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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
14

15 PATRICIA EIDLER, by and through her
Guardian Ad Litem, CHRISTOPHER
16 WILLIAM EIDLER; STACIA STINER;
MARY-CATHERINE JONES, by and through
17 her Guardian Ad Litem, KELLY CLAPPER;
and HELEN CARLSON, by and through her
18 Guardian Ad Litem, and JOAN CARLSON;
on their own behalves and on behalf of others
19 similarly situated,

20 Plaintiffs,

21 v.

22 BROOKDALE SENIOR LIVING, INC.;
BROOKDALE SENIOR LIVING
23 COMMUNITIES, INC.; and DOES 1 through
100,
24

25 Defendants.

Case No.

CLASS ACTION

**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

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

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

16 3. Defendant BROOKDALE has engaged in a policy and practice of violating Title
17 III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq.*,
18 accompanying regulations, and the Unruh Civil Rights Act (“Unruh Act”), California Civil Code
19 §§ 51 *et seq.* Among other things, Defendant has violated the ADA by failing to make its assisted
20 living facilities readily accessible to and usable by persons with disabilities. Defendants’ assisted
21 living facilities are characterized by multiple, pervasive physical access barriers that limit or deny
22 full and equal access to persons with disabilities.

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

14 5. In addition, Defendant has violated the ADA by failing and refusing to provide
15 residents with mobility disabilities with full and equal access to and enjoyment of its
16 transportation services. Further, Defendant has discriminated against residents with disabilities by
17 failing to provide them with an emergency evacuation plan that is designed for and reasonably
18 calculated to ensure the prompt and effective evacuation of persons with disabilities in the event of
19 emergency.

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

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

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

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

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

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

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

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JURISDICTION1
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12. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3)-(4). The Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, presents federal questions and confers jurisdiction on this Court over Plaintiffs' claims regardless of the amount in controversy. This Court also has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2)(A) because this is a class action in which the proposed class includes at least 100 members, the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and at least one putative class member is a citizen of a state different from one of the defendants. Plaintiffs seek damages in the amount of a minimum \$9,000 per class member and believe that the class consists of over 5,000 persons, making the amount in controversy well in excess of \$5,000,000. BROOKDALE is a Delaware corporation with its principal place of business in Tennessee, making it a citizen of both Delaware and Tennessee, and each of the named Plaintiffs are citizens of the State of California. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiffs' pendent claims under California law.

13. Defendants are subject to personal jurisdiction in this Court because Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market through ownership and/or management of assisted living facilities located in California, derivation of substantial revenues from California, and other activities, so as to render the exercise of jurisdiction over Defendants by the California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

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

1 disabled person pursuant to Cal. Civ. Code §§ 1761(f), 1761(g); and a consumer pursuant to Cal.
2 Civ. Code § 1761(d). MARY-CATHERINE JONES is 78 years old. She has been diagnosed with
3 cognitive impairments and needs assistance with the following activities of daily living: bathing,
4 dressing, managing medications, housekeeping, laundry, and food preparation. MARY-
5 CATHERINE JONES is and has been a resident of BROOKDALE Fountaingrove since
6 approximately January 2013. She is a resident of Sonoma County in the State of California.
7 KELLY CLAPPER is MARY-CATHERINE JONES's daughter and has had her power of
8 attorney since October 2005. Simultaneous with the filing of this lawsuit, Plaintiffs are filing a
9 motion for the appointment of KELLY CLAPPER as the guardian ad litem of MARY-
10 CATHERINE JONES for the purposes of prosecuting this lawsuit.

11 19. Plaintiff HELEN CARLSON is a qualified person with disabilities within the
12 meaning of the ADA and the Unruh Civil Rights Act. She is also a dependent adult and an elder
13 pursuant to Cal. Welf. & Inst. Code §§ 15610.23 and 15610.27; a senior citizen and a disabled
14 person pursuant to Cal. Civ. Code §§ 1761(f), 1761(g); and a consumer pursuant to Cal. Civ. Code
15 § 1761(d). HELEN CARLSON is 93 years old. She needs assistance with the following activities
16 of daily living: managing medications, transferring, toileting, bathing, dressing, grooming,
17 transportation, food preparation and meal setup, housekeeping, and laundry. She uses a
18 wheelchair for mobility. HELEN CARLSON is and has been a resident of BROOKDALE
19 Fountaingrove since approximately October 2011. She is a resident of Sonoma County in the
20 State of California. JOAN CARLSON is HELEN CARLSON's daughter-in-law and has had her
21 power of attorney since December 2006. Simultaneous with the filing of this lawsuit, Plaintiffs
22 are filing a motion for the appointment of JOAN CARLSON as the guardian ad litem of HELEN
23 CARLSON for the purposes of prosecuting this lawsuit.

24 20. Defendant BROOKDALE SENIOR LIVING, INC. is a corporation organized
25 under the laws of the State of Delaware with its principal place of business in Brentwood,
26 Tennessee.

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1 21. Defendant BROOKDALE SENIOR LIVING COMMUNITIES, INC. is a
2 corporation organized under the laws of the State of Delaware with its principal place of business
3 in Brentwood, Tennessee.

4 22. BROOKDALE SENIOR LIVING, INC. and BROOKDALE SENIOR LIVING
5 COMMUNITIES, INC. will be referred to collectively as “BROOKDALE” or “Defendants.”
6 BROOKDALE owns, manages, and/or operates approximately eighty-nine (89) assisted living
7 facilities throughout California. It is the largest chain of senior living facilities in California and in
8 the United States.

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

16 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

23 30. On information and belief, as of January 1, 2016, BROOKDALE increased the
24 Basic Service Rate and Personal Service Rate for residents in its California facilities by roughly
25 6%, and as of January 1, 2017, it raised these rates again by approximately 7%. In standard form
26 letters sent to residents attempting to explain these steep rate increases, BROOKDALE attributed
27 them to increases in "the operating costs of your community," including costs for "utility usage,
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1 insurance, supplies, and food.” But in fact the Consumer Price Index for the Bay Area rose only
2 3.4% between approximately January 1, 2016 and December 31, 2016.

3
4 **BROOKDALE FAILS TO PROVIDE FULL AND EQUAL ACCESS TO**
5 **AND ENJOYMENT OF ITS FACILITIES AND SERVICES TO PERSONS**
6 **WITH DISABILITIES IN VIOLATION OF THE ADA**
7 **AND THE UNRUH CIVIL RIGHTS ACT**

8 **Physical Access Violations**

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

15 32. There is a pattern of physical access barriers in BROOKDALE facilities, as
16 described below:

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

1 barriers are safety hazards, increasing the likelihood of falls. They also
2 prevent most persons with mobility disabilities from bathing as
3 independently as possible. Some wheelchair users have stopped using their
4 showers altogether and instead take sponge baths, hardly an adequate
5 substitute.

6 d. There are barriers to using the outdoor space for the residents' rooms,
7 including hard-to-open sliding doors, a lip at the threshold of the door, and
8 insufficient space to accommodate a wheelchair. This prevents persons
9 with mobility disabilities from using their outdoor space as persons without
10 disabilities can.

11 e. The closets do not have accessible hanging and storage space, in that they
12 are placed out of the reach of a wheelchair user. This prevents persons with
13 mobility disabilities from accessing their clothing and other personal items,
14 forcing them to rely on others for assistance.

15 f. Kitchen countertops and sinks are too high for a wheelchair user to access,
16 preventing those residents from fully using their kitchens.

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

19 **Understaffing**

20 34. BROOKDALE does not schedule or provide sufficient numbers of trained staff to
21 provide promised services and meet the needs of its residents. Plaintiffs allege on information and
22 belief that BROOKDALE staffs its facilities based on predetermined labor budgets and desired
23 profit margins. Pursuant to Defendants' corporate policies and procedures, the executive directors
24 who manage individual BROOKDALE facilities must request permission from Defendants'
25 corporate headquarters to deviate from these pre-determined budgets. Executive directors have a
26 disincentive to request increased labor budgets for their facilities because they are not eligible for
27 bonuses unless they meet earnings targets set by Defendants' corporate headquarters.
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1 35. Reports issued by California Department of Social Services' Community Care
2 Licensing Division ("Community Care Licensing"), the state agency that regulates assisted living
3 facilities, indicate that inadequate staffing pervades Defendants' California facilities. For instance,
4 Community Care Licensing recently issued a citation to BROOKDALE Corona after a licensing
5 inspector found "that there are not enough staff present" and observed five residents sitting
6 unsupervised in the dining room and 19 residents in the activity room with only one staff member
7 present. In March 2017, Community Care Licensing cited a BROOKDALE facility in Santa Cruz
8 County after a licensing inspector found that the facility did not have an adequate amount of staff
9 to meet residents' needs. In June 2016, BROOKDALE Oceanside received a citation because it
10 had only two caregivers on duty during daytime hours in the assisted living part of its facility.

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

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

2 *Impact of Understaffing on Personal Services*

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

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

24 40. Insufficient staffing has also caused and continues to cause errors in medication
25 administration, including providing the wrong dosage or the wrong medication, untimely or
26 missed doses, and/or a failure to implement physicians' orders. Community Care Licensing has
27 documented several recent examples from BROOKDALE's Sonoma County facilities that
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1 illustrate the broader problem. Community Care Licensing records show that the agency cited
2 BROOKDALE Chanate five times on consecutive visits between October 28, 2015 and October
3 13, 2016 for failing to give residents their prescribed medications. At BROOKDALE Windsor, a
4 resident recently received a double dose of medication because the nurse who administered the
5 first dose failed to document that it had been given. On a different occasion, staff gave a resident
6 at BROOKDALE Windsor a medication that had been prescribed for a different resident.
7 Meanwhile, at BROOKDALE Rohnert Park, licensing inspectors found that staff were not
8 properly trained on storing and administering residents' medication, leading to a narcotic pill that
9 went missing in August 2016 and staff's failure to administer medications in October 2016.
10 Numerous other reports issued by Community Care Licensing confirm that problems with
11 medication administration pervade Defendants' facilities throughout California. For example,
12 Community Care Licensing cited BROOKDALE Palm Springs when 20 residents missed their
13 medication doses on December 24, 2016 because there was no med tech on duty.

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

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

24 42. BROOKDALE'S failure to staff sufficiently results in caregivers' inability to
25 respond promptly to call pendants, if at all. BROOKDALE has represented that residents who
26 wear a call pendant, and pay a monthly fee for this service, may push a button to alert staff if they
27 have an emergency, and staff will immediately respond to provide assistance. Residents with
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1 disabilities rely heavily on these call pendants for assistance with basic tasks and activities of daily
2 living, as well as for emergencies. However, the call pendants do not notify staff of the resident's
3 location should they not be in their room. A BROOKDALE San Ramon resident fell and hit his
4 head on the pavement in the facility parking lot and pressed his pendant. No one responded.
5 Bleeding profusely from his head, he used his mobile phone to call the front desk. The son of
6 another resident, a fire chief with emergency response training, found the resident in the parking
7 lot just as BROOKDALE's bookkeeper and maintenance director responded to the resident's
8 telephone call. Because those employees have no caregiver or emergency response training, they
9 would not even touch the resident. The fire chief had to call 911 and administer first aid while
10 waiting.

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

21 44. Community Care Licensing records indicate lengthy emergency response times at
22 Defendants' facilities throughout California. For example, in February 2017 a licensing inspector
23 found that staff at BROOKDALE Riverside routinely took over 10 minutes to respond to
24 emergency pendant calls, and on one occasion took 36 minutes to respond. At BROOKDALE
25 Orangevale, a licensing inspector tested an emergency call pendant during a January 2017 visit
26 and found that it took over 45 minutes for facility staff to respond. At BROOKDALE North
27 Tarzana, a review of the facility's records revealed numerous response times of over 30 minutes,
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1 including multiple response times of over an hour. A licensing inspector who tested emergency
2 pull cords at BROOKDALE Chatsworth found that it took staff 24 minutes to respond during a
3 June 2016 inspection; during another visit, the inspector found that it took staff 30 minutes to
4 respond, and that they did so only after the inspector alerted the facility administrators. At
5 BROOKDALE Oceanside, an inspector found that as of April and May 2016, there were times
6 when staff did not answer residents' calls for 15 to 45 minutes. The inspector's report noted that
7 there were only two direct caregivers on duty during the day and evening shifts at the facility,
8 which has a capacity of 186 residents, and that those caregivers were responsible for numerous
9 tasks in addition to answering emergency calls on two floors. Community Care Licensing cited
10 BROOKDALE Fountaingrove at the end of March 2017 after a review of the pendant system
11 report revealed many instances of extremely lengthy response times, noting in particular a pendant
12 pressed at 5:23 p.m. which was not answered for over 39 minutes and a pendant set off at 5:45
13 p.m. to which staff did not respond for one hour and 27 minutes.

