic
14 services, personal services, and select and therapeutic services for which they are paying.

15 270. Defendants made these misrepresentations and misleading statements through
16 various uniform means of written corporate communications, including without limitation, the
17 standardized Residency Agreement; subsequent agreements based on re-assessments of the
18 resident; letters to residents regarding the merger between BROOKDALE and Emeritus,
19 Defendants' conversion to a new personal service system, and rate increases; invoices,
20 marketing and promotional materials, Defendants' corporate website and other materials
21 disseminated to the public from its corporate headquarters in connection with Defendants'
22 services. These representations were made directly to the named Plaintiffs, class members, and
23 their family members and/or responsible parties by Defendants in the uniform means of
24 communication listed above.

25 271. BROOKDALE concealed from Plaintiffs, the putative class members, and their
26 family members that BROOKDALE's staffing policies and procedures preclude it from
27 providing its residents all of the care and services they have been promised and places all
28 residents at an inherent and substantial risk that they will not receive the care and services they

1 have paid for on any given day.

2 272. BROOKDALE had exclusive and superior knowledge of material facts not
3 known to named Plaintiffs, putative class members or the general public at the time of the
4 subject transactions and actively concealed these material facts.

5 273. BROOKDALE had exclusive and superior knowledge of its corporate policy and
6 procedure. Further, Plaintiffs allege on information and belief that Defendants' officers,
7 directors, and managers knew that Defendants' failure to provide adequate staffing posed a
8 substantial health and safety risk to the named Plaintiffs and class members. BROOKDALE
9 intentionally concealed, suppressed and/or failed to disclose the true facts with the intent to
10 defraud the named Plaintiffs and putative class members. The named Plaintiffs and the putative
11 class members did not know these material undisclosed facts and could not reasonably have
12 been expected to discover them.

13 274. As a direct and proximate result of Defendants' conduct, Plaintiffs, the class
14 members, and members of the general public (including without limitation persons admitted to
15 and/or residing in the facilities, and their family members and/or responsible parties) have been
16 harmed and continue to be harmed. Among other things, they paid money to Defendants to
17 enter the facilities and for services that were not provided or that were substandard to those
18 promised by Defendants.

19 275. Plaintiffs seek an injunction that requires that Defendants immediately cease acts
20 of unlawful, unfair and fraudulent business acts or practices as alleged herein, and to enjoin
21 Defendants from continuing to engage in any such acts or practices in the future.

22 276. Plaintiffs' claims under Cal. Bus. & Prof. Code §§ 17200 are limited to
23 circumstances and facts occurring on or after May 16, 2015 to the extent they are based on
24 Defendants' failure to provide staff with adequate training and in sufficient numbers to provide
25 their assisted living facility residents all of the care and services they have been promised.

26 277. WHEREFORE Plaintiffs pray for judgment as set forth below, including
27 declaratory and injunctive relief as well as reasonable attorneys' fees, costs and expenses
28 incurred in bringing this action.

1 **ALLEGATIONS SUPPORTING DECLARATORY AND INJUNCTIVE RELIEF**

2 278. Plaintiffs incorporate by reference as though fully set forth herein the preceding
3 paragraphs of this Complaint.

4 279. Plaintiffs STACIA STINER, HELEN CARLSON, and BERNIE JESTRABEK-
5 HART continue to live at a BROOKDALE assisted living facility. Unless and until
6 BROOKDALE brings its facilities into compliance with the requirements of the ADA and
7 applicable federal disability access design standards, the above-named Plaintiffs will continue to
8 be denied full and equal access to and enjoyment of BROOKDALE's facilities as a result of
9 physical access barriers in violation of the ADA. Moreover, unless and until Defendant
10 BROOKDALE makes the requested reasonable modification in policies, practices and
11 procedures set forth above with respect to the staffing of its facilities, Plaintiffs will continue to
12 be denied full and equal access to and enjoyment of the services, goods, facilities, privileges,
13 advantages and accommodations provided to its residents by BROOKDALE. In this regard,
14 unless and until Defendants provide a sufficient number of adequately trained staff at their
15 facilities, residents with disabilities will continue to suffer the denial and deprivation of basic
16 services that are necessary to daily living, including assistance with bathing, showering,
17 toileting, taking medications, transferring, dressing, dining, cleaning and laundry services.
18 Further, residents with disabilities will continue to be denied full and equal access to on-site and
19 off-site social and recreational activities, and will be segregated and isolated in violation of the
20 ADA's integration mandate.

