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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF VENTURA**

16 FRANCIS R. FLEMING and PAULA  
17 LANGE by and through her Guardian ad  
18 Litem, CHRISTINE LANGE, on behalf of  
19 themselves and those similarly situated,

20 Plaintiff,

21 vs.

22 S-H OPCO CAMARILLO, LLC, dba  
23 BROOKDALE CAMARILLO, a Delaware  
24 limited liability company; S-H OPCO  
25 CARMEL VALLEY, LLC dba  
26 BROOKDALE CARMEL VALLEY a  
27 Delaware limited liability company; S-H  
28 OPCO RANCHO MIRAGE, LLC dba  
BROOKDALE RANCHO MIRAGE, a  
Delaware limited liability company; S-H  
OPCO SAN JUAN CAPISTRANO, LLC dba  
BROOKDALE SAN JUAN CAPISTRANO, a  
Delaware limited liability company; BLC  
GLENWOOD - GARDENS SNF-LH, LLC  
dba BROOKDALE RIVERWALK SNF (CA),  
a Delaware limited liability company;  
BROOKDALE SENIOR LIVING, INC., a  
Delaware corporation; and DOES 1-25,

CASE NO.:

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES FOR VIOLATION OF  
RESIDENT RIGHTS, HEALTH &  
SAFETY CODE § 1430(B)**

**CLASS ACTION**

1 inclusive,

2 Defendants.

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10 Plaintiffs FRANCIS R. FLEMING and PAULA LANGE, by and through her Guardian  
11 ad Litem CHRISTINE LANGE, on behalf of themselves and those similarly situated, hereby  
12 allege as follows:

13 **INTRODUCTION**

14 1. Plaintiffs Francis R. Fleming and Paula Lange bring this lawsuit on behalf of  
15 themselves and all residents at Defendants' commonly owned and controlled nursing facilities to  
16 stop Defendants' unlawful practice of dumping their poorest, neediest and most vulnerable  
17 residents.

18 2. Mr. Fleming was a resident at Defendants' BROOKDALE CAMARILLO  
19 facility. He required antibiotic injections three times a day after having his toe partially  
20 amputated. On October 1, 2017, the day Mr. Fleming's Medicare eligibility ran out, Defendants  
21 forced him to leave the facility. Defendants disregarded the legally required procedures for  
22 discharging residents. Defendants ignored their obligation to provide 30-days' advance written  
23 notice of the discharge, failed to have a doctor evaluate Mr. Fleming and document the medical  
24 basis for his discharge in his medical chart, and refused to provide written notice of the planned  
25 discharge to the State Ombudsman. Mr. Fleming was in no condition to be sent home; he had a  
26 life-threatening condition that required nursing care. One day after Defendants dumped him, Mr.  
27 Fleming had to be taken to the emergency room. On October 30, 2017 – almost one month *after*

1 his discharge – a doctor retroactively signed Mr. Fleming’s discharge summary. The entirety of  
2 the doctor’s analysis, without ever having seen Mr. Fleming, was “rehab complete.”

3 3. Ms. Lange was a resident at Defendants’ BROOKDALE CAMARILLO facility.  
4 She suffered from a broken femur and Alzheimer’s. On May 12, 2018, Defendants discharged  
5 her without following the legally required procedures for discharging residents. Defendants did  
6 not provide her with 30-days’ advance written notice of the discharge, failed to have a doctor  
7 examine her and document the medical basis for the discharge in her chart, and failed to provide  
8 written notice to the State Ombudsman that they were planning on kicking out Ms. Lange. On  
9 May 16, 2018 – four days *after* her discharge – a doctor retroactively signed Ms. Lange’s  
10 discharge summary. The entirety of his analysis, without ever having seen Ms. Lange, was  
11 “rehab completed.”

12 4. State and federal law create substantive and procedural rights to protect residents,  
13 such as Plaintiffs, from dangerous and unwarranted discharges. Before a facility may discharge  
14 a resident, it must, *inter alia*, prove that one of six statutorily enumerated reasons for the  
15 discharge exist, provide 30-days’ advance written notice, engage in discharge planning, have the  
16 resident’s primary care physician document the reasons for the discharge in the resident’s  
17 medical chart, provide written notice to the Ombudsman, whose job it is to advocate for  
18 residents, and notify the resident of his or her right to appeal the discharge – while the resident  
19 remains at the facility. 42 U.S.C. §§ 1395i-3(c)(2); 42 U.S.C. §§ 1396r(c)(2); 42 C.F.R. §  
20 483.15.

21 5. The reason Defendants illegally kicked out Mr. Fleming and Ms. Lange was  
22 purely monetary. Defendants deliberately violate the statutory discharge procedures so they can  
23 get rid of residents such as Mr. Fleming and Ms. Lange as fast as possible and replace them with  
24 more lucrative short-term Medicare residents. This practice violates state and federal law. To  
25 ensure that nobody can stop them from dumping residents, Defendants do not provide proper  
26 advance written notice, fail to have a doctor properly document the reasons for the discharge,  
27 and fail to provide timely advance written notice to the Ombudsman, to prevent the Ombudsman  
28

1 from informing residents about their rights. In addition to being dangerous and abusive, this  
2 ensures that each discharge from their facilities – thousands within the class period – is unlawful.