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

5 46. Residents must resort to calling 911 for assistance when staff fail to promptly
6 respond to their call pendants. For example, public records kept by the Rincon Valley & Windsor
7 Fire Protection Districts revealed that in a one-year period from June 2016 through May 2017, the
8 agency responded to 83 emergency calls from 907 Adele Drive, the address of BROOKDALE
9 Windsor. Community Care Licensing records indicate that this facility has a capacity of 80, but
10 often has fewer than 70 residents, suggesting that BROOKDALE Windsor residents averaged well
11 over one 911 call per person over the past year. Many of these calls were classified as “medical
12 assists,” meaning the Rincon Valley & Windsor Fire Protection Districts provided assistance to
13 another group or agency that had primary responsibility for medical care, such as assisting with
14 moving a heavy patient. Several of these 911 calls were classified as instances where a member of
15 the public called the fire protection districts for routine help, such as assisting a person in returning
16 to a bed or chair, with no transport or medical treatment given.

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

6 48. Because Defendants' staff are stretched so thin responding to emergency calls and
7 attending to their other duties, they have attempted to dissuade residents from calling for
8 assistance. Residents have been told by overworked caregivers to use their call buttons "only in
9 an emergency," despite the fact that, short of screaming for help, this is the only way to alert
10 caregivers that they need the assistance for which they are paying BROOKDALE. In many
11 instances, residents feel bad for overworked caregivers and attempt to perform tasks on their own,
12 despite paying BROOKDALE for these services. This has led to residents' falling or otherwise
13 injuring themselves.

14 *Impact of Understaffing on Dining Services*

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

24 50. At BROOKDALE San Ramon, the hours of serving staff were cut, and servers
25 have left as a result, leaving the dining department severely understaffed. At breakfast, there is
26 often one server for 80 people. On at least one day during June 2017, there were no servers in the
27 dining room for breakfast, and the activities director was cleaning the tables while the chef both
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1 cooked and served meals. At BROOKDALE Windsor, licensing inspectors found a single staff
2 member working morning shifts in the dining room, with dirty dishes and food droppings strewn
3 about because no other staff members were available to clean up. BROOKDALE Riverside
4 received a Community Care Licensing citation after investigators found that food was served cold
5 and residents had to wait an unreasonable amount of time for food to be served. The investigator
6 attributed this problem to understaffing, noting in her report that “[i]t was revealed there is not
7 enough servers for the number of residents in the dining room at one time.” On a recent visit to
8 BROOKDALE Corona, the licensing inspector found five residents sitting in the dining room
9 without supervision, and noted that caregivers were expected to serve lunch, clean the dining room
10 after meals, and sweep the floors in the dining room in addition to their other duties. The same
11 inspector found uncovered and dried-out ham and cheese sandwiches in the refrigerator and
12 unrefrigerated cartons of strawberry milk in a cupboard.

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

23 ***Impact of Understaffing on Housekeeping and Laundry***

24 52. BROOKDALE’s policy and practice of understaffing extends to housekeeping and
25 laundry services. For example, on information and belief, BROOKDALE San Ramon currently
26 only one housekeeper to clean approximately 80 rooms. As a result, the maintenance director
27 must also clean rooms and consequently has less time to perform maintenance duties. Residents’
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1 rooms have been left in deplorable and often unsanitary conditions, including toilet seats and
2 showers covered in feces and rooms which smell strongly of urine.

3 53. BROOKDALE routinely fails to wash residents' personal belongings and bed
4 linens. Even when BROOKDALE's staff take these items for laundering, residents' clothes and
5 linens are often lost, or they are given back other residents' clothing or linen instead of their own.
6 Residents are left in dirty and malodorous clothing. For example, the granddaughter of a resident
7 at BROOKDALE Hemet observed that her grandfather's clothes were never washed, and that staff
8 continued to dress him in the same pair of urine-stained pants. Some residents or their family
9 members have despaired of waiting and begun to perform these services on their own, despite
10 BROOKDALE's promise to provide them as part of their base rate.

11 ***Discrimination in Transportation/Activities***

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

26 55. Additionally, BROOKDALE has implemented policies and practices regarding its
27 provision of transportation services that discriminate against persons with mobility disabilities.
28

1 Residents at BROOKDALE San Ramon who use wheelchairs must be able to transfer from their
2 chairs to a seat in the bus, despite the existence of a wheelchair lift and a system for securing
3 wheelchairs in at least one of BROOKDALE San Ramon's buses. Making this transfer is
4 impossible and/or unsafe for many wheelchair users. The facility also requires wheelchair users to
5 arrange for a family member or an outside care attendant to accompany them on any off-site
6 activity, which deters many wheelchair users from participating and imposes a surcharge on those
7 who do. The facility also limits the number of wheelchair users for each off-site trip to two. At
8 BROOKDALE Fountaingrove, wheelchair users are limited to two off-site trips per month. At
9 least one wheelchair user at BROOKDALE San Ramon was told that she could not participate in
10 regular Saturday trips to the grocery store and shopping, because the driver "couldn't handle her."

11 **Emergency Evacuation Procedures**

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

18 57. Plaintiffs are informed and believe, and on that basis allege, that these practices
19 have been and are an official policy and practice by which Defendants operate their businesses
20 and/or services.

21 58. Defendants' failure and refusal to provide equal services to persons with disabilities
22 is humiliating and degrading to and creates a serious safety risk for the members of the proposed
23 class of persons with disabilities.

24 59. Defendants are responsible for their illegal operations and discriminatory policies
25 and practices as described herein. BROOKDALE residents, their family members, and staff
26 members have raised these issues repeatedly with members of BROOKDALE management to no
27 avail.

28

1 60. Defendants have been notified of the civil rights violations described herein, but
2 have refused to provide necessary reasonable modifications to its staffing policies, practices and
3 procedures to provide residents with disabilities full and equal enjoyment of its goods, services,
4 facilities, activities, benefits and accommodations and to comply with the requirements of the
5 ADA and the Unruh Civil Rights Act as alleged herein.

6
7 **BROOKDALE MISREPRESENTS, MAKES MISLEADING STATEMENTS,**
8 **AND CONCEALS MATERIAL FACTS ABOUT THE QUALITY AND**
9 **AVAILABILITY OF CARE IT PROVIDES TO ALL RESIDENTS**

10 61. As a result of Defendants’ corporate policies and practices, BROOKDALE subjects
11 all residents, regardless of disability, to a substantial risk that they will not receive the care and
12 services they require and have paid for on any given day, as described in Paragraphs 34-58.
13 BROOKDALE lures residents to move into or stay at its facilities by misrepresenting in various
14 corporate written materials that it will provide the basic, personal, and therapeutic services each
15 resident needs based on individualized assessments performed by BROOKDALE staff, and by
16 failing to disclose and concealing that it cannot provide the promised services to all residents
17 because its facilities are chronically understaffed.

18 **BROOKDALE’S MISREPRESENTATIONS REGARDING**
19 **THE SERVICES IT PROVIDES**

20 *Standardized Residency Agreements*

21 62. In order to move in to one of BROOKDALE’s California facilities, residents must
22 sign one of Defendants’ standardized Residency Agreements. In its standardized Residency
23 Agreement, BROOKDALE represents to residents prior to move-in and throughout their residency
24 that it will provide them with a standard set of basic services, additional personal services
25 identified in the Personal Service Plan, and any select and therapeutic services for which the
26 resident chooses to pay. At the time of signing the Residency Agreement, residents or their
27 responsible parties are required to confirm that they have reviewed and understood the document.
28

1 63. In Section I.A of its standardized Residency Agreement, BROOKDALE
2 affirmatively represents to prospective residents that “[i]n order to provide you with care,
3 supervision and assistance with instrumental activities of daily living in order to meet your needs,
4 we will provide you with the following Basic Services”: accommodations, including a residential
5 suite and use of common areas; three meals a day plus snacks 24 hours a day; basic utilities; “light
6 housekeeping once a week”; weekly laundry service of the resident’s “personal belongings and
7 bed linens”; “planned social and recreational programs”; transportation services; and staffing by
8 “Community associates ... available 24 hours a day, seven days a week.” Section I.A further
9 represents that BROOKDALE will observe the resident’s “health status to identify social and
10 health care needs” and “will consult with you regarding social and health-related issues.” In
11 addition, BROOKDALE represents in Section I.A of its standardized Residency Agreement that
12 “[w]e will provide personal services that are included as part of the personal service assessment.”

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

17 65. Defendants’ standardized price schedule for personal care services is attached to
18 the standardized Residency Agreement. This price schedule includes a variety of personal
19 services, such as staff assistance with ordering, storing, and taking medication; staff assistance
20 with eating, dressing, bathing, using the toilet, and other activities of daily living; escort and
21 mobility assistance to get around Defendants’ facilities; and help taking care of residents’ pets.
22 This price schedule lists the monthly costs of each service and details how Defendants’ caregivers
23 and other staff will provide the services. For instance, a resident may require and agree to pay for
24 “[s]taff attention while you administer your insulin injections”; “additional staff involvement” for
25 residents who are reluctant to accept care; and bathroom assistance such as “reminders to get to
26 the bathroom,” “pulling up and down pants, handling toilet paper, wiping, changing protective
27 undergarments and getting onto and off of toilet,” as well as “weight-bearing or balance assistance
28

1 from one associate” for residents “unable to stand independently while using the bathroom.”

2 66. BROOKDALE repeats these representations in the Personal Service Plan that it
3 prepares for each resident before the resident moves in and updates periodically throughout his or
4 her residency. The Personal Service Plan lists the types of staff assistance that the resident
5 requires and has agreed to pay for, along with the monthly fee for each. For example, the Personal
6 Service Plan for one former resident states that Defendants’ staff will “[p]rovide physical
7 assistance to and from the dining room and/or community activities as needed” for a monthly fee
8 of \$273. Standardized language in the Personal Service Plan states that “[t]he Personal Service
9 Assessment and the Physician Plan of Care are used to determine the personal services that you
10 require at move-in and periodically throughout your residency. The Personal Service Assessment
11 will be used to develop your Personal Service Plan.”

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

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

26 69. Every month, BROOKDALE sends each resident or his or her legal representative
27 an invoice for services that the company represents it will provide the following month. These
28

1 invoices list the monthly rate for basic services, the Personal Service Rate that is based on each
2 resident's Personal Service Plan, and any rate adjustments.

3 70. BROOKDALE repeats these representations in the letters it periodically sends all
4 residents informing them of increases in the rates they owe for basic services, personal services,
5 and select and therapeutic services. Using standardized language, Defendants' rate increase letters
6 notify the resident of changes to his or her monthly rates for these services, which BROOKDALE
7 attributes to increases in the cost of "providing the services you desire and depend upon."

8
9 ***Defendants' Communications Regarding the Merger and New Assessment
System***

10
11 71. In early 2014, Emeritus Senior Living ("Emeritus"), at the time a major chain of
12 senior living facilities, sent residents a standardized letter informing them of the merger between
13 BROOKDALE and Emeritus. The letter promised that residents would not be impacted by the
14 change but would "receive the same excellent care and service you expect at your community"
15 and would "continue to enjoy all the amenities of your community." It further stated the merger
16 would create a "senior living company offering the most comprehensive set of senior care
17 solutions" with a commitment to "customer-focused cultures and a commitment to continuous
18 improvement and innovation." Rather than inform residents that the merger would result in even
19 lower staffing levels and poorly trained staff, the letter promised a continuum of care with likely
20 improvements.

