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

18 Donald Lollock, by and through his Guardian  
19 ad Litem, Kathleen Lollock; Zareen Khan as  
20 Special Administrator for the Estate of  
21 Abdulwafi Khan; Frank Pearson; Jo Ella  
22 Nashadka; and Jane Burton-Whitaker; on  
23 their own behalves, and on behalf of others  
24 similarly situated,

22 Plaintiffs,

23 vs.

24 Oakmont Senior Living, LLC, and Does 1 -  
25 100,

26 Defendants.

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 13 2017

SUE PESKO

By \_\_\_\_\_

BY FAX

CASE NO. **RG17875110**

**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**

## INTRODUCTION

1. Plaintiffs Donald Lollock, Zareen Khan, Frank Pearson, Jo Ella Nashadka, and Jane Burton-Whitaker (collectively "Plaintiffs") and the proposed Class bring this action for injunctive relief and damages to stop the unlawful and fraudulent practices of Oakmont Senior Living, LLC ("Oakmont" or "Defendant").

2. Defendant has engaged in a scheme to defraud seniors, persons with disabilities, and their family members at its assisted living facilities in California by falsely representing to all residents in its admission contracts that each resident will be provided the care services (through facility staff) that the resident needs as determined by the resident assessment conducted by facility personnel. This is false and misleading because the results generated by Oakmont's resident assessment system are not used to set staffing at each facility. Instead, as a matter of corporate policy, Oakmont allocates expenditures for staffing at each facility based on pre-determined and static budgets designed to maximize revenue. As a result, Oakmont's facilities do not have sufficient numbers of trained staff to provide promised care services to its residents. Oakmont conceals and fails to disclose this material fact to current and prospective residents.

3. In its form admission agreements, Oakmont uniformly represents to each new resident that (a) each resident will receive the care that he/she requires; (b) the facility's professional staff will determine the care required for each resident through the resident assessment process; and (c) the amount of care needed by the resident will be translated into a specific number of care points for which the resident will be charged on a monthly basis. The reasonable consumer understands these representations to mean that, as a matter of policy and practice, the budgets for staffing at each facility are related to the aggregated care points generated from its resident assessment system and Oakmont will, accordingly, ensure each facility has sufficient numbers of trained staff to deliver to all facility residents the amount and type of care Oakmont has identified as needed and promised to provide.

4. Oakmont's misrepresentations, misleading statements, and omissions about its budgets driven primarily by desired profit margins profit as opposed to the aggregate care needs of

1 its residents are material to the reasonable consumer. Seniors and/or their family members choose  
2 an *assisted* living facility based on the expectation that they will receive the quantity and quality  
3 of care that they need. A system or policy that budgets staffing expenditures based on the overall  
4 needs of residents as quantified through aggregation of current residents' regular comprehensive  
5 resident assessments is likely to provide such care at the outset and on an ongoing basis. A system  
6 or policy that budgets staffing expenditures based primarily on desired profit margins results in  
7 facilities that do not have sufficient numbers of trained staff to meet the needs identified in  
8 residents' assessments and precludes Oakmont from providing all promised care to its residents. It  
9 is therefore a matter of fundamental importance to the reasonable consumer to know that Oakmont  
10 does not and has no intention of using its resident assessment system to budget sufficient  
11 expenditures for staffing such that residents receive the services for which they are being charged.

12         5. Through its representations and nondisclosures, Oakmont dupes residents and  
13 family members into paying significant amounts of money in the form of move-in fees, initial  
14 monthly payments, and other non-refundable fees to enter the facility. Oakmont's failure to use  
15 the results generated by the resident assessment system in determining its budgets for staffing at  
16 each facility places all Oakmont residents at an unnecessary risk of harm. That risk is particularly  
17 acute, given the vulnerable nature of the targeted population of seniors and residents with  
18 disabilities.

19         6. Oakmont's representations in its form contract of its comprehensive resident  
20 assessments and corresponding care fees contributes to its competitiveness in the marketplace of  
21 assisted living facilities and is a factor in its pricing structure. Its purported use of such a system  
22 to accurately assess the needs of residents and provide sufficient numbers of trained staff to meet  
23 those needs enables it to charge more for residency and services at its facilities than it otherwise  
24 could. Residents pay a premium for a system that is represented by Oakmont to provide  
25 comprehensive resident needs assessments and the trained staff necessary to provide the promised  
26 care. In actuality, Oakmont does not use the resident assessments to determine facility staffing.

1           7.       If Plaintiffs had known the true facts about Oakmont's corporate policy of using  
2 predetermined and static budgets for staffing at each facility that have no relationship to its  
3 resident assessment system and personal care points generated by it, they would not have agreed to  
4 enter Oakmont or paid Oakmont significant amounts of money in new resident fees and monthly  
5 charges. If the putative class members had known the true facts about Oakmont's corporate policy  
6 of using predetermined and static budgets for staffing at each facility that have no relationship to  
7 its resident assessment system and personal care points generated by it, they would in all  
8 likelihood not have agreed to enter Oakmont or paid Oakmont significant amounts of money in  
9 new resident fees and monthly charges. As a result of Oakmont's failure to consider resident  
10 assessments in setting the budgets at its facilities, the named Plaintiffs and putative class members  
11 did not or have not received, and/or are subjected to a substantial risk that they will not receive in  
12 the future, the care that Oakmont has promised to provide in their admission contracts.

13           8.       This action seeks to require Oakmont to cease and desist its ongoing violations of  
14 law. In addition, Plaintiffs seek an order requiring Oakmont to disclose to prospective and current  
15 residents, their family members, and/or responsible parties that its resident assessment system or  
16 the aggregated results generated by that system have no relationship to the budget for staffing at  
17 each facility. Plaintiffs further seek an order prohibiting Oakmont from charging fees based on  
18 care points that correspond to the amount of staff time Oakmont represents is necessary to provide  
19 the required services, unless and until Oakmont uses those numbers in setting and providing  
20 staffing levels at its facilities. In addition to injunctive relief, this action seeks class wide  
21 damages based on Defendant's misrepresentations and misleading statements and material  
22 omissions alleged herein. This action does not seek recovery for personal injuries, emotional  
23 distress, or bodily harm that may have been caused by Defendant's conduct alleged herein.

#### PARTIES

##### **Plaintiffs**

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25  
26           9.       Plaintiff Donald Lollock was a resident of Oakmont of Villa Capri in Santa Rosa,  
27 California from approximately June 2013 to September 2016. He is currently a resident at another  
28 assisted living facility with no connection to Defendant. At all times relevant to this complaint,

1 Donald Lollock was an elder as defined under California Welfare & Institutions Code section  
2 15610.27 and a senior citizen as defined under California Civil Code section 1761(f). Kathleen  
3 Lollock is his wife and has been his durable power of attorney since 2004. Simultaneous with the  
4 filing of this complaint, Mrs. Lollock has filed a motion for appointment as her husband's  
5 guardian ad litem for the purposes of prosecuting this action. Donald Lollock is and was at all  
6 times herein mentioned a resident of the State of California. He brings this action on behalf of  
7 himself and all others similarly situated.

8 10. Plaintiff Zareen Khan is the daughter of decedent Abdulwafi Khan, a former  
9 resident of Oakmont of Mariner Point, in Alameda, California from October 30, 2015 to  
10 December 11, 2015. On August 28, 2017, Ms. Khan filed a petition for special administration of  
11 the Estate of Abdulwafi Khan for the purpose of prosecuting this action. At all times relevant to  
12 this complaint, Abdulwafi Khan was an elder as defined under California Welfare & Institutions  
13 Code section 15610.27 and a senior citizen as defined under California Civil Code section 1761(f).  
14 Abdulwafi Khan was at all times herein mentioned a resident of the State of California. Plaintiff  
15 Zareen Khan brings this action on behalf of decedent Abdulwafi Khan and all others similarly  
16 situated.

17 11. Plaintiff Frank Pearson is a current resident of Oakmont of Mariner Point in  
18 Alameda, California who moved into the facility on June 9, 2015. At all times relevant to this  
19 complaint, Mr. Pearson is and was an elder as defined under California Welfare & Institutions  
20 Code section 15610.27 and a senior citizen as defined under California Civil Code section 1761(f).  
21 Frank Pearson is and was at all times herein mentioned a resident of the State of California. He  
22 brings this action on behalf of himself and all others similarly situated.

23 12. Plaintiff Jo Ella Nashadka is a current resident of Oakmont of Mariner Point in  
24 Alameda, California who moved into the facility in June 2015. At all times relevant to this  
25 complaint, Ms. Nashadka is and was an elder as defined under California Welfare & Institutions  
26 Code section 15610.27 and a senior citizen as defined under California Civil Code section 1761(f).

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1 Jo Ella Nashadka is and was at all times herein mentioned a resident of the State of California.  
 2 She brings this action on behalf of herself and all others similarly situated.

