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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

17
18 Audrey Heredia as successor-in-interest to
the Estate of Carlos Heredia; and Corbina
19 Mancuso as successor-in-interest to the
Estate of Ruby Mancuso; on their own
20 behalves and on behalf of others similarly
situated,
21
Plaintiffs,
22
vs.
23 Sunrise Senior Living, LLC; and Does 1
Through 100,
24
Defendants.

CASE NO. **RL 17835501**
CLASS ACTION COMPLAINT FOR:
1. VIOLATION OF THE CONSUMERS
LEGAL REMEDIES ACT (Civ. Code §
1750 *et seq.*)
2. UNLAWFUL, UNFAIR AND
FRAUDULENT BUSINESS PRACTICES
(B&P Code § 17200 *et seq.*)
3. ELDER FINANCIAL ABUSE (W&I Code
§ 15610.30)

JURY TRIAL DEMANDED

BY FAX

UNFILED
FILED
ALAMEDA COUNTY
JUN 27 2017
CLERK OF SUPERIOR COURT
By: D. OWEN PERRY

INTRODUCTION

1
2 1. Plaintiff Audrey Heredia as successor-in-interest to the Estate of Carlos Heredia
3 and Plaintiff Corbina Mancuso as successor-in-interest to the Estate of Ruby Mancuso
4 (collectively “Plaintiffs”) bring this action for injunctive relief and damages to stop the unlawful
5 and fraudulent practices of Sunrise Senior Living, LLC (“Sunrise” or “Defendant”).

6 2. Defendant has engaged in a scheme to defraud seniors, persons with disabilities,
7 and their family members at its assisted living facilities in California by falsely representing to all
8 residents in its admission contracts that each resident will be provided the care services (through
9 facility staff) that the resident needs as determined by a resident assessment conducted by facility
10 personnel. This is false and misleading because Sunrise does not use the results generated by its
11 resident assessment system to determine or provide staffing at its facilities. Sunrise conceals and
12 fails to disclose that, as a matter of corporate policy, Sunrise sets facility staffing per shift based
13 on pre-determined labor budgets that remain static throughout the year despite any increases in
14 aggregated resident needs as determined by resident assessments.

15 3. In its form admission agreements, Sunrise uniformly represents to each new
16 resident that (a) each resident will receive the care that he/she requires; (b) the facility's
17 professional staff will determine the care required for each resident through the resident
18 assessment process; and (c) the amount of care identified in the resident assessment process as
19 needed by the resident will be translated into a “score” and specific “Service Level” for which the
20 resident will be charged on a daily basis. The reasonable consumer understands these
21 representations to mean that, as a matter of policy and practice, Sunrise will use its resident
22 assessment system to determine and provide staffing levels at its facilities, and accordingly, will
23 provide sufficient staff at each facility to deliver to all facility residents the amount and type of
24 care that Sunrise has identified as necessary based on resident assessments and overall census.

25 4. Sunrise’s misrepresentations, misleading statements, and omissions about the
26 manner in which its facilities are staffed and the failure to consider the aggregate staffing needs
27 dictated by the comprehensive assessments are material to the reasonable consumer. Seniors
28 and/or their family members choose an *assisted* living facility based on the expectation that they

1 will receive the quantity and quality of care that they need. A system or policy that ensures a level
2 of staffing based on the overall needs of residents as quantified through aggregation of current
3 residents' assessment scores is likely to provide such care at the outset and on an ongoing basis.
4 However, Sunrise's system of care is based solely on budget considerations and desired profit
5 margins, which results in pre-determined facility staffing levels that are much lower than
6 necessary to meet the needs identified in residents' assessments. This system precludes Sunrise
7 from providing all promised care to the residents of its facilities. It is therefore a matter of
8 fundamental importance to the reasonable consumer that Sunrise does not staff and has no
9 intention of staffing its facilities based on the assessment scores and levels of care that Sunrise has
10 promised to provide and for which it is charging its residents.

11 5. Through its representations and nondisclosures, Sunrise dupes residents and family
12 members into paying large sums in the form of new resident fees and initial monthly payments.
13 For example, Carlos Heredia was charged a new resident fee (labeled by Sunrise as a "Move-In
14 Fee") of \$4,050 prior to his entry to the Sunrise at Tustin facility.

15 6. Sunrise's failure to use its resident assessment system when it sets and provides
16 facility staffing places all residents at an unnecessary risk of harm. That risk is particularly acute,
17 given the vulnerable nature of the targeted population of seniors and residents with disabilities.

18 7. Sunrise's promotion of its system of comprehensive resident assessments and
19 corresponding Service Levels in its form contract and marketing materials contributes to its
20 competitiveness in the marketplace of assisted living facilities and is a factor in its pricing
21 structure. Its purported use of such a system to accurately assess the needs of residents and
22 provide sufficient staffing to meet those needs enables it to charge more for residency and services
23 at its facilities than it otherwise could. In effect, residents pay a premium for a system that Sunrise
24 misrepresents will result in comprehensive resident needs assessments and the staff necessary to
25 provide the promised care.

26 8. If Plaintiffs and the putative class members had known the true facts about
27 Sunrise's corporate policy of ignoring its resident assessment system in determining and providing
28 facility staffing, they would not have agreed to enter Sunrise or paid Sunrise significant amounts

1 of money in new resident fees and monthly charges. As a result of Sunrise's failure to staff based
2 on resident assessments, the named Plaintiffs and putative class members did not or have not
3 received, and/or are subjected to a substantial risk that they will not receive in the future, the care
4 that Sunrise has promised to provide in its admission contracts.

5 9. This action seeks to require Sunrise to cease and desist its ongoing violations of
6 law. In addition, Plaintiffs seek an order requiring Sunrise to disclose to prospective and current
7 residents, their family members, and/or responsible parties that it does not use its resident
8 assessment system or aggregate the results generated by that system in setting and providing
9 staffing at its facilities. In addition to injunctive relief, this action seeks class wide damages based
10 on Defendant's misrepresentations and misleading statements and material omissions alleged
11 herein. This action does not seek recovery for personal injuries, emotional distress, or bodily
12 harm that may have been caused by Defendant's conduct alleged herein.

13 PARTIES

14 Plaintiffs

15 10. Plaintiff Audrey Heredia is the wife of decedent Carlos Heredia, a resident of
16 Sunrise at Tustin, in Santa Ana, California from June 2014 to April 2015. She is the successor-in-
17 interest to the Estate of Carlos Heredia pursuant to California Code of Civil Procedure sections
18 77.11 and 377.32. The appropriate declaration pursuant to section 377.32 is attached hereto as
19 Attachment 1. At all times relevant to this complaint, Carlos Heredia was an elder as defined
20 under California Welfare & Institutions Code section 15610.27 and a senior citizen as defined
21 under California Civil Code section 1761(f). Carlos Heredia was at all times herein mentioned a
22 resident of the State of California. Plaintiff Audrey Heredia brings this action on behalf of
23 decedent Carlos Heredia and all others similarly situated.

24 11. Plaintiff Corbina Mancuso is a daughter of decedent Ruby Mancuso, a resident of
25 Sunrise of Oakland Hills, in Oakland, California from December 26, 2012 to January 2016. She is
26 a successor-in-interest to the Estate of Ruby Mancuso pursuant to California Code of Civil
27 Procedure sections 377.11 and 377.32. The appropriate declaration pursuant to section 377.32 is
28 attached hereto as Attachment 2. At all times relevant to this complaint, Ruby Mancuso was an

1 elder as defined under California Welfare & Institutions Code section 15610.27 and a senior
2 citizen as defined under California Civil Code section 1761(f). Ruby Mancuso was at all times
3 herein mentioned a resident of the State of California. Plaintiff Corbina Mancuso brings this
4 action on behalf of decedent Ruby Mancuso and all others similarly situated.

