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THE YOUNTVILLE ALLIED COUNCIL, and
YOUNTVILLE VETERANS GROUP, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL CASE

ROBERT SLOAN, an individual, JENSENA L.
THOMAS, an individual, THE YOUNTVILLE
ALLIED COUNCIL, an unincorporated
association of veterans, and YOUNTVILLE
VETERANS GROUP, LLC, an corporation,

Plaintiffs/Petitioners,

v.

VITO IMBASCIANI, MD, in his Official
Capacity, COBY PETERSON, in his Official
Capacity, CALIFORNIA DEPARTMENT OF
VETERANS AFFAIRS, CALIFORNIA
VETERANS BOARD, and DOES 1-50,

Respondents/Defendants.

Case No. **RG18923047**

**VERIFIED PETITION
FOR WRIT OF MANDATE;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[Code Civ. Proc. §§ 1085 (a); Cal.
Const. Art. I, § 7; 42 U.S.C. § 1983; Gov.
Code § 11346 *et seq.*]

PET. FOR WRIT/COMPLAINT FOR DECL. INJUNCTIVE RELIEF Case No.

FAXED

I. INTRODUCTION AND SUMMARY OF ACTION

1. This action challenges a regulation promulgated by the California Department of Veterans Affairs ("CalVet") in 2017, in response to enactment of the End of Life Option Act, California Health and Safety Code, §§443-443.22 ("the EoLOA"). The EOLA empowers dying patients to choose aid in dying (AID), a medical practice offering patients who find themselves trapped in an unbearable dying process a more peaceful death by ingesting medication prescribed by a physician to precipitate a swift and peaceful death.¹ The regulation challenged by this action is section 509 of Title 12 California Code of Regulations ("the Regulation"), which mandates the eviction of any terminally ill resident of the California Veterans' Home ("the Home"²) who chooses to exercise their right under the EOLA. This regulation also requires the eviction from the Home of the veteran's non-veteran spouse, if living at the Home with him or her.

2. As described more fully herein, the Regulation was promulgated arbitrarily and capriciously, without proper consideration of alternatives, without consultation with residents of the Home, and without following the statutory procedure. The regulation is repugnant to the statutory mandate and mission of CalVet since it denies suffering dying veterans residing at the Home the compassionate medical care option to which they are entitled under California law.

3. The sole basis for the adoption of the Regulation is false. Despite affirming its support for "the right of every person living in our Veterans Homes (Home) to make choices relating to his or her medical care based on" the EoLOA, CalVet claimed that the Regulation was nevertheless necessary to avoid CalVet violating the 1997 Federal Assisted Suicide Funding Restriction Act, 42 U.S.C. section 14401 ("FASFRA") and thus jeopardizing the partial contribution for the operating costs of the Home that is annually provided by the United States Department of Veterans Affairs ("USDVA.")

¹ AID is increasingly widely accepted in the United States. It is permitted by statute in Oregon, Washington, California, Vermont, Colorado and Hawaii. It is permitted by court decision in Montana. A growing number of national medical and health policy professional groups support the practice, including the American Public Health Association, American College of Legal Medicine, American Medical Women's Association and American Medical Student Association.

² References herein to the "California Veterans Home", "Veterans Home of California" and "Home" all refer to the California Veterans Home established by the California Military and Veterans Code. The Home is a term that applies herein to all eight sites as specified herein.

4. As set forth herein, CalVet's position is unsupported by law or in fact. Under the wording of FASFRA, and as the USDVA has now informally confirmed, the statute is not violated if CalVet does not use federal funds for AID, and pays for it in the Home by using State funds. The basis for the Regulation is unsupported by FASFRA and its adoption was contrary to the California Government Code, the California Military and Veterans Code, and the applicable State and Federal regulations governing the operation of the Home. CalVet can set aside State funds to provide for AID in the California Veterans Home, without using federal funding for the medical option to which California's veterans have a right under EoLOA.

5. This action is brought by Petitioners/Plaintiffs, an individual veteran and a non-veteran spouse who are residents at the Home, and two associations acting on behalf of the residents of the California Veterans' Home, to seek a writ of mandate and injunctive relief to prevent further enforcement and order the repeal of the Regulation. This action also seeks a declaration that the Regulation is not required to avoid CalVet from violating the applicable provisions of FASFRA and federal regulations. Additionally, Petitioners/Plaintiffs seek the injunction and the declaration on the grounds that the Regulation constitutes a deprivation of the rights of Petitioners/Plaintiffs as California citizens, in violation of the California Constitution. Finally, Petitioners/Plaintiffs also seek injunctive and declaratory relief on the grounds that the Respondents/Defendants violated the California Administrative Procedures Act, California Government Code, section 11346, *et seq.* in connection with the adoption of the Regulation and acted arbitrarily and capriciously.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this proceeding pursuant to California Code of Civil Procedure sections 410.10, 1085, 526, *et seq.* and 1060. Respondents/Defendants are subject to the personal jurisdiction of this Court, and jurisdiction and venue are proper in this County under California Code of Civil Procedure section 401, because they are, respectively, a State agency, a State Board and individuals sued herein in their official capacities as members of an agency of the State of California, and the Attorney General maintains an office at Oakland, California.

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III. PARTIES

Petitioners/Plaintiffs

7. Petitioner/Plaintiff ROBERT "BOB" SLOAN, a California citizen, is a 73-year-old veteran who served this country in the U.S. Army during the Vietnam War era. BOB has been a resident at the Veterans Home of California, Yountville since September 2013. BOB suffers from serious congestive heart failure, complicated with a prolonged QT interval, a condition with potentially fatal consequences, and he has been diagnosed with an aortic aneurysm, which is under close medical monitoring; he also suffers from vascular problems in his legs, kidney and chronic bowel problems. He is in constant and uncontrollable severe pain in his lower back and legs.

8. BOB SLOAN intends, should he find the cumulative burden of suffering in the terminal phase of his illness to be unbearable, to exercise his right to choose a more peaceful death via AID, in accordance with the EoLOA. BOB's determination arises from witnessing, at his wife's bedside, the agony and indignity his wife suffered in her final stage of life after she had a major heart attack in 1999. BOB's wife begged him to let her die and prevent the doctors prolonging her life, and she suffered intensely because she was kept alive against her wishes. BOB came to realize that, despite acting out of love and devotion for his wife, he was wrong to have allowed the doctors to keep his wife alive in her pain and suffering. BOB was profoundly affected by this terrible experience and has vowed to never let that happen when he becomes terminally ill. As BOB has stated³, "I'm not going to be a vegetable ... I'm not going to end up living in so much pain it's unbearable." BOB is determined to exercise his rights under EoLOA, but he has nowhere else to go if, pursuant to the Regulation, CalVet evicts him from his home; the prospect of eviction causes BOB tremendous distress, anxiety, fear, uncertainty and emotional suffering. BOB SLOAN is beneficially interested in the outcome of this action.