3 13. Plaintiff Joan Burton-Whitaker is a former resident of Oakmont of Mariner Point in  
 4 Alameda, California who resided at the facility from February 16, 2016 until June 15, 2017. At all  
 5 times relevant to this complaint, Ms. Burton-Whitaker is and was an elder as defined under  
 6 California Welfare and Institutions Code section 15610.27 and a senior citizen as defined under  
 7 California Civil Code section 1761(f). Joan Burton-Whitaker is and was at all times herein  
 8 mentioned a resident of the State of California. She brings this action on behalf of herself and all  
 9 others similarly situated.

10 **Defendant**

11 14. Defendant is a California limited liability company with its principal place of  
 12 business in Windsor, California. On information and belief, William P. Gallaher is one of its  
 13 members and is a resident of Sonoma County in California.

14 15. Oakmont owns and operates all of the real estate and buildings, and it holds the  
 15 licenses for approximately twenty three (23) assisted living facilities in California under the  
 16 Oakmont name.

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

24 **JURISDICTION AND VENUE**

25 17. This Court has jurisdiction over all causes of action asserted herein. Defendant is a  
 26 resident of California. It has sufficient minimum contacts in California or otherwise intentionally  
 27 prevails itself of the California market through ownership and management of 23 assisted living  
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1 facilities located in California, derivation of substantial revenues from California, and other  
2 activities, so as to render the exercise of jurisdiction over Defendant by the California courts  
3 consistent with traditional notions of fair play and substantial justice.

4 18. Venue is proper in Alameda County under Code of Civil Procedure section 395(a),  
5 Business & Professions Code section 17203, and Civil Code section 1780, based on the facts,  
6 without limitation, that: This Court is a court of competent jurisdiction; Defendant conducts  
7 substantial business in this county, including but not limited to the management and ownership of  
8 Oakmont of Mariner Point and Oakmont of Cardinal Point, a portion of Defendant's liability arose  
9 in this county; and the acts upon which this action is based occurred in part in this county.

10 **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

11 19. Assisted living facilities, also called Residential Care Facilities for the Elderly  
12 ("RCFEs"), offer room, board, and daily assistance for seniors in certain activities of daily living  
13 ("ADLs"), such as preparing meals, shopping, transportation, preparing and taking medication,  
14 housekeeping, laundry, grooming, bathing, toileting, and others.

15 20. Assisted living facilities are intended to provide a level of care appropriate for  
16 those who are unable to live by themselves, but who do not have medical conditions requiring  
17 more extensive nursing care and significant assistance with most of their ADLs. Oakmont's  
18 assisted living facilities also have Memory Care units, which serve individuals with dementia and  
19 other cognitive disorders.

20 21. In recent years, Oakmont has increasingly been accepting and retaining more  
21 residents with conditions and care needs that were once handled almost exclusively in skilled  
22 nursing facilities. This has allowed it to increase not only the potential resident pool but also the  
23 amount of money charged to residents and/or their family members.

24 22. At Oakmont facilities, residents are charged a base rate, which includes room,  
25 board, and basic maintenance, cleaning and laundry. Oakmont assesses each resident before  
26 admission and then again each year and/or whenever there is a change of the resident's condition.  
27 By performing these assessments, Oakmont determines what additional services a resident needs,  
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1 such as assistance with ADLs. Each additional need correlates to a number of points, which  
 2 depend on how much more time Oakmont staff must spend caring for the resident and what type  
 3 of staff should perform the services. The total number of points is multiplied by a dollar amount  
 4 resulting in a monthly fee charge. Thus, the higher the points assessed, the more money  
 5 Defendant charges the resident.

6 **Uniform Representations in Oakmont's Standardized Contracts**  
 7 **and Other Corporate Materials**

8 23. Defendant represents to residents, family members and the general public that the  
 9 Oakmont resident assessment system will be used to determine and then provide the amount of  
 10 caregiver time Oakmont has itself decided that residents require. The resident assessment is used  
 11 to determine the amount residents are charged for the services and care that Oakmont has  
 12 determined is necessary.

13 24. Oakmont makes the affirmative representation to each resident in its standardized  
 14 contracts, specifically in Section 1.B of the Oakmont Residence and Services Agreement  
 15 "Residence Agreement") that it:

16 will provide YOU with personal assistance and care on an as needed basis. ...  
 17 When You applied for admission to the Community, Oakmont's professional staff  
 18 performed a comprehensive assessment of your needs ... Oakmont will perform  
 19 reassessments in light of your changing needs to determine the services that You  
 20 may require. You will receive the services appropriate to your individual need.

21 25. The Residence Agreement further provides in Section 24:

22 Each service is assigned a number of points that take into account the time to  
 23 perform the task, the average wage of the staff position performing the task, and  
 24 the frequency of the task. The number of points is multiplied by a dollar point  
 25 value ... to arrive at a monthly cost. If Levels of Care are utilized the number of  
 26 points will be used to determine a Level which is assigned a monthly cost.

27 26. Section 1.C. of the Residence Agreement represents that Oakmont will disclose to  
 28 each resident any changes to their "service package" after annual reassessments or reassessments  
 performed due to a change in condition.

29 27. Appendix A to each Residence Agreement states that "Care fees are charged based  
 on assessment points for a resident in assisted living." Residents in the Memory Care units are  
 charged "based on care levels associated with each resident's individual assessment and the level

1 of their specific needs.” For those residents, there are five levels that are assigned a range of  
2 points (e.g., Level 1 is 0-75 points, Level 2 is 27-150 points, and so on) with a corresponding  
3 monthly charge.

4 28. Oakmont does not disclose anywhere in the Residence Agreement that these points,  
5 or the resident assessment process from which the assigned points are derived, are totally  
6 unrelated to the budgets for staffing at each facility.

7 29. The Individualized Service Plan and Resident Assessment prepared for each  
8 resident represents that staffing will be based on the point-value system through the resident  
9 reassessment program. Specifically, the service plan assigns each task to a particular job category  
10 (i.e. Care Provider, Health Services Director) and indicates how the need will be met *by staff*. For  
11 example, under the category “Assistive Devices,” a service plan might list the following need:  
12 “Resident uses one assistive device such as a cane, walker, wheelchair, hospital bed, overlay  
13 mattress or a fall mat.” The “Task Description” listed is “Encourage and/or assist the resident  
14 with using and cleaning the assistive device,” and the “Responsible Party” listed is “Care  
15 Provider.” The corresponding Resident Assessment assigns five (5) points for this service.  
16 Oakmont adds fewer points to the total when a service requires less staff time. For example, a  
17 resident whose listed need is “Resident has Diabetes. Self Manages glucose monitoring,” may be  
18 assessed only one (1) point because the only staff time involved is “Assess ability to self-monitor  
19 glucose levels” as opposed to the more time-intensive task of monitoring glucose levels  
20 throughout the day. These statements underline the obvious—care can only be provided by  
21 people/staff, and a resident who has additional needs requires additional staff time. The promise  
22 of additional staff time is what allows Oakmont to charge these residents more.

23 30. In a standardized brochure provided to prospective residents and their families,  
24 Oakmont advertises that its “Wellness Center and full-time nurse are available to assist with all of  
25 your daily needs.” The same brochure also states, “Services are appropriately tailored to each  
26 resident’s needs and our professional staff provides individualized assistance 24-hours a day. Care  
27 services are additional and based on a fee for service basis.” The clear message to the consuming  
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1 public, including Plaintiff and the putative class, is that Oakmont will provide sufficient numbers  
2 of trained staff to provide individualized care to each resident, and residents will pay only for the  
3 care received.

4 31. Because these representations are presented through form contracts and other  
5 standardized corporate materials, potential and current residents of Oakmont facilities reasonably  
6 understand them to be representations of the policies and procedures followed by Oakmont both  
7 for determining the needs of facility residents and for allocating the resources necessary to ensure  
8 sufficient numbers of trained staff in California facilities to meet those needs.

9 32. Based on these representations, Plaintiffs, the putative class members, and the  
10 general consuming public reasonably expect that Oakmont sets and modifies its budget in a  
11 manner that ensures adequate numbers of trained and qualified staff are available to meet all  
12 current resident needs based on their comprehensive needs assessments and the number and type  
13 of staff hours Oakmont has itself determined are necessary to satisfy those needs.

#### 14 **Oakmont's Non-Disclosure and Concealment**

15 33. Contrary to the express and implied representations in the Oakmont standardized  
16 contract and other uniform written statements, Oakmont does not use the resident assessment  
17 system or assessment points to determine staffing or set staffing budgets at its facilities. Oakmont  
18 does not disclose this material fact from the residents, their family members, and the general  
19 public.

20 34. Plaintiffs are informed and believe, and on that basis allege, that Oakmont has the  
21 capability to determine, to the minute, the number and type of staff required to meet the aggregate  
22 care points promised to residents. With its resident assessment system, Oakmont can calculate the  
23 number and type of staff needed by a facility for the population or group of residents therein  
24 viewed as a whole on any given shift based on the evaluated needs and assessed points of  
25 residents. While Defendant uses this resident assessment system to set and charge monthly rates,  
26 it does not use the resident assessment system to set budgets that ensure its facilities have the  
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1 number and type of staff available to provide the necessary services identified in residents'  
2 assessments.