5 **Defendant**

6 12. Defendant Sunrise Senior Living LLC is a Delaware limited liability company with
7 its principal place of business in McClean, Virginia. The residences of its members are unknown.

8 13. Sunrise owns and operates all of the real estate and buildings, and holds the
9 licenses for approximately 52 assisted living facilities in California under the Sunrise name.

10 14. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of the designated herein as Does 1 through 100, inclusive, are presently unknown to
12 Plaintiff and thus sued by such fictitious names. On information and belief, each of the
13 Defendants designated herein as "Doe" is legally responsible for the events and actions alleged
14 herein, and proximately caused or contributed to the injuries and damages as hereinafter described.
15 Plaintiffs will seek leave to amend this Complaint, in order to show the true names and capacities
16 of such parties, when the same has been ascertained.

17 **JURISDICTION AND VENUE**

18 15. This Court has jurisdiction over all causes of action asserted herein. Defendant has
19 sufficient minimum contacts in California or otherwise intentionally prevails itself of the
20 California market through ownership and management of 52 assisted living facilities located in
21 California, derivation of substantial revenues from California, and other activities, so as to render
22 the exercise of jurisdiction over the Sunrise Defendant by the California courts consistent with
23 traditional notions of fair play and substantial justice.

24 16. Venue is proper in Alameda County under Code of Civil Procedure section 395(a),
25 Business & Professions Code section 17203 and Civil Code section 1780, based on the facts,
26 without limitation, that: This Court is a court of competent jurisdiction; Defendant's conduct
27 substantial business in this county, including but not limited to the management and ownership of
28 Sunrise of Oakland Hills in Oakland; a portion of Defendant's liability arose in this county; and

1 the acts upon which this action is based occurred in part in this county.

2 **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

3 17. Sunrise provides assisted living and memory care for senior citizens and persons
4 with disabilities at facilities nationwide, including 52 facilities that it owns and/or operates in
5 California.

6 18. Assisted living facilities, also called Residential Care Facilities for the Elderly
7 (“RCFEs”), offer room, board, and daily assistance for seniors in certain activities of daily living
8 (“ADLs”), such as preparing meals, shopping, transportation, preparing and taking medication,
9 using the telephone, paying bills, housekeeping, and others.

10 19. Assisted living facilities are intended to provide a level of care appropriate for
11 those who are unable to live by themselves, but who do not have medical conditions requiring
12 more extensive nursing care and significant assistance with most of their ADLs. Sunrise’s assisted
13 living facilities also have Memory Care units, which serve individuals with dementia and other
14 cognitive disorders.

15 20. In recent years, Sunrise has increasingly been accepting and retaining more
16 residents with conditions and care needs that were once handled almost exclusively in skilled
17 nursing facilities. Sunrise has acknowledged in public statements:

18 What we’ve seen over the years is that, we’ve gone from caring for a more
19 independent senior who may have needed some assistance with activities of daily
20 living (ADLs), to those who have more complex health needs requiring
21 coordination of care and services.

22 Industry-wide, we are taking care of folks who are frailer, needing more assistance
23 with ADLs and chronic disease management, such as diabetes. Also, people are
24 living longer. As the average lifespan has increased, so has the average age of
25 Sunrise residents.

26 [https://www.sunriseseniorliving.com/blog/december-2016/the-evolution-of-care-in-assisted-
27 living.aspx](https://www.sunriseseniorliving.com/blog/december-2016/the-evolution-of-care-in-assisted-living.aspx) (last visited April 26, 2017). Sunrise’s practice of accepting and retaining residents
28 with “more complex health needs” has allowed it to increase not only the potential resident pool
but also the amounts of money charged to residents and/or their family members.

21. At Sunrise facilities, residents are charged a base rate, which includes room, board,
and basic maintenance, cleaning and laundry. Sunrise assesses each resident before admission and

1 then periodically, including whenever there is a change of the resident's condition. By performing
2 these assessments, Sunrise determines what additional services a resident needs, such as assistance
3 with ADLs. Each additional need correlates to a numerical score and "Service Level," which
4 determines how much more time Sunrise staff must spend caring for the resident. The Service
5 Level also determines the amount charged per-day for fees. Thus, the higher the Service Level
6 assessed the more money Defendant charges the resident.

7 **Uniform Representations in Sunrise's Standardized Contracts and Other**
8 **Corporate Materials**

9 22. Defendant represents that it will use its resident assessment system to identify the
10 level of care necessary to ensure that residents receive the services they require and to identify the
11 amount Sunrise will charge them for services.

12 23. Sunrise clearly represents in its standardized contracts that there is a connection
13 between the services they will receive and the level of care assessed as needed in the resident
14 assessment system. At or before the time of move-in, Sunrise requires all residents to sign a
15 "Residency Agreement." Section I.D. of the Residency Agreement describes the Assessment
16 process:

17 The level of assisted living services required by the Resident is determined through
18 an assessment ("Assessment") of the Resident. The Assessment is performed by
19 designated team members and includes an evaluation of each Resident's specific
20 needs. It covers areas such as: mobility, skin care, eating habits, oral hygiene,
21 continence, cognitive behavior, and medication. This Assessment, along with the
22 Physician's Report, provides the basis for identifying the Resident's Service Level.

23 24. Section I.E. describes the "Resident Service Plan" that is developed based
24 on the Assessment. It provides, "The service plan will outline the services the Resident is
25 to receive."

26 25. Section I.F. provides:

27 If the Resident's condition changes so that the previously assessed level of services
28 is no longer appropriate, the Community will reevaluate the Resident's needs to
determine which level of service is appropriate and notify the Resident/Responsible
Party of such reevaluation. The rate charged will vary according to the level of
service provided.

29 26. Section III.F. emphasizes that residents who require more services will be

1 charged higher fees. “A change in the level of service is not considered a change of fees or
2 charges. Rather, it is an increase in services which are subject to the higher fees
3 corresponding to those services.”

4 27. The Residency Agreement, on page 18, includes a “Schedule of Community Fees.”
5 It lists “Service Level Fees” including “Assisted Living Select,” “Assisted Living Plus,” “Assisted
6 Living Plus Plus,” “Reminiscence Program Fee,” “Reminiscence Plus Plus,” etc., with
7 corresponding daily rates ranging from \$18 to \$98. The same page indicates that residents’
8 assessments result in a numerical value: “Enhanced Care fees are variable, **depending on the**
9 **needs of the resident as determined by the resident’s assessment score** [emphasis added].”

10 28. In the Agreement, Sunrise describes the various service levels, which vary
11 by resident based on the “nature and extent of services provided.” Likewise, the
12 Individualized Service Plan prepared for each resident describes the “level of assistance”
13 required from staff to provide the services Sunrise has determined are necessary to meet
14 the resident’s needs. For example, under the category “Bathing,” a service plan might list
15 the following:

16 “Needs step-by-step cuing while bathing, Needs standby assistance while bathing.
17 ... Be sure bathroom is warmed up prior to shower time, all needed supplies,
18 towels, shampoo, lotions are ready for her. ... [O]ffer her privacy but stay stand by
[sic] to keep her safe and be sure to cue her for full cleaning. Give simple step by
step instruction if she appears confused on the process and assist as needed.”

19 29. The Residency Agreement and Individualized Service Plans highlight the
20 obvious—care can only be provided by people/staff, and the reasonable consumer understands that
21 a resident who has additional needs requires additional staff time. Thus, a reasonable consumer
22 would interpret Sunrise’s promise of increased services as residents’ needs increase, and the
23 corresponding increase in fees, to include additional staff time to provide those services. The
24 reasonable consumer would not agree to pay increased fees if she knew that such fees had no
25 relationship to staff time provided.