9. Petitioner/Plaintiff JENSENA THOMAS, a California citizen, is a 77-year-old former professional ballet dancer who in 2015 moved to the Veterans Home of California,

³ "At Veterans' Homes, Aid-in-Dying Isn't an Option", The Atlantic, February 12, 2018.

1 Yountville with her husband, James F. Thomas. James ("Jim") Thomas is an 83-year-old U.S.
2 Air Force veteran who served this country from 1956-1967, as a pilot, which included flying
3 missions throughout Vietnam and S.E. Asia. Jim and JENSENA THOMAS now call their home
4 a single small room, with shared bathroom, kitchen and laundry facilities, on the second floor of a
5 "domiciliary" building, built in 1939, at the Yountville Home.

6 10. Jim Thomas suffers from heart disease; he wishes to have the right, when in the
7 terminal phase of his dying process, to choose a more peaceful death via AID in accordance with
8 the EoLOA. Under the Regulation, if Jim were to make clear his intention to exercise his right to
9 AID under the EoLOA, he would be evicted from the couple's home. As Jim's spouse,
10 JENSENA THOMAS would also be evicted from the Home.

11 11. JENSENA THOMAS has recently been diagnosed with a form of breast cancer
12 that her physician has characterized as "invasive and aggressive." JENSENA and Jim are proud
13 and dignified elder Americans and both are determined that, when they become terminally ill,
14 they will request AID, as it is their right to do under the EoLOA. Under the Regulation, CalVet
15 will evict them both from the Home if either of them becomes terminally ill and intends to
16 exercise their option to choose AID.

17 12. If Jim Thomas succumbs to terminal illness and requests AID or if she becomes
18 terminally ill and chooses to end her life in comparative dignity and comfort through AID,
19 JENSENA THOMAS will be forced to leave their home at the Veterans Home of California,
20 Yountville, and, despite JENSENA's extreme age and suffering from serious cancer, CalVet will
21 put her out on the street. The prospect of eviction causes both Jim and JENSENA tremendous
22 distress, anxiety, fear, uncertainty and emotional suffering. JENSENA THOMAS is beneficially
23 interested in the outcome of this action.

24 13. At the California Veterans Home, numerous terminally ill veterans are currently
25 receiving medical care in the last months of their lives.

26 14. Petitioner/Plaintiff YOUNTVILLE ALLIED COUNCIL is an unincorporated
27 association of residents of the Veterans Home of California, Yountville. The YOUNTVILLE
28 ALLIED COUNCIL represents and provides services and benefits to residents of the Home and

1 acts in an advisory capacity to the Administrator of the Home. On behalf of its members, many
2 of whom are terminally ill, the YOUNTVILLE ALLIED COUNCIL has opposed and continues
3 to oppose the Regulation on the grounds that the Regulation denies the terminally ill residents of
4 the Home their right as California citizens to be choose a more peaceful death via AID in
5 accordance with the EoLOA. The YOUNTVILLE ALLIED COUNCIL has delegated authority
6 to its Parliamentarian/Compliance Officer, James B. Musson, a veteran resident at the Home, to
7 act as its representative and on behalf of its veteran members in bringing this action. The
8 YOUNTVILLE ALLIED COUNCIL, on its own behalf and on behalf of the veterans it
9 represents, is beneficially interested in the outcome of this action.

10 15. Petitioner/Plaintiff the YOUNTVILLE VETERANS GROUP, LLC is a limited
11 liability corporation. The YOUNTVILLE VETERANS GROUP, LLC represents and provides
12 services and benefits to residents of the Veterans Home of California, Yountville. Its mission is:
13 To help all Veterans and their spouses to preserve their dignity, honor, health and living
14 conditions. On behalf of its members, many of whom are terminally ill, the YOUNTVILLE
15 VETERANS GROUP, LLC has opposed and continues to oppose the Regulation on the grounds
16 that the Regulation denies the residents of the Home their right as California citizens to choose a
17 more peaceful death via AID in accordance with EoLOA. The YOUNTVILLE VETERANS
18 GROUP, LLC has delegated authority to its Vice Chairman, James F. Thomas, to act as its
19 representative and on behalf of its veteran members in bringing this action. The YOUNTVILLE
20 VETERANS GROUP, LLC, on its own behalf and on behalf of the veterans it represents, is thus
21 beneficially interested in the outcome of this action.

22 16. Petitioners/Plaintiffs anticipate that during the course of this action, they will seek
23 to amend this action to add as petitioners and plaintiffs additional terminally veterans who live at
24 the California Veterans Home and desire to exercise their rights under the EoLOA to access AID
25 while they are residents of the Home.

26 Respondents/Defendants:

27 17. Respondent/Defendant VITO IMBASCIANI MD, sued herein in his official
28 capacity, is Secretary of the CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS.

1 18. Respondent/Defendant COBY PETERSON, sued herein in his official capacity, is
2 the Deputy Secretary of Veterans Homes for the CALIFORNIA DEPARTMENT OF
3 VETERANS AFFAIRS.

4 19. Respondent/Defendant CALIFORNIA DEPARTMENT OF VETERANS
5 AFFAIRS ("CalVet") is an agency of the State of California established by section 63 of the
6 California Military and Veterans Code. CalVet's mission is "to deliver the innovative services
7 veterans and their families need to be successful, productive Californians."⁴ The Veterans Homes
8 Division is a division of CalVet whose goal is to provide California's aged and disabled veterans
9 and their spouses with rehabilitative, residential medical care and services for all veterans living
10 in one of California's 8 Veterans Home sites, located in Yountville, Barstow, Chula Vista,
11 Ventura, Lancaster, West Los Angeles, Fresno and Redding. Approximately 2,700 veterans, and
12 their spouses, reside in the California Veterans Homes.

13 20. Respondent/Defendant CALIFORNIA VETERANS BOARD is a board of seven
14 members appointed by the Governor of the State of California and subject to confirmation by the
15 Senate. The mission statement of the CALIFORNIA VETERANS BOARD provides that the
16 Board "serves as an advocate for Veterans affairs identifying needs and working to ensure and
17 enhance the rights and benefits of California Veterans and their dependents." The current
18 members of the CALIFORNIA VETERANS BOARD are Todd Trotter, Hugh Crooks, Carla
19 Thornton, Charlene Taylor, Juan Gonzalez and John Busterud. The CALIFORNIA VETERANS
20 Board is responsible for advising on the policies for all operations of CalVet.

21 21. Petitioners/Plaintiffs are ignorant of the true names or capacities of the
22 respondents/defendants sued herein under the fictitious names DOES 1 through 20 inclusive.
23 When their true names and capacities are ascertained, Petitioners/Plaintiffs will amend this
24 Petition/Complaint to show such true names and capacities. Petitioners/Plaintiffs are informed
25 and believe, and thereon allege, that DOES 1 through 20, inclusive, and each of them, are agents
26 or employees of one or more of the named Respondents/Defendants responsible, in one way or
27 another, for the promulgation and prospective enforcement of the Regulation at issue herein.

28 ⁴ California State Auditor Report May 2013..