3       35. Each year, Oakmont's corporate headquarters sets budgets, including labor  
4 budgets, and operating income targets for each facility to meet desired profit margins. On  
5 information and belief, as reflected in various corporate policies and procedures, Oakmont directs  
6 its Executive Directors ("EDs") that their paramount concern should be staying within their pre-  
7 determined budgets so that Oakmont can meet or exceed operating income targets, regardless of  
8 the impact on the care and staffing needs of facility residents. EDs of Oakmont facilities may not  
9 increase their budgets without approval from corporate headquarters. Job postings for facility  
10 Executive Directors on Oakmont's website state that the ED must "[a]ssure[] implementation of  
11 all operating and financial controls required under company policy . . . [and] [c]onsider[] all  
12 expenditures within the constraints of budget." The ED is also "[r]esponsible for the annual  
13 budget and financial performance of the community, operating within the approved budget,  
14 meeting or exceeding established outcomes and company's targeted operating income."  
15 [https://www.ziprecruiter.com/jobs/oakmont-senior-living-431f7b3f/executive-directors-luxury-](https://www.ziprecruiter.com/jobs/oakmont-senior-living-431f7b3f/executive-directors-luxury-senior-communities-throughout-california-a3e22307?same_org_id=1&source=ziprecruiter_companyjobs_list_us)  
16 [senior-communities-throughout-california-](https://www.ziprecruiter.com/jobs/oakmont-senior-living-431f7b3f/executive-directors-luxury-senior-communities-throughout-california-a3e22307?same_org_id=1&source=ziprecruiter_companyjobs_list_us)  
17 [a3e22307?same\\_org\\_id=1&source=ziprecruiter\\_companyjobs\\_list\\_us](https://www.ziprecruiter.com/jobs/oakmont-senior-living-431f7b3f/executive-directors-luxury-senior-communities-throughout-california-a3e22307?same_org_id=1&source=ziprecruiter_companyjobs_list_us), last visited September 12,  
18 2017).

19       36. On information and belief, Oakmont gives EDs and other divisional and regional  
20 managers a disincentive to request more resources for staffing, including more caregiver positions,  
21 training hours, or increases in salaries, because under corporate compensation policies, they can  
22 only receive a bonus if they meet earnings targets set in advance by corporate headquarters. Some  
23 EDs attempt to bridge the gap between residents' assessed needs and available staff hours by using  
24 outside agencies to hire contract caregivers to fill in as needed on a temporary basis. But these  
25 caregivers often provide substandard care because they are untrained and unfamiliar with  
26 Oakmont's policies and practices, as well as the individualized needs of each resident. Further,  
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1 EDs who regularly hire contract caregivers also run the risk of exceeding their operating budgets,  
2 and, consequently, foregoing their bonuses and eventually losing their jobs.

3 37. Former Oakmont employees and current and former residents confirm that there are  
4 seldom enough staff in each facility to meet residents' needs, a problem that is compounded by a  
5 high degree of staff turnover. Because of this turnover, new staff are constantly cycling through,  
6 and many positions remain unfilled for long periods of time. Staff who have worked in the facility  
7 longer end up shouldering more of the workload, including training new staff, and become  
8 overwhelmed with tasks, causing them to make mistakes or fail to provide services to all residents  
9 who require them. Moreover, training that must be provided by law for both new and veteran staff  
10 is often cut short or not given at all because staff are too busy and stretched too thin to take time  
11 away from their daily responsibilities, and Oakmont does not approve overtime for staff to receive  
12 training outside of their regularly scheduled shifts.

13 38. Former employees also report that Oakmont does not build relief coverage into its  
14 schedules to cover absences. Caregivers are responsible for finding someone to cover their shifts  
15 when they want to take days off, but since the facilities are usually short-staffed, there is typically  
16 no one available to cover for them. Consequently, some employees call in sick or do not show up  
17 to work, and the position is not filled for the duration of that shift.

18 39. As a result of Oakmont's failure to use its resident assessment system care points in  
19 allocating staffing resources to each facility, there are not enough trained caregivers to provide  
20 necessary services to residents on a consistent basis. Further, because Oakmont's failure to use its  
21 residential assessment system for staffing decisions results in insufficient numbers of trained staff  
22 in each facility, Oakmont's residents run the continuing risk of not having their care needs met and  
23 of suffering frustration, pain, discomfort, humiliation, and/or injury from inadequate care and  
24 supervision.

25 40. The consequences of Oakmont's policy and standard operating procedure of  
26 prioritizing profit over care by using pre-determined and inflexible staffing budgets designed to  
27 maximize revenue are significant. They include, but are not limited to: resident falls and injuries,  
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1 injuries left untreated, unexplained injuries, elopements, slow or no responses to resident call  
2 buttons, failures to assist with toileting resulting in incontinence, inconsistent incontinence care  
3 resulting in residents sitting in soiled and/or wet briefs for long periods of time, urinary tract  
4 infections, dehydration, residents assaulting other residents, medication errors, and inadequate  
5 grooming and hygiene assistance.

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

7 41. Defendant's misrepresentations and the facts it does not disclose are material to the  
8 reasonable consumer. An important and significant factor in choosing an Oakmont facility is the  
9 availability of trained staff to consistently provide the services identified as needed in  
10 individualized assessments. A policy and practice of providing sufficient numbers of adequately  
11 trained staff as determined through comprehensive assessments of residents' care needs, such as  
12 the system Oakmont represents it uses, is likely to ensure that residents' care needs are met and  
13 will be met in the future.

14 42. Oakmont knows that prospective residents consider the availability of trained staff  
15 sufficient to address each resident's needs when choosing an assisted living facility. Each  
16 Oakmont facility website represents that "[s]ervices are appropriately tailored to each resident's  
17 needs and professional staff provides individualized assistance 24 hours a day." (See, e.g.,  
18 "Continuum of Care", <http://www.fountaingrovelodge.com/>, last visited on September 12, 2017.)  
19 The website also represents that Oakmont "residents experience peace of mind knowing Oakmont  
20 offers a 24-hour care staff to assist with all of your daily living needs in the privacy of your own  
21 home." (See, e.g., <http://oakmontofvillacapri.com/about-us/>, last visited on September 12, 2017.)

22 43. Oakmont's promise to provide the care services (through facility staff) that each  
23 resident requires as calculated by the resident assessments conducted by Oakmont is material to  
24 prospective residents and their family members. Further, residents (and their family members)  
25 reasonably expect that Oakmont will provide the overall number and type of trained staff  
26 sufficient to meet all of the assessed needs of all facility residents. The availability of trained staff  
27 sufficient to provide the care necessary to meet assessed resident needs is a substantial factor (and  
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1 often the most important factor) in deciding to enter an assisted living facility. The named  
2 plaintiffs would not have agreed to enter or place their family members into Oakmont facilities, if  
3 they had known that, although Defendant would charge them based on the staffing associated with  
4 their assessed care points, Defendant would use pre-determined labor budgets for staffing and  
5 those budgets would remain static despite the aggregate results of residents' assessments and  
6 related care points. Likewise, members of the putative class would in all reasonable probability  
7 not have entered Oakmont's facilities if they had known that Oakmont did not and does not use its  
8 resident assessment system and the care points generated by it when allocating expenditures for  
9 staffing at its facilities.

10 44. This is true even for residents who currently are practically independent. These  
11 residents choose an assisted living facility as opposed to remaining at home or moving into an  
12 independent living community because they wish to "age in place." They may not need  
13 significant assistance with the activities of daily living initially upon admission, but they expect to  
14 become more dependent as they age and do not want to move yet again when that happens.  
15 Oakmont represents that its facilities offer a "continuum of care" to provide a range of services,  
16 from independent living to the availability of a full-time nurse onsite, to meet residents' needs as  
17 they age and require more care.

18 45. A key factor for these residents in selecting Oakmont is that trained staff will be  
19 available to provide the care services that Oakmont itself has determined are necessary to meet  
20 assessed residents' needs, both now and as those needs, and corresponding care services fees,  
21 increase.

22 46. Oakmont has a duty to disclose to the consuming public that resident assessments  
23 and assigned care points are not used to set staffing budgets at Oakmont facilities because of,  
24 among other things, the inherent and substantial safety risk to current and future residents from  
25 Oakmont's conduct, particularly as Defendant serves a vulnerable population that needs  
26 assistance. The non-disclosure is material because Oakmont knows that its conduct risks the  
27 safety of its residents. Yet, Oakmont has failed to disclose and actively conceals from residents,  
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1 prospective residents, and their family members the true facts about its corporate policy and  
2 practice of prioritizing profit over resident care.

### 3 **Barriers to Moving Out**

4 47. Defendant's misrepresentations affect not only the decision of residents to enter an  
5 Oakmont facility, but also the decision to stay there.

