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CASE MANAGEMENT REVIEW

JUN 10 2013

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IN DEPARTMENT

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAN 11 2013

John A. Clarke, Executive Officer/Clerk

By Renetta Thompson, Deputy

Attorneys for Plaintiff MARK MORIKAWA, by and through his representative and attorney in fact LISETTE MORIKAWA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SOUTH DISTRICT

MARK MORIKAWA, by and through his
representative and attorney in fact LISETTE
MORIKAWA

CASE NO.

NC058529

COMPLAINT FOR DAMAGES

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS dba
KAISER PERMANENTE SOUTH BAY
MEDICAL CENTER, COUNTRY VILLA
SOUTH BAY, LLC dba COUNTRY VILLA
BELMONT HEIGHTS HEALTHCARE
CENTER, COUNTRY VILLA SERVICE
CORP. dba COUNTRY VILLA HEALTH
SERVICES, and DOES 1 through 75,
inclusive

- 1) Elder Abuse (Pursuant to the Elder Adult and
Dependant Adult Civil Protection Act -
Welfare and Institution Code sections 15600
et seq.) Against All Defendants
- 2) Negligence Against All Defendants
- 3) Willful Misconduct Against All Defendants
- 4) Violation of Patient's Rights (Health & Safety
Code §1430) Against Country Villa South
Bay, LLC dba Country Villa Belmont Heights
Healthcare Center and Country Villa Service
Corp. dba Country Villa Health Services

DEMAND FOR JURY TRIAL

Defendants.



ORIGINAL

1 Plaintiff MARK MORIKAWA, by and through his representative and attorney in fact,
2 LISETTE MORIKAWA (hereinafter referred to as "Plaintiff"), acting on his own behalf, based
3 on information and belief and the investigation of counsel, except for information based on
4 personal knowledge, hereby allege as follows:

5 6 THE PARTIES

7 1. Plaintiff, MARK MORIKAWA ("MARK"), is an individual domiciled in the City of
8 Redondo Beach, County of Los Angeles, State of California. LISETTE MORIKAWA ("LISETTE"),
9 representative of and attorney in fact for MARK MORIKAWA, is an individual domiciled in the City of
10 Redondo Beach, County of Los Angeles, State of California.

11 2. Defendant KAISER FOUNDATION HOSPITALS dba KAISER PERMANENTE SOUTH
12 BAY MEDICAL CENTER ("KAISER") is a business entity located in the City of Harbor City, County
13 of Los Angeles, State of California. KAISER is a general acute care hospital licensed by the State of
14 California and was at all times doing business at 25825 Vermont Avenue, Harbor City, California
15 90710.

16 3. Defendant COUNTRY VILLA SOUTH BAY, LLC dba COUNTRY VILLA BELMONT
17 HEIGHTS HEALTHCARE CENTER ("COUNTRY VILLA") is a business entity located in the City of
18 Long Beach, County of Los Angeles, State of California. COUNTRY VILLA SOUTH BAY, LLC is
19 listed as the licensee of COUNTRY VILLA and was at all times doing business at 5120 W. Goldleaf
20 Circle, Suite 400, Los Angeles, CA 90056.

21 4. Defendant COUNTRY VILLA is a Skilled Nursing Facility licensed by the State of
22 California and was at all times doing business at 1730 Grand Avenue, Long Beach, California 90804.

23 5. Defendant COUNTRY VILLA SERVICE CORP. dba COUNTRY VILLA HEALTH
24 SERVICES is a business entity located in the City of Los Angeles, County of Los Angeles, State of
25 California. COUNTRY VILLA SERVICE CORP. is listed as the management company of COUNTRY
26 VILLA and was at all times doing business at 5120 W. Goldleaf Circle, Suite 400, Los Angeles,
27 California 90056.

28 6. Plaintiff is ignorant of the true names and capacities of defendants sued as Does 1-75,
inclusive, and therefore sue these defendants by such fictitious names. Plaintiff will amend this

1 complaint to allege their true names and capacities when ascertained. Plaintiff will refer to all
2 defendants, including DOES 1-75, collectively as "defendants."