3 6. Dumping is one of the gravest dangers nursing facility residents currently face. It  
4 uproots residents from their families, removes them from their familiar environment, destroys  
5 their relationships with other residents and staff, and often leaves them isolated and despondent.

6 7. The dumping epidemic in California is well documented. It arises from a  
7 combination of strong economic incentives for facilities and the industry’s perception that the  
8 State cannot stop the practice. Accordingly, Mr. Fleming and Ms. Lange bring this action for  
9 injunctive relief and monetary damages to protect Defendants’ most vulnerable residents.

10 **PARTIES**

11 8. **PLAINTIFF FRANCIS R. FLEMING**: is a former resident of Defendant  
12 BROOKDALE CAMARILLO and a resident of Ventura County, CA.

13 9. **PLAINTIFF PAULA LANGE**: is a former resident of Defendant  
14 BROOKDALE CAMARILLO and a resident of Ventura County, CA. PAULA LANGE is  
15 represented in this action by and through her Guardian ad Litem and daughter, CHRISTINE  
16 LANGE.

17 10. Defendants are all part of a commonly owned and controlled enterprise held  
18 together through interlocking officers and directors and run as a unified business. Defendants’  
19 business is a shadowy network of licensees that operate the facilities, shell entities and holding  
20 companies, and management entities. Through payment of management fees and other related-  
21 party transactions, Defendants indemnify, guarantee and subsidize one another and divert money  
22 that should be going to resident care into the pockets of their owners. There is no legitimate  
23 business purpose for a structure such as Defendants’, and studies have shown that entities that  
24 employ similar structures that eliminate transparency and obfuscate the flow of money provide  
25 statistically worse resident care. Defendants deliberately structured their business, which is  
26 simply a chain of facilities, in a byzantine labyrinth of entities to hide the flow of money and try  
27 to evade responsibility for misconduct.

11. **BROOKDALE CAMARILLO**: Defendant S-H OPCO CAMARILLO, LLC. dba BROOKDALE CAMARILLO (“BROOKDALE CAMARILLO”) is and was at all times relevant herein, a Delaware limited liability company engaged in the business of providing long-term custodial and skilled care as a licensed Skilled Nursing Facility (“SNF”) as defined in Health & Safety Code section 1250(c), and is therefore subject to Health & Safety Code section 1430(b). At all times relevant to this action, it operated under the name BROOKDALE CAMARILLO, located at 6000 Santa Rosa Rd, Camarillo, CA 93012, within the County of Ventura. Under penalty of perjury, BROOKDALE CAMARILLO identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

12. In 2016, BROOKDALE CAMARILLO, a 45-bed facility, reported under penalty of perjury that it had discharged 393 residents.

13. **BROOKDALE CARLSBAD**: Defendant S-H OPCO CARLSBAD, LLC dba BROOKDALE CARLSBAD (“BROOKDALE CARLSBAD”) is and was at all times relevant herein, a Delaware limited liability company engaged in the business of providing long-term custodial and skilled care as a licensed SNF as defined in Health & Safety Code section 1250(c), and is therefore subject to Health & Safety Code section 1430(b). At all times relevant to this action, it operated under the name BROOKDALE CARLSBAD, located at 3140 El Camino Real, Carlsbad, CA 92008, within the County of San Diego. Under penalty of perjury, BROOKDALE CARLSBAD identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

1           14.     In 2016, BROOKDALE CARLSBAD reported a net loss of \$731,466. That same  
 2 year, it reported paying over \$590,000 in management fees the same year and an outstanding  
 3 related-party loan to BROOKDALE SENIOR LIVING exceeding \$7 million. In 2015,  
 4 BROOKDALE CARLSBAD reported a net loss of \$1,458,518. No rational business would  
 5 operate (or obtain credit) while hemorrhaging money in this manner. The only way a company  
 6 with such financials could exist is if it is part of larger organization.

7           15.     In 2016, BROOKDALE CARLSBAD reported discharging 520 residents at its  
 8 45-bed facility. In 2015, it reported discharging 496 residents.

9           16.     **BROOKDALE CARMEL VALLEY:** Defendant S-H OPCO CARMEL  
 10 VALLEY, LLC dba BROOKDALE CARMEL VALLEY (“BROOKDALE CARMEL  
 11 VALLEY”) is and was at all times relevant herein, a Delaware limited liability company  
 12 engaged in the business of providing long-term custodial and skilled care as a licensed SNF as  
 13 defined in Health & Safety Code section 1250(c), and is therefore subject to Health & Safety  
 14 Code section 1430(b). At all times relevant to this action, it operated under the name  
 15 BROOKDALE CARMEL VALLEY, located at 13101 Hartfield Avenue, San Diego, CA 92130,  
 16 within the County of San Diego. Under penalty of perjury, BROOKDALE CARMEL VALLEY  
 17 identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

23           17.     In 2016, BROOKDALE CARMEL VALLEY reported discharging 534 residents  
 24 at its 45-bed facility. In 2015, it reported discharging 210 residents. It also reported an  
 25 outstanding related-party loan to BROOKDALE SENIOR LIVING exceeding \$5.8 million. In  
 26 2015, it reported a net loss of \$761,922.