6 48. In choosing assisted living in general and an Oakmont facility in particular, the  
7 resident forgoes other options such as his or her former home, a senior community, or other  
8 facilities where the resident can try to build a new community. Once in a facility, there are  
9 significant financial, physical, emotional, and other burdens for the residents that are triggered if  
10 they terminate residency, including impacts such as "transfer trauma." Oakmont is aware of these  
11 burdens, and makes the representations described herein with the knowledge that it will be  
12 difficult for residents to leave its facilities once they are enticed to enter based on its  
13 misrepresentations.

14 49. After luring residents into the facility through its misrepresentations and misleading  
15 statements, Oakmont increases residents' care points during re-assessments and does not  
16 consistently provide copies of those assessments to the residents. Residents often do not become  
17 aware that their care points have increased until they receive an invoice that charges them more for  
18 care services. Oakmont's invoices do not identify the number of care points or specific care  
19 services that will or have been provided. Oakmont's billing practices and failures to disclose its  
20 assessments and care points obfuscate its staffing practices by making it difficult for residents to  
21 compare what services they are paying for against what services staff are providing to them.

22 50. Oakmont thereby unjustly continues to profit from the original fraud by  
23 perpetuating its misrepresentations and failures to disclose.

### 24 **Named Plaintiffs' Experiences at Oakmont Facilities**

#### 25 **Donald Lollock**

26 51. Donald Lollock ("Mr. Lollock") has Parkinson's Disease and dementia, and lived  
27 in the Memory Care unit at Oakmont of Villa Capri in Santa Rosa, California from June 2013 to  
28

1 September 2016. He currently lives in another facility not affiliated with Defendant. Before  
2 Mr. Lollock moved in, his wife, Kathy Lollock ("Mrs. Lollock"), toured the Villa Capri facility  
3 and met with its executive staff. She relied on Oakmont's representations in choosing the facility  
4 over others she considered.

5 52. Oakmont provided Mrs. Lollock with a standard contract under which it promised  
6 to provide certain core services in exchange for a monthly base rate. Additionally, the contract  
7 stated that Oakmont would provide Mr. Lollock:

8 with personal assistance and care on an as needed basis. ... When You applied for  
9 admission to the Community, Oakmont's professional staff performed a  
10 comprehensive assessment of your needs. Oakmont will perform reassessments  
11 in light of your changing needs to determine the services that You may require.  
12 You will receive the services appropriate to your individual need.

13 The contract further provided:

14 Each service is assigned a number of points that take into account the time to  
15 perform the task, the average wage of the staff position performing the task, and  
16 the frequency of the task. The number of points is multiplied by a dollar point  
17 value ... to arrive at monthly cost. If Levels of Care are utilized the number of  
18 points will be used to determine a Level which is assigned a monthly cost.

19 53. On behalf of Mr. Lollock, as his power of attorney, Mrs. Lollock read and  
20 reasonably understood Oakmont's representations in the contract to mean that Oakmont would  
21 perform an assessment of her husband, assign him a certain number of points based on the services  
22 he required, and charge him fees based on those points. She reasonably expected that Oakmont  
23 staff would provide the services identified as necessary in the assessments, and that his points, and  
24 related charges, would increase as he required more services from staff. She expected that  
25 Oakmont would sufficiently staff the facility to provide the services for which Mr. Lollock would  
26 be charged. Mrs. Lollock read and relied on the representations in the contract in making the final  
27 decision to place Mr. Lollock in the Memory Care unit at Oakmont of Villa Capri.

28 54. Mr. Lollock paid \$3,532 for the first month's rent, \$1,676 for the first month's care  
fees, and a Community Fee of \$5,000. Over the course of his stay, his fees increased to an  
average of around \$10,800 a month.

1           55.     Beginning in approximately December 2015, Mr. Lollock's family members began  
2 to observe that the Villa Capri facility was short-staffed. In January 2016, for example, during an  
3 evening shift, only one Oakmont caregiver was available in the Memory Care unit for more than a  
4 dozen residents with dementia who required assistance with feeding, toileting, ambulating,  
5 showering, and other activities of daily living. Managers would pull the caregivers from the  
6 Memory Care unit to work in the assisted living unit, and sometimes attempt to fill the staffing  
7 gaps in the Memory Care unit with contract caregivers who were not trained generally, let alone to  
8 care for persons with dementia, or familiar with the residents. Mr. Lollock suffered from a deep  
9 gash on his leg after one of the contract caregivers attempted to transfer him. The constant  
10 changing of staff due to turnover and use of contract workers was confusing and alarming for  
11 residents with dementia.

12           56.     Oakmont did not consistently provide the continence and hygiene care that  
13 Mr. Lollock required and that he paid for. Staff did not take him to the toilet every two hours as  
14 he required, and Mrs. Lollock frequently discovered her husband in urine soaked pants. When he  
15 was prescribed an antibiotic that gave him diarrhea, staff did not consistently take him to the toilet  
16 immediately after meals as he required to avoid soiling his pants. He paid for showers three times  
17 a week and was unable to clean himself after bowel incontinence episodes, but Mrs. Lollock  
18 sometimes found Mr. Lollock with feces crusted around his groin. He suffered from terrible  
19 rashes as a result. One night the only available caregiver to assist Mr. Lollock was much smaller  
20 than he, and Mrs. Lollock had to assist the caregiver in transferring Mr. Lollock to the toilet and in  
21 performing hygiene tasks.

22           57.     Oakmont staff sometimes left Mr. Lollock alone and unsupervised for long periods  
23 of time. Mrs. Lollock arrived at the facility unexpected on one occasion to find Mr. Lollock  
24 sliding almost entirely out of his wheelchair. She found him on another occasion napping in his  
25 recliner without his fall alarm and the door to his room closed. Mr. Lollock has difficulty using  
26 his call pendant, and leaving him alone in this way made it nearly impossible for him to call for  
27 help or for staff to find him if he fell or had an emergency. Another time Mrs. Lollock was  
28

1 dismayed to find her husband on the floor. In May 2016, Mr. Lollock had a broken rib that  
 2 Oakmont could not explain.

3 58. Mrs. Lollock notified Oakmont managers on several occasions in 2016 that she was  
 4 concerned about the inadequate care provided to her husband. She also notified them that, despite  
 5 her concerns, it would be too stressful for Mr. Lollock to move. Most of the time, in response,  
 6 Oakmont reassured her that her concerns would be addressed. Knowing that a move would be  
 7 extremely disruptive for her husband and likely accelerate his decline, Mrs. Lollock was torn  
 8 about transferring Mr. Lollock from the facility. In June 2016, however, Oakmont managers  
 9 pressured Mrs. Lollock into moving her husband out of the facility, which she did as soon as a bed  
 10 became available in his current facility.

#### 11 Abdulwafi Khan

12 59. Abdulwafi Khan ("Mr. Khan") had dementia and lived in the Memory Care unit at  
 13 Oakmont of Mariner Point in Alameda, California from October 30, 2015 until he died on  
 14 December 11, 2016. His daughter, Zareen Khan ("Ms. Khan"), chose Oakmont of Mariner Point  
 15 over other facilities after touring the facility, reviewing the marketing materials, and meeting with  
 16 the marketing staff who promised that her father's needs would be met.

17 60. Oakmont provided Ms. Khan with a standard contract under which it promised to  
 18 provide certain core services in exchange for a monthly base rate. Additionally, the contract stated  
 19 that Oakmont would provide Mr. Khan:

20 with personal assistance and care on an as needed basis. ... When You  
 21 applied for admission to the Community, Oakmont's professional staff  
 22 performed a comprehensive assessment of your needs. Oakmont will  
 23 perform reassessments in light of your changing needs to determine the  
 services that You may require. You will receive the services appropriate  
 to your individual need.

24 The contract further provided:

25 Each service is assigned a number of points that take into account the time  
 26 to perform the task, the average wage of the staff position performing the  
 task, and the frequency of the task. The number of points is multiplied by  
 27 a dollar point value ... to arrive at monthly cost. If Levels of Care are  
 utilized the number of points will be used to determine a Level which is  
 28 assigned a monthly cost.

1        61. On behalf of Mr. Khan, as his power of attorney, Ms. Khan read and reasonably  
2 understood Oakmont's representations in the contract to mean that Oakmont would perform an  
3 assessment of her father, identify the services he needed, provide the services, and charge her for  
4 the services provided. She reasonably expected that Oakmont would ensure that enough trained  
5 staff were available to provide the needed services. Ms. Khan read and relied on the  
6 representations made in the contract in making the final decision to admit her father to Oakmont of  
7 Mariner Point.

8        62. At the time of move-in, Mr. Khan paid a prorated amount of \$1,567 for the first  
9 month's rent. He also paid a Community Fee of \$6,500. Thus, the total amount he paid upon  
10 move-in was \$8,067.