26 30. Sunrise’s website and a standardized brochure provided to prospective residents
27 explicitly links staffing levels to the assessed needs of its residents. A brochure states, “We adjust
28 staffing 365 days a year based on the number of residents and the care they need.” The website

1 lists “Frequently Asked Questions”, including “What is your staff to resident ratio?

2 A: Our staffing ration is variable and adjusted constantly based on the needs of our
3 residents at each community. Every resident’s Individualized Service Plan (ISP)
4 outlines the type of care they need, which is delivered by a team of Designated
5 Care Managers who also learn each resident’s likes, dislikes and preferences,
6 helping to anticipate a resident’s needs before they arise. Our residents and their
7 care managers build very strong bonds.”

8 The website further provides, “Team members are available 24-hours a day for help with bathing,
9 dressing, medication reminders, or other daily activities, relieving residents of the stress of day-to-
10 day chores and giving them more time to focus on choosing activities to participate in, meal
11 selection, and more.”

12 31. In another standardized brochure entitled, “Senior Living: A Resource Guide,” that
13 is provided to prospective residents, Sunrise lists “important questions” that a prospective residents
14 should ask “when researching and visiting senior living communities.” The list of questions
15 includes, “How does the community meet residents’ needs as they change over time? Is staffing
16 adjusted to ensure that quality of care remains consistent through such changes?”

17 32. A reasonable consumer would infer from all of Defendant’s representations that
18 Sunrise would consider the resident assessment system in setting staffing levels. Sunrise’s clear
19 message to the consuming public, including Plaintiff and the putative class, through all of its
20 corporate materials is that staffing levels matter and are part of the value they will receive in
21 exchange for their fees at Sunrise facilities.

22 33. Because these representations are presented through form contracts and other
23 standardized corporate materials, potential and current residents of Sunrise facilities reasonably
24 understand them to be representations of the policies and procedures followed by Sunrise both for
25 determining the needs of facility residents and for setting staffing levels at each of its California
26 facilities.

27 34. Based on these representations, Plaintiffs, the putative class members, and the
28 general consuming public reasonably expect that Sunrise uses its resident assessment system to
ensure adequate staffing and meet all current residents’ needs.

1 **Sunrise’s Non-Disclosure and Concealment**

2 36. Contrary to the express and implied representations in the Sunrise standardized
3 contract and other uniform written statements, Sunrise does not use the resident assessment
4 system or consider assessment scores in setting or providing facility staffing. Sunrise conceals
5 this material fact from the residents, their family members, and the general public.

6 37. Plaintiffs are informed and believe, and on that basis allege, that Sunrise has the
7 capability to determine the facility staffing levels required to meet the aggregate care scores
8 promised to residents. With its resident assessment system, Sunrise can calculate the amount and
9 type of staff needed by a facility for the population or group of residents therein viewed as a
10 whole on any given shift based on the evaluated needs and assessed scores of residents.
11 However, in reality Defendant only uses this resident assessment system to assign Service Levels
12 and charge the corresponding daily rates; it does not use the resident assessment system to set
13 staffing at its facilities.

14 38. As reflected in corporate policies and procedures, Sunrise directs its facilities to
15 make meeting labor budgets and operating income targets a paramount concern, regardless of the
16 impact on the care and staffing needs of facility residents.

17 39. Sunrise’s Executive Directors (“EDs”) must adhere to pre-determined budgets –
18 including labor budgets – approved by corporate headquarters for the next fiscal year. Regardless
19 of changes of needs in the resident population, EDs of Sunrise may not increase these budgets
20 without approval from corporate headquarters. The ED Job Description states that EDs should
21 “meet[] financial targets with the goal to maximize the owners return,” “prepare and adhere to the
22 community’s budget,” and “manage[] labor and other operating costs in line with budget and
23 revenue.” Sunrise’s Assisted Living Coordinators are responsible for “maintain[ing] budgetary
24 guidelines for daily staffing hours and supplies.”

25 40. As a result of Sunrise’s failure to use its resident assessment system and Service
26 Levels in setting staffing at its facilities, staffing is substantially lower than what Sunrise itself has
27 determined is necessary to meet the assessed needs of residents. Further, because Sunrise’s failure
28 to use its residential assessment system for staffing decisions results in lower staffing levels than it

1 has determined are necessary, the residents of Sunrise's facilities run the continuing risk of not
2 having their care needs met and of suffering injury from the lack of care or from other residents
3 who are insufficiently supervised or cared for.

4 41. The consequences of Sunrise's common policy and standard operating procedure of
5 providing staffing without regard to the assessment scores or Service Levels of its current
6 residents are significant. They include, but are not limited to: resident falls, injured or sick
7 residents left unattended, elopements, urinary tract infections, slow or no responses to resident call
8 buttons, inconsistent incontinence care resulting in residents sitting in soiled and/or wet briefs for
9 long periods of time, failures to assist with toileting resulting in incontinence, decubitus ulcers,
10 medication errors, and inadequate grooming and hygiene assistance.

11 **The Misrepresented and Concealed Facts Are Material**

12 42. Defendant's misrepresentations and the facts it conceals are material to the
13 reasonable consumer. An important and significant factor in choosing to move oneself or one's
14 relative to a Sunrise facility is the provision of staffing that the facility itself has determined is
15 necessary to meet the assessed needs of all facility residents. The use of a system that determines
16 and assigns the staffing necessary for a facility based on comprehensive assessments of its
17 residents' care needs, such as the one Sunrise represented it uses, is likely to ensure that those
18 needs are met and will be met in the future.

19 43. Sunrise's promise to provide the care services (through facility staff) that each
20 resident requires as calculated by the resident assessments conducted by Sunrise is material to
21 prospective residents and their family members. Further, residents (and their family members)
22 reasonably expect that Sunrise will provide staffing at levels sufficient to meet the assessed needs
23 of facility residents. Staffing at levels sufficient to provide the care necessary to meet assessed
24 resident needs is a substantial factor (and indeed often the most important factor) in deciding to
25 enter an assisted living facility. Plaintiffs would not have admitted their family members to
26 Sunrise if they had known that Defendant did not and does not use its resident assessment system
27 and the assessed Service Levels in setting staffing levels at its facilities. Likewise, members of
28 the putative class would in all reasonable probability not have entered Sunrise's facilities if they

1 had known that Sunrise did not and does not use its resident assessment system and the Service
2 levels generated by it when determining the amount and type of staff at its facilities.

3 44. This is true even for residents who currently are practically independent. These
4 residents choose an assisted living facility as opposed to remaining at home or moving into an
5 independent living community because they wish to “age in place.” Sunrise specifically markets
6 to those individuals on its website by stating it has a “philosophy to encourage residents’ ability to
7 age in place.” [https://www.sunriseseniorliving.com/care-and-services/memory-care/sunrise-](https://www.sunriseseniorliving.com/care-and-services/memory-care/sunrise-remembrance-program/terrace-club.aspx)
8 [remembrance-program/terrace-club.aspx](https://www.sunriseseniorliving.com/care-and-services/memory-care/sunrise-remembrance-program/terrace-club.aspx) (last visited on February 14, 2017). Residents who wish
9 to “age in place” may not need significant assistance with their activities of daily living initially
10 upon admission, but they expect to (and will) become more dependent as they age and do not want
11 to move yet again when that happens.

12 45. A key factor for these residents in selecting Sunrise is that the facility will provide
13 the staffing sufficient to provide the care services that Sunrise itself has determined are necessary
14 to meet assessed residents’ needs, both now and as those needs, and corresponding care services
15 fees, increase.