1 **IV. ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

2 A. **CalVet's Duty to Veterans**

3 22. According to CalVet, California is home to more than 1.8 million veterans⁵ who
4 have served this country since World War II and the Korean War, through the Vietnam era until
5 the current conflicts in the Middle East.⁶ Many of these veterans are now homeless, physically or
6 mentally ill, disabled, financially desperate and in need of medical care. California's veteran's
7 population is the largest in the United States.

8 23. From 1884 through today, California has proudly maintained homes for its
9 veterans. The California Veterans Home, located at 8 sites in Yountville, Barstow, Chula Vista,
10 Lancaster, Ventura, West Los Angeles, Fresno and Redding, provides housing, amenities and
11 long-term health care services, at various levels of care, to approximately 2,700 California
12 veterans and their spouses ("Members.")

13 24. The administration and operation of the California Veterans Home is governed by
14 the California Military and Veterans Code ("the Code") and regulations issued thereto (contained
15 in Title 12, California Code of Regulations.)

16 25. Under section 1012 of the Code, the California Veterans Home is intended to be
17 "for aged and disabled persons who served in the Armed Forces of the United States of America
18 who were discharged or released from active duty under honorable conditions from service, who
19 are eligible for hospitalization or domiciliary care in a veterans' facility in accordance with the
20 rules and regulations of the United States Department of Veterans Affairs, and who are bona fide
21 residents of this state at the time of application."

22 26. The Home is specifically intended to provide a home for the spouses of veterans,
23 subject to the availability of space and other conditions.

24 27. The Home consists of licensed medical facilities providing some or all of the
25 following five levels of care to aged and disabled veterans and their spouses: Domiciliary

26 _____
27 ⁵ "Snapshot of California Veterans", estimate as of September 30, 2012.

28 ⁶ "A New Approach to California's Veterans Homes", Little Hoover Commission report #237 March 2017
(hereinafter, Little Hoover Commission Report), p. 5.

1 (independent living); Residential Care for the Elderly (assisting living); Intermediate Care
2 (licensed nursing required); Skilled Nursing (round-the-clock care by licensed nurses and
3 certified nursing assistants); and Memory Care/Dementia Care.

4 28. The California Veterans Home is home to many veterans and their spouses who
5 are or will become terminally ill while residents of the Home.

6 29. Pursuant to the Code, Respondent/Defendant CALIFORNIA DEPARTMENT OF
7 VETERANS AFFAIRS ("CalVet"), an agency of the State of California, is responsible for the
8 operation and administration of the California Veterans Home.

9 30. The Secretary of CalVet, Respondent/Defendant VITO IMBASCIANI, MD, is its
10 chief administrative officer. Under the California Military and Veterans Code, the Deputy
11 Secretary of CalVet, Respondent/Defendant COBY PETERSON, is responsible for the
12 administration of all the sites of the California Veterans Home.

13 31. By law, CalVet and Secretary IMBASCIANI are required to seek and take advice
14 on the operations of CalVet from Respondent/Defendant CALIFORNIA VETERANS BOARD, a
15 board of seven members appointed by the Governor of the State of California and subject to
16 confirmation by the Senate.

17 32. Above all, Respondents/Defendants CalVet, Dr. IMBASCIANI, Mr. PETERSON
18 and the CALIFORNIA VETERANS BOARD are required to comply with section 500 of Title 12
19 of the California Code of Regulations, which provides, in relevant part, that, "[t]he Veterans'
20 Home of California ... shall be maintained and operated as a facility where California veterans,
21 appropriately admitted, shall be assured of receiving such care, sustenance, and treatment as will
22 result in their best possible mental, physical, and social status. **It shall be their home.**"

23 [Emphasis supplied.]

24 33. Since the late 19th century the Federal Government has not directly participated in
25 the administration and operation of the California Veterans Home. The Federal Government has
26 left to the State of California the responsibility for the care of California veterans at the Veterans
27 Home of California and, as shall be addressed in more detail below, provides a partial
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1 contribution to the funding for the Home, through a per diem payment for each veteran in the
2 Home based on the level of medical care provided to the veteran.

3 34. That Federal contribution, paid into the State General Fund, currently amounts to
4 only 22% of the total cost of operating the California Veterans Home, with the substantial
5 majority of the cost, currently 61%, borne by California taxpayers.

6 35. By regulation, in order to qualify for the Federal contribution, the Home must meet
7 certain standards required by the United States Department of Veterans Affairs ("USDVA.")
8 Paramount among these standards is that the home must ensure the following rights to residents:

9 "The resident has the right to exercise his or her rights as a resident of the facility
10 and as a citizen or resident of the United States." [38 CFR §51.70(a)(1)]

11 36. Specifically, with respect to medical care, the USDVA regulations provide:
12 "*Free choice.* The resident has the right to ... Unless determined incompetent or
13 otherwise determined under the laws of the State, participate in planning care and
14 treatment or changes in care and treatment." [38 CFR §51.70(d)(2)]

15 37. Under California law, all residents of the Home retain all their rights as California
16 citizens. Section 1771.7 of the California Health and Safety Code provides, in relevant part: "No
17 resident of a continuing care retirement community shall be deprived of any civil or legal right,
18 benefit, or privilege guaranteed by law, by the California Constitution, or by the United States
19 Constitution, solely by reason of status as a resident of a community."

20 38. Article I, section 7(a) of the California Constitution provides:

21 "A person may not be deprived of life, liberty, or property without due process of
22 law or denied equal protection of the laws."

23 39. California citizens who are residents of the Veterans Home of California are
24 entitled to the same rights as all other California citizens. CalVet owes a duty to California
25 veterans to provide them with a home, and to ensure that residents have the right to exercise their
26 Constitutional rights equally as all California citizens, to be assured of receiving such care,
27 sustenance, and treatment as will result in their best possible mental, physical, and social status,
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1 and be entitled to participate in planning such care and treatment. As an agency of the State
2 Government, CalVet has a duty to fulfill this duty on behalf of the people of California.

3 40. Nothing in the Code, or any applicable Federal or State regulations permits CalVet
4 to deny the residents of the California Veterans Home their rights as California citizens, to deny
5 residents their Constitutional rights or to deprive residents of their civil or legal rights, benefits, or
6 privileges guaranteed by law.

7 41. As Respondent/Defendant VITO IMBASCIANI himself has stated⁷,
8 "Members of the Veterans Homes of California are not wards of the state; rather,
9 **they are residents of California who should be able to enjoy all the rights and**
10 **responsibilities afforded to any other Californian."** [Emphasis supplied.]

11 42. Under section 1023 of the Code California regulations, CalVet is mandated to
12 "manage the homes and administer their affairs, and, subject to the direction of the secretary,
13 adopt rules and regulations for the government of the homes in conformity, as nearly as possible,
14 to the rules and regulations of the United States Department of Veterans Affairs for their
15 facilities." CalVet is not required to maintain and operate the California Veterans Home as if it
16 were a facility owned and operated by the USDVA. The standard to which CalVet must adhere is
17 only to conform to the rules and regulations for USDVA facilities "as nearly as possible."