11        63. Not long after her father moved in, Ms. Khan noticed that there were not enough  
12 staff to supervise and regularly engage with her father and other residents. Oakmont promised that  
13 staff would provide activities to its residents throughout the week, but the "activities" were mainly  
14 watching television and playing bingo, facilitated by a machine (not staff) that called out the  
15 numbers. Sometimes when Ms. Khan arrived at the facility, she could not find her father. When  
16 she asked caregivers where he was, they did not know and would have to search the facility room-  
17 by-room to find him. She saw that her father's roommate regularly pulled out his catheter, and  
18 that no staff checked on him to replace it. Ms. Khan received calls repeatedly from Oakmont  
19 because staff found her father on the floor after unwitnessed falls in various locations throughout  
20 the facility and could not say how long he might have been waiting for someone to find and help  
21 him up off the floor. Oakmont increased Mr. Khans's care fees due to his falls, but did not  
22 provide increased services in exchange for those fees.

23        64. Oakmont sent Mr. Khan to the emergency room alone approximately five or six  
24 times and did not always follow its own procedures to timely notify Ms. Khan. Ms. Khan would  
25 arrive at the emergency room to find her father agitated, confused, and distressed, because he was  
26 alone and did not understand where he was and why he was there. Despite knowing that  
27 Oakmont's practice of sending Mr. Khan and other residents to the hospital unattended  
28

1 traumatized those residents, Oakmont staff told Ms. Khan that that there were not enough  
2 caregivers to accompany its residents on emergency room visits.

3 65. Oakmont did not bathe Mr. Khan according to his care plan; he often spent weeks  
4 without a bath or shower. When Ms. Khan asked staff why they were not bathing her father, they  
5 claimed he refused. However, it was not clear what, if any, interventions staff attempted to try to  
6 bathe Mr. Khan. Towards the end of his life, Mr. Khan's insurance paid for an outside hospice  
7 agency to bathe him. Oakmont consistently refused to reduce the care fees for bathing even when  
8 it provided this service very rarely, if at all, to Mr. Khan.

9 66. Mr. Khan received substandard care from the contract caregivers frequently  
10 assigned to the Memory Care Unit. For example, he paid for and required a diabetic diet, and the  
11 only meat he ate was seafood. But Ms. Khan witnessed contract caregivers provide her father with  
12 fruit juice and chicken soup, both prohibited due to his health condition and/or religious beliefs.

13 67. Although Oakmont was not providing the services paid for by Mr. Khan, his  
14 dementia would have made it traumatic for him to move to another facility. He had connected  
15 with some of the few long-term caregivers on staff, and that consistency, as well as the familiar  
16 surroundings, was necessary for his mental health to remain stable. Ms. Khan thought it would be  
17 better to work with staff to improve her father's care, and staff always reassured her that her father  
18 would be taken care of when she brought concerns to their attention. Mr. Khan died while on  
19 hospice care in the facility.

20 **Frank Pearson**

21 68. Frank Pearson is a current resident of Oakmont of Mariner Point in Alameda,  
22 California. He and his wife, Charmaine Pearson, moved to Oakmont of Mariner Point in June  
23 2015, soon after it was built. Before they moved in, they visited Oakmont's nearby facility,  
24 Oakmont of Cardinal Point, reviewed Oakmont's marketing materials, and met with Oakmont  
25 executive staff during a Oakmont-hosted luncheon at an Oakland restaurant on November 1, 2014.  
26 During the luncheon, Oakmont staff told the Pearsons and other prospective residents that  
27 Oakmont of Mariner Point would have nurses on site and plenty of caregivers to meet their needs.  
28

1 After considering all of Oakmont's representations, including those about staffing, the Pearsons  
2 paid a deposit of \$2,000 to hold an apartment at Oakmont of Mariner Point when construction was  
3 completed.

4 69. Oakmont provided the Pearsons with a standard contract on or around June 9, 2015  
5 under which it promised to provide certain core services in exchange for a monthly base rate.

6 Additionally, the contract stated that Oakmont would provide Mr. Pearson:

7 with personal assistance and care on an as needed basis. ... When You applied for  
8 admission to the Community, Oakmont's professional staff performed a  
9 comprehensive assessment of your needs. Oakmont will perform reassessments  
10 in light of your changing needs to determine the services that You may require.  
11 You will receive the services appropriate to your individual need.

12 The contract further provided:

13 Each service is assigned a number of points that take into account the time to  
14 perform the task, the average wage of the staff position performing the task, and  
15 the frequency of the task. The number of points is multiplied by a dollar point  
16 value ... to arrive at monthly cost. If Levels of Care are utilized the number of  
17 points will be used to determine a Level which is assigned a monthly cost.

18 70. Mr. Pearson read and reasonably understood Oakmont's representations in the  
19 contract to mean that Oakmont would use the resident assessments to determine staffing levels  
20 such that he and other residents would receive the staff time needed to provide the care promised  
21 in the assessments and service plans. He reasonably expected that if his care needs increased,  
22 Oakmont staff would spend more time caring for him. Mr. Pearson read and relied on the  
23 representations made in the contract in making the final decision to enter Oakmont of Mariner  
24 Point.

25 71. At the time of move-in, Mr. Pearson was charged a pro-rated amount for the first  
26 month's rent (\$5,790), a pro-rated amount for the first month's care fees (\$308), and a non-  
27 refundable pet deposit of \$1,000. Thus, the total amount he paid to enter Oakmont was \$7,098.  
28 Mr. Pearson currently pays \$8,369 for rent, and his care fees have ranged from an additional \$105  
to \$1,092 a month.

72. Within the first few months of moving in, Mr. Pearson began having trouble  
receiving the care he needs from staff. Mr. Pearson was provided with a call-button to alert staff

1 when he needs them, and it is not uncommon for staff to take 45 minutes to respond when he  
2 pushes it. Also, many of the care providers are small and do not have the strength to assist Mr.  
3 Pearson in the shower one-on-one, but there are not enough staff available to provide him with a  
4 two-person assist. Mrs. Pearson, who moved into the facility in part because of back problems,  
5 typically helps Mr. Pearson shower, with the care provider, because the only available care  
6 provider does not have the strength to do it alone. On one occasion, Mrs. Pearson had to reach  
7 into the shower and grab Mr. Pearson, with the assistance of the care provider, to keep Mr.  
8 Pearson from falling. The Pearsons have also noticed that the care providers are often rushed and  
9 do not complete care tasks because they have so many residents under their care. In addition, the  
10 Pearsons have observed that despite an increase in the number of residents who use wheelchairs  
11 and require more assistance, the number of staff has remained the same.

12 73. Although the Pearsons are dissatisfied with Oakmont, it is too hard for them to  
13 move to another facility. Due to their age and impairments, it would be overwhelming, not to  
14 mention expensive, to find another facility, pack, move and unpack all of their belongings. They  
15 do not wish to burden their families, many of whom live in other states, by asking for help. Mr.  
16 Pearson's health is fragile, and Mrs. Pearson fears the detrimental impact a move would have on  
17 it.

18 **Jo Ella Nashadka**

19 74. Jo Ella Nashadka is a current resident of Oakmont of Mariner Point in Alameda,  
20 California. She moved to Oakmont of Mariner Point in June 2015. Before she moved in, her son,  
21 Lance Anderson, toured the facility, reviewed Oakmont's marketing materials, and met with  
22 Oakmont marketing staff. After considering all of Oakmont's representations, Mr. Anderson paid  
23 a deposit of \$2,000 in May 2015 on behalf of his mother to hold an apartment at Oakmont of  
24 Mariner Point.

25 75. Oakmont provided Mr. Anderson with a standard contract on or around June 9,  
26 2015 under which it promised to provide certain core services in exchange for a monthly base rate.  
27 Additionally, the contract stated that Oakmont would provide Ms. Nashadka:  
28

1 with personal assistance and care on an as needed basis. ... When You applied for  
2 admission to the Community, Oakmont's professional staff performed a  
3 comprehensive assessment of your needs. Oakmont will perform reassessments  
4 in light of your changing needs to determine the services that You may require.  
5 You will receive the services appropriate to your individual need.

6 The contract further provided:

7 Each service is assigned a number of points that take into account the time to  
8 perform the task, the average wage of the staff position performing the task, and  
9 the frequency of the task. The number of points is multiplied by a dollar point  
10 value ... to arrive at monthly cost. If Levels of Care are utilized the number of  
11 points will be used to determine a Level which is assigned a monthly cost.

12 76. Mr. Anderson reviewed the representations in the contract and reasonably  
13 understood them to mean that Oakmont would perform assessments of his mother, and based on  
14 those assessments, assign her a certain number of care points. He understood that Oakmont would  
15 charge his mother for each care point assessed and those care points would reflect the amount of  
16 time staff would spend providing services to mother. He reasonably expected that Oakmont  
17 would ensure sufficient numbers of trained staff to provide the services his mother required and  
18 paid for. Mr. Anderson read and relied on Oakmont's representations in the contract in making  
19 the final decision to admit Ms. Nashadka into Oakmont of Mariner Point.