27           18.     **BROOKDALE RANCHO MIRAGE:** Defendant S-H OPCO RANCHO  
 28 MIRAGE, LLC dba BROOKDALE RANCHO MIRAGE (“BROOKDALE RANCHO

MIRAGE”) is and was at all times relevant herein, a Delaware limited liability company engaged in the business of providing long-term custodial and skilled care as a licensed SNF as defined in Health & Safety Code section 1250(c), and is therefore subject to Health & Safety Code section 1430(b). At all times relevant to this action, it operated under the name BROOKDALE RANCHO MIRAGE, located at 72201 Country Club Drive, Rancho Mirage, CA 92270, within the County of Riverside. Under penalty of perjury, BROOKDALE RANCHO MIRAGE identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

19. In 2016, BROOKDALE RANCHO MIRAGE reported a net loss of \$599,587. It reported paying over \$498,000 in management fees the same year and has an outstanding related-party loan to BROOKDALE SENIOR LIVING exceeding \$4.5 million. In 2016, BROOKDALE RANCHO MIRAGE reported discharging 506 residents at its 45-bed facility. In 2015, it reported discharging 496 residents.

20. **BROOKDALE SAN JUAN CAPISTRANO:** Defendant S-H OPCO SAN JUAN CAPISTRANO, LLC dba BROOKDALE SAN JUAN CAPISTRANO (“BROOKDALE

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

Capistrano, CA 92675, within the County of Orange. Under penalty of perjury, BROOKDALE SAN JUAN CAPISTRANO identified its officers and directors in 2016 as follows:

21. In 2016, BROOKDALE SAN JUAN CAPISTRANO reported a net loss of \$1,083,630, whilst paying \$617,546 in management fees and an outstanding related-party loan to

1 BROOKDALE SENIOR LIVING exceeding \$8.3 million. In 2016, the numbers were similar –  
 2 BROOKDALE SAN JUAN CAPISTRANO reported a net loss of \$1,161,174 whilst paying  
 3 \$596,224 in management fees to BROOKDALE SENIOR LIVING.

4 22. In 2016, BROOKDALE SAN JUAN CAPISTRANO reported discharging 366  
 5 residents at its 45-bed facility. In 2015, it reported discharging 387 residents.

6 23. Defendants BROOKDALE CAMARILLO, BROOKDALE CARLSBAD,  
 7 BROOKDALE CARMEL VALLEY, BROOKDALE RANCHO MIRAGE, and BROOKDALE  
 8 SAN JUAN CAPISTRANO (hereinafter, the “S-H OPCO LICENSEES”) are all managed by the  
 9 same managing member, S-H FORTY-NINE OPCO VENTURES, LLC., and share the same  
 10 principal place of business: 1920 Main Street, Suite 1200, Irvine CA 92614.

11 24. **BROOKDALE RIVERWALK**: Defendant BLC GLENWOOD - GARDENS  
 12 SNF-LH, LLC dba BROOKDALE RIVERWALK SNF (CA) (“BROOKDALE RIVERWALK”) is  
 13 is and was at all times relevant herein, a Delaware limited liability company engaged in the  
 14 business of providing long-term custodial and skilled care as a licensed SNF as defined in Health  
 15 & Safety Code section 1250(c), and is therefore subject to Health & Safety Code section  
 16 1430(b). At all times relevant to this action, it operated under the name BROOKDALE  
 17 RIVERWALK, located at 350 Calloway Drive, Building C, Bakersfield, CA 93312, within the  
 18 County of Bakersfield. BROOKDALE RIVERWALK’s principal place of business is located at  
 19 515 North State Street, Suite 1750, Chicago, IL 60654. Under penalty of perjury, BROOKDALE  
 20 RIVERWALK identified its officers and directors in 2016 as follows:

21

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	MARK W. OHLENDORF	PRESIDENT AND CFO	
162	GREGORY B. RICHARD	CHIEF OPERATING OFFICER	
163	GLENN MAUL	CHIEF PEOPLE OFFICE	
164	BRYAN D. RICHARDSON	CHIEF ADMINISTRATIVE OFFICER	
165	KRISTIN A. FERGE	CHIEF ACCOUNTING OFFICER	

22 \* Amount received from all sources for services rendered as a board member.

23  
 24  
 25  
 26 25. In 2016, BROOKDALE RIVERWALK reported paying \$115,430 in management  
 27 fees to BROOKDALE SENIOR LIVING. That same year, it reported discharging 798 residents  
 28 from its 120-bed facility. In 2015, it reported discharging 770 residents.