18 43. Nothing in the Code requires CalVet to operate the California Veterans Home in a
19 manner that denies residents their rights as California citizens under California law.

20 B. The End of Life Option Act

21 44. The rights, benefits, or privileges guaranteed to residents of the Home include the
22 rights of residents to AID as permitted under the California End of Life Option Act, California
23 Health and Safety Code, §§443-443.22 (the EoLOA.)

24 45. Under the EoLOA, any Californian who has been diagnosed to be in the terminal
25 stage of illness and has capacity to make medical decisions may request, according to a specific
26 procedure set forth in the Act, that his or her attending physician prescribe medication, which the
27 patient may ingest to achieve a peaceful death.

28 ⁷ Letter to Honorable David J. Shulkin, Secretary of USDVA, March 16, 2018;

1 46. The EoLOA thus affords every California citizen the comfort of knowing that he
2 or she has the option of avoiding what often can be brutal pain, suffering and other distressing
3 symptoms in the final stage of terminal illness.

4 47. The EoLOA was signed into law on October 5, 2015.

5 48. When he signed the Act, the Governor of the State of California wrote a letter to
6 the Members of the California State Assembly, which included the following statement:

7 “I do not know what I would do if I were dying in prolonged and excruciating
8 pain. **I am certain, however, that it would be a comfort to be able to consider**
9 **the options afforded by this bill. And I wouldn’t deny that right to others.”**

10 [Emphasis supplied.]

11 C. The Regulation

12 49. The EoLOA took effect on June 9, 2016.

13 50. On June 8, 2016, CalVet banned AID from the Home, imposing the punishment
14 of eviction on those residents who would choose it.

15 51. At CalVet’s direction, the Administrators of each of the 8 California Veterans
16 Homes sent out letters on June 8, 2016, in identical terms, to the residents of the Homes
17 informing them that when the EoLOA came into effect the next day, June 9, 2016, “any adult
18 California citizen who has been determined by their attending physician to be suffering from a
19 terminal illness will be entitled, under certain specified circumstances, to request a prescription
20 for a drug to end their life.” The letter from the Administrators stated:

21 “CalVet supports the right of every person living in our Veterans Homes (Home)
22 to make choices relating to his or her medical care based on the [EoLOA]

23 “However, due to a conflict between the Act and existing federal laws that
24 significantly affects the operation of the Homes, our Homes’ Members will not be
25 permitted to consume an aid-in-dying drug while on Homes’ grounds.

26 Consequently, if a Member intends to take an aid-in-dying drug to end his or her
27 life, prior to receiving and taking the drug, the Member must voluntarily discharge
28 from the Home.”

1 52. CalVet did not arrange for there to be any meetings at the Homes to discuss this
2 letter and its implications prior to placing it in the mailboxes of residents at the Home.

3 53. As the agency operating the California Veterans Home, CalVet is a “care
4 custodian”, as that term is defined in the California Welfare and Institutions Code, section
5 15610.17. As a care custodian, CalVet has a duty not to abuse the residents of the California
6 Veterans Home by depriving the residents of goods and services that necessary to avoid physical
7 harm or mental suffering. Furthermore, CalVet has a duty to avoid “neglect” to the residents of
8 the Home, which term includes the “failure to provide medical care for physical and mental
9 health needs.” Id. § 15610.57.

10 54. Prior to June 2016, CalVet failed to provide Petitioners/Plaintiffs or other residents
11 of the California Veterans Home with information about and access to AID as provided for in the
12 EoLOA.

13 55. On June 8, 2016, CalVet filed an emergency regulation with the State of California
14 Office of Administrative Law. The regulation, which became section 509(b) of Title 12 of the
15 California Code of Regulations, provides that the California Veterans Home would not provide
16 “aid-in-dying drugs” as defined in EoLOA, that health care providers would not participate in
17 activities under the EoLOA while on the premises of the Home or while acting within the scope
18 of any employment by the Home (hereinafter, “the Regulation”).

19 56. Moreover, section 509(c) of the Regulation provided that if a resident of the Home
20 intends to take an aid-in-dying drug to end his or her life, the resident “shall discharge from the
21 Veterans Home.”

22 57. CalVet is aware that the substantial majority of residents of the California
23 Veterans Home live there because they have nowhere else to go. By thus mandating that the
24 consequence of intending to seek a more peaceful death via AID at the Home is that a resident
25 will be evicted from the Home, CalVet knows or should know that it is effectively denying
26 residents of the Home the right to exercise their rights under the EoLOA as California citizens,
27 and causing them fear, anxiety, distress and other forms of emotional suffering.

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1 58. The eviction mandated by section 509(c) of the Regulation applies to residents in
2 the most extreme circumstances of their lives. When a terminally ill resident determines that he
3 or she is so burdened by pain, indignity and terrible discomfort as they approach death that they
4 decide to take aid-in-dying medication, rather than continue to endure such horrific and brutal
5 suffering, those residents should be treated with compassion and understanding, and afforded the
6 best medical options available to them under California law, including AID. Instead, the
7 Regulation mandates that they be evicted from their home.

8 59. Under the circumstances, by issuing the Regulation, CalVet has failed to meet its
9 statutory duty under the California Military and Veterans Code and has failed to meet the
10 standards required of CalVet under the California Welfare and Institutions Code.

11 D. Failure to Meet the Standards Required for an Emergency Regulation

12 60. Pursuant to Government Code section 11340.5, CalVet is required to follow the
13 California Administrative Procedures Act, Chapter 3.5 of the Government Code, in particular the
14 provisions requiring public participation as part of the procedure for the adoption of regulations,
15 sections 11346-11348, which “establish basic minimum procedural requirements for the adoption,
16 amendment, or repeal of administrative regulations.” 11346(a).

17 61. CalVet failed to adhere to the requirements for prior public notice and comment by
18 submitting the Regulation as an emergency regulation because it failed to comply with the
19 California Administrative Procedures Act provisions relating to the adoption of emergency
20 regulations.

21 62. CalVet failed to meet the standards for the adoption of emergency regulations in
22 the following respects.

23 (i) Failure to Consult with Interested Persons

24 63. Section 11346 affords to the “agency that is considering adopting ... regulation”
25 the discretion to “consult with interested persons before initiating regulatory action ...”

26 64. CalVet chose not to exercise its discretion to consult with any residents of the
27 Home about the Regulation or the EoLOA. Between October 5, 2015, when Governor Brown
28 signed the EoLOA into law and June 8, 2016, CalVet did not take any action to consult with

1 veterans living in the California Veterans Home about the EoLOA. CalVet did not provide any
2 notice to any residents of the Home educating residents about the law, CalVet did not hold any
3 meetings, formal or informal, in any of the California Veterans Home facilities regarding the law,
4 CalVet did not attempt to solicit any views, comments or input about the EoLOA from any of the
5 residents of the Home, and CalVet did not invite residents of the Home to participate in any
6 studies or analyses conducted by CalVet concerning the new law. CalVet did nothing, prior to
7 EoLOA coming into effect, to determine the opinions of residents of the California Veterans
8 Home regarding the EoLOA and whether, in participating "in planning care and treatment", as is
9 their guaranteed right under federal regulations, residents of the Home sought, to quote the
10 Governor, "the comfort to be able to consider the options afforded by" the EoLOA.