21 280. In addition, unless and until Defendants comply with the ADA, Plaintiffs
22 STACIA STINER, HELEN CARLSON, and BERNIE JESTRABEK-HART will continue to
23 suffer falls, and to be at risk of falls and/or serious physical injuries, as a result of Defendants'
24 failure and refusal to provide full and equal access to its facilities and services. In this regard,
25 Defendants must be enjoined to provide facilities that comply with applicable federal disability
26 access standards, a sufficient number of staff who are adequately trained to assist residents with
27 disabilities to prevent falls and to assist them if a fall takes place, and a functioning and effective
28 pendant system so that residents can obtain prompt and effective assistance when they have

1 fallen and/or are at risk of other physical injuries. Further, unless and until Defendants provide
2 adequate emergency planning and evacuation procedures for residents with disabilities,
3 Defendants will continue to place them at significant risk of serious injury and death.

4 281. Further, unless and until Defendants provide residents with disabilities with full
5 and equal access to enjoyment of its transportation services, residents with disabilities will
6 continue to be excluded from and denied access to off-site appointments and activities in
7 violation of the ADA.

8 282. Additionally, unless and until BROOKDALE ceases its false and/or misleading
9 statements regarding its services and discloses that its corporate staffing policies and practices
10 preclude it from providing its residents the care and services they have been promised and places
11 all residents at an inherent and substantial risk that they will not receive the care and services
12 they have paid for on any given day, residents, their family members, their responsible parties
13 and the general public will continue to be misled and will continue to expend very substantial
14 sums of money for services, goods and facilities that are not as represented, and Defendants will
15 continue to receive the benefits of their ill-gotten gains.

16 283. Finally, unless and until BROOKDALE is ordered to refrain from interfering
17 with the maintenance and promotion of resident and family councils at its facilities, Plaintiffs
18 will continue to suffer from retaliation against resident and family councils and their members
19 and be subjected to BROOKDALE's obstruction of the promotion and operation of said councils
20 at its facilities.

21 284. A present and actual controversy exists regarding the respective rights and
22 obligations of Plaintiffs and Defendants. Plaintiffs desire a judicial determination of their rights
23 and Defendants' obligations in a declaration as to whether, and to what extent, the Defendants'
24 conduct violates applicable law.

25 285. Such a declaration is necessary and appropriate at this time in order that Plaintiffs
26 may ascertain their rights. Such a declaration is also necessary and appropriate to prevent
27 further harm or infringement of Plaintiffs' rights.

28 286. Plaintiffs STACIA STINER, HELEN CARLSON, and BERNIE JESTRABEK-

1 HART have no adequate remedy at law for the harm to them arising from the conduct alleged
2 herein. Unless and until Defendants are preliminarily and permanently enjoined from engaging
3 in such conduct, Plaintiffs will continue to suffer irreparable harm as a result of Defendants'
4 violations of the ADA, the Unruh Act, the CLRA, the UCL, Cal. Welf. & Inst. Code § 15610.30,
5 and Cal. H&S Code §§ 1569.157 and 1569.158 as alleged herein.