26. Defendant EMERICARE, INC. (“EMERICARE”) is and was at all times relevant herein, a Delaware corporation engaged in the business of providing long-term custodial and skilled care through licensed SNFSs, as defined in Health & Safety Code section 1250(c), and is therefore subject to Health & Safety Code section 1430(b). At all times relevant to this action, it licensed several nursing facilities in California, four of which are SNFs: BROOKDALE SAN DIMAS, BROOKDALE YORBA LINDA, BROOKDALE NORTHRIDGE, and BROOKDALE FOUNTAINGROVE.

27. **BROOKDALE SAN DIMAS:** BROOKDALE SAN DIMAS is located at 31741 Rancho Viejo Road, San Juan Capistrano, CA 92675, within the County of Orange. Under penalty of perjury, BROOKDALE SAN DIMAS identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

28. In 2016, BROOKDALE SAN DIMAS reported a net loss of \$2,729,627. That same year, it reported discharging 410 residents from its 45-bed facility. In 2015, it reported discharging 314 residents.

29. **BROOKDALE YORBA LINDA:** BROOKDALE YORBA LINDA is located at 17803 Imperial Hwy., Yorba Linda, Ca 92886, within the County of Orange. Under penalty of perjury, BROOKDALE YORBA LINDA identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

30. In 2016, BROOKDALE YORBA LINDA reported a net loss of \$1,686,233.00; the following year, in 2015, it reported a net loss of \$3,642,194, and discharged 604 residents from its 45-bed facility.

31. **BROOKDALE NORTHRIDGE:** BROOKDALE NORTHRIDGE is located at 17650 Devonshire Street, Northridge, CA 91325, within the County of Los Angeles. Under penalty of perjury, BROOKDALE NORTHRIDGE identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

32. In 2016, BROOKDALE NORTHRIDGE reported a net loss of \$1,025,581, with an outstanding related-party loan to BROOKDALE SENIOR LIVING in the amount of \$7,232,067. That same year, it reported discharging 310 residents from its 45-bed facility. In 2015, it had a net loss of \$3,111,720 and reported discharging 297 residents.

33. **BROOKDALE FOUNTAINGROVE:** BROOKDALE FOUNTAINGROVE is located at 300 Fountaingrove Parkway, Santa Rosa, CA 95403, within the County of Sonoma. Under penalty of perjury, BROOKDALE FOUNTAINGROVE identified its officers and directors in 2016 as follows:

I) Governing Board Officers and Members			
Line No.	(1) Name	(2) Occupation	(3) Compensation *
160	T. ANDREW SMITH	CHIEF EXECUTIVE OFFICER	\$
161	BRYAN D. RICHARDSON	VICE PRESIDENT	
162	GEORGE T HICKS	VICE PRESIDENT	
163	DANIEL DECKER	CHAIRMAN OF THE BOARD	
164	LABEED DIAB	CHIEF OPERATING OFFICER	
165	LUCINDA BAIER	CHIEF FINANCIAL OFFICER	

\* Amount received from all sources for services rendered as a board member.

34. In 2016, BROOKDALE FOUNTAINGROVE reported a net loss of \$1,838,589 with an outstanding related-party loan to BROOKDALE SENIOR LIVING exceeding \$2.3 million. In 2015, BROOKDALE FOUNTAINGROVE reported a net loss of \$2,989,239. In

1 2016, BROOKDALE FOUNTAININGROVE reported discharging 276 residents from its 45-bed  
2 facility. In 2015, it reported discharging 322 residents.

3 35. Hereinafter, the seven licensees described above (The S-H OPCO LICENSEES,  
4 BROOKDALE RIVERWALK, and EMERICARE) shall be referred to collectively as the  
5 “BROOKDALE LICENSEES.”

6 36. Hereinafter, the ten facilities described above (BROOKDALE CAMARILLO,  
7 BROOKDALE CARLSBAD, BROOKDALE CARMEL VALLEY, BROOKDALE RANCHO  
8 MIRAGE, BROOKDALE SAN JUAN CAPISTRANO, BROOKDALE RIVERWALK,  
9 BROOKDALE SAN DIMAS, BROOKDALE NORTHRIDGE, and BROOKDALE  
10 FOUNTAININGROVE) shall be referred to collectively as the “BROOKDALE FACILITIES.”

11 37. **Defendant OWNERS:** The following entities own, operate, and/or control the  
12 skilled nursing facilities in the Brookdale chain in California and other states. These corporate  
13 entities control the provision of nursing services and other services associated with running a  
14 nursing home chain, including without limitation compliance services, administrative services,  
15 legal services, and risk management services. Upon information and belief, the corporate  
16 defendants set policies and procedures at the corporate level that were then implemented at the  
17 BROOKDALE FACILITIES.