21 72. In or about October 2015, BROOKDALE sent residents a standardized letter
22 informing them of an upgrade to its community assessment and care planning system effective
23 December 1, 2015. The upgrade would involve a conversion to a "new personal service system"
24 which would "enhance our ability to match your needs and preferences with the right services at
25 the right time." The letter promised "benefits from enhancements," which included, *inter alia*,
26 "[p]ersonalized service planning and care systems."

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

6
7 ***Defendants' Marketing Materials***

8 74. Defendants' public website, www.brookdaleliving.com, prominently features
9 online marketing materials directed at prospective residents. In a section of its website entitled
10 "What is Assisted Living?", BROOKDALE claims that its "assisted living communities have staff
11 and programs in place that support and assist residents with daily living and basic care in a
12 homelike or apartment setting. Residents receive three meals a day, recreational and social
13 activities, housekeeping, linen service, apartment maintenance and transportation. That means
14 your loved one gets all the benefits of retired life, without the hassle of daily chores."

15 75. Defendants' online marketing materials also tout the personalized services that its
16 assisted living facilities provide. The company's website explains that "[o]ur trained caregivers
17 provide attention and assistance with medication support, bathing, dressing, cooking and other
18 tasks throughout the day. Our staff will also coordinate services with outside healthcare providers
19 and monitor residents to ensure they are healthy so your loved one gets the care they need while
20 enjoying the quality of life they've earned."

21 76. Defendants' online marketing materials promise a "Culinary Arts" program that
22 uses "only the freshest meat, seafood, produce, herbs, and spices."

23 77. Defendants' online marketing materials further represent that "[a]t Brookdale, we
24 believe in delivering senior care that's tailored to you and your loved one based on those unique
25 needs and desires. That's why we provide a variety of options. This personalized approach
26 ensures that you and your family get exactly what you need without paying for what you don't."

1 78. BROOKDALE represents to prospective and current residents that it tailors its
2 services to residents' personal needs. According to Defendants' representations, the process
3 begins with an individualized assessment, which BROOKDALE uses to produce a Personal
4 Service Plan for each resident. The Personal Service Plan includes a list of services for which the
5 resident pays a monthly fee. Defendants' affirmative representations give rise to a reasonable
6 expectation on the part of the reasonable consumer that BROOKDALE will determine and then
7 provide the amount of caregiver and other staff time that is necessary to provide the personal
8 services for which residents are paying.

9 79. BROOKDALE makes similar representations in the standardized marketing folder
10 it distributes to prospective and incoming residents. In this marketing folder, BROOKDALE
11 represents that at its facilities, "Carefully selected and trained associates do more than assist with
12 activities of daily living such as dressing, bathing and dispensing of medications; they implement
13 custom care plans designed to meet the individual needs of each resident ... It all begins with a
14 Personal Service Assessment. We take the time to listen to our residents so that we understand
15 how to establish clinical, dining and program support that works for them in a meaningful way.
16 We recognize their individual needs and preferences and respond to them accordingly. So,
17 whether it's a scented lotion, a unique snack, a favorite recipe or a lifelong interest, we integrate
18 everything we learn to create a truly individualized living experience." Elsewhere in this
19 marketing folder, BROOKDALE represents that it "provide[s] customized care solutions to meet
20 residents' unique needs and complement their vision for all the places they would still like their
21 lives to go. From our trained staff to our wide variety of amenities and activities, we strive to
22 offer personalized care and exceptional service at competitive and affordable rates. Fees for care
23 and services are based on each resident's needs and preferences, as determined by the Living
24 Accommodation selected and their Personal Service Plan ... This provides customer value because
25 **our residents only pay for what they need and want.**" (Emphasis in original). BROKDALE's
26 marketing folder also promises an industry-leading dining services program that "continue[s] to
27 satisfy the preferences and nutritional needs of residents with dining choices that offer mealtime
28

1 fulfillment while meeting dietary requirements.”

2 80. Based on all of Defendants’ representations, Plaintiffs, the putative class members,
3 and the general consuming public reasonably expect that BROOKDALE will ensure adequate
4 staffing to perform the services promised to residents, including by providing sufficient levels of
5 qualified and adequately trained staff to perform the services identified in each resident’s Personal
6 Service Plan.

7
8 **BROOKDALE FAILS TO DISCLOSE AND CONCEALS THAT ITS**
9 **STAFFING POLICIES PREVENT IT FROM PROVIDING BASIC**
10 **SERVICES, PERSONAL SERVICES, AND SELECT AND THERAPEUTIC**
11 **SERVICES TO ITS RESIDENTS ON A CONSISTENT BASIS**

12 81. Contrary to Defendants’ representations regarding its provision of services,
13 BROOKDALE has a corporate policy and practice of staffing its facilities according to a system
14 that ensures all BROOKDALE residents run the continuing risk of not receiving the services for
15 which they are paying, of not having their care needs met, and of suffering injury from the lack of
16 care.

17 82. In addition to the Community Care Licensing records described in Paragraphs 35-
18 36, 39-41, 44-47, and 50, current and former residents of BROOKDALE facilities confirm that
19 Defendants’ staffing levels do not change when updates to personal service assessments show that
20 residents require additional personal services. BROOKDALE has in many cases modified
21 residents’ Personal Service Plans—and raised monthly personal service fees accordingly—even
22 though BROOKDALE failed to conduct an updated personal service assessment, failed to provide
23 residents or their legal representatives with the results and method of the assessment, and/or failed
24 to provide 60 days’ written notice. Despite paying higher fees as a result of these changes to their
25 Personal Service Plans, residents and their families have observed that neither the services
26 provided nor staffing levels increased and, in many cases, decreased.

27 83. Caregivers have informed residents that although they would like to work a 40-
28 hour week, but BROOKDALE allows certain caregivers to work only 24 hours in a week.

1 Residents and their family members have also observed that BROOKDALE fails to ensure that all
2 staff members receive necessary training. At BROOKDALE Fountaingrove, the facility's interim
3 executive director admitted to residents' families that BROOKDALE has insufficient staff to meet
4 residents' needs.

5
6 **BROOKDALE'S MISREPRESENTATIONS AND**
7 **CONCEALED FACTS WERE MATERIAL**

8 84. BROOKDALE's misrepresentations and the facts it conceals are material to the
9 reasonable consumer. An important and significant factor in choosing to move oneself or one's
10 relative to a BROOKDALE facility, to stay there after the facility was purchased by
11 BROOKDALE, and/or to continue to agree to pay the amounts charged by BROOKDALE is the
12 provision of staffing that is necessary to provide the services its residents need and for which the
13 residents are paying.

14 85. BROOKDALE's misrepresentations, misleading statements and omissions
15 regarding its provision of staffing are material to prospective residents and their family members.
16 Assurances that a facility will provide the amount of staffing necessary to provide basic services
17 and meet the personal service needs of residents based on BROOKDALE's own assessments is a
18 substantial factor (and indeed often the most important factor) in deciding to enter a certain
19 facility. The named Plaintiffs would not have, and the members of the putative class would in all
20 reasonable probability not have, entered BROOKDALE's facilities, or stayed at these facilities
21 after BROOKDALE purchased them from other companies, or they would have insisted on paying
22 a lower price, if they had known that, although BROOKDALE would charge them based on the
23 staffing associated with their Personal Service Plans, BROOKDALE did not and does not provide
24 adequate staffing to carry out the services identified in residents' Personal Service Plans, nor does
25 it provide adequate staffing to perform basic services and select and therapeutic services.

26 86. This is true even for residents who currently are nearly independent. These
27 residents chose an assisted living facility as opposed to an independent living community or
28

1 remaining at home because they wish to “age in place.” They may not currently need significant
2 assistance with the activities of daily living initially, but they will become more dependent as they
3 age and do not want to move again when that happens. Moreover, even the most independent
4 residents depend on the basic services that BROOKDALE promised them, such as food, laundry,
5 and housekeeping. A key factor for these residents in selecting BROOKDALE is that the facility
6 will provide the staffing that BROOKDALE itself has determined is necessary to meet their
7 assessed needs, both now and as those needs increase.

8 87. BROOKDALE has a duty to disclose that its staffing policies and procedures
9 preclude it from consistently providing basic services, personal services, and select and therapeutic
10 services, because of, among other things, the substantial safety risk to current and future residents
11 from BROOKDALE’s conduct.

12 88. The non-disclosure is material because, among other things, BROOKDALE knows
13 that its conduct risks the safety of its residents. In addition to individual complaints made by
14 residents and family members, family and resident councils send regular correspondence to
15 Executive Directors of BROOKDALE facilities, as well as regional and national managers
16 regarding the problems outlined above. In the case of BROOKDALE San Ramon and
17 BROOKDALE Fountaingrove, local and regional management employees have attended
18 numerous meetings of the Family and Resident Councils and have made unfulfilled promises to
19 address the concerns outlined above. Moreover, Community Care Licensing has conducted
20 numerous licensing inspections which are delivered to BROOKDALE executives and managers of
21 California facilities describing the failure of various facilities to meet state laws and regulations.

22 89. BROOKDALE is fully aware of the facts alleged above. Yet, BROOKDALE has
23 failed to disclose and actively concealed from residents, prospective residents and their family
24 members the true facts about how staffing provided at BROOKDALE’s California facilities.

25 //

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27

28

1 **Barriers to Moving Out**

2 90. BROOKDALE’s misrepresentations, misleading statements, and material
3 omissions affect not only the decision of residents to enter the facility but also the decision to stay
4 at a BROOKDALE facility.

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

13 92. BROOKDALE puts great effort into increasing and maintaining building
14 occupancy to the detriment of their current and future residents. When residents or their family
15 members complain about staffing and/or conditions at a BROOKDALE facility, on information
16 and belief, employees are instructed to reassure them that things will improve and that the incident
17 or incidents are temporary snags. For example, the Family Council of BROOKDALE
18 Fountaingrove has been meeting every month for many months to address the inadequate staffing,
19 slow response times to call buttons, and other health and safety issues faced by the Fountaingrove
20 residents. At most meetings, BROOKDALE representatives, including Vice President of
21 Regional Operations Sharyl Ronan and Interim Executive Director Dan Devine, appear, listen to
22 the numerous complaints, and assure those present that they are looking into the problems and all
23 will be well. Notwithstanding these claims, members of the Family Council report little to no
24 changes or action items undertaken by BROOKDALE staff after these meetings.

25 93. Similarly, residents and family members at BROOKDALE San Ramon hold
26 monthly Family Council and Resident Council meetings and have informed facility management,
27 as well as Rick Flynn, District Director of Operations, Executive Director Steve Millard,
28

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

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

19 95. BROOKDALE thereby unjustly continues to profit from the original fraud by
20 perpetuating the misrepresentations, misleading statements, and failures to disclose.

21 **NAMED PLAINTIFFS’ EXPERIENCES IN BROOKDALE FACILITIES**

22 **Patricia Eidler**

23
24 96. PATRICIA EIDLER has been a resident at BROOKDALE San Ramon since
25 approximately April 27, 2013. When Ms. EIDLER moved into the facility, it was owned and
26 operated by Merrill Gardens LLC (“Merrill Gardens”) and was known as Merrill Gardens at San
27 Ramon. Prior to move-in, Ms. EIDLER, through her son and power-of-attorney, CHRIS EIDLER,
28

1 read, reviewed, and signed a standardized residency agreement with Merrill Gardens. In this
2 agreement, Merrill Gardens promised to provide Ms. EIDLER with “standard services” that are
3 substantially similar to the basic services enumerated in Defendants’ standardized residency
4 agreement. Merrill Gardens also agreed to provide Ms. EIDLER with assisted living services for
5 her needs as determined by a pre-admission interview and assessment. The agreement stated that
6 Merrill Gardens would “continue to monitor your needs and periodically reassess the services
7 being provided. ... Assessments may result in changes in the level of care you receive, as well as
8 the associated assisted living fee.” The agreement also provided that any change in the amount or
9 frequency of assisted living services would result in an immediate increase in the assisted living
10 charges.