3 7. Plaintiff is informed and believes and based thereon alleges that defendants were and are
4 licensed and/or unlicensed care providers rendering care and services as skilled nursing facilities,
5 general acute care hospitals, medical groups, directors of nursing, medical directors, physicians,
6 administrators, nurses, nurses' aides, social workers, discharge planners, physical therapists,
7 occupational therapists, speech language pathologists, and others to patients including MARK.

8 8. Plaintiff is informed and believes that defendants are the owners, operators, and managers of
9 skilled nursing facilities or acute care hospitals in California and participated in, authorized, and/or
10 directed the conduct of care and services and their respective agents and employees, and are therefore
11 liable for the acts and omissions of the skilled nursing facilities or acute care hospitals, their agents and
12 employees, as is more fully herein alleged. DOES 1 through 25 were and are licensed and/or unlicensed
13 health care providers as defined in Division 2 of the Business and Professions Code.

14 9. Plaintiff is informed and believes and thereon alleges that at all times relevant to this
15 complaint, DOES 26 through 50 were healthcare providers rendering care and services as physicians,
16 administrators, nurses, nurses' aides, and others to patients including MARK. Plaintiff is informed and
17 believes, and on that basis alleges, that the fictitiously named defendants are liable to Plaintiff for the
18 conduct and damages alleged herein.

19 10. Plaintiff is informed and believes and thereon alleges that at all times relevant to this
20 complaint, DOES 51-75 were owners, operators, officers, investors, management companies, managing
21 agents and others whose identities and titles are unknown at this time who made significant decisions
22 affecting the level and quality of care provided to patients at KAISER or residents at COUNTRY
23 VILLA, including Plaintiff MARK.

24 11. On or about November 23, 2010, MARK was admitted to the care and protection of
25 defendant KAISER, so as to secure and receive appropriate medical care and treatment as was
26 reasonable and necessary relative to MARK'S then existing medical condition, health and well being.
27 On or about February 10, 2011, MARK was admitted to the care and protection of defendant
28 COUNTRY VILLA, so as to secure and receive appropriate skilled nursing care, medical care, custodial

1 care, and treatment as was reasonable and necessary relative to MARK's then existing medical
2 condition, health and well being. Accordingly, at all relevant times, MARK was a Dependent Adult
3 within the meaning of California Welfare & Institutions Code § 15610.23.

4 12. Plaintiff is informed and believes and thereon alleges that defendants are those persons or
5 entities whose conduct caused the injuries and damages alleged herein.

6 13. As to defendants COUNTRY VILLA SOUTH BAY, LLC and COUNTRY VILLA
7 SERVICE CORP., Plaintiff further alleges that at all times relevant hereto there was a such a unity of
8 interest and ownership between defendants such that the individual distinctions between them had
9 ceased and that the facts as alleged herein are such that an adherence to the fiction of the separate
10 existence of defendants would, under the particular circumstances alleged herein, sanction a fraud and/or
11 promote injustice. On information and belief, at all times herein mentioned, defendants, and each of
12 them, was the agent, partner, joint venturer, representative, and/or employee of the remaining
13 defendants, and was acting within the course and scope of such agency, partnership, joint venture,
14 and/or employment. Furthermore, in engaging in the conduct described below, the defendants were
15 acting with the knowledge, consent, approval, and/or ratification of their co-defendants. Plaintiffs will
16 collectively refer to COUNTRY VILLA SOUTH BAY, LLC and COUNTRY VILLA SERVICE
17 CORP. hereinafter as "COUNTRY VILLA DEFENDANTS."