18 38. Defendant BROOKDALE SENIOR LIVING, INC. is and was at all times  
19 relevant herein, the parent corporation of BROOKDALE LICENSEES. BROOKDALE  
20 SENIOR LIVING, INC. exercises control over the management and policies of the skilled  
21 nursing facilities in the Brookdale chain in California and other states.<sup>1</sup>

22 39. BROOKDALE SENIOR LIVING, INC. **Unity of Interest:** Defendants are alter-  
23 egos of one another and form part of a single enterprise. They are all run for the purpose of  
24 providing skilled nursing services under the Brookdale brand and are commonly owned and  
25 controlled. BROOKDALE SENIOR LIVING, INC. shares common officers, directors, and  
26 managing agents with the BROOKDALE LICENSEES including Thomas Andrew Smith as the  
27

28 \_\_\_\_\_  
<sup>2</sup> 42 U.S.C. § 1395i-3(c)(2); 42 U.S.C. § 1396r(c)(2); 42 C.F.R. § 483.15.

1 President/CEO up until February 29, 2018, when Lucinda M. Baier replaced Thomas Andrew  
2 Smith as President/CEO; Chad C. White is the secretary; and Lucinda M. Baier is the Chief  
3 Financial Officer through February 2018 as reflected in their respective Long-Term Care  
4 Facility Integrated Disclosure and Medi-Cal Cost Reports submitted to California's Office of  
5 Statewide Health, Planning, and Development ("OSHPD Reports"). On information and belief,  
6 the various Facility Defendants are subject to a common Master Lease Agreement that was  
7 orchestrated by the Corporate Defendants for the overall benefit of the unified enterprise. As  
8 such, there is sufficient unity of interest and ownership among Defendants, and between each of  
9 them, such that the acts of one are for the benefit of all and can be imputed to the acts of others.

10 40. Under common ownership and control, Defendants, and each of them, were  
11 jointly responsible to ensure the BROOKDALE FACILITIES were operated in full compliance  
12 with federal and state laws and regulations governing operations of a SNF, and for all aspects of  
13 the organization, management, operation, and control of the BROOKDALE FACILITIES by  
14 Defendants. Plaintiff's injuries arise out of the organization, management, operation, and control  
15 of the BROOKDALE FACILITIES by BROOKDALE SENIOR LIVING, INC. BROOKDALE  
16 SENIOR LIVING, INC. in their capacity as owner/operators/managers of the BROOKDALE  
17 FACILITIES. Defendants, and each of them, share joint responsibility for Plaintiff's injuries.

18 41. Defendants treat the assets of one as the assets of all. Defendants make and  
19 approve key decisions concerning the BROOKDALE FACILITIES' day-to-day operations, such  
20 as policies, staffing levels, employee training, hiring and firing, budgets and related issues, which  
21 decisions and directives, on information and belief, were made at the direction of and/or for the  
22 benefit of the BROOKDALE SENIOR LIVING, INC..

23 42. Moreover, the BROOKDALE SENIOR LIVING, INC. siphon funds and assets  
24 away from the BROOKDALE FACILITIES as the BROOKDALE FACILITIES pay large  
25 administrative fees to the BROOKDALE SENIOR LIVING, INC.. According to the 2017 Long-  
26 Term Care Facility Integrated Disclosure and Medi-Cal Cost Reports submitted to California's  
27 Office of Statewide Health, Planning, and Development ("OSHPD Report"), the BROOKDALE  
28

1 SENIOR LIVING, INC. received over \$2.5 million in administrative fees from the  
2 BROOKDALE FACILITIES in 2017.

3 43. Injustice will result if the Court does not disregard the fiction of the separate  
4 entities. Defendants conceal and misrepresent the identity of the responsible ownership,  
5 management, and financial interests of the BROOKDALE FACILITIES. The CORPORATE  
6 DEFENDANTS created a fractured ownership and management structure in order to shield  
7 themselves from liability and to carry out their single enterprise with financial impunity.

8 44. BROOKDALE SENIOR LIVING, INC. benefits financially from the policies and  
9 procedures, decisions, control, and management of the BROOKDALE FACILITIES in the form  
10 of income and profits received from the BROOKDALE FACILITIES, but hide behind the  
11 corporate structure to escape financial and legal liability arising from the very conduct they  
12 directed.

13 45. If Defendants are not treated as a single enterprise or alter egos of each other, a  
14 severe injustice will result. Allowing the BROOKDALE SENIOR LIVING, INC. to avoid legal  
15 responsibility for actions taken at the facility level, which they directed and caused, would be  
16 unfair and unjust.

17 46. **DOES:** The true names and capacities of defendants named herein as DOES 1-25,  
18 inclusive, are unknown to Plaintiff, who therefore sue those defendants by such fictitious names.  
19 Plaintiff will amend this complaint to allege the true names and/or capacities and/or involvement  
20 of said fictitiously named defendants when ascertained. Plaintiff is informed and believes, and  
21 thereon alleges, that each of the defendants designated as a DOE is responsible in some manner  
22 for the events and happenings herein referred to and thereby legally caused the injuries and  
23 damages herein alleged.

24 47. On information and belief, DOES 1 through 25 are, and at all times mentioned  
25 herein owned, operated, managed, supervised, controlled, maintained, or were otherwise  
26 responsible for the business activities of Defendants. Such DOES would include officers,  
27 directors, controlling shareholders, partners, and governing board members, persons in de facto  
28 control of healthcare, operators, or employees of Defendants. At all times relevant to this action,

1 DOES 1 through 25 helped set and enforce policies and procedures for the services rendered to  
2 clients of Defendants.