11 97. PATRICIA EIDLER, through her son and power-of-attorney, CHRIS EIDLER,
12 read and reasonably understood Merrill Gardens’ representations in the residency agreement as
13 statements that it used resident assessments to determine its residents’ needs and provide staffing
14 levels necessary to meet those needs. Ms. EIDLER also reasonably understood and expected that
15 Merrill Gardens would staff the facility in a manner that would allow it to consistently provide the
16 services that Merrill Gardens had promised and that Ms. EIDLER would be paying for.
17 Ms. EIDLER also reasonably understood and expected that Merrill Gardens would regularly
18 assess Ms. EIDLER to ascertain any changes in her care needs and provide that care immediately
19 in exchange for an immediate increase in her assisted living charges, which she understood to be
20 necessary because of the increased staffing cost associated with providing those services to her.
21 Ms. EIDLER, through her son and power-of-attorney, CHRIS EIDLER, read and signed the
22 agreement acknowledging that she had reviewed and understood all of the terms contained in the
23 agreement. Ms. EIDLER, through her son and power-of-attorney, CHRIS EIDLER, read and
24 relied on the representations in the residency agreement in making the decision to enter Merrill
25 Gardens at San Ramon; she did so with the reasonable expectation that she would age in place and
26 that as her needs increased, the facility would be able to provide increased services and
27 corresponding caregiver time to meet those needs.
28

1 98. While the facility was operated by Merrill Gardens, Ms. EIDLER received better
2 care. However, it was subsequently purchased by Emeritus, and shortly thereafter became
3 BROOKDALE San Ramon, following the Emeritus-BROOKDALE merger. In or about April
4 2014, CHRIS EIDLER received and read a letter from Emeritus informing residents about the
5 merger between BROOKDALE and Emeritus. The letter promised that residents would not be
6 impacted by the change but would “receive the same excellent care and service you expect at your
7 community” and would “continue to enjoy all the amenities of your community.” It further stated
8 the merger would create a “senior living company offering the most comprehensive set of senior
9 care solutions” with a commitment to “consumer-focused cultures and a commitment to
10 continuous improvement and innovation.”

11 99. CHRIS EIDLER, as his mother’s power of attorney and legal representative, read
12 the letter and reasonably understood and expected that the care Ms. EIDLER received would be no
13 worse than the care she had received under Merrill Gardens, and possibly improve.
14 BROOKDALE did not inform the EIDLERS nor did they have any reason to believe that
15 BROOKDALE would not staff the facility with sufficient staff in numbers and training to provide
16 the services for which Ms. EIDLER and the other residents were paying.

17 100. In or about November 2015, Mr. EIDLER, as power of attorney for his mother,
18 received new contract paperwork from BROOKDALE, entitled “AMENDMENT TO
19 CONTINUING CARE RESIDENCE AND SERVICES AGREEMENT,” purporting to amend the
20 residency agreement that Ms. EIDLER had signed with Merrill Gardens. The “Schedule of
21 Services and Rates” replaced references to “standard services” and “assisted living services” with
22 the terms “basic service rate” and “personal service rate.”

23 101. Ms. EIDLER, through her legal representative and power of attorney CHRIS
24 EIDLER, read and reasonably understood BROOKDALE’s representations—as well as Merrill
25 Gardens’ representations in the agreement that was assigned to BROOKDALE—as statements
26 that BROOKDALE would perform assessments to determine needed services and staff
27 BROOKDALE San Ramon in a manner that would allow it to consistently provide the services
28

1 that BROOKDALE promised and that Ms. EIDLER was paying for. Ms. EIDLER, through
2 CHRIS EIDLER, read and relied on these representations in making the decision to stay at the
3 facility despite the change in ownership. At no time has BROOKDALE informed Ms. EIDLER or
4 her son CHRIS EIDLER that its corporate policy and procedure of providing pre-determined
5 staffing at its facilities precludes BROOKDALE from providing the care and services residents
6 have been promised and places all residents at a substantial risk that they will not receive the care
7 and services they have paid for on any given day.

8 102. Had BROOKDALE disclosed this material fact to Ms. or Mr. EIDLER, he would
9 have begun looking for a place to move his mother and/or not agreed to pay the amounts charged
10 by BROOKDALE.

11 103. Ms. EIDLER uses a walker and/or wheelchair for mobility. In addition to her basic
12 services, Ms. EIDLER pays to receive assistance with her medication and with bathing. Due to
13 understaffing at BROOKDALE San Ramon, Ms. EIDLER often waits 30 minutes or more for a
14 response to her call pendant. When staff do arrive, they are clearly rushed, and Ms. EIDLER feels
15 guilty about seeking their assistance when they are overworked. Consequently, instead of using
16 her call pendant, she performs some of the basic and personal care services for which she pays
17 BROOKDALE on her own or with the help of other residents, posing a safety risk.

18 104. Ms. EIDLER and her family members have witnessed carelessness with
19 medications caused by overworked staff. On at least two occasions, Ms. EIDLER has found
20 medication that did not belong to her in her room. Just this month, BROOKDALE staff was
21 unable to locate a bottle of eye medication prescribed to another resident for two days, because it
22 had left the medication in Ms. EIDLER's room. On information and belief, Plaintiffs allege that
23 the other resident did not receive her eye medication during that time.

24 105. On or about July 10, 2017, Ms. EIDLER was informed that her pain medication
25 had been stolen from the facility. Despite numerous requests that BROOKDALE contact Ms.
26 EIDLER's family regarding issues relating to her medication, the facility did not contact the
27 family, who learned of the burglary from Ms. EIDLER. When her daughter-in-law, Sharon Eidler,
28

1 asked the facility's acting Executive Director, Shawn Cull, about the incident, he explained that
2 the staff believed that Ms. EIDLER's medication and that of other residents was stolen during the
3 overnight shift ("NOC Shift") from July 9 to 10, 2017. When Sharon Eidler asked Mr. Cull which
4 employees were on duty during that shift, he told her that there were only two employees on duty
5 to respond to all residents at the facility. The facility has an occupancy of between approximately
6 70 to 80 residents. Because no one was immediately available at the facility to pick up refills, Ms.
7 EIDLER did not receive her pain medication until later that evening and was extremely anxious
8 until that time. Another resident's family was not informed of the theft until almost 6 p.m., after
9 the resident's physician's offices had closed and the family could not obtain a refill. That resident
10 was given an inadequate substitute pain medication in the evening, which was distressing to the
11 resident and her family members, who had to reassure and calm her. The following day, although
12 BROOKDALE was notified that the refill was ready for pick-up at 10 a.m., the resident told her
13 family that she did not receive her prescribed pain medication until 4 p.m.

14 106. BROOKDALE's staff, policies, and practices have deterred Ms. EIDLER from
15 attending Defendants' off-site activities with her walker. Ms. EIDLER would like to participate in
16 the "Monday lunches" where residents are taken off-site for lunch at nice restaurants. However,
17 Ms. EIDLER has a hard time climbing the steps of the bus with her walker. When she has
18 attended in the past, BROOKDALE staff were very impatient with Ms. EIDLER and made her
19 feel as if her walker was a nuisance and that she should not bring it with her.

20 107. BROOKDALE's discriminatory policies and practices have also deterred
21 Ms. Eidler from attending off-site activities with her wheelchair. BROOKDALE posted a sign in
22 BROOKDALE San Ramon stating its official policy that wheelchair users must be accompanied
23 by a family member or private caregiver and must be able to transfer from their wheelchair to a
24 bus seat. Moreover, BROOKDALE San Ramon buses are fully equipped to handle only two
25 wheelchairs, and the staff tasked with assisting residents on these off-site outings are unable or
26 unwilling to operate the wheelchair harnesses. Ms. EIDLER requires assistance transferring from
27 her wheelchair and operating the wheelchair harnesses, and does not wish to burden her family
28

1 members or pay for a private caregiver, on top of the fees she already pays BROOKDALE, to
2 attend off-site activities with her. As a result of BROOKDALE'S discriminatory policies and
3 practices, Ms. EIDLER has stopped participating in Defendants' off-site activities and will
4 continue to be so deterred unless and until BROOKDALE changes its discriminatory policies and
5 practices.

6 108. Ms. EIDLER has been instructed to keep her legs elevated as much as possible to
7 reduce the effects of edema. Understaffing in the dining services department means that she often
8 remain in the dining room for approximately two hours for each meal, something she cannot
9 afford to do given her condition. In addition to long wait times to place her orders and receive her
10 food, Ms. EIDLER frequently receives food she did not order and/or cold food. Ms. EIDLER
11 used to enjoy eating lunch and dinner in the dining room. However, the chronic understaffing and
12 poor quality of food has deterred her from doing so. She has instead increased her budget for food
13 purchased outside the facility. When she does eat at the facility, she chooses the simplest
14 offerings, such as eggs for lunch or a grilled cheese sandwich for dinner, because the food quality
15 is so poor.

16
17 **Stacia Stiner**

18 109. STACIA STINER has been a resident at BROOKDALE San Ramon since
19 approximately February 13, 2016. On or about February 12, 2016, STACIA STINER's mother,
20 RITA STINER, read, reviewed, and signed an agreement with BROOKDALE as STACIA
21 STINER's legal representative and power of attorney. As part of this "RESIDENCY
22 AGREEMENT", BROOKDALE stated that "[i]n order to provide you with care, supervision and
23 assistance with instrumental activities of daily living in order to meet your needs, we will provide
24 you with the following Basic Services, which are included in the Basic Service Rate," which
25 included, among other things, the room, three daily meals and snacks on demand, weekly room
26 cleaning, weekly laundry and linen service, planned activities, transportation, observation, and the
27 availability of staff "24 hours a day, seven days a week." This standard residency agreement also
28

1 stated that:

2
3 [p]rior to moving in and periodically throughout your residency, we will use a
4 personal service assessment to determine the personal services you require. The
5 personal service assessment will be used to develop your Personal Service Plan.
6 The results of the assessment, our method for evaluating your personal care needs,
7 and the cost of providing the additional personal services (the “Personal Service
8 Rate”) will be shared with you.

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

20 110. Ms. STINER, through her legal representative and power of attorney, RITA
21 STINER, read and reasonably understood BROOKDALE’s representations as statements that
22 BROOKDALE would perform assessments to determine needed services and staff BROOKDALE
23 San Ramon in a manner that would allow it to consistently provide the services that
24 BROOKDALE promised and Ms. STINER was paying for. Ms. STINER, through RITA
25 STINER, relied on these representations in making the decision to enter BROOKDALE San
26 Ramon. BROOKDALE did not disclose to STACIA or RITA STINER at any time prior to her
27 admission nor has it disclosed since that time that its corporate policy and procedure of providing
28 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

1 not receive the care and services they have paid for on any given day. If BROOKDALE had
2 disclosed this material fact to STACIA and/or RITA STINER, STACIA STINER would have
3 looked for another facility for STACIA and would not have agreed to pay the rates charged by
4 BROOKDALE.

5 111. Beginning in October 2016, BROOKDALE initiated increases in Ms. STINER's
6 basic service and personal service rates. Ms. STINER and her mother RITA STINER have been
7 unable to decipher the changes in Ms. STINER's bills. On or about October of 24, 2016, RITA
8 STINER received a letter from BROOKDALE's Executive Director informing her that
9 Ms. STINER's basic service rate would increase from \$3,205 to \$3,429 per month and that her
10 personal service rate would increase by approximately 6%. During an in-person meeting in
11 January of 2017, BROOKDALE staff told RITA STINER that Ms. STINER's personal service
12 rates would rise as follows: the monthly medication management fee would rise from \$567 to
13 \$631; the monthly fee for staff assistance with dressing and grooming tasks would rise from \$454
14 to 505; the monthly fee for assistance with two showers per week would rise from \$113 to \$631
15 per week (a significant increase because STACIA STINER was purportedly requiring more than
16 the allotted 20 minutes of caregiver time per shower); and the monthly fee for assistance with
17 toileting would increase from \$397 to \$442. RITA STINER has had conversations with Shawn
18 Cull, the acting Executive Director, during which he told her that BROOKDALE would not
19 charge the full amount of the increases listed above. Despite numerous communications with
20 Mr. Cull and the billing department, the monthly bills remain confusing and BROOKDALE has
21 sent RITA STINER notices of late payment and even a "30-DAY FINAL DEMAND TO PAY" in
22 December 2016, stating that "[i]n order to provide the care our residents expect and deserve and at
23 the same time support the professional staff we employ, it's imperative that we receive our
24 monthly rent and any additional charges in a timely fashion."