16 46. Sunrise has a duty to disclose to the consuming public that it does not use its
17 resident assessment system or the Service Levels generated by it to set aggregate staffing levels
18 because of, among other things, the inherent and substantial safety risk to current and future
19 residents from Sunrise’s conduct, particularly as Defendant serves a vulnerable population that
20 needs assistance. The non-disclosure is material because Sunrise knows that its conduct risks the
21 safety of its residents. Yet, Sunrise has failed to disclose and actively conceals from residents,
22 prospective residents, and their family members the true facts about how it sets staffing at its
23 facilities.

24 **Barriers to Moving Out**

25 47. Defendant’s misrepresentations affect not only the decision of residents to enter a
26 Sunrise facility, but also the decision to stay there.

27 48. In choosing assisted living in general and a Sunrise facility in particular, the
28 resident forgoes other options such as his or her former home, a senior community, or other

1 facilities where the resident can try to build a new community. Once in a facility, there are
2 significant physical, emotional and other burdens for the residents that are triggered if they
3 terminate residency, including impacts such as “transfer trauma.” Sunrise is aware of these
4 burdens, and makes the representations described herein with the knowledge that it will be
5 difficult for residents to leave its facilities once they are enticed to enter based on its
6 misrepresentations.

7 49. Sunrise also repeats its misrepresentations when it conducts periodic re-
8 assessments of residents. Often, the facility discovers additional care services needed by the
9 resident that Sunrise uses as a basis for a Service Fee increase.

10 50. Sunrise thereby unjustly continues to profit from the original fraud by perpetuating
11 its misrepresentations and failures to disclose.

12 **Named Plaintiffs’ Experiences At Sunrise Facilities**

13 **Carlos Heredia**

14 51. Carlos Heredia (“Mr. Heredia”) lived at Sunrise at Tustin in Santa Ana, California
15 from June 18, 2014 to April 18, 2015. He died on March 16, 2016. Plaintiff Audrey Heredia
16 (“Mrs. Heredia”) is his surviving wife. Their daughter, Vivian Heredia (“Vivian”), made health
17 care decisions for Mr. Heredia. Three weeks before he moved into Sunrise at Tustin, Mr. Heredia
18 moved from his home into another assisted living facility that was not part of the Sunrise chain.
19 During those three weeks, he fell twice. Vivian believed that he fell because there were not
20 enough staff to help him and that he needed to move immediately to another facility that was
21 better staffed. They visited Sunrise at Tustin and spoke to the Executive Director. The Executive
22 Director assured the Heredias that Sunrise at Tustin was staffed appropriately, they would provide
23 Mr. Heredia with individualized care, and his needs would be met.

24 52. In addition, Sunrise provided Mrs. Heredia and Vivian with the standard contract
25 quoted in detail, *supra*, in paragraphs 24-29. In short, the contract promised that staff would
26 provide an assessment of Mr. Heredia that would be used to develop a service plan and identify
27 his specific needs. It promised to provide the services outlined in the service plan. It also stated
28 that the assessment would be used to identify Mr. Heredia’s service level, and that “[t]he rate

1 charged will vary according to the level of service provided.” It explained that a change of level is
2 an increase in services “which are subject to the higher fees corresponding to those services.”
3 Exhibit 1 of the contract provided that Mr. Heredia’s service level was “Enhanced Care” and that
4 he would be charged \$77 a day for this level of care, in addition to “Base Fees,” “Medication
5 Management” fees, and “Pendant” fees, for a total of \$236 a day.

6 53. Mrs. Heredia and Vivian reviewed the contract and reasonably understood its
7 representations regarding the assessment, service level, service plan, and fee structure to mean that
8 staff would assess Mr. Heredia, identify his needs, and provide the services necessary to meet his
9 needs. They further reasonably understood that as Mr. Heredia’s needs and services increased, he
10 would require more staff time, and that Sunrise would provide the increased staff time in exchange
11 for more fees.

12 54. In reliance on all of Sunrise’s representations, Mrs. Heredia entered the Tustin
13 facility on June 18, 2014 and signed a Sunrise admission contract. Mr. Heredia paid a “Move-in
14 Fee” of \$4,050.

15 55. Approximately six weeks later, the Heredias began noticing problems related to
16 understaffing. Vivian asked staff if they could occasionally take her father to the courtyard for
17 some fresh air, but they refused stating there were not enough staff available to do that. Vivian
18 was disturbed when she heard another resident yelling for help over and over for approximately 15
19 to 20 minutes. At the end of July 2014, Mr. Heredia fell, and received stitches in his face, after
20 staff did not respond to his call-pendant and he was forced to transfer alone from his bed to his
21 wheelchair. In October 2014, Vivian noticed that staff was not taking Mr. Heredia’s blood
22 pressure as frequently as Sunrise had represented they would do and as ordered by Mr. Heredia’s
23 physician; Vivian eventually had to hire an outside provider to deliver this service. Mr. Heredia
24 often complained to Vivian that staff was not responding when he called them for help getting to
25 the toilet, which made him so uncomfortable that his physical therapist recommended that he keep
26 a trash can next to his bed for urinating. Vivian also personally observed that staff did not always
27 respond to his call-pendant, on one occasion for up to two hours, requiring Vivian to leave the
28 room and find staff herself. Mr. Heredia fell approximately six times or more because he tried

1 ambulating unassisted when staff did not timely respond to his calls.

2 56. In January 2015, Sunrise sent Mrs. Heredia a “Service & Health Update” that gave
3 Mr. Heredia a total of 12 Service Points, and placed him in the “Assisted Living Enhanced” level
4 of care.

5 57. On February 19, 2015, Sunrise increased Mr. Heredia’s service points from 12 to
6 15 and his service fees from \$77 a day to \$99. A Service Health Update dated April 5, 2015
7 delineating the 15 points showed that Sunrise had doubled his service points from 1 to 2 points
8 each for mobility, grooming, and assistance to the bathroom because he required “significantly
9 more time” for each task. Despite the increase in points and related fees, Mr. Heredia did not
10 receive increased attention from staff.

11 58. Whenever Vivian approached management and other staff members because her
12 father was not receiving the care for which he was being charged, they would reassure Vivian that
13 her concerns would be addressed and her father’s needs would be met. Sunrise never disclosed to
14 the Heredias that its Service Level system was not supported by sufficient numbers of staff and
15 was geared only toward increasing revenue.

16 59. In April 2015, Mr. Heredia nearly died from a medication error, which often occurs
17 at facilities that are understaffed. He suffered from an overdose after he received prescription
18 opiates that were not prescribed to him. Vivian moved her father out of Sunrise immediately after
19 the overdose.

20 **Ruby Mancuso**

21 60. Ruby Mancuso (“Ms. Mancuso”) lived at Sunrise of Oakland Hills, in Oakland,
22 California from December 26, 2012 to January 2016. She died on April 30, 2016, in another
23 facility. Her daughter, Corbina Mancuso made healthcare decisions for her mother and chose
24 Sunrise of Oakland Hills over other facilities after touring the facility and meeting with the
25 marketing staff who promised her that her mother’s needs would be met. On December 13,
26 2012, Ms. Mancuso paid a Move-In Fee of \$4,000 to hold her space at the facility.