3 48. **Joint Liability Allegations:** Upon information and belief, Plaintiff further alleges  
4 that each Defendant and DOES 1-25 were the agent, servant, employee, joint venturer and/or  
5 partner of each Co-Defendant, and at all times acted within the course and scope of said agency,  
6 employment, venture, and/or partnership pursuant to the policies, practices, procedures, written  
7 or otherwise, and with the advance knowledge, acquiescence, or subsequent ratification of each  
8 Co-Defendant.

9 **FACTUAL ALLEGATIONS**

10 **A. Defendants Unlawfully Discharge Mr. Fleming**

11 49. MR. FLEMING was admitted to BROOKDALE CAMARILLO on July 31, 2017  
12 to recover and rehabilitate from a partial toe amputation. MR. FLEMING had initially injured his  
13 toe, which then became infected, necessitating amputation. The infection had also spread to his  
14 spine (a condition called osteomyelitis) which required intravenous antibiotic treatment. Thus, a  
15 primary reason that MR. FLEMING was placed at BROOKDALE CAMARILLO was so that he  
16 could receive intravenous antibiotic therapy three times daily to treat this infection, which was  
17 necessitated by his condition and ordered by his physician.

18 50. During his admission at BROOKDALE CAMARILLO, MR. FLEMING was  
19 provided physical and occupational rehabilitation secondary to his IV therapy. However, his  
20 condition worsened due to the poor care he received. On September 22, 2017, BROOKDALE  
21 CAMARILLO staff told MR. FLEMING's daughter that his Medicare coverage would end on  
22 September 28, 2017, which they later extended to September 30, 2017. On October 1, 2017,  
23 Defendants discharged MR. FLEMING from BROOKDALE CAMARILLO, the very day after  
24 his Medicare coverage expired.

25 51. BROOKDALE CAMARILLO did not follow the mandated statutory discharge  
26 procedures. For example, it did not give him the required 30-days' written notice of his  
27 upcoming discharge and the reasons for the discharge, as required by 42 U.S.C. § 1395i-3(c)(2),  
28 42 U.S.C. § 1396r(c)(2) and 42 C.F.R. § 483.15(c)(2). Instead, it provided him two days' notice.

1 On the notice form, none of the boxes listing the statutorily-enumerated grounds for discharge is  
2 checked. Brookdale Camarillo did not have Mr. Fleming's doctor examine him before it  
3 discharged him. It did not contemporaneously document the medical justification for his  
4 discharge in his medical chart. It did not provide the local ombudsperson with a copy of the  
5 notice. It did not properly orient or prepare him for his discharge. And it did not provide him  
6 with a sufficient post-discharge plan of care.

7 52. MR. FLEMING was in no condition to be discharged; and within 24 hours he was  
8 transported by ambulance back to the hospital with excruciating back pain. At the hospital, it was  
9 discovered that MR. FLEMING's spinal osteomyelitis had not been cured by the intermittently-  
10 administered intravenous antibiotic therapy, but instead, had advanced and formed an epidural  
11 abscess. The abscess had reached a critical size and had started to cause acute weakness and  
12 paralysis from pressure on MR. FLEMING's spinal cord. As a result, MR. FLEMING immediately  
13 underwent a complicated emergency surgery to remove the abscess.

14 53. BROOKDALE CAMARILLO's reasons for discharging MR. FLEMING were  
15 purely monetary; they had nothing to do with whether MR. FLEMING was fit to leave. Under  
16 state and federal law, a facility can receive federal Medicare reimbursement for their first 100  
17 days of care for residents such as MR. FLEMING. By getting rid of residents after their  
18 Medicare coverage runs out, facilities can replace them with more lucrative clients.

19 54. For the protection of residents and to ensure proper functioning of the health care  
20 system, state and federal law prohibit cherrypicking residents by the source of their payment.  
21 State and federal law also provide that a facility may only discharge a resident for six, narrow,  
22 statutorily-enumerated reasons.

23 55. To further protect residents, before a facility may evict a resident, it must, *inter*  
24 *alia*, provide 30-days' written notice, have a doctor document all the reasons for the discharge in  
25 the medical record, engage in extensive discharge planning, prepare and orient the resident, and  
26 notify the local ombudsman whose job it is to advocate for the resident and inform the resident  
27  
28

1 of his rights.<sup>2</sup> These procedures exist to protect against dangerous, unfounded and hasty  
2 discharges – *i.e.*, exactly what happened to MR. FLEMING.

3 **B. Defendants Unlawfully Discharge Ms. Lange**

4 56. Ms. Lange was admitted to Brookdale Camarillo on February 24, 2018 with an  
5 intertrochanteric fracture of her femur (a hip fracture caused by falling). She also had been  
6 diagnosed with Alzheimer’s Disease.