25 112. Although Ms. STINER is a wheelchair user, BROOKDALE has not provided her
26 with a room that has any physical access features. It does not have sufficient turning space in the
27 bathroom area, making it difficult for Ms. STINER to enter the bathroom and impossible for
28

1 Ms. STINER to turn around in the bathroom. The bathroom does not have a roll-in shower, and
2 the grab bars do not comply with applicable access standards, preventing her from bathing
3 independently and creating a serious safety hazard. Ms. STINER cannot reach most of the
4 hanging or the storage space in her closet and therefore cannot access her clothing or other
5 personal items without assistance from others. Ms. STINER's room has a balcony, but a two-inch
6 lip leading out to the balcony and insufficient turning space once outside makes it inaccessible to
7 Ms. STINER. She once tried to enter and exit the balcony by herself, but has not attempted to do
8 so since because the experience scared her. The complete lack of accessible features in
9 Ms. STINER's room prevents her from being as independent as possible and causes her to rely on
10 personal assistance from BROOKDALE staff. In fact, Ms. STINER is charged more than \$400
11 per month for toilet assistance because "resident is unable to use the bathroom on their own."
12 BROOKDALE charges Ms. STINER an elevated rate of \$631 for two showers per week because,
13 according to BROOKDALE management, she requires more than the allotted 20 minutes per
14 shower. Compounding this problem is BROOKDALE's understaffing in care services, which
15 means that Ms. STINER must wait to accomplish most of her activities of daily living, if at all.
16 This puts Ms. STINER in humiliating, frustrating and hazardous situations on a daily basis.

17 113. Despite paying approximately \$600 per month for BROOKDALE to "order and
18 coordinate medications between family, health care providers and pharmacy," RITA STINER
19 must pick up medication for her daughter at least once per week, frequently with only one-day
20 notice from BROOKDALE. RITA STINER also does the majority of her daughter's laundry
21 because BROOKDALE frequently loses her clothing or returns the wrong clothing to her.

22 114. Understaffing in the dining services department means that Ms. STINER has had to
23 wait up to 45 minutes just to order breakfast.

24 115. On some days, there is only one caregiver available in the mornings, causing
25 Ms. STINER to wait anywhere from 10 minutes to one hour for assistance getting dressed. At
26 night, Ms. STINER requires assistance if she needs to use the toilet. She waits anywhere from 10
27 minutes to an hour for staff to respond and will occasionally have to urinate in her bed when
28

1 assistance takes too long to arrive. She frequently resorts to using her mobile phone to call the
2 outside line when staff do not respond to her call pendant. Due to short-staffing, caregivers often
3 attempt to leave Ms. STINER in the middle of assisting her with bathing or toileting because they
4 must respond to call pendants from other residents or because they left another resident on the
5 commode to respond to Ms. STINER.

6 116. Ms. STINER enjoys getting out of the facility and participating in off-site
7 activities. However, BROOKDALE requires that, because she is a wheelchair user, she be
8 accompanied by a family member or a private personal caregiver. Although she has been able to
9 participate in scenic drives or lunches by herself, Ms. STINER had to pay approximately \$180 for
10 a personal assistant to participate in a trip to a casino in Cache Creek in approximately August
11 2016. She would like to return to Cache Creek on a future BROOKDALE outing, but is deterred
12 by BROOKDALE's discriminatory policy. Outings are also frequently limited to two wheelchair
13 users per outing on a first come, first served basis.

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

18
19 **Mary-Catherine Jones**

20 118. MARY-CATHERINE JONES has been a resident at BROOKDALE Fountaingrove
21 in Santa Rosa since approximately January 2013. When Ms. JONES moved into the facility, it
22 was owned and operated by Emeritus and was known as Emeritus at Santa Rosa. Prior to move-
23 in, KELLY CLAPPER, acting as Ms. JONES's legal representative and power of attorney, signed
24 a standardized residency agreement with Emeritus. In this agreement, Emeritus promised to
25 provide a list of "core services" that are substantially similar to the basic services enumerated in
26 Defendants' standardized residency agreement. Emeritus also agreed to "perform a
27 comprehensive Resident Evaluation prior to your admission in the Community, regularly
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1 thereafter, and as your condition warrants, in order to determine the level of Personal Care
2 Services that you need. We will develop your Service Plan, based on your Resident Evaluation,
3 that describes how we will provide these services. You will receive services appropriate to your
4 individual needs, as described in your Service Plan.” The agreement reserved Emeritus’s right to
5 assign the agreement to any successor-in-interest selected by Emeritus.

6 119. In 2014, BROOKDALE merged with Emeritus, and Emeritus at Santa Rosa
7 became BROOKDALE Fountaingrove. Plaintiffs are informed and believe, and on that basis
8 allege, that Emeritus assigned its residency agreements with existing residents to BROOKDALE,
9 and that BROOKDALE assumed any liability arising from those agreements. In or about
10 February 2014, KELLY CLAPPER received and read a letter from Emeritus informing residents
11 about the merger between BROOKDALE and Emeritus. The letter promised that residents would
12 not be impacted by the change but would “receive the same excellent care and service you expect
13 at your community” and would “continue to enjoy all the amenities of your community.” It
14 further stated the merger would create a “senior living company offering the most comprehensive
15 set of senior care solutions” with a commitment to “consumer-focused cultures and a commitment
16 to continuous improvement and innovation.”

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

23 121. On November 18, 2015, KELLY CLAPPER read, reviewed, and signed an
24 agreement with BROOKDALE as Ms. JONES’s legal representative and power of attorney. This
25 agreement, entitled “AMENDMENT TO CONTINUING CARE RESIDENCE AND SERVICES
26 AGREEMENT,” amended the residency agreement that Ms. JONES signed with Emeritus and
27 that was assigned to BROOKDALE after the merger with Emeritus. Pursuant to this amendment,
28

1 references to “core services” and “personal care services” were replaced with the terms “basic
2 services” and “personal services,” and Emeritus’s price schedules for various services were
3 replaced with BROOKDALE’s standardized personal services price schedule and lists of select
4 and therapeutic services. The parties agreed that except as otherwise amended, the terms of the
5 prior residency agreement would remain in full force and effect.

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

18 123. Ms. JONES, through her legal representative and power of attorney KELLY
19 CLAPPER, read and reasonably understood BROOKDALE’s representations—as well as
20 Emeritus’s representations in the agreement that was assigned to BROOKDALE and expressly
21 incorporated into BROOKDALE’s November 18, 2015 agreement with Ms. JONES—as
22 statements that BROOKDALE would perform assessments to determine needed services and staff
23 BROOKDALE Fountaingrove in a manner that would allow it to consistently provide the services
24 that BROOKDALE promised and Ms. JONES was paying for. Ms. JONES, through KELLY
25 CLAPPER, read and relied on these representations in making the decision to remain at the
26 facility despite the change in ownership.

27

28

1 124. BROOKDALE currently charges Ms. JONES a basic service rate of \$3,790 per
2 month, plus a personal service rate of \$2,436 per month, minus a loyalty credit. Ms. JONES's
3 personal service rate includes, among other things, a \$580 monthly fee for BROOKDALE's
4 providing "attention and/or assistance with taking medications[] ... [and] [a]ssist[ing] with
5 medication storage," a \$116 monthly fee for staff assistance with the "setup, selection, or laying
6 out of clothes or grooming toiletries," a \$116 monthly fee for staff assistance with showering, a
7 \$348 monthly fee for staff assistance to "accomplish and/or participate in daily routines due to
8 memory loss or cognitive impairment," a \$460 monthly fee due to Ms. JONES's "demonstrated
9 reluctance to accept care related to showering or bathing assistance," a \$290 monthly fee for
10 "demonstrating anxious, disruptive or obsessive behavior," a \$58 monthly fee because the
11 "resident smokes," and a \$464 monthly fee for "pet care assistance."

12 125. Although Ms. JONES's Personal Service Plan includes a monthly fee for staff
13 assistance with medications, BROOKDALE's staff have regularly failed to provide that service as
14 promised. In May 2016, Ms. JONES's doctor changed her blood pressure medication. The doctor
15 sent BROOKDALE Fountaingrove the instructions for administering the new medication, and
16 Ms. JONES's daughter, Drue Rostel, personally dropped off the medication at BROOKDALE
17 Fountaingrove, alerting staff to be on the lookout for the new doctor's orders. However, staff at
18 BROOKDALE Fountaingrove failed to give Ms. JONES the new medication. When Ms. Rostel
19 visited BROOKDALE Fountaingrove several days after dropping off the new medication, staff
20 told her they had no idea that there had been a change, and they could not locate the new
21 medication. Staff also failed to log Ms. JONES's blood pressure as requested by her doctor. As a
22 result of these errors, Ms. JONES's doctor had to cancel an appointment that had been scheduled
23 to review Ms. JONES's health status and the effectiveness of the new medication. Ms. Rostel and
24 Ms. CLAPPER filed a complaint with Community Care Licensing, which investigated the
25 incident, found that the complaint was substantiated, and issued a citation to BROOKDALE. Just
26 two months later, BROOKDALE's staff again failed to follow medication instructions sent by
27 Ms. JONES's doctor.

28

1 126. Notwithstanding the high fees paid for medication monitoring, Plaintiff MARY-
2 CATHERINE JONES' daughter recently discovered that Ms. JONES was taking an entire pill of
3 the anti-anxiety medication prescribed by her physicians—not a half-pill as the physician ordered.
4 This discovery was made two months after Ms. JONES began sleeping through lunch daily and
5 losing five pounds per month. Ms. JONES's daughters were not informed of the medication error
6 or the excessive sleepiness for weeks.

7 127. Although Ms. JONES pays a monthly fee for staff assistance with showers and
8 dressing and grooming, Ms. Rostel and Ms. CLAPPER have observed that staff at BROOKDALE
9 Fountaingrove regularly fail to bathe or dress Ms. JONES. In addition, Ms. Rostel and
10 Ms. CLAPPER have observed that Ms. JONES's laundry is almost never done, and that in one
11 period, staff went several weeks without laundering Ms. JONES's clothes, even though weekly
12 laundry service is part of Ms. JONES' monthly Basic Service Rate.

13 128. In October 2016, Ms. JONES's Personal Service Plan was amended to add a
14 monthly fee for staff assistance with Ms. JONES's pet dog, which included daily feeding, taking
15 the dog on daily walks, and letting the dog outside to relieve himself multiple times per day.
16 However, over the course of several months, staff at BROOKDALE Fountaingrove failed to feed
17 the dog or take the dog outside to relieve himself. As a result, on several occasions Ms. Rostel
18 and/or Ms. CLAPPER found the dog unfed and Ms. JONES' floor smeared with dog feces.