27 61. Prior to move-in, the Executive Director of the facility provided Corbina with the
28 standard contract quoted in detail, *supra*, in paragraphs 24-29. In short, the contract promised that

1 staff would provide an assessment of Ms. Mancuso that would be used to develop a service plan
2 and identify her specific needs. The contract included Sunrise's promise to provide the services
3 outlined in the service plan. The contract also stated that the assessment would be used to identify
4 Ms. Mancuso's service level, and that "[t]he rate charged will vary according to the level of
5 service provided." It explained that a change of level is an increase in services "which are subject
6 to the higher fees corresponding to those services." Exhibit 1 to the contract provided that Ms.
7 Mancuso's medication management level was "Level 2" and that she would be charged \$18 a day
8 for this service, in addition to "Base Fees," for a total of \$97 a day, plus the Move-In Fee of
9 \$4,000. Later in Ms. Mancuso's residency, she was also charged for "Service Level Fees."

10 62. Corbina reviewed all of the representations in the contract. She reasonably
11 understood that as her mother's care needs increased, Sunrise staff would perform an assessment
12 to determine what level of care Ms. Mancuso would receive, and that staff would provide the level
13 of care they assessed as needed. She understood that Ms. Mancuso would pay more as her level of
14 care and need for staff time increased. She also reasonably understood that Sunrise would provide
15 enough staff to deliver the services for which she would be charged. Corbina relied on all of
16 Sunrise's representations when she moved her mother into the facility on December 26, 2012.

17 63. Towards the end of 2013, Ms. Mancuso's needs for assisted living services began
18 to increase. Beginning in January 2014, Sunrise sent Corbina several "Service and Health
19 Update" forms stating she would be charged Service Level Fees. The forms represented that Ms.
20 Mancuso would receive standby assistance for mobility and dressing, scored as a total of two
21 service points, and placed her in the "Assisted Living Select Program – Daily." Sunrise charged
22 her \$19 a day for this service level, on top of base fees of \$86 a day and medication service fees of
23 \$18 a day. During the first half of 2014, Corbina did not notice any problems with Sunrise's
24 delivery of the specific services it promised in the Service and Health Updates.

25 64. Over time, Corbina began to notice that the facility was understaffed and not
26 providing promised care. When Corbina notified the Executive Director of her concerns, Corbina
27 was told in an email that all residents "are well care for and feel safe in our community." But the
28 staffing conditions did not improve and, on one occasion, another resident physically struck Ms.

1 Mancuso during an unsupervised bridge game in the common area. Corbina also noticed that
2 residents spent most afternoons watching television or sitting idle because there were no activities,
3 or when there were activities, there was not enough staff to encourage and escort each resident to
4 join them.

5 65. Further, the facility provided conflicting communications regarding Ms.
6 Mancuso's services. In December 2014, Sunrise sent Corbina a Service and Health Update stating
7 that Ms. Mancuso was now independent for dressing and mobility, which was not true, gave her
8 no Service Points, and stated the Service Level was "N/A." A Service and Health Update dated
9 January 2015 again misstated that she was independent for dressing, but required reminders for
10 mobility, gave her no Service Points, and again stated her Service Level was "N/A." Nonetheless,
11 beginning in November 2014, Sunrise increased her Service Level to "Assisted Living Plus" and
12 service fees to \$38 a day. Sunrise did not send Corbina any more Service Health Updates, but did
13 send her an Individualized Service Plan dated April 3, 2015. The Individualized Service Plan
14 represented that Sunrise would provide staffing assistance with mobility, grooming, bathing,
15 assistance to the bathroom, and dressing. For example, the Plan stated Sunrise would "provide
16 assistance of 1 team member to promote dignity and safety" with bathing.

17 66. By 2015, it was clear to Corbina that Sunrise only inconsistently and sporadically
18 provided the services it promised in the Service and Health Updates and the Individualized Service
19 Plan. Staff did not consistently help Ms. Mancuso get dressed. On one occasion that year,
20 Corbina left her mom alone in bed in the evening fully dressed only to find her still fully dressed
21 in the same clothes in the early morning. Ms. Mancuso reported several times to Corbina that staff
22 was not helping her get dressed. Also during that year, Corbina pushed her mother's call-pendant
23 for help with dressing her mother, waited at least 15 minutes without a response, pushed the
24 pendant again and waited 30 minutes more, before eventually going out into the hallway to find
25 someone. On other occasions, staff was too busy to notice when Ms. Mancuso had lost her glasses
26 and hearing aid – Corbina was the first to notice after Ms. Mancuso had been without them well
27 into the day. A few times Corbina discovered that staff and her mother had lost her walker even
28 though her Individualized Service Plan stated, "Ruby uses a walker for support, and will need

1 owned and/or operated by Sunrise under the Sunrise name from June 27, 2013 through the present
2 (the "Class Period"), and who contracted with Sunrise for services for which Sunrise was paid
3 money.

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

8 73. This action is brought as a class action and may properly be so maintained pursuant
9 to Cal. Code of Civ. Proc section 382 and applicable case law. In addition to injunctive relief, this
10 action seeks class wide damages based on Defendant's misrepresentations and misleading
11 statements and material omissions alleged herein. This action does not seek recovery for personal
12 injuries, emotional distress, or bodily harm that may have been caused by Defendant's conduct
13 alleged herein.

14 74. **Ascertainability.** Members of the class are identifiable and ascertainable.
15 Defendant retains admissions contracts, Resident Services Plans, and billing statements for all
16 persons who currently reside or resided at Sunrise facilities during the class period. Thus,
17 Defendant's own records will reliably identify class members.

18 75. **Impracticability of Joinder (Numerosity of the Class).** Members of the class are
19 so numerous that their individual joinder herein is impracticable. The precise number of members
20 of the class and their addresses are presently unknown to Plaintiffs. Defendant currently owns
21 and/or operates approximately 52 assisted living facilities in California. The precise number of
22 persons in the class and their identities and addresses may be ascertained from Defendant's
23 records.

24 76. **Questions of Fact and Law Common to the Class.** Numerous important
25 common questions of law and fact exist as to all members of the class and predominate over the
26 questions affecting only individual members of the class. These common legal and factual
27 questions include without limitation:

28 (a) whether Defendant has violated and continues to violate the Consumer

1 Legal Remedies Act, California Civil Code section 1770 et seq. by falsely representing that
2 Sunrise uses its resident assessment system and the Service Levels generated by it to determine
3 and provide staffing at its California assisted living facilities, when, in fact, Defendant does not
4 and has no intention to do so;

5 (b) whether Defendant has violated and continues to violate the Consumer
6 Legal Remedies Act, California Civil Code section 1770 et seq. by promising residents that it will
7 provide care and services when Defendant knows that its standard operating procedure and
8 corporate policy of providing pre-determined staffing at its facilities, without regard to the
9 resident assessment system and Service Levels, precludes it from providing its residents all of the
10 care they have been promised and places all residents at an inherent and substantial risk that they
11 will not receive the services they have paid for on any given day;

12 (c) whether Defendant's misrepresentations, misleading statements and
13 omissions regarding the staffing of its facilities as alleged herein were and are material to the
14 reasonable consumer;

15 (d) whether a reasonable consumer would be likely to be deceived by
16 Defendant's misrepresentations, misleading statements, or material omissions;

17 (e) whether by making the misrepresentations, misleading statements, and
18 material omissions alleged in this Complaint, Defendant has violated and continues to violate the
19 Consumer Legal Remedies Act;

20 (f) whether by making the misrepresentations, misleading statements, and
21 material omissions alleged in this Complaint Defendant violated and continues to violate
22 California Business & Professions Code section 17200, et seq. ("UCL");

23 (g) whether Defendant had exclusive knowledge of material facts not known or
24 reasonably accessible to the Plaintiffs and the class;

25 (h) whether the Plaintiffs, the class, and the consuming public were likely to be
26 deceived by the foregoing concealment and omission;

27 (i) whether the Plaintiffs, the class, and the consuming public have a
28 reasonable expectation that Defendant will use its resident assessment system to determine and