6 287. Plaintiffs STACIA STINER, HELEN CARLSON, and BERNIE JESTRABEK-
7 HART are entitled to declaratory and injunctive relief pursuant to each of the laws under which
8 this action is brought.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs respectfully pray that this Court:

11 1. Issue a declaratory judgment that Defendants' failure to provide full and equal
12 access to and enjoyment of Defendants' goods, services, facilities, benefits, advantages and
13 accommodations with nondisabled persons violates Plaintiffs' rights the ADA, § 42 U.S.C.
14 12101 *et seq.*, and the regulations promulgated thereunder, and also violates their civil rights
15 under California Civil Code §§ 51 *et seq.*;

16 2. With respect to the Residents with Mobility or Visual Disabilities Class and the
17 Residents with Disabilities Class issue preliminary and permanent injunctions requiring
18 Defendants to come into full compliance with the requirements of the ADA and its
19 implementing regulations;

20 3. With respect to the Residents with Mobility or Visual Disabilities Class and the
21 Residents with Disabilities Class issue preliminary and permanent injunctions enjoining
22 Defendants from violating the Unruh Civil Rights Act in the operation of Defendants' business
23 establishments and/or public accommodations with respect to its goods, services, facilities,
24 advantages, benefits and accommodations at its assisted living facilities in California;

25 4. Issue preliminary and permanent injunctions requiring that Defendants
26 immediately cease acts that constitute false advertising and violations of the Consumer Legal
27 Remedies Act and the Elder Financial Abuse statute as alleged herein with respect to
28 Defendants' misrepresentations, misleading statements, and material omissions, and to enjoin

1 Defendants from continuing to engage in any such acts or practices in the future;

2 5. Issue preliminary and permanent injunctions requiring that BROOKDALE
3 disclose to Plaintiffs, the putative class members and the consuming public that its corporate
4 staffing policies and procedures preclude it from providing its residents the care and services
5 they have been promised and places all residents at an inherent and substantial risk that they will
6 not receive the care and services they have paid for on any given day, and prohibiting
7 BROOKDALE from charging fees based on the residents' Personal Service Plans when
8 BROOKDALE does not, in fact, provide adequate staffing levels to perform the personal
9 services identified in those plans;

10 6. Issue preliminary and permanent injunctions ordering BROOKDALE to refrain
11 from interference with the formation, maintenance and promotion of family or resident councils
12 at its facilities.

13 7. For statutory damages pursuant to California Civil Code § 52(a) for the Residents
14 with Mobility or Visual Disabilities and the Residents with Disabilities classes;

15 8. For statutory damages pursuant to California Civil Code § 1780(a) and (b) for the
16 False or Misleading Statements class;

17 9. For actual damages according to proof, excepting any damages for personal
18 injury, emotional distress and/or wrongful death suffered by the named Plaintiffs or any class
19 member;

20 10. For restitution and any other monetary relief permitted by law;

21 11. For punitive damages;

22 12. For treble damages pursuant to California Civil Code §§ 52(a) and 3345;

23 13. For pre-judgment and post-judgment interest according to law;

24 14. Award to Plaintiffs all costs of this proceeding, including reasonable attorneys'
25 fees costs and litigation expenses, as provided by law;

26 15. Issue any other preliminary and permanent injunctions the Court deems sufficient
27 to rectify the acts and omissions alleged herein; and,

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16. For such other relief as the Court may deem just and proper.

Respectfully submitted,

DATED:

SCHNEIDER WALLACE
COTTRELL KONECKY
WOTKYNS, LLP

By: /s/Guy B. Wallace
Guy B. Wallace

DATED:

ROSEN BIEN
GALVAN & GRUNFELD LLP

By: /s/Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

DATED:

STEBNER AND ASSOCIATES

By: /s/Kathryn A. Stebner
Kathryn A. Stebner

Attorneys for Plaintiffs and the Proposed Classes

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted,

DATED:

SCHNEIDER WALLACE
COTTRELL KONECKY
WOTKYNS LLP

By: /s/Guy B. Wallace
Guy B. Wallace

DATED:

ROSEN BIEN
GALVAN & GRUNFELD LLP

By: /s/Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

DATED:

STEBNER AND ASSOCIATES

By: /s/Kathryn A. Stebner
Kathryn A. Stebner

Attorneys for Plaintiffs and the Proposed Classes

CERTIFICATE OF SERVICE

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I hereby certify that on March 29, 2018, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Sarah Colby
Sarah Colby (SBN 194475)
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