19 129. Ms. Rostel and Ms. CLAPPER complained about these problems numerous times
20 to managers at BROOKDALE Fountaingrove. Although BROOKDALE management has
21 repeatedly reassured Ms. Rostel and Ms. CLAPPER that BROOKDALE will address their
22 concerns, they have not seen any improvement. Since Ms. JONES has resided at BROOKDALE
23 Fountaingrove, BROOKDALE has never disclosed that its staffing policies and procedures
24 preclude it from providing its residents all of the care and services they have been promised and
25 places all residents at an inherent and substantial risk that they will not receive the care and
26 services they have paid for on any given day. Ms. JONES has not received the care
27 BROOKDALE promised her, and for which she pays significant fees each month.
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2 **Helen Carlson**

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

16 131. Ms. CARLSON, through her legal representative and power of attorney JOAN
17 CARLSON, read and reasonably understood Emeritus's representations in the residency
18 agreement as statements that Emeritus used its resident assessment system and results generated
19 by it to determine and provide staffing levels necessary to meet residents' needs. Ms. CARLSON
20 also reasonably understood and expected that Emeritus would staff Emeritus at Santa Rosa in a
21 manner that would allow it to consistently provide the services that Emeritus promised and
22 Ms. CARLSON would be paying for. Ms. CARLSON, through JOAN CARLSON, read and
23 relied on the representations in the residency agreement in making the decision to enter Emeritus
24 at Santa Rosa. As Ms. CARLSON's legal representative and power of attorney, JOAN
25 CARLSON read and signed the agreement acknowledging that she understood and agreed to all of
26 the terms contained in the agreement. In or about February 2014, JOAN CARLSON received and
27 read a letter from Emeritus informing residents about the merger between BROOKDALE and
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1 Emeritus. The letter promised that residents would not be impacted by the change but would
2 “receive the same excellent care and service you expect at your community” and would “continue
3 to enjoy all the amenities of your community.” It further stated the merger would create a “senior
4 living company offering the most comprehensive set of senior care solutions” with a commitment
5 to “consumer-focused cultures and a commitment to continuous improvement and innovation.”

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

12 133. In 2015, BROOKDALE merged with Emeritus, and Emeritus at Santa Rosa
13 became BROOKDALE Fountaingrove. Plaintiffs are informed and believe, and on that basis
14 allege, that Emeritus assigned its residency agreements with existing residents to BROOKDALE,
15 and that BROOKDALE assumed any liability arising from those agreements.

16 134. On November 17, 2015, JOAN CARLSON read, reviewed, and signed an
17 agreement with BROOKDALE as Ms. CARLSON’s legal representative and power of attorney.
18 This agreement, entitled “AMENDMENT TO CONTINUING CARE RESIDENCE AND
19 SERVICES AGREEMENT,” amended the residency agreement that Ms. CARLSON signed with
20 Emeritus and that was assigned to BROOKDALE after the merger with Emeritus. Pursuant to this
21 amendment, references to “core services” and “personal care services” were replaced with the
22 terms “basic services” and “personal services,” and Emeritus’s price schedules for various services
23 were replaced with BROOKDALE’s standardized personal services price schedule and lists of
24 select and therapeutic services. The parties agreed that except as otherwise amended, the terms of
25 the prior residency agreement would remain in full force and effect.

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

11 136. Ms. CARLSON, through her legal representative and power of attorney JOAN
12 CARLSON, read and reasonably understood BROOKDALE's representations—as well as
13 Emeritus's representations in the agreement that was assigned to BROOKDALE and expressly
14 incorporated into BROOKDALE's November 17, 2015 agreement with Ms. CARLSON—as
15 statements that BROOKDALE would perform assessments to determine needed services and staff
16 BROOKDALE Fountaingrove in a manner that would allow it to consistently provide the services
17 that BROOKDALE promised and that Ms. CARLSON was paying for. Ms. CARLSON, through
18 JOAN CARLSON, read and relied on these representations in making the decision to stay at the
19 facility despite the change in ownership.

20 137. BROOKDALE currently charges Ms. CARLSON a Basic Service Rate of \$4,227
21 per month, plus a Personal Service Rate of \$3,710 per month, minus a loyalty credit.
22 Ms. CARLSON's Personal Service Rate includes, among other things, a \$580 monthly fee for
23 staff assistance with ordering, storing, and taking medications; a \$811 monthly fee for staff
24 assistance with dressing and grooming; a \$927 monthly fee for staff assistance with using the
25 bathroom; a \$522 monthly fee for staff assistance with accomplishing and/or participating in daily
26 routines due to memory loss or cognitive impairment; a \$290 monthly fee for help going to and
27 from the dining room and/or community activities; and a \$290 monthly fee for “additional staff
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1 involvement because of demonstrating anxious, disruptive or obsessive behavior requiring
2 additional attention.” Ms. CARLSON also pays \$100 per month for incontinence supplies, which
3 BROOKDALE represents its staff will order and stock.

4 138. Beginning in early 2016, JOAN CARLSON and her husband Ralph Carlson began
5 to observe a decline in the quality of care provided to Ms. CARLSON. On one occasion, JOAN
6 discovered that despite promising to fax certain paperwork to Ms. CARLSON’s primary care
7 physician in advance of a scheduled appointment, BROOKDALE’s staff never did so. In addition,
8 JOAN and Ralph CARLSON stopped receiving phone calls to notify them of Ms. CARLSON’s
9 injuries and other noteworthy incidents.

10 139. In June 2016, Ms. CARLSON was admitted to the hospital after falling while
11 attempting to get out of bed. BROOKDALE’s staff failed to call JOAN or Ralph CARLSON,
12 even though they are listed as Ms. CARLSON’s emergency contacts. As a result, Ms. CARLSON
13 spent several hours in the emergency room without a family member present, and she was charged
14 for ambulance transport back to BROOKDALE Fountaingrove because no family member was
15 present to give her a ride.

16 140. In December 2016, Ms. CARLSON’s doctor took her off the blood thinner
17 Coumadin. Nonetheless, in January and February 2017, staff at BROOKDALE Fountaingrove
18 continued to order and stock Coumadin for Ms. CARLSON. BROOKDALE charged
19 Ms. CARLSON a monthly fee for staff assistance with ordering and storing medications, even
20 though BROOKDALE’s staff failed to adequately perform that service.

21 141. JOAN and Ralph CARLSON have also observed numerous failures by staff to
22 assist Ms. CARLSON with using the bathroom, even though Ms. CARLSON pays a monthly fee
23 for that service. In addition, even though Ms. CARLSON pays a monthly fee for staff to order and
24 stock incontinence products, she has often run out of such products because BROOKDALE’s staff
25 do not check whether supplies are running low or if orders need to be adjusted.

26 142. Ms. CARLSON is unable to use the bathroom sink and kitchenette sink in her suite
27 because they are installed at a height that makes them inaccessible for wheelchair users.

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1 Ms. CARLSON requires glasses to see and dentures to eat, but BROOKDALE staff frequently
2 misplace or lose these assistive devices.

3 143. JOAN and Ralph CARLSON have complained to managers at BROOKDALE
4 Fountaingrove about these problems on numerous occasions. Although BROOKDALE
5 management has repeatedly reassured JOAN and Ralph CARLSON that BROOKDALE will
6 address their concerns, they have not seen any improvement. Since Ms. CARLSON has resided at
7 BROOKDALE Fountaingrove, BROOKDALE has never disclosed that its staffing policies and
8 procedures preclude it from providing its residents all of the care and services they have been
9 promised and places all residents in an inherent and substantial risk that they will not receive the
10 care and services they have paid for on any given day. Ms. CARLSON has not received the care
11 BROOKDALE promised her, and for which she pays significant fees each month.

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13 **CLASS ALLEGATIONS**

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

17 145. **Class Definitions.**

18 Plaintiffs PATRICIA EIDLER, STACIA STINER, MARY-CATHERINE JONES, and
19 HELEN CARLSON seek to represent the following two classes:

- 20
21 a. **RESIDENTS WITH DISABILITIES CLASS:** All persons with disabilities
22 who use wheelchairs, scooters, canes or other mobility aids or who require
23 assistance with mobility or activities of daily living and who reside or have
24 resided at a residential care facility for the elderly located in California and
25 owned, operated and/or managed by BROOKDALE during the CLASS
26 PERIOD.
- 27
28 b. **FALSE OR MISLEADING STATEMENTS CLASS:** All persons who
resided or reside at one of the California assisted living facilities owned,
operated, and/or purchased by BROOKDALE during the CLASS PERIOD
and who contracted with BROOKDALE or another assisted living facility
for services for which BROOKDALE was paid money.

1 146. The CLASS PERIOD is defined as commencing three years prior to the filing of
2 this action for the RESIDENTS WITH DISABILITIES CLASS and four years prior to the filing
3 of this suit for the FALSE OR MISLEADING STATEMENTS CLASS.

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

8 148. This action is brought as a class action and may properly be so maintained pursuant
9 to Federal Rule of Civil Procedure 23 and applicable case law. In addition to declaratory and
10 injunctive relief, this action seeks class-wide damages pursuant to California Civil Code § 52(a) in
11 the amount of \$4,000 per class member based on Defendants' wrongful policy and practice of
12 failing to provide residents with disabilities with full and equal access to and enjoyment of its
13 services, goods, facilities, privileges, or advantages of BROOKDALE's assisted living facilities as
14 alleged herein. It also seeks class-wide statutory and punitive damages based on Defendants'
15 misrepresentations, misleading statements, and material omissions, including \$5,000 per class
16 member pursuant to California Civil Code § 1780(b). This action also seeks treble damages
17 pursuant to both California Civil Code § 52(a) and California Civil Code § 3345(b)(2) and (3).
18 This action does not seek recovery for personal injuries or emotional distress that may have been
19 caused by Defendants' conduct alleged herein.

20 149. **Ascertainability.** Members of the proposed Class are identifiable and
21 ascertainable. BROOKDALE retains admission contracts, resident service plans, and billing
22 statements for all persons who currently reside or resided at BROOKDALE facilities during the
23 CLASS PERIOD.

24 150. **Impracticability of Joinder (Numerosity of the Class).** The members of the
25 proposed class are so numerous that joinder of all such persons is impracticable and the
26 disposition of their claims in a class action is a benefit both to the parties and to this Court. On
27 information and belief, the number of persons in this case exceeds 5,000 persons. The number of
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1 persons in the class and their identities and addresses may be ascertained from Defendants'
2 records.

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

- 9 a. Whether BROOKDALE's assisted living facilities are public
10 accommodations within the meaning of Title III of the ADA;
- 11 b. Whether BROOKDALE and its assisted living facilities are business
12 establishments within the meaning of the Unruh Civil Rights Act;
- 13 c. Whether BROOKDALE constructed or altered any of its assisted living
14 facilities after January 26, 1993;
- 15 d. Whether BROOKDALE's facilities that were newly constructed or altered
16 between January 26, 1993 and March 15, 2012 comply with the
17 requirements of the Americans with Disabilities Act Accessibility
18 Guidelines;
- 19 e. Whether BROOKDALE constructed or altered any of its facilities after
20 March 15, 2012;
- 21 f. Whether BROOKDALE's facilities that were constructed or altered after
22 March 15, 2012 comply with the 2010 ADA Standards for Accessible
23 Design;
- 24 g. Whether BROOKDALE has removed physical access barriers where doing
25 so was readily achievable as required by Title III of the ADA;
- 26 h. Whether Plaintiffs are being denied full and equal access to and enjoyment
27 of BROOKDALE's goods, services, facilities, privileges, advantages or
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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 to and enjoyment of its services and facilities with respect to emergency planning and emergency 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 as identified by resident assessments, when BROOKDALE knows that its corporate policy

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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;
- u. Whether BROOKDALE’s misrepresentations, its misleading statements, its failures to disclose and its concealment of its true policies, procedures, and practices regarding how it staffs its facilities violated the CLRA and the UCL;
- v. Whether BROOKDALE has engaged and continues to engage in a pattern and practice of unfair and deceptive conduct in connection with the management, administration, and operation of its California assisted living facilities;
- w. Whether BROOKDALE has violated and continues to violate the UCL by

1 violating the CLRA, ADA, Unruh Civil Rights Act, and California Welfare
2 and Institutions Code § 15610.30 during the CLASS PERIOD;

- 3 x. Whether BROOKDALE has committed financial elder abuse under
4 California Welfare and Institutions Code § 15610.30 by taking, secreting,
5 appropriating, obtaining, and/or retaining money from elders and dependent
6 adults for a wrongful use and/or with the intent to defraud them;
- 7 y. Whether the Plaintiffs and the putative class members have been injured;
- 8 z. Whether the Plaintiffs and the members of the putative class are entitled to
9 damages, and the nature of such damages; and,
- 10 aa. Whether the Plaintiffs and the members of the putative class are entitled to
11 declaratory and/or injunctive relief, and the nature of such relief.