11 65. CalVet acted arbitrarily and capriciously in failing to exercise its discretion to
12 consult with residents of the California Veterans Home before initiating this regulatory action.

13 (ii) Failure to Show Immediate, Serious Harm

14 66. Pursuant to section 11346.1(a)(2) of the Government Code, "[a]t least five
15 working days before submitting an emergency regulation to the [Office of Administrative Law],
16 the adopting agency shall send a notice of the proposed emergency action to every person who
17 has filed a request for notice of regulatory action with the agency. 'The notice shall include both
18 of the following: (A) The specific language proposed to be adopted. (B) The finding of
19 emergency required by subdivision (b).'" CalVet did not send out any such notice at least 5 days
20 prior to June 8, 2016, the date when it submitted the emergency regulation to the Office of
21 Administrative Law, or at all.

22 67. Under section 11346.1(a)(2), the only exception to this 5-day prior notice rule is
23 where, under section 11346.1(a)(3), "the emergency situation clearly poses such an immediate,
24 serious harm that delaying action to allow public comment would be inconsistent with the public
25 interest."

26 68. CalVet did not make any showing of the existence of any such emergency
27 situation. CalVet failed to show that there was an "immediate, serious harm that delaying action
28 to allow public comment would be inconsistent with the public interest."

1 69. CalVet wrote to the Office of Administrative Law on June 8, 2016 stating that the
2 emergency regulation was required because of “a conflict between the [EoLOA] and existing
3 federal laws.” The federal law to which CalVet’s June 8, 2016 letter referred is the 1997 Federal
4 Assisted Suicide Funding Restriction Act, 42 U.S.C. section 14401 (“FASFRA.”) FASFRA
5 provides, in 42 U.S.C. section 14402(a), that no funds appropriated by Congress for the purposes
6 of paying for the provision of health care may be used to provide or pay for any item or service
7 furnished for the purpose of assisting in causing, the death of any individual, such as by assisted
8 suicide, euthanasia, or mercy killing.”

9 70. The sole reason CalVet gave, and has given, for adopting the Regulation, is that
10 because of the provisions of FASFRA, particularly 42 U.S.C. section 14402(a), permitting AID in
11 the California Veterans Home would, to quote CalVet’s letter to the Office of Administrative Law
12 on June 8, 2016, “risk violation of federal law, placing their continued operation in jeopardy.”

13 71. When it submitted the emergency regulation, CalVet made no showing that
14 USDVA would withdraw or stop paying the Federal per diem immediately upon the EoLOA
15 coming into effect on June 9, 2016.

16 72. CalVet was not and is not in possession of any written opinion or guidance issued
17 by the USDVA to the effect that, because AID is available to eligible California citizens pursuant
18 to the EoLOA, the USDVA would cease making its partial contribution to the operating costs of
19 the California Veterans Home immediately upon the effective date of the EoLOA unless CalVet
20 took emergency action to prevent residents of the Home from exercising their rights to AID.

21 73. No such evidentiary showing was made when CalVet submitted the emergency
22 regulation to the Office of Administrative Law and no such showing could be made, because such
23 a consequence was unlikely and would be contrary to law.

24 74. As a matter of law, AID permitted by the EoLOA is not “assisted suicide”.
25 California Health and Safety Code, §443.18.

26 75. As a matter of law, FASFRA section 14402(a) applies only to the use of federal
27 funds; it is not violated if sources other than federal funds are used for the provision of AID in the
28 California Veterans Home.

1 76. In March 2016, CalVet sent an inquiry to USDVA asking for USDVA to advise as
2 to its position if AID were provided to residents of the Home under the EoLOA. CalVet did not
3 ask if USDVA would continue paying the per diem if CalVet used non-federal funds exclusively
4 to pay for AID provided to residents of the Home. Most importantly, USDVA did not provide
5 CalVet with any written advice as to its position.

6 77. Subsequently, on a date prior to March 16, 2018, the Secretary of the U.S.
7 Department of Veterans Affairs, David J. Shulkin, confirmed to Respondent/Defendant VITO
8 IMBASCIANI that USDVA respects state law and suggested that USDVA would defer to state
9 policy relating to physician assistance in ending life for terminally ill residents of the state. That
10 discussion between Mr. Shulkin and Dr. IMBASCIANI, to use Dr. IMBASCIANI's words,

11 "seemed to realize a solution that respects state law and would harmonize federal
12 law, so long as no federal funding whatsoever was used in the procurement or
13 administration of this type of drug."⁸

14 78. Under the circumstances, CalVet's position, in support of its submission of
15 the emergency regulation, that the funding of the California Veterans Home would be
16 jeopardized by the immediate withdrawal of Federal funds if CalVet permitted AID in the
17 Home, was unfounded.

18 79. By failing to consult with any residents of the California Veterans Home prior to
19 submitting the emergency regulation, CalVet was not in a position to determine if any residents
20 intended to exercise their rights under EoLOA. CalVet was therefore not able to make any
21 representation of when or if any issue would arise with respect to federal funding of the Home,
22 even if, contrary to the language of the law, it were correct that there is a conflict between
23 FASFRA and permitting AID to residents in the Home. CalVet was therefore never in any
24 position to make a representation that "immediate, serious harm" would result if the regulation
25 were not adopted as an emergency regulation.

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28 ⁸ Letter to Honorable David J. Shulkin, Secretary of USDVA, March 16, 2018.

1 80. CalVet acted arbitrarily and capriciously in failing to show that there was an
2 “immediate, serious harm” posed by delaying action on the regulation such as would justify the
3 adoption of an emergency regulation.

4 (iii) The Basis for the Emergency Regulation Was Unsupported by Fact

5 81. CalVet’s sole stated reason for enacting the Regulation was to preserve USDVA
6 funding for the Home.

7 82. In proceeding to adopt the emergency regulation based on this reason, CalVet
8 acted arbitrarily and capriciously by not fully conducting an analysis to determine how it could
9 use non-federal funding for AID in the Home.

10 83. One source of the non-federal funding available are the fees paid by the residents
11 themselves and by the insurance applicable to each resident. By regulation, the California
12 Veterans Home is required “to admit all eligible applicants, provided that care for their needs can
13 be furnished within the available resources of the Veterans Home and subject to the levels of care
14 for which direct admission is permitted.” Such eligibility includes meeting the requirements of
15 section 1012 of the Code. Before being admitted as a Member of the Home, the veteran must be
16 participating, or be in the process of applying to participate, in a qualified federal, state or private
17 health service plan, or a medical program administered by the United States Department of
18 Veterans Affairs. Prior to admission, the Member must first undergo an investigation into his or
19 her financial status “to ensure that the veteran is unable to pay for necessary hospital or
20 domiciliary care outside of the” Home. Section 1012.1 of the Code.