18 **PLAINTIFF MARK MORIKAWA'S INJURIES**

19 14. On or about November 23, 2010, MARK was admitted to KAISER for care and treatment for
20 symptoms of Guillian Barre Syndrome. MARK was at KAISER for over two months, during which
21 time he was at many times unresponsive. While a patient at KAISER, MARK developed severe medical
22 problems, which were either not charted and/or not sufficiently addressed by KAISER, including but not
23 limited to a deplorable sacral pressure ulcer, infection, and other injuries unknown at this time. After
24 MARK'S neurological condition improved, KAISER transferred MARK to COUNTRY VILLA on or
25 about February 10, 2011, where MARK's sacral pressure ulcer worsened. On or about April 20, 2011,
26 MARK went to the emergency room at KAISER with a Stage IV sacral pressure ulcer that was oozing
27 blood, had started to expose the underlying bone, and he was experiencing excruciating pain. Despite
28 the horrific condition of the pressure ulcer, KAISER did not sufficiently address it, failed to find that it

1 had become infected, and discharged him that same day to COUNTRY VILLA. On April 27, 2011,
2 MARK was admitted once more to KAISER for a severe infection of his Stage IV pressure ulcer. The
3 injuries MARK suffered at KAISER and COUNTRY VILLA, including and especially his Stage IV
4 pressure ulcer and resulting infection, escalated to the point that he suffered debilitating pain and
5 exposure of the sacral bone. MARK'S injuries were preventable had defendants provided to MARK the
6 level of care they were required to provide under the relevant state and federal regulations, and much
7 less the level of care any decent human being should give to another human being in their custody.

8 **DEFENDANTS' DIRECT AND VICARIOUS LIABILITY**

9 15. Through the operation of their respective facilities, the defendants, and each of them,
10 operated their respective facilities in such a way as to make their individual identities indistinguishable,
11 and they are, therefore, the mere alter-egos and/or managing agents of one another. The COUNTRY
12 VILLA DEFENDANTS either make or approve key decisions concerning COUNTRY VILLA 's day-
13 to-day operations.

14 16. Defendants were the knowing agents and/or alter-egos of one another, and each of their
15 officers, directors, and managing agents directed, approved and/or ratified all of the acts and omissions
16 of each of the other, and their agents and employees, thereby making each of them vicariously liable for
17 the acts and omissions of their co-defendants, their agents and employees, as is more fully alleged
18 herein. Moreover, through their managing agents, defendants, and each of them, agreed, approved,
19 authorized, ratified and/or conspired to commit all of the acts and omissions alleged herein.

20 17. Defendants managed themselves, governed and controlled the care and custodial services
21 provided to MARK, and that by virtue of their management and control over each other, and each of
22 them, voluntarily and intentionally assumed responsibility for and provided supervisory care, medical
23 treatment, and custodial services to MARK while he was a resident of COUNTRY VILLA and patient
24 of KAISER.

25 18. The term "managing agent" means "one who exercises substantial discretionary authority
26 over decisions that ultimately determine corporate policy." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th
27 563, 573.) KAISER and COUNTRY VILLA'S managing agents were hired by the governing bodies,
28 which were also legally responsible for establishing and implementing policies regarding the
management and operation of the facility, including the staffing, the budgeting, and the training of

1 employees, pursuant to Federal Regulations. Defendants performed, ratified, and approved the reckless
2 and malicious conduct at each respective facility.

3 19. At all relevant times, COUNTRY VILLA, KAISER, and DOES 1 through 75, through
4 their "governing body," "managing agent," managers, directors, officers and other agents directly
5 oversaw, managed and/or controlled all aspects of the operation and management of their respective
6 facilities, including, but not limited to, the budget, the staffing, staff training, the policy and procedures
7 manual, accounts payable, accounts receivable, the facilities' development and leasing, general
8 accounting, cash management, pricing, reimbursement, capitalization, and profit and loss margins.

9 20. At all relevant times, defendants, through their managers, directors, officers and other
10 agents created and authorized the budgets, policies and procedures that these employees were required
11 to implement and follow at their respective facilities. At all relevant times, COUNTRY VILLA
12 DEFENDANTS, and each of their tortious acts and omissions, as alleged herein, were done in concert
13 with one another in furtherance of their common design and agreement to accomplish a particular result,
14 namely maximizing gross revenues from the operation of COUNTRY VILLA at the expense of resident
15 or patient care.