12 152. **Typicality.** The claims of the named Plaintiffs are typical of those of the proposed
13 classes. Plaintiffs' claims are typical of the claims of the proposed classes in the following ways:

14 1) Plaintiffs are members of the proposed classes; 2) Plaintiffs' claims arise from the same
15 uniform corporate policies, procedures, practices and course of conduct on the part of
16 BROOKDALE; 3) Plaintiffs' claims are based on the same legal and remedial theories as those of
17 the proposed classes and involve similar factual circumstances; 4) the injuries suffered by the
18 named Plaintiffs are similar to the injuries suffered by the proposed class members; and 5) the
19 relief sought herein will benefit the named Plaintiffs and all class members alike.

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

24 154. **Predominance.** With respect to Plaintiffs' claims under the ADA, the Unruh Civil
25 Rights Act, the CLRA, the UCL, and the Elder Abuse Act, class certification is appropriate under
26 Federal Rule of Civil Procedure 23(b)(3) because questions of law or fact common to the class
27 members predominate over any questions affecting individual members of the putative classes.
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1 160. Title III of the ADA provides in pertinent part: “[N]o individual shall be
2 discriminated against on the basis of disability in the full and equal enjoyment of the goods,
3 services, facilities, privileges, advantages, or accommodations of any place of public
4 accommodation by any person who owns, leases, or leases to, or operates a place of public
5 accommodation.” 42 U.S.C. § 12182.

6 161. At all times relevant to this action, Plaintiffs PATRICIA EIDLER, STACIA
7 STINER, MARY-CATHERINE JONES, and HELEN CARLSON were and remain qualified
8 individuals with disabilities within the meaning of the ADA.

9 162. Defendants are each a “private entity,” as defined under 42 U.S.C. § 12181(6).
10 They own, operate and/or manage approximately 89 assisted living facilities in California. These
11 facilities are “public accommodations” pursuant to 42 U.S.C. § 12181(7). BROOKDALE is
12 subject to Title III of the ADA and its corresponding regulations.

13 163. As alleged above in greater detail, BROOKDALE has violated Title III of the ADA
14 in the following ways.

15 ***Failure to Provide Reasonable Modifications in Its Staffing Policies, Practices and Procedures***
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17 164. BROOKDALE has a policy and practice of staffing its assisted living facilities
18 based on pre-set corporate labor budgets and profit margins without regard for residents’ needs.
19 BROOKDALE’s policy and practice of understaffing its assisted living facilities in order to
20 minimize its labor expenses and maximize its corporate profits has resulted in facilities that are
21 chronically understaffed, and in which skeletal levels of staffing make it commonplace for
22 residents with disabilities to go without the services, goods, facilities, privileges, advantages or
23 accommodations for which they have paid. For example, staff are often unavailable or unable to
24 assist residents with disabilities with activities of daily living including, *inter alia*, bathing,
25 showering, toileting, transferring, taking medications, dressing, dining, and housekeeping. In
26 addition, residents with disabilities are often denied full and equal access to and enjoyment of
27 social and recreational activities, as well as transportation to off-site locations for appointments
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1 and other activities, because of the lack of a sufficient number of trained staff to assist residents
2 with disabilities to participate in these activities.

3 165. Plaintiffs have requested that BROOKDALE make reasonable modifications in
4 policies, practices, or procedures as required by Title III of the ADA. Plaintiffs have requested
5 that BROOKDALE provides its facilities with a sufficient number of adequately trained staff to
6 ensure that residents with disabilities are provided with full and equal access to and enjoyment of
7 the services specified in BROOKDALE's own resident assessments. Among other things, and
8 without limitation, BROOKDALE should increase its level of trained staff in its assisted living
9 facilities such that residents with disabilities are not required to wait for more than five minutes
10 for a substantive response to their call pendants. A substantive response means actual action taken
11 to address the resident's need, rather than a staff member passing by the resident's room to say
12 that they will return later.

13 166. Such reasonable modifications in BROOKDALE's policies, practices and
14 procedures are necessary to ensure that residents with disabilities receive full and equal access to
15 and enjoyment of BROOKDALE's services, including assistance with, *inter alia*, bathing,
16 showering, toileting, transferring, taking medications, dressing, dining, and housekeeping. In
17 addition, such modifications are necessary to ensure that residents with disabilities have full and
18 equal access to and enjoyment of BROOKDALE's social and recreational activities, and
19 transportation to off-site locations for appointments and other activities. Unless and until
20 BROOKDALE makes this requested reasonable modification in policies, practices, or procedures,
21 residents with disabilities will continue to be denied full and equal access to and enjoyment of the
22 services, goods, facilities, privileges, advantages or accommodations that BROOKDALE claims
23 to provide to all of its residents, whether disabled or nondisabled.

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

4 168. The requested modification in policies, practices or procedures will not make any
5 alteration (much less a fundamental alteration) in the nature of BROOKDALE's goods and
6 services. Rather, Plaintiffs merely seek to ensure that BROOKDALE provides a sufficient
7 number of adequately trained staff to provide its residents with mobility disabilities with full and
8 equal access to and enjoyment of the types of services and goods that BROOKDALE already
9 promises to provide to its residents in its normal course of business. Thus, the requested
10 reasonable modification in policy, practice or procedure would not change the nature or type of
11 services and goods that BROOKDALE sells to the public.

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

18 170. Plaintiffs have repeatedly requested that BROOKDALE make reasonable
19 modifications in policies, practices, or procedures by increasing the number of trained staff that it
20 provides in its facilities. Notwithstanding the reasonableness and necessity of such modifications,
21 and notwithstanding the fact that BROOKDALE could significantly increase its staffing without
22 changing the nature of its services, goods, facilities, privileges, advantages or accommodations,
23 and could make such modifications without undue financial or administrative burdens,
24 BROOKDALE has failed and refused to make any such modifications.

25 ***Physical Access Barriers***

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

7 172. Plaintiffs allege on information and belief that Defendants’ facilities were altered
8 after January 26, 1993, thus triggering access requirements under Title III of the ADA. The ADA
9 prohibits altering facilities after January 26, 1993 in a manner that is not readily accessible to, and
10 usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C.
11 § 12183(a)(2). Here, Defendants violated the ADA by altering its assisted living facilities after
12 January 26, 1993 in a manner that did not comply with the ADAAG even though it was
13 structurally practicable to do so. Specifically, Defendants have failed to ensure that the areas of
14 alteration complied with the ADAAG, and that the path of travel to the areas of alteration
15 complied with the ADAAG.

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

21 ***Transportation and Activities***

22 174. BROOKDALE has violated Title III of the ADA by failing and refusing to provide
23 Plaintiffs with full and equal access to and enjoyment of its transportation services to off-site
24 activities and appointments. BROOKDALE has a policy and practice of limiting the number of
25 wheelchair users who may use transportation to off-site activities. This limitation is not imposed
26 on residents who do not use wheelchairs. In addition, BROOKDALE has required residents with
27 mobility disabilities to transfer from their wheelchairs into the seats in its shuttles, and has not
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1 permitted residents to remain in their wheelchairs. BROOKDALE has done so despite the fact
2 that many residents with mobility disabilities have great difficulty in transferring from their
3 wheelchairs into the passenger seats in shuttles, and doing so is time consuming, physically
4 exhausting and sometimes dangerous. Further, on numerous occasions residents with mobility
5 disabilities have been completely denied access to medical appointments, and other off-site
6 appointments and activities, because BROOKDALE has failed to provide any accessible
7 transportation to those appointments and activities

8 ***Evacuation Procedures***

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

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

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

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- c. Failing to provide the goods, services, facilities, privileges, advantages, and accommodations at its assisted living facilities in California to residents with disabilities in the most integrated setting possible, in violation of 42 U.S.C. § 12182(b)(1)(B);
- d. Utilizing standards, criteria and methods of administration that have the effect of discriminating against residents on the basis of their disabilities, in violation of 42 U.S.C. § 12182(b)(1)(D);
- e. Imposing eligibility criteria that screen out or tend to screen out residents with disabilities from fully and equally enjoying BROOKDALE’s assisted living facilities’ goods, services, facilities, privileges, advantages, and/or accommodations, in violation of 42 U.S.C. § 12182(b)(2)(A)(i);
- f. Failing to make reasonable modifications in its policies, practices, and procedures which are necessary for its residents with disabilities to enjoy and access BROOKDALE’s assisted living facilities’ goods, services, facilities, privileges, advantages and/or accommodations, in violation of in violation of 42 U.S.C. § 12182(b)(2)(A)(ii);
- g. Failing to remove architectural barriers in those facilities constructed prior to January 26, 1993 and not altered after that date where such removal is readily achievable, in violation of 42 U.S.C. § 12182(b)(2)(A)(iv);
- h. Failing to design and construct facilities first occupied after January 26, 1993 such that they are readily accessible and usable by persons with disabilities, in violation of 42 U.S.C. § 12183(a)(1);
- i. Performing alterations after January 26, 1993 that affect the usability of its facilities or a part of its facilities, while failing to ensure that the altered portions and the path of travel to those altered portions are readily accessible to and usable by persons with disabilities, in violation of 42 U.S.C. § 12183(a)(2); and

1 accommodations, and have done so by reason of Plaintiffs’ disabilities.

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

5 185. Defendants, by their actions and inactions alleged in this Complaint, have directly
6 discriminated against persons with disabilities.

7 186. The actions of Defendants were and are in violation of the Unruh Civil Rights Act,
8 Cal. Civ. Code §§ 51 *et seq.* and therefore Plaintiffs are also entitled to injunctive relief and
9 reasonable attorneys’ fees, costs and expenses.

10 **THIRD CLAIM FOR RELIEF**

11 **(Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*)**

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

14 188. Plaintiffs and the members of the putative class are “consumer[s]” within the
15 meaning of California Civil Code § 1761(d). They are also “senior citizen[s]” and/or “[d]isabled
16 person[s]” within the meaning of California Civil Code § 1761(f) and (g).

17 189. 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).

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

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

17 192. 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. If
21 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 facility,
26 or would have paid less money to BROOKDALE.

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1 193. The facts that BROOKDALE misrepresents, fails to disclose and actively conceals
2 are material and are likely to deceive the reasonable consumer. Reasonable consumers, including
3 the residents and their family members herein, consider of great importance the staffing levels
4 provided by the assisted living facility they select, and such consumers also attach great
5 importance to BROOKDALE's claims regarding its provision of basic services, personal services,
6 and select and therapeutic services.

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

13 195. BROOKDALE has violated and continues to violate the Consumer Legal Remedies
14 Act, California Civil Code §§ 1750 *et seq.* ("CLRA") in at least the following respects:

- 15 a. In violation of § 1770(a)(5), BROOKDALE has misrepresented, failed to
16 disclose and concealed the true characteristics and/or quantities of services
17 provided at its facilities in California;
- 18 b. In violation of § 1770(a)(7), BROOKDALE has misrepresented, failed to
19 disclose and concealed the true standard, quality and/or grade of services
20 provided at its facilities in California;
- 21 c. In violation of § 1770(a)(9), in BROOKDALE's standard resident
22 admission contracts and elsewhere, BROOKDALE has falsely advertised
23 that it will provide the assistance specified by each resident's personal
24 service assessment and which corresponds to that resident's Personal
25 Service Plan, knowing that BROOKDALE does not intend to provide the
26 services as advertised; and
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1 and; that these policies and practices preclude it from providing its residents all of the care and
2 services they have been promised and places all residents in an inherent and substantial risk that
3 they will not receive the care and services they have paid for on any given day; and that
4 BROOKDALE did not intend to provide and has no intention of providing sufficient qualified and
5 adequately trained staff at its facilities to ensure that all residents receive these services.

6 199. BROOKDALE has exclusive and superior knowledge of materials facts not known
7 to the named Plaintiffs, class members or the general public at the time of the subject transactions
8 and actively concealed those material facts.

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

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

25 202. Plaintiffs sent BROOKDALE a notice to cure under California Civil Code
26 § 1782(a), which was received by BROOKDALE on June 6, 2017. More than 30 days have
27 passed since BROOKDALE's receipt, and BROOKDALE has not corrected or remedied the
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1 violations alleged in the notice and herein.