21 84. Members of the Home must pay to the Home fees and charges as determined by
22 CalVet. Such fees and charges vary according to the level of health care received by the Member.
23 In addition, the Member may be charged for “costs of care in excess of the member fee”, as
24 determined by the regulations promulgated by CalVet.

25 85. Another non-federal source for the provision of AID in the Home is the substantial
26 contribution to the operations of the Home made by California taxpayers. The operating budget
27 for the California Veterans Home is approximately \$300 million per year. This budget is funded
28 by (a) fees collected from the residents of the Home, a percentage of the resident’s annual income

1 determined by his or her level of care; (b) Medicare; (c) Medi-Cal; (d) private insurance; (e)
2 income from lease agreements; (f) the per diem paid by the United States Department of Veterans
3 Affairs at rates depending the level of care provided; and (g) California taxpayers.⁹ For the fiscal
4 year 2017-2018, California taxpayers funded approximately 61% of the total operating cost of the
5 Home, or \$185 million.¹⁰

6 86. In proposing the emergency regulation, CalVet made no showing that it would use
7 federal funds for the provision of AID at the California Veterans Home. For the fiscal year 2017-
8 2018, the contribution to the annual operating costs of the California Veterans Home made by the
9 United States Department of Veterans Affairs is approximately 22% of the total operating budget
10 for the Home, or just under \$68 million.

11 87. The funding provided by the United States Department of Veterans Affairs is paid
12 into the State General Fund.

13 88. Upon information and belief, Petitioners/Plaintiffs allege that the USDVA does not
14 condition receipt of the per diem on CalVet allocating that portion of the General Fund
15 representing the USDVA per diem to any specific budget item, including any housing or medical
16 costs, contained in the overall operating budget for the Home.

17 89. When it adopted the Regulation, CalVet made no showing that it does not have the
18 discretion to allocate the per diem paid by the USDVA to other services provided at the Home.

19 90. Under the circumstances, CalVet acted arbitrarily and capriciously in failing to
20 determine that its stated rationale for the emergency regulation was not supportable.

21 E. Failure to Meet the Standards for Adopting the Regulation

22 91. On June 17, 2016, the Office of Administrative Law approved the emergency
23 regulation. Under Government Code section 11346.1(e), the regulation was then in effect for 180
24 days and repealed unless CalVet either (a) permanently readopts it in compliance with notice and
25 comment requirements of the APA or (b) readopts it.

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27 ⁹ Little Hoover Commission Report, p. 39.

28 ¹⁰ Little Hoover Commission Report, pp. 5, 8.

1 92. As part of the procedure for permanently adopting the Regulation, CalVet was
2 required to submit an Initial Statement of Reasons that, by law, is required to include, but not be
3 limited to, certain specific requirements provided by section 11346.2.

4 93. CalVet failed to comply with the first of these statutory requirements for the Initial
5 Statement of Reasons, specifically that it include a statement of the specific purpose for the
6 adoption of the regulation, including "the problem the agency intends to address, and the rationale
7 for the determination by the agency that each adoption, amendment, or repeal is reasonably
8 necessary to carry out the purpose and address the problem for which it is proposed ... the
9 benefits anticipated from the regulatory action, including the benefits or goals provided in the
10 authorizing statute." CalVet did not attempt to show in its Initial Statement of Reasons that the
11 regulation was "reasonably necessary" to preserve federal funding for the Home. In its Initial
12 Statement of Reasons, CalVet never attempted to show how non-federal funds could be used to
13 provide AID in the Home and thus avoid the use of the per diem administered by the USDVA in
14 potential violation of FASFRA.

15 94. CalVet failed to comply with another of these statutory requirements for the Initial
16 Statement of Reasons, specifically that it include an "identification of each technical, theoretical,
17 and empirical study, report, or similar document, if any, upon which the agency relies in
18 proposing the adoption, amendment, or repeal of a regulation." There were no such studies,
19 reports, or similar documents that CalVet relied upon in proposing the Regulation. Instead,
20 CalVet relied on oral advice given by USDVA based on written questions that omitted any
21 reference to providing AID to residents of the California Veterans Home using non-federal funds.
22 CalVet never made any showing that it had conducted any study or analysis to determine how
23 AID could be provided using State funds exclusively, which is evidently permissible to USDVA.

24 95. CalVet failed to comply with another of the statutory requirements for the Initial
25 Statement of Reasons, specifically that it include a "description of reasonable alternatives to the
26 regulation and the agency's reasons for rejecting those alternatives." Such reasonable alternatives
27 to be considered must include "alternatives that are proposed as less burdensome and equally
28 effective in achieving the purposes of the regulation in a manner that ensures full compliance with

1 the authorizing statute or other law being implemented or made specific by the proposed
2 regulation.” CalVet failed to include in its Statement of Reasons consideration that, as an
3 alternative to the Regulation, CalVet might provide AID to residents of the California Veterans
4 Home using non-federal funds exclusively.

5 96. Under the Government Code, CalVet was required to “convene a public hearing or
6 hearings and take public comment on any draft regulation.” §11346.36(c). Moreover, the “public
7 at large shall be afforded the opportunity to review and comment on the draft regulation before
8 the regulation is adopted in final form.” CalVet failed to take any steps to ensure that the
9 residents of the Home received any notice of the proposed Regulation and CalVet’s Initial
10 Statement of Reasons. CalVet did not provide the draft regulation and Initial Statement of
11 Reasons to the residents of the Home by placing them in the residents’ mailboxes, as it had
12 arranged to be done with the June 8, 2016 Administrators’ letter, and it did not arrange for any
13 meetings to take place in the Home where the draft regulation or Initial Statement of Reasons was
14 presented to residents at the Home or for their input.

15 97. Although notice of the proposed rulemaking was published in the official
16 California register, the residents of the Home, including the individual Petitioners/Plaintiffs and
17 the members of the Petitioner/Plaintiff associations, never knew about the public hearing or their
18 opportunity to review and comment on the draft regulation. As a consequence, the public hearing
19 occurred without any residents of the Home in attendance or any written comments regarding the
20 EoLOA being submitted.

21 98. Despite there being no members of the public in attendance at the public hearing,
22 CalVet did not convene any further hearings or attempt to provide actual notice of the draft
23 regulation and the initial statement of reasons to the residents of the Home.

24 99. Under the California Government Code, section 11346.4(a)(4),
25 “At least 45 days prior to the hearing and close of the public comment period on
26 the adoption, amendment, or repeal of a regulation, notice of the proposed action
27 shall be When appropriate in the judgment of the state agency, mailed to any
28 person or group of persons whom the agency believes to be interested in the

1 proposed action and published in the form and manner as the state agency shall
2 prescribe.”

3 100. CalVet did not comply with this provision by mailing the notice of the regulatory
4 action, including the proposed regulation and initial statement of reasons, to the residents of the
5 Home.