20 77. At the time of move-in, Ms. Nashadka was charged a Community Fee of \$2,000  
21 and a pro-rated amount for the first month's rent (\$3,633). Thus, the total amount she paid to  
22 enter Oakmont was \$5,633. Ms. Nashadka currently pays \$5,127 for rent, and her care fees have  
23 ranged from an additional \$241 to \$4,380 a month.

24 78. Within the first several months, Ms. Nashadka began telling Mr. Anderson about  
25 problems related to understaffing, including that staff was not responding to her call-button when  
26 she pressed it for help. In approximately November 2015, for example, Ms. Nashadka called her  
27 son distressed in the middle of the night because she was recuperating from a broken shoulder  
28 after a fall and staff would not respond to her call button to help her turn on the light in her  
apartment and ambulate to the toilet. Alone and in pain in the dark, she was forced to urinate in  
her bed. Mr. Anderson complained to the executive director the next morning, who reassured him  
the problem would be addressed, but staff still fail to consistently respond to his mother's call

1 button within a reasonable amount of time. Ms. Nashadka felt and continues to feel afraid of  
2 being dependent on staff that are not consistently available to help her.

3 79. Mr. Anderson has also noticed that staff does not consistently provide the services  
4 for which Oakmont is charging his mother. Specifically, staff often fail to provide assistance with  
5 toileting and transferring, even though Oakmont represented in service plans that these services  
6 were required and charges Ms. Nashadka accordingly. As a result, Ms. Nashadka must perform  
7 these daily activities unassisted. In October 2015, Mr. Anderson discovered his mother alone on  
8 the floor after a fall, where she had been waiting at least 30 minutes for staff to help her. After  
9 this fall, Oakmont began charging her for "fall management," but the health services director  
10 could not reasonably explain to Mr. Anderson what services staff were providing in exchange for  
11 those fees. Ms. Nashadka has fallen at least twice more since she began paying for "fall  
12 management." Ms. Nashadka is also paying for staff to escort her throughout the facility, but staff  
13 does not come to her room to escort her for meals and she instead uses her walker unassisted.

14 80. Mr. Anderson has considered moving Ms. Nashadka out of Oakmont of Mariner  
15 Point, but has decided against it because he is concerned how another move might impact her  
16 health. She only just moved to Oakmont from Pennsylvania a little over two years ago, and she  
17 has since been transferred back and forth from a skilled nursing facility to rehabilitate from her  
18 broken shoulder. Each move has been stressful and disruptive to Ms. Nashadka's physical and  
19 mental health.

20 **Jane Burton-Whitaker**

21 81. Jane Burton-Whitaker is a former resident of Oakmont of Mariner Point from  
22 February 16, 2016 until June 15, 2017. She has multiple sclerosis and uses a motorized scooter.  
23 Before moving into Oakmont, Ms. Burton-Whitaker toured the facility, met with the Executive  
24 Director, and reviewed Oakmont's marketing materials. Oakmont represented to her that there  
25 would be enough staff in the facility to take care of her needs.

1       82.     Oakmont provided Ms. Burton-Whitaker with a standard contract under which it  
2 promised to provide certain core services in exchange for a monthly base rate. Additionally, the  
3 contract stated that Oakmont would provide Ms. Burton-Whitaker:

4             with personal assistance and care on an as needed basis. ... When You  
5 applied for admission to the Community, Oakmont's professional staff  
6 performed a comprehensive assessment of your needs. Oakmont will  
7 perform reassessments in light of your changing needs to determine the  
services that You may require. You will receive the services appropriate  
to your individual need.

8       The contract further provided:

9             Each service is assigned a number of points that take into account the time  
10 to perform the task, the average wage of the staff position performing the  
11 task, and the frequency of the task. The number of points is multiplied by  
a dollar point value ... to arrive at monthly cost. If Levels of Care are  
utilized the number of points will be used to determine a Level which is  
assigned a monthly cost.

12  
13       83.     Ms. Burton-Whitaker read and reasonably understood Oakmont's representations in  
14 the contract to mean that Oakmont staff would perform an assessments of her needs and assign her  
15 a certain number of care points based on those needs, and that those care points would reflect the  
16 frequency and type of services she required from staff to meet those needs. She reasonably  
17 expected that as her needs increased, her points would increase because she required more care  
18 from staff, and she would pay more for those increased levels of care. She further expected that  
19 Oakmont would ensure the facility had the staffing resources necessary to provide the services for  
20 all of the residents in the facility based on their assessment results. Ms. Burton-Whitaker read and  
21 relied on Oakmont's misrepresentations and misleading statements, including those in its  
22 standardized contract, in making the final decision to enter Oakmont of Mariner Point.

23       84.     At the time of move-in, Ms. Burton-Whitaker paid approximately \$5,000 for the  
24 first month's rent, and a Community Fee of \$600. Thus, the total amount she paid upon move-in  
25 was approximately \$5,600.

26       85.     After the first six months, Ms. Burton-Whitaker noticed that she did not  
27 consistently receive all of the services that Oakmont promised to provide in her resident  
28

1 assessments. For example, she paid Oakmont approximately \$270 a month for assistance with her  
2 urinary catheter, but staff came to change the catheter bag only once a day when it required  
3 changing several times a day. Ms. Burton-Whitaker paid Oakmont approximately \$153 a month  
4 to provide "skin checks" up to three times a day, but she is not aware of *any* skin checks  
5 performed by staff, let alone up to three times a day. She paid Oakmont approximately \$50 a  
6 month for "coordination of care by Community nurse" with an outside provider, but Ms. Burton-  
7 Whitaker handled her own care with outside providers and was not aware of Oakmont providing  
8 any services in this regard.

9       86. Staff did not always timely respond to Ms. Burton-Whitaker's call button.  
10 Sometimes she waited up to 45 minutes before staff responded, and other times staff did not  
11 respond at all and Ms. Burton-Whitaker had to leave her room to find staff herself. She witnessed  
12 staff fail to respond to residents who pushed their call button for help in the dining room and  
13 searched the facility for staff to help them. In early June 2017, at approximately 10 p.m., another  
14 resident came to Ms. Burton-Whitaker's room because her bed frame had collapsed and staff were  
15 not responding to her call button. Ms. Burton-Whitaker also pushed her call button and went  
16 searching for staff when they did not respond. She searched the second and third floors of the  
17 facility and could not find any staff. Ms. Burton-Whitaker then called the main phone number for  
18 the facility and reached a staff member in the Memory Care Unit on the first floor. Approximately  
19 45 minutes after Ms. Burton-Whitaker first pushed her call-button, a staff member arrived to help  
20 the resident.

21       87. Ms. Burton-Whitaker decided to leave Oakmont of Mariner Point because she was  
22 frustrated with its failure to deliver the services for which she was being charged. She was also  
23 afraid that Oakmont's failure to adequately staff the facility was jeopardizing her safety, and staff  
24 would not be available to help if she had a medical emergency.

25                                   **CLASS ALLEGATIONS**

26       88. The Named Plaintiffs bring this action as a class action pursuant to Cal. Code of  
27 Civ. Proc. section 382 as set forth below.

28

1           89. This action is brought on behalf of the named Plaintiffs and all similarly situated  
2 persons, and/or the successors-in-interest to the estates of similarly situated persons, who resided  
3 or reside at one of the California assisted living facilities owned and/or operated by Oakmont  
4 under the Oakmont name from September 13, 2013, through the present (the "Class Period"), and  
5 who contracted with Oakmont for services for which Oakmont was paid money.

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

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

16           92. Impracticability of Joinder (Numerosity of the Class). Members of the class are so  
17 numerous that their individual joinder herein is impracticable. The precise number of members of  
18 the class and their addresses are presently unknown to Plaintiff. Defendant currently owns and/or  
19 operates approximately 23 assisted living facilities in California. The number of residents at those  
20 facilities during the class period likely exceeds 4,000 individuals. The precise number of persons  
21 in the class and their identities and addresses may be ascertained from Defendant's records.

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

26           (a) whether Defendant has violated and continues to violate the Consumer  
27 Legal Remedies Act, California Civil Code section 1770 et seq., ("the CLRA") by falsely  
28

1 representing that Oakmont uses its resident assessment system and the care points generated by it  
2 to determine and provide staffing at its California assisted living facilities, when, in fact,  
3 Defendant does not and has no intention to do so;

4 (b) whether Defendant has violated and continues to violate the CLRA by  
5 promising residents that it will provide care and services when Defendant knows that its standard  
6 operating procedure and corporate policy of using pre-determined and static budgets to staff its  
7 facilities, without regard to the results generated by its resident assessment system, precludes it  
8 from providing its residents with all of the care they have been promised and places all residents at  
9 an inherent and significant risk that they will not receive the services they have paid for on any  
10 given day;

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

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

16 (e) whether by making the misrepresentations, misleading statements, and  
17 material omissions alleged in this Complaint, Defendant has violated and continues to violate the  
18 CLRA;

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

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

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

26

27

28

1 (i) whether the Plaintiffs, the Class and the consuming public have a  
2 reasonable expectation that Defendant will use its resident assessment system to determine the  
3 budgets for staffing at its facilities;

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

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

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

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

15 (n) whether Plaintiffs and the members of the Class have sustained injury;

16 (o) whether Plaintiffs and the members of the Class are entitled to damages,  
17 and the nature of such damages; and,

18 (p) whether Plaintiffs and the members of the Class are entitled to restitution,  
19 declaratory and injunctive relief and/or other relief, and the nature of such relief.