7 57. On May 12, 2018, Defendants discharged Ms. Lange. Defendants did not follow  
8 the mandated statutory discharge procedures. For example, Defendants did not give her the  
9 required 30-days’ written notice of her upcoming discharge, as required by law. Instead, it  
10 provided her two days’ written notice. Defendants did not have Ms. Lange’s doctor examine her  
11 before they discharged her. They did not contemporaneously document the medical justification  
12 for her discharge in her medical chart; rather, the doctor added a note to the chart on May 16,  
13 2018 – four days *after* Defendants had already discharged her. They did not provide the local  
14 ombudsperson with a copy of the notice. They did not properly orient or prepare her for her  
15 discharge.

16 58. MS. LANGE was not adequately prepared for discharge, and suffered anxiety and  
17 stress associated with the sudden disruption of her living situation and need to find alternate  
18 housing. Relocation stress syndrome, otherwise known as ‘transfer trauma’ is well recognized in  
19 the long-term care industry and a syndrome or cluster of symptoms that can occur when an  
20 elderly person is subjected to a sudden change of environment. Symptoms include sadness,  
21 anger, irritability, depression, anxiety, feelings of isolation and loss of control, and a change in  
22 mood and behaviors. Often times, physiological symptoms are part of the trauma, and include  
23 confusion, pain, falling, rapid heartbeat from anxiety, sleeplessness, poor appetite, weight loss or  
24 gain. The discharge orientation and planning requirements mandated by law are in place, in part,  
25 to minimize if not eliminate this potential trauma. Here, the failure to adhere to the discharge  
26 requirements caused Ms. LANGE to suffer the effects of transfer trauma as described herein.

27  
28 \_\_\_\_\_  
<sup>2</sup> 42 U.S.C. § 1395i-3(c)(2); 42 U.S.C. § 1396r(c)(2); 42 C.F.R. § 483.15.



1 59. BROOKDALE CAMARILLO deliberately discharged MR. FLEMING and MS.  
2 LANGE without proper notice, without informing either of them of their rights and without  
3 notifying the Ombudsman so that they would remain unaware of his rights protecting Defendants  
4 from evicting them. This was nothing new. BROOKDALE CAMARILLO has demonstrated a  
5 pattern and practice of discharging residents without the due process afforded them by the law.

6 60. There are no exceptions to the statutory discharge requirements. The rules are  
7 stringent because discharging someone without ensuring that it is medically appropriate and  
8 without making substantial efforts to guarantee that the resident has a proper place to go and is  
9 oriented to the process can be devastating to residents and their loved ones. Defendants' refusal  
10 to comply with the statutory procedures is causing and threatening to cause irreparable injury to  
11 its residents.

12 61. On information and belief, all the BROOKDALE FACILITIES follow the same  
13 unlawful policy in place at BROOKDALE CAMARILLO. As a result, each of the Defendants is,  
14 and has been, systemically violating the law each time each of them discharges a resident.

15 62. Defendants are wilfully violating the law for their own monetary gain and  
16 intentionally exposing thousands of people to needless danger of death and grievous injury.  
17 Defendants are guilty of recklessness, oppression, fraud, or malice. Defendants' conduct was  
18 intended to cause injury to Plaintiffs and carried out with a willful and conscious disregard of  
19 Plaintiffs' rights.

20 63. Plaintiffs bring this action on behalf of themselves and those similarly situated for  
21 an injunction prohibiting Defendants' unlawful business practices and for statutory damages of  
22 \$500 per statutory violation for each resident unlawfully discharged within the last three years.

23 **CLASS ALLEGATIONS**

24 64. This action is brought on behalf of Plaintiffs and all similarly situated individuals  
25 who were discharged from one of the facilities owned, managed and/or operated by Defendants  
26 from three years from the date this action is filed through such time as class notice is given.

27 65. **Numerosity:** The number of Class members is so large that the joinder of all its  
28 members is impracticable. The exact number of Class members can be determined from

1 information in the possession and control of the Defendants, but based on public records, the  
2 number of class members is in the thousands.

3         66.     **Typicality:** Plaintiffs' claims are typical of the claims of the members of the  
4 Class, as BROOKDALE CAMARILLO failed to follow any of the correct procedures for  
5 discharging MR. FLEMING, including by failing to provide advance written notice to the State  
6 Ombudsman.

7         67.     **Adequacy:** Plaintiffs are adequate representatives of the Class and will fairly and  
8 adequately protect the interest of the Class. Plaintiffs' interests are not antagonistic to or in  
9 conflict with the interests they seek to represent as Class representative.

10         68.     Plaintiffs' counsel is experienced in prosecuting class actions, is committed to  
11 improving conditions in nursing facilities, and intends to prosecute this action vigorously.