1 provide staffing at its facilities;

2 (j) whether the Plaintiffs, the Class, and the consuming public have a
3 reasonable expectation that Defendant will provide staffing at its facilities to meet the aggregate
4 care needs of the residents in its facilities as determined by Defendant's resident assessment
5 system;

6 (k) whether Defendant's misrepresentations, its misleading statements, its
7 failures to disclose, and its concealment of its true policies, procedures and practices regarding
8 how its staffs its facilities violated the CLRA and the UCL;

9 (l) whether Defendant has engaged and continues to engage in a pattern and
10 practice of unfair and deceptive conduct in connection with the management, administration, and
11 operation of its California assisted living and memory care facilities;

12 (m) whether Defendant has violated and continues to violate the UCL by
13 violating the CLRA and California W&I Code section 15610.30 during the Class Period;

14 (n) whether Defendant has committed financial elder abuse under California
15 W&I Code section 15610.30 by taking, secreting, appropriating, obtaining, and/or retaining
16 money from elders and dependent adults for a wrongful use and/or with the intent to defraud
17 them;

18 (o) whether Plaintiffs and the members of the Class have sustained injury;

19 (p) whether Plaintiffs and the members of the Class are entitled to damages,
20 and the nature of such damages; and,

21 (q) whether Plaintiffs and the members of the Class are entitled to restitution,
22 declaratory and injunctive relief and/or other relief, and the nature of such relief.

23 86. **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the
24 Class. As alleged above, Defendant misrepresented to Plaintiffs and the class members and/or
25 their family members that Defendant uses its resident assessment system to determine the care
26 services to be provided by facility staff and to assess and bill residents for corresponding Service
27 Levels. The resident assessment system, and the Service Levels generated by it, allow Defendant
28 to determine and provide the aggregate staffing Defendant has determined is necessary to meet

1 the assessed needs of its residents, but in fact, Defendant does not use this critical information in
2 budgeting for or scheduling staff at its California facilities. Rather, Defendant has a policy of
3 fixed staffing, regardless of the results generated by its resident assessment system, which results
4 in residents not receiving all of the care they have paid for and/or being subjected to the inherent
5 risk that, on any given day, facility staffing will be insufficient to provide the promised care for
6 all residents. Further, as alleged above, Defendant has failed to disclose and concealed this
7 material fact from the Named Plaintiffs and the class. Plaintiffs' claims are typical of the claims
8 of the proposed class in the following ways: 1) Plaintiffs are members of the proposed class; 2)
9 Plaintiffs' claims arise from the same uniform corporate policies, procedures, practices, and
10 course of conduct on the part of Defendant; 3) Plaintiffs' claims are based on the same legal and
11 remedial theories as those of the proposed class and involve similar factual circumstances; 4) the
12 injuries suffered by the Named Plaintiffs are similar to the injuries suffered by the proposed class
13 members; and 5) Plaintiffs seek a common form of relief for themselves and the members of the
14 class.

15 87. **Adequacy.** The Named Plaintiffs are adequate representatives of the class on
16 whose behalf this action is prosecuted. Their interests do not conflict with the interests of the
17 class. Also, they have retained competent counsel with extensive experience in class action and
18 senior care litigation who will prosecute this action vigorously.

19 88. **Predominance.** With respect to Plaintiffs' claims under the CLRA, the UCL, and
20 the Elder Abuse Act, class certification is appropriate because significant questions of law or fact
21 common to class members, including but not limited to those set forth above, predominate over
22 any questions affecting only individual members of the proposed class.

23 89. **Superiority.** A class action is superior to other methods for the fair and efficient
24 adjudication of the controversies raised in this Complaint because:

25 (a) individual claims by the class members would be impracticable because the
26 costs of pursuing such claims would far exceed what any individual class member has at stake;

27 (b) relatively little individual litigation has been commenced over the
28 controversies alleged in this Complaint and individual class members are unlikely to have an

1 interest in separately prosecuting and controlling individual actions;

2 (c) the concentration of litigation of these claims in one forum will achieve
3 efficiency and promote judicial economy;

4 (d) the proposed class is manageable, and no difficulties are likely to be
5 encountered in the management of this class action that would preclude its maintenance as a class
6 action;

7 (e) the proposed class members are readily identifiable from Defendant's own
8 records; and,

9 (f) prosecution of separate actions by individual members of the proposed class
10 would create the risk of inconsistent or varying adjudications with respect to individual members
11 of the proposed class that would establish incompatible standards of conduct for Defendant.

12 90. Without a class action, Defendant will likely retain the benefit of its wrongdoing
13 and will continue in its illegal course of conduct which will result in further damages to Plaintiffs
14 and the proposed class.

15 **FIRST CLAIM**

16 **CALIFORNIA CONSUMERS LEGAL REMEDIES ACT (Cal. Civ. Code § 1750 et seq.)**

17 91. Plaintiffs refer to, and incorporate herein by reference, all preceding paragraphs.

18 92. Plaintiffs and the class members are "senior citizens" and/or "disabled persons" as
19 defined in California Civil Code sections 1761(f) and (g). They are also "consumers" as defined
20 in California Civil Code section 1761(d).

21 93. Defendant is a "person" as defined under California Civil Code section 1761(c).
22 The assisted living and memory care services provided by Defendant constitute "services" under
23 California Civil Code section 1761(b). The agreement by Plaintiffs and the putative class
24 members to provide new resident services fees and monthly payments to Defendant in exchange
25 for assisted living and memory care services constitute a "transaction" under California Civil Code
26 section 1761(e).

27 94. In its uniform resident contracts presented to prospective residents and their family
28 members, Defendant represented and continues to represent that Sunrise will provide care services

1 (through its facility staff) that are sufficient to meet the needs of each resident, as determined by
2 Sunrise's resident assessment system and confirmed in the Service Levels assigned to each
3 resident. That same representation is made in Sunrise's Individualized Service Plans for residents
4 and other standardized corporate materials. As alleged herein, these uniform corporate
5 representations are false and misleading, and are likely to deceive the reasonable consumer.

6 95. Contrary to Sunrise's uniform misrepresentations and misleading statements,
7 Sunrise does not use its resident assessment system and Service Levels generated by it in setting
8 staffing levels necessary to provide the services to residents it assessed as required, but instead
9 uses predetermined labor budgets designed to meet corporate profit goals. Sunrise facilities use a
10 predetermined staffing schedule that rarely, if ever, changes, despite changes in the assessment
11 scores or Service Levels of the current residents. Sunrise does not disclose and actively conceals
12 this corporate policy and practice from current and prospective residents and their family
13 members.

14 96. The named Plaintiffs, through their legal representatives and power of attorneys,
15 and the putative class members considered material Sunrise's promise to provide care services
16 (through its facility staff) that would be sufficient to meet the needs of each resident, as
17 determined by Sunrise's resident assessment system. If the named Plaintiffs and their
18 representatives had known the true facts, they would not have agreed to place them in a Sunrise
19 facility. If the putative class members had known the true facts, they would in all reasonable
20 probability not have agreed to enter Sunrise.

21 97. The facts that Sunrise misrepresents, fails to disclose and actively conceals are
22 material and are likely to deceive the reasonable consumer. Consumers choose an assisted living
23 facility because they need care and/or wish to age in place as their care needs change. Residents
24 and their family members consider the overall staffing levels provided by the assisted living
25 facility they select to be of great importance. The use of a system such as the one Sunrise
26 represents it uses, which ensures adequate staffing at the facilities by basing staffing decisions on
27 resident assessments and personal care needs, is also, therefore, of great importance to residents
28 and their family members and is a material factor in their decision to choose Sunrise and to pay

1 Sunrise the amounts of money that it charges for occupancy and services.

2 98. Residents and their family members would consider material Defendant's uniform
3 corporate policy and practice of not using its resident assessment system and Service Levels
4 generated by it to set and staff its facilities. They would consider material Defendant's policy and
5 practice of maintaining predetermined staffing schedules regardless of increases in the assessed
6 needs and corresponding Service Levels assigned to current residents. Plaintiffs and the putative
7 class members could not reasonably have been expected to learn or discover these non-disclosed
8 facts, and in fact, Sunrise affirmatively concealed them.