20 94. **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the  
21 Class. As alleged above, Defendant misrepresented to Plaintiffs and the class members and/or  
22 their family members that Defendant uses its resident assessment system to determine the care  
23 services to be provided by facility staff and to assess and bill residents for corresponding care  
24 points. The resident assessment system and care points generated by it allow Defendant to  
25 determine and provide the aggregate staffing Defendant has determined is necessary to meet the  
26 assessed needs of its residents, but in fact, Defendant does not use this critical information in  
27 budgeting for or determining staffing at its California facilities. Rather, Defendant has a policy of  
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1 setting a fixed budget for staffing, regardless of the results generated by its resident assessment  
2 system, which results in residents' not receiving all of the care they have paid for and/or being  
3 subjected to the inherent risk that, on any given day, facility staffing will be insufficient to provide  
4 the promised care for all residents. Further, as alleged above, Defendant has failed to disclose and  
5 concealed this material fact from the Named Plaintiffs and the members of the proposed class.  
6 Plaintiffs' claims are typical of the claims of the proposed class in the following ways: 1)  
7 Plaintiffs are members of the proposed class; 2) Plaintiffs' claims arise from the same uniform  
8 corporate policies, procedures, practices, and course of conduct on the part of Defendant; 3)  
9 Plaintiffs' claims are based on the same legal and remedial theories as those of the proposed class  
10 and involve similar factual circumstances; 4) the injuries suffered by the Named Plaintiffs are  
11 similar to the injuries suffered by the proposed class members; and 5) Plaintiffs seek a common  
12 form of relief for themselves and the members of the class.

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

17 96. Predominance. With respect to Plaintiffs' claims under the CLRA, the UCL, and  
18 the Elder Abuse Act, class certification is appropriate because questions of law or fact common to  
19 class members predominate over any questions affecting only individual members of the proposed  
20 class.

21 97. Superiority. Moreover, a class action is superior to other methods for the fair and  
22 efficient adjudication of the controversies raised in this Complaint because:

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

25 (b) relatively little individual litigation has been commenced over the  
26 controversies alleged in this Complaint, and individual class members are unlikely to have an  
27 interest in separately prosecuting and controlling individual actions;  
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1 (c) the concentration of litigation of these claims in one forum will achieve  
2 efficiency and promote judicial economy;

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

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

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

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

#### 14 15 **FIRST CLAIM**

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

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

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

21 101. 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 constitutes a "transaction" under California Civil  
26 Code section 1761(e).

1           102. In its uniform resident contracts presented to prospective residents and their family  
2 members, Defendant represented and continues to represent that Oakmont will provide care  
3 services (through its facility staff) that are sufficient to meet the needs of each resident, as  
4 determined by Oakmont's resident assessment system and confirmed in the care points assigned to  
5 each resident. That same representation is made in Oakmont's re-assessments of residents and  
6 other standardized corporate materials. As alleged herein, these uniform corporate representations  
7 are false and misleading, and are likely to deceive the reasonable consumer.

8           103. Contrary to Oakmont's uniform misrepresentations and misleading statements,  
9 Oakmont does not use its resident assessment system or consider resident assessment points in  
10 setting budgets to ensure sufficient numbers of trained staff to meet promised care levels, but  
11 instead uses predetermined budgets designed to meet corporate profit goals. Oakmont facilities  
12 must stay within these predetermined budgets for staffing that rarely, if ever, changes, despite  
13 changes in the assessed personal care levels of the current residents. Oakmont does not disclose  
14 and actively conceals this corporate policy and practice from current and prospective residents and  
15 their family members.

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

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

6 106. Residents and their family members would consider material Defendant's uniform  
7 corporate policy and practice of not using its resident assessment system and the staffing numbers  
8 generated by it to set staffing at its facilities. They would consider material Defendant's policy  
9 and practice of not using the assessed resident needs and corresponding care points to set staffing  
10 budgets. Plaintiffs and the putative class members could not reasonably have been expected to  
11 learn or discover these non-disclosed facts, and in fact, Oakmont affirmatively concealed them.

12 107. Oakmont has violated and continues to violate Cal. Civ. Code § 1770 in at least the  
13 following respects: (a) in violation of section 1770(a)(5), Oakmont has misrepresented, failed to  
14 disclose and concealed the true characteristics and/or quantities of services provided at its  
15 California facilities; (b) in violation of section 1770(a)(7), Defendant has misrepresented, failed to  
16 disclose and concealed the true standard, quality and/or grade of services provided at its California  
17 facilities; and (c) in violation of section 1770(a)(14), Defendant has represented that the agreement  
18 signed by residents and/or their representatives, and under which they pay their monthly rates,  
19 confers on residents the right to reside in a facility that provides staffing based on the amount of  
20 time its own resident assessment system has determined is necessary to provide the care services  
21 for which residents are charged, when in fact, Defendant does not use its resident assessment  
22 system and the care points generated by it in allocating resources for staffing at its facilities.

23 108. These misrepresentations, misleading statements, material omissions, acts, and  
24 practices by Defendant are and were intended to induce and lure elderly and dependent adult  
25 residents and their family members into agreeing to be admitted to or to place their family  
26 members in Defendant's facilities and to pay new resident services fees and monthly rates based  
27 on Defendant's resident assessment system and assessed care points.  
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1           109. Defendant made the written misrepresentations and misleading statements alleged  
2 herein through various uniform means of communication, including without limitation, the  
3 admission agreement, subsequent agreements based on re-assessments of the resident, resident  
4 care plans, standardized corporate marketing and promotional materials, Defendant's corporate  
5 website, and other written corporate materials disseminated to the public in connection with  
6 Defendant's services. These representations were made directly to the named Plaintiffs, putative  
7 class members and their family members and/or representatives by Oakmont in its standard  
8 resident admission contract and reinforced by the uniform means of communication listed above.

9           110. 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 allocates resources for staffing based  
13 on predetermined and static budgets, regardless of changes in the aggregate assessed care needs of  
14 the facility residents and regardless of whether the residents' assessed care needs are being met.

15           111. Oakmont had exclusive and superior knowledge of material facts not known to the  
16 named Plaintiffs, the proposed class members, or the general public at the time of the subject  
17 transactions and did not disclose these material facts.

18           112. Oakmont had exclusive and superior knowledge of its corporate policy and practice  
19 of ignoring its resident assessment system and the care points generated by it in determining the  
20 budgets for its facilities. Further, Plaintiffs allege on information and belief that Defendant's  
21 officers, directors, and managers were advised by their own staff that Oakmont facilities did not  
22 have enough trained staff to consistently meet residents' needs. Oakmont also knew that its  
23 failure to ensure sufficient numbers of trained staff based on the amount of time that Oakmont had  
24 itself determined was necessary to provide the care and services for which it charged its residents  
25 posed a substantial health and safety risk to the named Plaintiffs and the proposed class members.  
26 Oakmont intentionally concealed, suppressed, and/or failed to disclose the true facts with the  
27 intent to defraud the named Plaintiffs and putative class members. The named Plaintiffs and the  
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1 putative class members did not know these material undisclosed facts and could not reasonably  
2 have been expected to discover them.

3       113. As a direct and proximate result of the Defendant's conduct, Plaintiffs and the  
4 putative class members suffered actual damages. Specifically, Plaintiffs and the class members  
5 paid money to Defendant, in the form of the new resident fee (called a "Community Fee"), their  
6 initial monthly fees, and additional monthly fees, paid in exchange for residency and services in a  
7 facility that was falsely represented to be staffed based on Oakmont's residential assessment and  
8 care point system. Plaintiffs and the class members paid a premium for the misrepresented  
9 services, and would not, in all reasonable probability, have entered Oakmont's facilities and made  
10 payments to Oakmont had they known the truth about Oakmont's policies and practices of  
11 determining its budgets for staffing its assisted living facilities. Members of the class continue to  
12 pay monthly fees based on their assessed care points.

13       114. As a further direct and proximate result of Defendant's failure to ensure sufficient  
14 numbers of trained staff at its facilities as represented, *i.e.* based on residents' needs as determined  
15 through its comprehensive assessments, Plaintiffs and the class members have been forced to  
16 reside in facilities that do not have enough trained staff to meet their care needs, as determined by  
17 Oakmont itself. As a result of Oakmont's policy of staffing its facilities according to pre-  
18 determined and inflexible labor budgets, regardless of increases in the overall care needs and  
19 assessed points of current residents, it is not possible for the needs of all residents to be met, and  
20 there is a substantial likelihood that each resident, at any given time, will not receive the care  
21 Oakmont has determined necessary and promised to provide. Plaintiffs and the proposed class  
22 members also face the substantial risk that they will suffer physical injuries from such lack of care  
23 and/or supervision.