6 101. CalVet acted arbitrarily and capriciously in failing to exercise its judgment to mail
7 the notice of regulatory action to the residents of the Home prior to the hearing and close of the
8 public comment period. When CalVet failed to receive any comment from any resident of the
9 Home relating to AID and when not one resident of the Home attended the public hearing on the
10 adoption of the Regulation, CalVet was on notice that the residents of the Home had not received
11 actual notice of the proposed regulatory action and draft regulation, CalVet should have realized
12 that this proposed regulatory action was being taken without any knowledge of or comment from
13 the persons most directly interested in the proposed action, and should have taken steps to ensure
14 that proper actual notice was provided to residents of the Home.

15 F. Conclusion

16 102. In adopting the Regulation, CalVet acted arbitrarily, capriciously, and in violation
17 of California law and its statutory duty to the residents of the California Veterans Home.

18 103. CalVet issued, utilized and has enforced the Regulation without following the
19 California Administrative Procedure Act (APA), Government Code section 11340, *et seq.* As
20 such the Regulation, section 509 of Title 12 of the California Code of Regulations, constitutes an
21 “underground regulation” which Respondents/Defendants are prohibited from enforcing.

22 104. There was no legal basis for the adoption of the Regulation. The Regulation was
23 adopted by CalVet based on its false assumption as to the position that the USDVA would take as
24 to the application of FASFRA if AID were provided to suffering dying residents of the California
25 Veterans Home funded by non-federal contributions, including the contributions to the operating
26 costs of the Home provided by the fees and charges paid for by the veterans themselves,
27 insurance, and the California taxpayer.

28 105. No reasonable reading of FASFRA would justify the adoption of the Regulation.

1 106. Following and as a consequence of the advice provided prior to March 16, 2018 by
2 the Secretary of the U.S. Department of Veterans Affairs to Respondent/Defendant VITO
3 IMBASCIANI that USDVA would respect state law and defer to state policy relating to provision
4 of AID to residents of the California Veterans Home, in harmony with FASFRA so long as no
5 federal funds are used, CalVet knew that its stated rationale for the Regulation was invalid.

6 107. CalVet owes a duty to residents under the Code, the applicable State and Federal
7 regulations and under the California Constitution to immediately cease enforcing the Regulation,
8 and taking all appropriate steps to withdraw and repeal the Regulation.

9 **V. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **(Petition for Writ of Mandate Against All Respondents/Defendants)**

12 108. Petitioners/Plaintiffs incorporate and reallege, as if fully set forth herein, the
13 allegations of paragraphs 1-107 above.

14 109. Respondents/Defendants, and each of them, have a mandatory duty under the
15 California Military and Veterans Act, to discharge their responsibilities, respectively, as a
16 California state agency, the Secretary, Deputy Secretary of that agency, responsible for
17 maintenance and operation of the California Veterans Home and the Board charged with
18 advocating for Veterans affairs, identifying needs and working to ensure and enhance the rights
19 and benefits of California Veterans and their dependents, to maintain and operate the Veterans
20 Home of California as a facility where California veterans, appropriately admitted, shall be
21 assured of receiving such care, sustenance, and treatment as will result in their best possible
22 mental, physical, and social status.

23 110. Furthermore, Respondents/Defendants, and each of them, have a mandatory duty
24 under the California Health and Safety Code to ensure that all residents of the Veterans Home of
25 California shall not be deprived of any civil or legal right, benefit, or privilege guaranteed by law,
26 by the California Constitution, or by the United States Constitution, solely by reason of status as a
27 resident of the Home.

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1 111. Furthermore, Respondents/Defendants, and each of them, have a mandatory duty
2 to maintain and operate, or ensure the maintenance and operation of, the Veterans Home of
3 California as the home for veterans and their spouses.

4 112. The said duties of Respondents/Defendants, and each of them, are duties of a
5 public nature.

6 113. Respondents/Defendants, and each of them, have no statutory, regulatory or other
7 authority to issue or adopt the Regulation preventing residents of the Home from exercising their
8 rights under the EoLOA. Nor do they have authority to mandate the eviction of a spouse of a
9 member who intends to exercise such rights.

10 114. By issuing and adopting the Regulation, Respondents/Defendants, and each of
11 them, have failed to perform, and have violated their mandatory, ministerial, and/or non-
12 discretionary duties as described above.

13 115. By issuing and adopting the Regulation, Respondents/Defendants, and each of
14 them, have acted beyond the scope of their statutory and regulatory authority as delegated to them
15 by the California Legislature.

16 116. By issuing and adopting the Regulation as an emergency regulation,
17 Respondents/Defendants, and each of them, have acted arbitrarily and capriciously and have
18 abused their discretion.

19 117. By issuing and adopting the permanent Regulation, Respondents/Defendants, and
20 each of them, have acted arbitrarily and capriciously and have abused their discretion.

21 118. The duties imposed on Respondents/Defendants, as aforesaid, are imperative.

22 119. The Regulation, section 509 of Title 12 of the California Code of Regulations,
23 constitutes an "underground regulation" which Respondents/Defendants are prohibited from
24 enforcing.

25 120. The actions of Respondents/Defendants described above are contrary to the public
26 interest and, if permitted to take further effect, will deny the residents of the Veterans Home of
27 California their rights under the California and United States Constitutions.

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1 121. As residents of the California Veterans Home and associations of residents acting
2 on behalf of their members, Petitioners/Plaintiffs are beneficially interested in the performance by
3 Respondents/Defendants of their statutory and regulatory duties as described above.

4 122. The public will be irreparably harmed if Respondents/Defendants are not forced to
5 cease enforcement, withdraw or repeal the Regulation.

6 123. Petitioners/Plaintiffs will be irreparably harmed if Respondents/Defendants are not
7 forced to cease enforcement, withdraw or repeal the Regulation.

8 124. Petitioners/Plaintiffs have no plain, speedy and adequate remedy at law other than
9 the relief sought herein.

10 125. Because the issuance or adoption of the Regulation purport to be quasi-legislative
11 in nature and are not adjudicatory in nature, and in view of the other circumstances of this case,
12 Petitioners/Plaintiffs bring this action for a writ of mandate under California Code of Civil
13 Procedure section 1085. In the alternative, however, Petitioners/Plaintiffs also seek a writ of
14 mandate under California Code of Civil Procedure section 1094.5 to the extent, if any, that the
15 Court concludes that California Code of Civil Procedure section 1094.5 is applicable to this case.

16 126. Pursuant to section 1085(a) of the California Code of Civil Procedure, this Court
17 should issue a writ of mandate or peremptory writ to compel Respondents/Defendants to comply
18 with their duties as set forth herein, and not enforce the Regulation.

19 127. Further, pursuant to section 1085(a) of the California Code of Civil Procedure, this
20 Court should issue a writ of mandate or peremptory writ to compel Respondents/Defendants to
21 comply with their duties as set forth herein, and take appropriate action to withdraw or appeal the
22 Regulation.

23 128. Under the circumstances, Petitioners/Plaintiffs are entitled to the writ of mandate
24 as requested.