9 99. Sunrise has violated and continues to violate the Consumers Legal Remedies Act,
10 California Civil Code section 1750 *et seq.* ("CLRA") in at least the following respects: (a) in
11 violation of section 1770(a)(5), Sunrise has misrepresented, failed to disclose and concealed the
12 true characteristics and/or quantities of services provided at its California facilities; (b) in violation
13 of section 1770(a)(7), Defendant has misrepresented, failed to disclose and concealed the true
14 standard, quality and/or grade of services provided at its California facilities; (c) in violation of
15 section 1770(a)(9), Defendant has falsely advertised that it will provide staffing based on resident
16 assessments and the Service Levels generated by those assessments, knowing that it does not
17 intend to provide the services as advertised; and (d) in violation of section 1770(a)(14), Defendant
18 has represented that the agreement signed by residents and/or their representatives, and under
19 which they pay their monthly rate, confers on residents the right to reside in a facility that provides
20 staffing based on the level of care its own resident assessment system has determined is necessary
21 to provide the services each resident needs and for which residents are charged, when in fact,
22 Defendant does not use its resident assessment system and related Service Levels when
23 determining and providing facility staffing.

24 100. These misrepresentations, misleading statements, acts, practices, and omissions by
25 Defendant are and were intended to induce and lure elderly and dependent adult residents and their
26 family members into agreeing to be admitted to Defendant's facilities and to pay new resident
27 services fees and monthly rates based on Defendant's resident assessment system and assessed
28 Service Levels.

1 101. Defendant made the written misrepresentations and misleading statements alleged
2 herein through various uniform means of communication, including without limitation, the
3 admission agreement, service and health updates, individualized service plans, standardized
4 corporate marketing and promotional materials, and other written corporate materials disseminated
5 to the public in connection with Defendant's services. These representations were made directly
6 to the named Plaintiffs, putative class members and their family members and/or representatives
7 by Sunrise in its standard resident admission contract and reinforced by the uniform means of
8 communication listed above.

9 102. In addition to its affirmative misrepresentations, Defendant failed to disclose and
10 concealed from Plaintiffs, the putative class members, and their family members that it does not
11 use its resident assessment system to determine or provide facility staffing at levels sufficient to
12 meet the assessed care needs of facility residents, but instead maintains predetermined levels of
13 staffing, regardless of changes in the aggregate assessment scores or Service Levels of the facility
14 residents and regardless of whether the residents' assessed care needs are being met.

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

18 104. Sunrise had exclusive and superior knowledge of its corporate policy and practice
19 of ignoring its resident assessment system and related Service Levels in setting staffing levels.
20 Sunrise knew that its failure to provide staffing based on the levels of care that Sunrise had itself
21 determined was necessary to provide the services for which it charged its residents posed a
22 substantial health and safety risk to the named Plaintiffs and class members. Sunrise intentionally
23 concealed, suppressed, and/or failed to disclose the true facts with the intent to defraud the named
24 Plaintiffs and putative class members. The named Plaintiffs and the putative class members did
25 not know these material undisclosed facts and could not reasonably have been expected to
26 discover them.

27 105. As a direct and proximate result of the Defendant's conduct, Plaintiffs and the
28 putative class members suffered actual damages. Specifically, Plaintiffs and the class members

1 paid money to Defendant, in the form of the new resident fee (called a “Move-In Fee”), their
2 initial monthly fees, and additional monthly fees, paid in exchange for residency and services in a
3 facility that was falsely represented to be staffed based on Sunrise’s residential assessment and
4 care level system. Plaintiffs and the class members paid a premium for the misrepresented
5 services, and would not have entered Sunrise’s facilities and made payments to Sunrise had they
6 known the truth about Sunrise’s policies and practices for staffing its assisted living facilities.
7 Members of the class continue to pay monthly fees based on their assessed Service Levels.

8 106. As a further direct and proximate result of Defendant’s failure to staff its facilities
9 as represented, *i.e.* based on residents’ needs as determined through its comprehensive
10 assessments, Plaintiffs and the class members have been forced to reside in facilities that have less
11 staff than necessary to satisfy their care needs, as determined by Sunrise itself. As a result of
12 Sunrise’s policy of staffing its facilities according to pre-determined labor budgets which do not
13 permit staffing increases, regardless of increases in the overall care needs and assessed points of
14 current residents, it is not possible for the needs of all residents to be met, and there is a substantial
15 likelihood that each resident, at any time, will not receive the care Sunrise has determined
16 necessary and promised to provide. Plaintiffs and the class members also face the substantial risk
17 that they will suffer physical injuries from such lack of care and/or from other residents who are
18 insufficiently supervised or cared for.

19 107. Sunrise’s conduct presents a continuing threat of substantial harm to the public in
20 that, among other things, Sunrise continues to misrepresent how it uses its resident assessment
21 system and how it determines and provides staffing at its facilities. Despite the knowledge that
22 Sunrise does not staff its facilities based on the resident assessments and assessed Service Levels,
23 Defendant continues to induce elderly and vulnerable citizens to enter its facilities. Additionally,
24 the risk of harm to the class members from Defendant’s conduct is substantial. Accordingly,
25 Plaintiffs seek an injunction that requires that Defendant immediately cease the CLRA violations
26 alleged herein, and to enjoin it from continuing to engage in any such acts or practices in the
27 future. Additionally, Plaintiffs seek an injunction requiring Defendant to disclose to Plaintiffs, the
28 putative class members, and the consuming public that Sunrise does not staff its facilities based on

1 the results of resident assessments but instead maintains staffing levels based on pre-determined
2 labor budgets, regardless of changes in the overall care needs and assessed care points of current
3 residents.

4 108. In accordance with Civil Code section 1782(a), Plaintiff has provided Defendant
5 with notice and an opportunity to address the violations alleged herein. If Defendant fails to cure
6 the violations within the statutory time period, Plaintiff will amend the complaint to seek CLRA
7 damages as authorized under Civil Code section 1782(d).

8 **SECOND CLAIM FOR UNLAWFUL, UNFAIR AND DECEPTIVE BUSINESS**

9 **PRACTICES (Cal. B&P Code §17200 et seq.)**

10 109. Plaintiffs refer to, and incorporate herein by this reference, all preceding
11 paragraphs.

12 110. Defendant has engaged in unlawful business acts and practices. Such acts and
13 practices constitute unfair business practices in violation of California Business and Professions
14 Code section 17200 *et seq.*

15 111. In particular, Defendant has engaged in unlawful business acts and practices by
16 violating numerous laws, statutes, and regulations including, without limitation:

17 (a) Systematically and uniformly representing to the residents of its assisted
18 living facilities in California, family members and the public that Sunrise uses its resident
19 assessment system and related Service Levels to determine and provide facility staffing, when in
20 fact, it did not and never intended to do so, in violation of California Business & Professions
21 Code section 17500, *et seq.* and California Civil Code section 1770, *et seq.*; and

22 (b) Taking, secreting, appropriating, obtaining, and retaining the funds of elders
23 and dependent adults for a wrongful use and/or with the intent to defraud in violation of
24 California W&I Code section 15610.30.