16 21. At all relevant times, defendants, through their managers, directors, officers and other
17 agents created and authorized the budgets, policies and procedures that these employees were required
18 to implement and follow at their respective facilities. At all relevant times, KAISER and other unknown
19 defendants, and each of their tortious acts and omissions, as alleged herein, were done in concert with
20 one another in furtherance of their common design and agreement to accomplish a particular result,
21 namely maximizing gross revenues from the operation of KAISER at the expense of resident or patient
22 care.

23 22. At all relevant times, COUNTRY VILLA SOUTH BAY, LLC and COUNTRY VILLA
24 SERVICE CORP., by their acts and omissions as alleged herein, operated pursuant to an agreement,
25 with a common purpose and community of interest, with an equal right of control, and subject to
26 participation in profits and losses, as further alleged herein, such that they operated a joint enterprise or
27 joint venture, subjecting each of them to liability for the acts and omissions of each other.

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THE DEFENDANTS' WRONGFUL CONDUCT

23. Defendants failed to exercise that degree of care that a reasonable person in a like position would exercise with respect to caring for MARK by: failing to conduct an ongoing, accurate, and comprehensive assessment of his needs; failing to develop and/or follow a complete care plan to prevent or aid in preventing the deplorable sacral pressure ulcer suffered by MARK; failing to timely treat and cure MARK'S pressure ulcer so its condition would not worsen and become infected; and failing to follow doctors' orders for treatments and medications.

24. Defendants, and each of their alleged violations of state and federal laws and regulations as specifically set forth herein are not meant to limit the generality of the allegations contained herein, but are merely illustrative of the depth of defendants' malicious, oppressive, and/or reckless conduct and subject to that to be more fully proven through discovery and at time of trial.

25. The state and federal laws and regulations governing skilled nursing facilities and general acute care hospitals set the standard of care and help define the care due to dependent adults, and said laws and regulations are appropriate in determining whether defendants' conduct amounted to physical abuse, neglect, recklessness, oppression, fraud or malice. (See *Gregory v. Beverly Enterprises* (2000) 80 Cal. App. 4th 514.)

26. Defendants, and each of their neglect and dependent adult abuse of MARK, are due to the fact that they conceived, implemented, and carried out a scheme to maximize revenue generated from various reimbursement sources at KAISER and COUNTRY VILLA whereby defendants intentionally ignored the medical and custodial needs of MARK.

27. Defendants knew that this scheme of promoting revenue over resident and patient care would result in inadequate treatment and services to MARK and that such conduct posed an extreme risk to the health, safety and welfare of MARK, evidenced by recent deficiencies issued by the Department of Health Services to COUNTRY VILLA and by the deplorable neglect of MARK, resulting in, among other injuries, a horrific Stage IV sacral pressure ulcer and resulting infection, which caused him tremendous pain and suffering, both mental and physical.

28. Defendants failed to adequately train and/or screen existing or incoming staff to ensure that they were competent in meeting the needs of MARK. Defendants also hired and retained incompetent service personnel, many of whom were not properly trained or qualified to care for MARK.

1 29. Although it was known to defendants that the risk of resident abuse, neglect, and physical
2 deterioration decreased with proper training and adequate staffing, said defendants knowingly and
3 recklessly followed through with their dereliction of duty and continued to under-staff and under-train
4 the facilities in conscious disregard of the increased likelihood that MARK could, and ultimately did,
5 suffer physical harm and injuries.

6 30. Defendants knew or should have known in the exercise of reasonable diligence that by
7 engaging in the conscious disregard of their duties, they were creating the high probability that MARK
8 would suffer from preventable injuries.

9 31. Defendants consciously disregarded these known risks to MARK in order to carry out
10 and follow through with their plan to generate revenue. In conceiving of, implementing, and carrying
11 through with the plan, defendants willfully, knowingly, recklessly, and with conscious disregard for
12 MARK'S health, safety and welfare, breached their duties to MARK, and did so in a manner that was
13 malicious, fraudulent, reckless, and oppressive. Defendants implemented and carried out the profit
14 scheme with knowledge that such a scheme was designed to exploit elderly and dependent adults, a class
15 expressly deemed by the Legislature of the State of California as a vulnerable segment of our population
16 who require a heightened level of protection.