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1 132. Petitioners/Plaintiffs seek a judicial declaration that:

2 a. The Regulation, section 509 of Title 12 of the California Code of Regulations, is,

3 and shall remain, unlawful, void and of no effect for the reasons set forth above;

4 b. The Regulation, section 509 of Title 12 of the California Code of Regulations, is

5 not necessary to avoid or prevent the violation of the 1997 Federal Assisted Suicide Funding

6 Restriction Act, 42 U.S.C. section 14401 if residents of the Veterans Home of California are

7 permitted to exercise their rights under the California End of Life Option Act, California Health

8 and Safety Code, §§443-443.22 to receive AID at the Home, provided that no federal funds are

9 used for or in connection with providing AID to residents at the Home.

10 c. The Regulation, section 509 of Title 12 of the California Code of Regulations,

11 constitutes an "underground regulation" which Respondents/Defendants are prohibited from

12 enforcing.

13 133. Petitioners/Plaintiffs desire a judicial determination of the duties of Respondents/

14 Defendants by declaration as to unlawfulness and unenforceability of section 509 of Title 12 of

15 the California Code of Regulations.

16 134. Petitioners/Plaintiffs have no adequate remedy at law because the harm to them as

17 a result of the statutory and regulatory violations of Respondents/Defendants cannot be

18 adequately measured in or by reference to monetary damages.

19 135. Moreover, under the circumstances, the harm to the public and to Respondents/

20 Defendants of permitting section 509 of Title 12 of the California Code of Regulations to remain

21 effective and enforced would be hard to calculate and irreparable.

22 136. At all times herein, Petitioners/Plaintiffs have acted in good faith and are entitled

23 to the equitable relief sought herein.

24 137. Under the circumstances, Petitioners/ Plaintiffs are entitled to the declaratory relief

25 as requested herein.

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1 146. Petitioners/Plaintiffs therefore seek, and are entitled to, preliminary and permanent
2 injunctive relief under California Code of Civil Procedure section 526 enjoining
3 Respondents/Defendants from continuing to implement and enforce the Regulation, section 509
4 of Title 12 of the California Code of Regulations, and requiring that Respondents/Defendants take
5 immediate action to withdraw or repeal said Regulation.

6 **FOURTH CAUSE OF ACTION**

7 **(Violations of Gov. Code section 11346 *et seq.* Against CalVet)**

8 147. Petitioners/Plaintiffs hereby incorporate and re-allege, as if fully set forth herein,
9 the allegations of paragraphs 1-146 above.

10 148. As an agency of the State of California, Respondent/Defendant CalVet is required
11 to comply with the California Administrative Procedures Act, California Government Code,
12 section 11346, *et seq.* in connection with the adoption of the Regulation, section 509 of Title 12
13 of the California Code of Regulations.

14 149. As set forth herein, Respondent/Defendant CalVet failed to comply with the
15 California Administrative Procedures Act, California Government Code, section 11346, *et seq.* in
16 the adoption of the Regulation as aforesaid, specifically, as alleged herein, by failing to comply
17 with the provisions of the said California Administrative Procedures Act in connection with the
18 submission of the emergency Regulation and the permanent Regulation.

19 150. As alleged herein, Respondent/Defendant CalVet acted arbitrarily, capriciously,
20 contrary to law and in abuse of its discretion.

21 151. As a proximate result of said violations of the California Administrative
22 Procedures Act by Respondents/Defendants, the individual Petitioners/Plaintiffs and the members
23 of the Petitioner/Plaintiff associations have suffered harm and are entitled to the relief prayed for.

24 152. Accordingly, Petitioners/Plaintiffs seek declaratory and/or injunctive relief as set
25 forth herein.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE Petitioners ROBERT SLOAN, JENSENA THOMAS, THE
3 YOUNTVILLE ALLIED COUNCIL, and YOUNTVILLE VETERANS GROUP, LLC request
4 relief from this Court as follows:

5 A. For a writ of mandate or peremptory writ issued under the seal of this Court
6 pursuant to Code of Civil Procedure section 1085, directing Respondents/Defendants to cease
7 enforcement of, and act to withdraw or repeal, section 509 of Title 12 of the California Code of
8 Regulations to compel Respondents/Defendants to comply with their duties as set forth herein;

9 B. For a declaration, pursuant to Code of Civil Procedure section 1060, that section
10 509 of Title 12 of the California Code of Regulations, is, and shall remain, unlawful, void and of
11 no effect; and that section 509 of Title 12 of the California Code of Regulations, is not necessary
12 to avoid or prevent the violation of the 1997 Federal Assisted Suicide Funding Restriction Act, 42
13 U.S.C. section 14401 under if residents of the Veterans Home of California are permitted to
14 exercise their rights under the California End of Life Option Act, California Health and Safety
15 Code, §§443-443.22 to request and be prescribed aid-in-dying medication ("AID") at the Home,
16 provided that no federal funds are used for AID at the Home.

17 C. For a temporary restraining order, preliminary and permanent injunction
18 restraining Respondents/Defendants from enforcing section 509 of Title 12 of the California Code
19 of Regulations and requiring that Respondents/Defendants withdraw or repeal section 509 of Title
20 12 of the California Code of Regulations;

21 D. For attorneys' fees as provided by statute;

22 E. For an award of their fees and costs, including reasonably attorneys' fees and
23 expert costs, as authorized by Code of Civil Procedure section 1021.5;

24 F. That this Court retain continuing jurisdiction over this matter until such time as the
25 Court has determined that has fully and properly complied with its Orders; and

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1 G. For such other and further relief as may be just and appropriate.

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3 Dated: October 2, 2018

Respectfully submitted,
HOLLAND & KNIGHT LLP

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6 By: 

Matthew P. Vafidis

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8 Kathryn L. Tucker
End of Life Liberty Project

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10 Attorneys for Petitioners/Plaintiffs
ROBERT SLOAN, JENSENA THOMAS, THE
11 YOUNTVILLE ALLIED COUNCIL, and THE
YOUNTVILLE VETERANS GROUP, LLC
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VERIFICATION

I, Petitioner/Plaintiff ROBERT SLOAN, have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe, and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of October, 2018, at Yountville, California.


Robert Sloan

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jensena L. Thomas
Jensena L. Thomas

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of October, 2018, at Yountville, California.

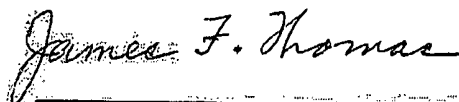

James B. Musson

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3 VERIFICATION

4 I, James F. Thomas, am the Vice Chairman of Petitioner/Plaintiff THE YOUNTVILLE
5 VETERANS GROUP and am authorized to make this Verification on behalf of THE
6 YOUNTVILLE VETERANS GROUP and its members. I have read the foregoing VERIFIED
7 PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND
8 INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe, and on that
9 ground allege that the matters stated therein are true.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this ___ day of October, 2018, at Yountville, California.

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15 James F. Thomas
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