25 112. By virtue of the conduct alleged herein, Defendant has also engaged in fraudulent
26 business practices. Members of the general public (including without limitation persons admitted
27 to and/or residing in Sunrise's California assisted living and memory care facilities during the
28

1 Class Period, and their family members and/or representatives) have been and are likely to be
2 deceived by Defendant's misrepresentations and failures to disclose as alleged herein.

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

7 114. Defendant's misrepresentations, misleading statements, acts, practices, and
8 omissions were intended to induce and lure elderly and dependent adult residents and their family
9 members into agreeing to be admitted to Defendant's facilities and to pay a new resident services
10 fee and monthly rates to live in an assisted living facility that determines and provides staffing
11 according to the staff time and type of staff Defendant has determined is necessary to provide the
12 services identified in its resident assessments.

13 115. Defendant made these misrepresentations and misleading statements through
14 various uniform means of written corporate communications, including without limitation, the
15 admission agreement, service and health updates, individualized service plans, marketing and
16 promotional materials, Defendant's corporate website, and other materials disseminated to the
17 public from its corporate headquarters in connection with Defendant's services. These
18 representations were made directly to the named Plaintiffs, class members and their family
19 members and/or representatives by Defendant in its standard resident contracts and reinforced by
20 the uniform means of communication listed above.

21 116. In addition to its affirmative misrepresentations that Sunrise uses its resident
22 assessment system to determine and provide facility staffing in accordance with residents'
23 assessed needs, Defendant concealed from Plaintiffs, the putative class members, and their family
24 members that Defendant does not use its resident assessment system to set or provide facility
25 staffing but instead maintains predetermined facility staffing levels regardless of changes in the
26 overall assessed Service Levels and Service Points of current residents.

27 117. Defendant had exclusive and superior knowledge of material facts not known to
28 the named Plaintiffs, putative class members, or the general public at the time of the subject

1 transactions and actively concealed these material facts.

2 118. Defendant had exclusive and superior knowledge of its corporate policy and
3 procedure of ignoring the resident assessments and corresponding Service Levels and Service
4 Points in setting staffing levels. Sunrise also knew that its failure to provide staffing based on the
5 levels of care that Sunrise had itself determined as necessary to provide the services for which it
6 charged its residents posed a substantial health and safety risk to the named Plaintiffs and class
7 members. Sunrise intentionally concealed, suppressed and/or failed to disclose the true facts with
8 the intent to defraud the named Plaintiffs and putative class members. The named Plaintiffs and
9 the putative class members did not know these material undisclosed facts and could not reasonably
10 have been expected to discover them.

11 119. As a direct and proximate result of Defendant's conduct, Plaintiffs, the class
12 members, and members of the general public (including without limitation persons admitted to
13 and/or residing in the facilities, and their family members and/or representatives) have been
14 harmed and continue to be harmed. Among other things, they paid money to Defendant to enter
15 the facility and for services that were substandard to those promised by Defendant. Accordingly,
16 Plaintiffs and the putative class members are entitled to restitution.

17 120. Additionally, Plaintiffs seek an injunction that requires that Defendant immediately
18 cease acts of unlawful, unfair, and fraudulent business acts or practices as alleged herein, and to
19 enjoin Defendant from continuing to engage in any such acts or practices in the future. Plaintiffs
20 and the putative class members also seek reasonable attorneys' fees, costs and expenses, and all
21 other remedies permitted by law.

22 **THIRD CLAIM FOR ELDER FINANCIAL ABUSE (Cal. W&I Code §15610.30)**

23 121. Plaintiffs refer to, and incorporate herein by this reference, all preceding
24 paragraphs.

25 122. Plaintiffs and the putative class members are and at all times were "elders" as
26 defined under California W&I Code section 15610.27 and/or "dependent adults" as defined under
27 California W&I Code section 15610.23.

28 123. Defendant entered into a standard agreement with the named Plaintiffs, by and

1 through their power of attorneys, the putative class members and/or their personal representatives.
2 In these agreements, Defendant represented that Sunrise determines and provides staffing at its
3 assisted living facilities sufficient to meet the needs of its residents as determined by Sunrise's
4 assessments and confirmed in Service Levels used to calculate resident charges. Defendant made
5 this promise in exchange for new resident services fees and monthly payments that it received
6 from the named Plaintiffs and the putative class members. Yet Defendant did not and had no
7 intention of complying with its obligations under the contract. Defendant did not intend to and
8 does not use its resident assessment system and Service Levels generated by it to set or provide
9 staffing at its facilities. Rather, it has a policy and practice of providing pre-determined facility
10 staffing that does not change with increases in resident care needs. This policy and practice
11 precludes Sunrise from providing facility residents with all of the care Sunrise has promised them
12 and for which they are paying Sunrise.

13 124. Defendant knew or should have known that such conduct would likely be harmful
14 to Plaintiffs and the putative class members.

15 125. Defendant knew or should have known that Plaintiffs and the putative class
16 members had a right to the funds used to pay new resident move-in fees and monthly fees to
17 Defendant.

18 126. As such, Defendant took, secreted, appropriated, obtained, and retained the funds of
19 Plaintiffs and the putative class members for a wrongful use and/or with the intent to defraud.

20 127. Defendant's conduct was despicable, fraudulent, reckless, and carried out with a
21 willful and conscious disregard for the rights and safety of Plaintiffs and the members of the
22 putative class.

23 128. Accordingly, Plaintiffs and the putative class seek an injunction requiring
24 Defendant to disclose to Plaintiffs, the putative class members, and the consuming public that
25 Sunrise does not use its resident assessments or Service Levels to set or provide staffing at its
26 facilities, but instead maintains pre-determined staffing levels, based on fixed labor budgets,
27 which do not change regardless of increases in the overall assessed care needs of current residents.

28 129. Plaintiffs and the putative class members also seek compensatory damages,

1 reasonable attorneys' fees, costs and expenses, punitive damages, treble damages pursuant to
2 California Civil Code section 3345, and all other remedies permitted by law. Plaintiffs do not
3 seek certification of any claims for damages related to any personal injuries, emotional distress, or
4 wrongful death suffered by any member of the class.

5 **PRAYER**

6 WHEREFORE, Plaintiffs pray for judgment as follows:

- 7 1. For a Court order certifying that the action may be maintained as a class action;
- 8 2. For actual damages according to proof, excepting any damages for personal injury,
9 emotional distress, and/or wrongful death suffered by the named Plaintiff or any
10 class member;
- 11 3. For restitution and any other monetary relief permitted by law;
- 12 4. For reasonable attorneys' fees, costs, and expenses;
- 13 5. For treble damages pursuant to California Civil Code section 3345;
- 14 6. For punitive damages;
- 15 7. For pre-judgment and post-judgment interest, according to law;
- 16 8. For an order requiring that Defendant immediately cease acts that constitute
17 unlawful, unfair and fraudulent business practices, false advertising and violations
18 of the Consumer Legal Remedies Act, Business and Professions Code section
19 17200 *et seq.*, and the Elder Financial Abuse statute as alleged herein, and to enjoin
20 Defendant from continuing to engage in any such acts or practices in the future;
- 21 9. Plaintiffs and the class further seek an injunction requiring Defendant to disclose to
22 the putative class members and the consuming public that Sunrise does not use its
23 resident assessment or corresponding Service Levels to set or provide staffing at its
24 facilities; and

25 ///

26 ///

27 ///

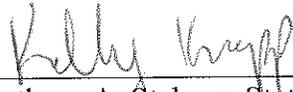
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1 10. For such other and further relief as the Court may deem just and proper.

2 **JURY TRIAL DEMANDED**

3 Plaintiffs demand a jury trial on all issues so triable.

4 DATED: June 27, 2017

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