2 203. Accordingly, Plaintiffs and the class members are entitled to no less than \$1,000 in
3 statutory damages pursuant to California Civil Code § 1780(a). Moreover, as senior citizens
4 and/or disabled persons, Plaintiffs and the class members are also entitled to statutory damages of
5 \$5,000 per class member pursuant to California Civil Code § 1780(b), as well as actual damages
6 and restitution in an amount to be proven at trial.

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

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

20 206. Defendants' conduct presents a continuing threat of substantial harm to the public
21 in that, among other things, Defendants continue to make misleading statements about and conceal
22 material facts about whether and how they provide basic, personal care, select and therapeutic
23 services at BROOKDALE facilities in California, as well as the fact that their staffing policies and
24 procedures preclude them from providing residents the services they have been promised. Despite
25 these misrepresentations, BROOKDALE continues to induce elderly and vulnerable citizens to
26 enter and remain in its facilities, which conduct irreparably harms Plaintiffs and the putative class.
27 Accordingly, Plaintiffs seek an injunction that requires that BROOKDALE immediately cease the
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1 CLRA violations alleged herein regarding BROOKDALE’s misrepresentations, misleading
2 statements, and material omissions, and to enjoin it from continuing to engage in any such acts or
3 practices in the future. Specifically, Plaintiffs seek an injunction requiring BROOKDALE to
4 disclose to Plaintiffs, the putative class members and the consuming public that BROOKDALE’s
5 staffing policies and procedures preclude it from providing its residents the care and services they
6 have been promised and places all residents at an inherent and substantial risk that they will not
7 receive the care and services they have paid for on any given day. Plaintiffs also seek an
8 injunction prohibiting BROOKDALE from charging residents or their responsible parties monthly
9 fees based on their Personal Service Plans until BROOKDALE implements staffing policies and
10 procedures that enable it to deliver those services on a consistent basis.

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

14 **FOURTH CLAIM FOR RELIEF**

15 **(Elder Financial Abuse, Cal. Welf. & Inst. Code § 15610.30)**

16 208. Plaintiffs incorporate by reference as though fully set forth herein the preceding
17 paragraphs of this Complaint.

18 209. Plaintiffs and the putative class members are and at all times were “elders” as
19 defined under California Welfare & Institutions Code § 15610.27 and/or “dependent adults” as
20 defined under California Welfare & Institutions Code § 15610.23.

21 210. BROOKDALE represented to the named Plaintiffs, and/or their personal
22 representatives, and the putative class members, and/or their personal representatives, in standard
23 agreements, service updates, monthly invoices, and/or annual notification of rate increases that
24 BROOKDALE would provide care and assistance with activities of daily living, including but not
25 limited to staffing 24 hours a day, dining services, housekeeping, laundry, transportation, and
26 other basic services in exchange for community fees and monthly payments that it received from
27 the named Plaintiffs and the putative class members. However, BROOKDALE did not and has no
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1 intention of providing sufficient levels of qualified and adequately trained staff at its facilities to
2 ensure that all residents receive these services. As a result, residents do not consistently receive all
3 of the basic services BROOKDALE has promised them and for which they are paying
4 BROOKDALE.

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

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

22 213. BROOKDALE knew or should have known that such conduct would likely be
23 harmful to Plaintiffs and the putative class members.

24 214. BROOKDALE knew or should have known that Plaintiffs and the putative class
25 members had a right to the funds used to pay new resident community fees and monthly fees to
26 BROOKDALE.

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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
5 places all residents in an inherent and substantial risk that they will not
6 receive the care and services they have paid for on any given day, in
7 violation of California Business & Professions Code §§ 17500 *et seq.* and
8 California Civil Code §§ 1750 *et seq.*; and

9 b. Taking, secreting, appropriating, obtaining, and retaining the funds of elders
10 and dependent adults for a wrongful use and/or with the intent to defraud in
11 violation of California Welfare and Institutions Code § 15610.30.

12 222. By virtue of the conduct alleged herein, Defendants have also engaged in
13 fraudulent business practices. Members of the general public (including without limitation
14 persons admitted to and/or residing in BROOKDALE's California assisted living facilities during
15 the CLASS PERIOD, and their family members and/or representatives) have been and are likely
16 to be deceived by Defendants' misrepresentations and failures to disclose as alleged herein.

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

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

1 225. Defendants made these misrepresentations and misleading statements through
2 various uniform means of written corporate communications, including without limitation, the
3 standardized Residency Agreement; subsequent agreements based on re-assessments of the
4 resident; letters to residents regarding the merger between BROOKDALE and Emeritus,
5 Defendants' conversion to a new personal service system, and rate increases; invoices, marketing
6 and promotional materials, Defendants' corporate website and other materials disseminated to the
7 public from its corporate headquarters in connection with Defendants' services. These
8 representations were made directly to the named Plaintiffs, class members, and their family
9 members and/or representatives by Defendants in the uniform means of communication listed
10 above.

11 226. BROOKDALE concealed from Plaintiffs, the putative class members, and their
12 family members that BROOKDALE's staffing policies and procedures preclude it from providing
13 its residents all of the care and services they have been promised and places all residents at an
14 inherent and substantial risk that they will not receive the care and services they have paid for on
15 any given day.

16 227. BROOKDALE had exclusive and superior knowledge of material facts not known
17 to named Plaintiffs, putative class members or the general public at the time of the subject
18 transactions and actively concealed these material facts.

19 228. BROOKDALE had exclusive and superior knowledge of its corporate policy and
20 procedure. Further, Plaintiffs allege on information and belief that Defendants' officers, directors,
21 and managers knew that Defendants' failure to provide adequate staffing posed a substantial
22 health and safety risk to the named Plaintiffs and class members. BROOKDALE intentionally
23 concealed, suppressed and/or failed to disclose the true facts with the intent to defraud the named
24 Plaintiffs and putative class members. The named Plaintiffs and the putative class members did
25 not know these material undisclosed facts and could not reasonably have been expected to
26 discover them.

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1 229. As a direct and proximate result of Defendants' conduct, Plaintiffs, the class
2 members, and members of the general public (including without limitation persons admitted to
3 and/or residing in the facilities, and their family members and/or representatives) have been
4 harmed and continue to be harmed. Among other things, they paid money to Defendants to enter
5 the facilities and for services that were not provided or that were substandard to those promised by
6 Defendants.

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

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

13 **ALLEGATIONS SUPPORTING DECLARATORY AND INJUNCTIVE RELIEF**

14 232. Plaintiffs incorporate by reference as though fully set forth herein the preceding
15 paragraphs of this Complaint.

16 233. Each of the Plaintiffs continues to live at a BROOKDALE assisted living facility.
17 Unless and until BROOKDALE brings its facilities into compliance with the requirements of the
18 ADA and applicable federal disability access design standards, Plaintiffs will continue to be
19 denied full and equal access to and enjoyment of BROOKDALE's facilities as a result of physical
20 access barriers in violation of the ADA. Moreover, unless and until Defendant BROOKDALE
21 makes the requested reasonable modification in policies, practices and procedures set forth above
22 with respect to the staffing of its facilities, Plaintiffs will continue to be denied full and equal
23 access to and enjoyment of the services, goods, facilities, privileges, advantages and
24 accommodations provided to its residents by BROOKDALE. In this regard, unless and until
25 Defendants provide a sufficient number of adequately trained staff at its facilities, residents will
26 continue to suffer the denial and deprivation of basic services that are necessary to daily living,
27 including assistance with bathing, showering, toileting, taking medications, transferring, dressing,
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1 dining, as well as cleaning and laundry services. Further, residents with disabilities will continue
2 to be denied full and equal access to on-site and off-site social and recreational activities, and will
3 be segregated and isolated in violation of the ADA's integration mandate.

4 234. In addition, unless and until Defendants comply with the ADA, Plaintiffs will
5 continue to suffer falls, and to be at risk of falls and/or serious physical injuries, as a result of
6 Defendants' failure and refusal to provide full and equal access to its facilities and services. In
7 this regard, Defendants must be enjoined to provide facilities that comply with applicable federal
8 disability access standards, a sufficient number of staff who are adequately trained to assist
9 residents with disabilities to prevent falls and to assist them if a fall takes place, and a functioning
10 and effective pendant system so that residents can obtain prompt and effective assistance when
11 they have fallen and/or are at risk of other physical injuries. Further, unless and until Defendants
12 provide adequate emergency planning and evacuation procedures for residents with disabilities,
13 Defendants will continue to place them at significant risk of serious injury and death.

14 235. Further, unless and until Defendants provide residents with full and equal access to
15 enjoyment of its transportation services, residents with disabilities will continue to be excluded
16 from and denied access to off-site appointments and activities in violation of the ADA.

17 236. Finally, unless and until BROOKDALE ceases its false and/or misleading
18 statements regarding its services and discloses that its corporate staffing policies and practices
19 preclude it from providing its residents the care and services they have been promised and places
20 all residents at an inherent and substantial risk that they will not receive the care and services they
21 have paid for on any given day, residents, their family members, their representatives and the
22 general public will continue to be misled and will continue to expend very substantial sums of
23 money for services, goods and facilities that are not as represented, and Defendants will continue
24 to receive the benefits of their ill-gotten gains.

25 237. A present and actual controversy exists regarding the respective rights and
26 obligations of Plaintiffs and Defendants. Plaintiffs desire a judicial determination of their rights
27 and Defendants' obligations in a declaration as to whether, and to what extent, the Defendants'
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1 conduct violates applicable law.

2 238. Such a declaration is necessary and appropriate at this time in order that Plaintiffs
3 may ascertain their rights. Such a declaration is also necessary and appropriate to prevent further
4 harm or infringement of Plaintiffs' rights.

5 239. Plaintiffs have no adequate remedy at law for the harm to them arising from the
6 conduct alleged herein. Unless and until Defendants are preliminarily and permanently enjoined
7 from engaging in such conduct, Plaintiffs will continue to suffer irreparable harm as a result of
8 Defendants' violations of the ADA and the Unruh Act as alleged herein.

9 240. Plaintiffs are entitled to declaratory and injunctive relief pursuant to each of the
10 laws under which this action is brought.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully pray that this Court:

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

18 2. Issue preliminary and permanent injunctions requiring Defendants to come into full
19 compliance with the requirements of the ADA and its implementing regulations;

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

24 4. Issue preliminary and permanent injunctions requiring that Defendants immediately
25 cease acts that constitute false advertising and violations of the Consumer Legal Remedies Act and
26 the Elder Financial Abuse statute as alleged herein with respect to Defendants' misrepresentations,
27 misleading statements, and material omissions, and to enjoin Defendants from continuing to
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1 engage in any such acts or practices in the future;

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

9 6. For statutory damages pursuant to California Civil Code § 52(a);

10 7. For statutory damages pursuant to California Civil Code § 1780(a) and (b);

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

13 9. For restitution and any other monetary relief permitted by law;

14 10. For punitive damages;

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

16 12. For pre-judgment and post-judgment interest according to law;

17 13. Award to Plaintiffs all costs of this proceeding, including reasonable attorneys' fees
18 costs and litigation expenses, as provided by law;

19 14. Issue any other preliminary and permanent injunctions the Court deems sufficient
20 to rectify the acts and omissions alleged herein; and,

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

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted.

DATED: July 13, 2017

SCHNEIDER WALLACE
COTTRELL KONECKY
WOTKYNS, LLP

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

DATED: July 13, 2017

ROSEN BIEN
GALVAN & GRUNFELD LLP

By: /s/Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

DATED: July 13, 2017

STEBNER AND ASSOCIATES

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

Attorneys for Plaintiffs and the Proposed Classes

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ATTESTATION PER LOCAL RULE 5-1(i)(3)

The e-filing attorney hereby attests that concurrence in the filing of the document has been obtained from each of the other signatories indicated by a conformed signature (/s/) within this e-filed document.

/s/ Guy B. Wallace
Guy B. Wallace (SBN 176151)
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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2017, 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/ Guy B. Wallace
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