12         69.     **Existence of Predominance of Common Questions of Fact and Law:**  
13 Numerous common issues of law and fact exist and predominate over questions affecting only  
14 individual members. These issues include, without limitation:

- 15             a)     Whether the facilities commonly owned, managed, controlled and/or  
16                     operated by Defendants have a pattern and/or practice of violating 42  
17                     C.F.R. 483.15(c)(3)(i);
- 18             b)     Whether the facilities commonly owned, managed, controlled and/or  
19                     operated by Defendants have a pattern and/or practice of violating 22 CCR  
20                     § 72527(a)(5);
- 21             c)     Whether the facilities commonly owned, managed, controlled and/or  
22                     operated by Defendants have a pattern and/or practice of violating 22 CCR  
23                     § 72527(a)(6);
- 24             d)     Whether Defendants are commonly owned, operated, controlled and/or  
25                     managed, and acting as a unified enterprise;
- 26             e)     Whether the facilities commonly owned, managed, controlled and/or  
27                     operated by Defendants should be enjoined from violating the  
28                     aforementioned rules and regulations;

- 1 f) Whether the facilities commonly owned, managed, controlled and/or  
2 operated by Defendants should be required to take remedial action to  
3 correct their policies, procedures and/or actual practices related to  
4 discharges;
- 5 g) Whether further relief, including an independent monitor, is necessary to  
6 prevent Defendants' ongoing violations of the laws detailed above.

7 70. Defendants have acted or refused to act on grounds that apply generally to the  
8 class, so that final injunctive relief is appropriate respecting the class as a whole.

9 71. Absent certification of a class, the equitable relief sought by Plaintiff will create  
10 the possibility of inconsistent judgments and/or obligations among the facilities commonly  
11 owned, managed and/or operated by Defendants.

12 72. **Superiority**: A class action is also superior to other available methods for the fair  
13 and efficient adjudication of this controversy. Requiring Class members to pursue their claims  
14 individually would invite a host of separate suits, with concomitant duplication of costs,  
15 attorney's fees, and demands on judicial resources. Furthermore, as the damages suffered by the  
16 individual members of the Class may be relatively small, the expense and burden of individual  
17 litigation make it impracticable for the members of the Class individually to seek redress of the  
18 wrongs perpetrated by Defendants. Plaintiffs know of no difficulty that could be encountered in  
19 the management of this litigation that would preclude its maintenance as a class action.

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **(Violation of Residents Rights pursuant to Health and Safety Code § 1430(b))**

23 73. Plaintiffs incorporate the previous paragraphs as though fully set forth herein.

24 74. Health & Safety Code § 1430(b) states that "[a] current or former resident or  
25 patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250 ... may bring a  
26 civil action against the licensee of a facility who violates any of the rights of the resident or  
27 patient as set forth in the Patient Bill of Rights in Section 72527 of Title 22 of the California  
28

1 Code of Regulations (“C.C.R.”), or any other right provided for by federal or state law or  
2 regulation. ....”

3 75. Plaintiffs allege the following rights were violated:

- 4 a. Right to receive a 30-day notice of discharge prior to the discharge. The  
5 contents of the notice must include the reason for discharge, the effective  
6 date for discharge, the location to which the patient is being discharged, a  
7 statement of the patient’s right to appeal including name and contact  
8 information of the entity to send the appeal, information on how to obtain  
9 an appeal, and assistance in submitting the appeal, and the name and  
10 contact information of the Ombudsman (42 U.S.C. §§ 1395i-3(c)(2); 42  
11 U.S.C. §§ 1396r(c)(2); 42 C.F.R. § 483.15(c)(2), (4)-(5));
- 12 b. Right to be notified of discharge and the reasons for the move in writing  
13 and in a language and manner they understand (42 U.S.C. §§ 1395i-  
14 3(c)(2); 42 U.S.C. §§ 1396r(c)(2); 42 C.F.R. § 483.15(c)(3));
- 15 c. Right to have the facility provide contemporaneous written notice of the  
16 planned discharge to the State Ombudsman (42 U.S.C. §§ 1395i-3(c)(2);  
17 42 U.S.C. §§ 1396r(c)(2); 42 C.F.R. § 483.15(c)(3)(i));
- 18 d. Right to an advance discharge summary (42 CFR § 483.21(c)(2)).

19 76. Right to receive sufficient preparation and orientation to discharge location to  
20 ensure safe and orderly discharge from the facility, and to have preparation and orientation  
21 services documented (42 C.F.R. § 483.15(c)(7)). Plaintiffs are therefore entitled to an injunction  
22 to prevent further violations as set forth in Health and Safety Code § 1430(b), statutory damages,  
23 punitive damages, attorney’s fees and costs pursuant to *Jarman v. HCR ManorCare, Inc.* (2017)  
24 9 Cal.App.5th 807, 817.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court issue the following relief:

- 1) Equitable relief, including without limitation, an injunction prohibiting Defendants from wrongfully discharging residents and appointment of a monitor to ensure Defendants stop violating the law;
- 2) Statutory damages as allowed by law for Plaintiffs and for each member of the Class;
- 3) Attorney’s fees and costs;
- 4) Punitive damages; and
- 5) All such other and further relief as the Court may deem just, proper, and equitable.

Date: December 5, 2018

**JOHNSON MOORE**

By: \_\_\_\_\_  
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Jody C. Moore  
Joanna A. Hutchins  
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