24       115. Plaintiffs sent Defendant a notice to cure under California Civil Code section  
25 1782(a), which was received by Defendant on May 8, 2017. Defendant has not corrected or  
26 remedied the violations alleged in the notice and herein.

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1           116. Accordingly, Plaintiffs and the class members are entitled to actual damages and  
2 restitution in an amount to be proven at trial.

3           117. Plaintiffs and the proposed class members are also entitled to not less than \$1,000  
4 in statutory damages pursuant to California Civil Code section 1780(a). Further, Plaintiffs and  
5 other class members are also each entitled to statutory damages of up to \$5,000 pursuant to  
6 California Civil Code section 1780(b). Plaintiffs and many other class members are seniors and/or  
7 disabled persons as defined by California Civil Code section 1761(f) and (g) and have sustained  
8 substantial economic harm as a result of Defendant's conduct. Oakmont knew that its conduct  
9 negatively impacted seniors and disabled persons.

10           118. Plaintiffs additionally seek treble damages under California Civil Code section  
11 3345, punitive damages, reasonable attorneys' fees and costs, and all other relief the Court deems  
12 just and proper. Excluded from Plaintiffs' request are damages related to any personal injuries,  
13 emotional distress, or wrongful death suffered by any member of the class.

14           119. Oakmont's conduct presents a continuing threat of substantial harm to the public.  
15 Among other things, Defendant continues to induce elderly and vulnerable citizens to enter its  
16 facilities, despite the fact that Oakmont does not use resident assessments and assigned care points  
17 to determine facility staffing. The risk of harm to the class members from Defendant's conduct is  
18 substantial. Accordingly Plaintiffs seek an injunction that requires that Defendant immediately  
19 cease the CLRA violations alleged herein, and to enjoin it from continuing to engage in any such  
20 acts or practices in the future. Additionally, Plaintiffs seek an injunction requiring Defendant to  
21 disclose to Plaintiffs, the putative class members, and the consuming public that the results of  
22 resident assessments and care points are not used to set staffing budgets, and that Oakmont instead  
23 uses pre-determined and static labor budgets, regardless of changes in the overall needs and  
24 assessed care points of current residents. Plaintiffs and the class also seek an injunction  
25 prohibiting Defendant from basing its care fees on care points that correspond to the amount of  
26 staff time Defendant represents is necessary to provide the required services, when Defendant does  
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1 not, as a matter of corporate policy and procedure, use those numbers in setting staffing levels at  
2 its facilities.

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

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

5 120. Plaintiffs refer to, and incorporate herein by this reference, all preceding  
6 paragraphs.

7 121. Defendant has engaged in unlawful business acts and practices. Such acts and  
8 practices constitute unfair business practices in violation of California Business and Professions  
9 Code section 17200 *et seq.*

10 122. In particular, Defendant has engaged in unlawful business acts and practices by  
11 violating numerous laws, statutes, and regulations including, without limitation:

12 (a) Systematically and uniformly representing to the residents of its assisted  
13 living facilities in California, their family members, and the public that Oakmont uses its resident  
14 assessment system and the care points generated by it to determine and provide facility staffing,  
15 when in fact, it did not and never intended to do so, in violation of California Business &  
16 Professions Code section 17500, *et seq.* and California Civil Code section 1770, *et seq.*; and

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

20 123. By virtue of the conduct alleged herein, Defendant has also engaged in fraudulent  
21 business practices. Members of the general public (including without limitation persons admitted  
22 to and/or residing in Oakmont's California assisted living and memory care facilities during the  
23 Class Period, and their family members and/or representatives) have been and are likely to be  
24 deceived by Defendant's misrepresentations and failures to disclose as alleged herein.

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

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

9 126. Defendant made these misrepresentations and misleading statements through  
10 various uniform means of written corporate communications, including without limitation, the  
11 admission agreement, subsequent agreements based on re-assessments of the resident, resident  
12 care plan, marketing and promotional materials, Defendant's corporate website and other materials  
13 disseminated to the public from its corporate headquarters in connection with Defendant's  
14 services. These representations were made directly to the named Plaintiffs, the proposed class  
15 members and their family members and/or representatives by Defendant in its standard resident  
16 contracts and reinforced by the uniform means of communication listed above.

17 127. In addition to its affirmative misrepresentations that Oakmont uses its resident  
18 assessment system to determine and provide facility staffing in accordance with residents'  
19 assessed needs, Defendant failed to disclose to Plaintiffs, the putative class members, and their  
20 family members that Defendant does not use its resident assessment system to set or determine the  
21 budgets for facility staffing but instead maintains predetermined and static budgets for facility  
22 staffing levels regardless of changes in the overall assessed care needs of current residents.

23 128. Defendant had exclusive and superior knowledge of material facts not known to the  
24 named Plaintiffs, the putative class members or the general public at the time of the subject  
25 transactions and did not disclose these material facts.

26 129. Oakmont had exclusive and superior knowledge of its corporate policy and practice  
27 of ignoring the assessed care points and corresponding amounts of staff service time generated by  
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1 its resident assessment system in determining the staffing budgets for each facility. Oakmont also  
2 knew that its failure to provide staffing based on the amount of time that Oakmont had itself  
3 determined was necessary to provide the care and services for which residents were charged posed  
4 a substantial health and safety risk to the named Plaintiffs and class members. Oakmont  
5 intentionally concealed, suppressed, and/or failed to disclose the true facts with the intent to  
6 defraud the named Plaintiffs and putative class members. The named Plaintiffs and the putative  
7 class members did not know these material undisclosed facts and could not reasonably have been  
8 expected to discover them.

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

15 131. Additionally, Plaintiffs seek an injunction that requires that Defendant immediately  
16 cease acts of unlawful, unfair and fraudulent business acts or practices as alleged herein, and to  
17 enjoin Defendant from continuing to engage in any such acts or practices in the future.

18 132. Plaintiffs and the putative class members also seek reasonable attorneys' fees, costs  
19 and expenses, and all other remedies permitted by law.

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

21 133. Plaintiffs refer to, and incorporate herein by this reference, all preceding  
22 paragraphs.

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

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

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

14 137. Defendant knew or should have known that Plaintiffs and the putative class  
15 members had a right to the funds used to pay new resident community fees and monthly fees to  
16 Defendant.

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

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

22 140. Accordingly, Plaintiffs and the putative class seek an injunction requiring  
23 Defendant to disclose to Plaintiffs, the putative class members and the consuming public that  
24 Oakmont does not use its resident assessment or assessed care points to set or provide staffing at  
25 its facilities, but instead allocates staffing resources based on fixed labor budgets, which do not  
26 change regardless of increases in the overall assessed care needs of current residents. Plaintiffs  
27 and the class also seek an injunction prohibiting Defendant from basing its care fees on care points  
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1 that correspond to the amount of staff time Defendant represents is necessary to provide the  
 2 required services, when Defendant does not, as a matter of corporate policy and procedure, use  
 3 those numbers in setting staffing levels at its facilities.

4 141. Plaintiffs and the putative class members also seek compensatory damages,  
 5 reasonable attorneys' fees, costs and expenses, punitive damages, treble damages pursuant to  
 6 California Civil Code section 3345, and all other remedies permitted by law. Plaintiffs do not  
 7 seek damages related to any personal injuries, emotional distress, or wrongful death suffered by  
 8 any member of the class.

#### 9 PRAYER

10 WHEREFORE, Plaintiffs pray for judgment as follows:

- 11 1. For a Court order certifying that the action may be maintained as a class action;
- 12 2. For statutory damages;
- 13 3. For actual damages according to proof, excepting any damages for personal injury,  
 14 emotional distress, and/or wrongful death suffered by the named Plaintiffs or any  
 15 class member;
- 16 4. For restitution and any other monetary relief permitted by law;
- 17 5. For reasonable attorneys' fees, costs and expenses;
- 18 6. For treble damages pursuant to California Civil Code section 3345;
- 19 7. For punitive damages;
- 20 8. For pre-judgment and post-judgment interest, according to law;
- 21 9. For a public injunction requiring that Defendant immediately cease acts that  
 22 constitute unlawful, unfair and fraudulent business practices, and violations of the  
 23 Consumer Legal Remedies Act, Business and Professions Code section 17200 *et*  
 24 *seq.*, and the Elder Financial Abuse statute as alleged herein, and to enjoin  
 25 Defendant from continuing to engage in any such acts or practices in the future;
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10. For a public injunction requiring Defendant to disclose to the putative class members and the consuming public that Oakmont does not use its resident assessment or care points generated by it to set or provide staffing at its facilities;
11. For a public injunction prohibiting Defendant from charging fees based on care points that correspond to the amount of staff time Defendant represents is necessary to provide the required services, unless and until Defendant uses those numbers in setting and providing staffing levels at its facilities;
12. For such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs demand a jury trial on all issues so triable.

Dated: September 13, 2017

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