17 32. Defendants ratified the conduct of each of their co-defendants in that they authorized,
18 mandated, knew, and/or acquiesced to the chronic understaffing, in both number and training, and were
19 aware that such understaffing and lack of training would lead to injury to MARK. Defendants had
20 within their power, ability, and discretion to mandate that each respective facility employ adequate staff
21 to meet the needs of MARK, yet intentionally and/or with conscious disregard continuously failed to do
22 so.

23 33. Defendants attempted to hide MARK'S serious and deteriorating medical condition, as
24 well as the abuse and neglect of MARK, so as not to alert his wife, LISETTE, to the fact that defendants
25 had understaffed and underfunded their facilities with inadequate and insufficiently trained care
26 personnel, and that MARK had suffered a severe injury that was preventable. Defendants intentionally
27 concealed from MARK'S wife, LISETTE, the severity of MARK'S pressure ulcer.

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35. Venue is proper in this County under CCP § 395 and Civil Code § 1750, et seq. because this Court is a court of competent jurisdiction as KAISER and COUNTRY VILLA, maintain their principal places of business in this County, a portion of defendants' liability arose in this County, and the acts upon which this action is based occurred in part in this County.

[Plaintiffs Against All Defendants]

37. At all relevant times, MARK was a "Dependent Adult" as that term is defined in the Welfare and Institutions Code § 15610.23. MARK was born on or about July 8, 1951. MARK suffers from a rare form of Guillian Barre Syndrome, which causes severe physical and mental limitations that diminishes his ability to carry out normal activities.

38. Defendants were the care custodians of MARK from approximately November 23, 2010 through February 10, 2011, April 20, 2011, and April 27, 2011 through May 10, 2011 while MARK was a patient at KAISER.

39. Defendants owed statutory, regulatory and standard of care duties to MARK. These duties included protecting MARK from health and safety hazards and providing the care and services he required to maintain his well-being. Defendants failed to meet these obligations by failing to prevent the injuries suffered by MARK and failing to diagnose and treat the injuries after they were suffered. Specifically, while at KAISER, MARK developed severe medical problems, many of which were either not charted or not sufficiently addressed by defendants, including but not limited to a sacral Stage IV

1 pressure ulcer and resulting infection which caused him excruciating pain and suffering, and other
2 injuries unknown at this time.

3 40. Defendants willfully, intentionally, and/or recklessly caused or permitted MARK to be
4 injured and/or to be placed in a situation such that his health and safety were in danger and
5 compromised.

6 41. KAISER had knowledge that it needed to take preventive measures to avoid the
7 development of MARK'S sacral pressure ulcer, but intentionally failed to do so despite knowledge of
8 the consequences of its inaction. Defendants' conduct, as alleged herein, created circumstances or
9 conditions likely to produce great bodily harm, and they willfully caused or permitted MARK to suffer,
10 or inflicted upon him, unjustifiable physical pain and mental suffering.

11 42. Defendants' conduct, as alleged herein, constitutes "abuse of an elder or dependent adult"
12 as defined in Welfare & Institutions Code §15610.07.

13 43. Defendants' conduct, as alleged herein, constitutes "neglect" as defined in Welfare &
14 Institutions Code § 15610.57. KAISER ignored their duty and obligation to perform basic assessments
15 and medical care with respect to MARK'S sacral pressure ulcer. In that regard, KAISER failed to
16 monitor MARK'S pressure ulcer, and to detect and treat this injury before the damage became more
17 severe.

18 44. KAISER was on notice that MARK was in an often unresponsive state and unable to
19 move on his own due to symptoms of a rare form of Guillian Barre Syndrome for nearly three months,
20 thereby requiring assistance in turning and repositioning so as to prevent the formation of pressure
21 ulcers. Furthermore, KAISER was on notice that because of MARK'S medical condition, he was
22 especially susceptible to pressure ulcers and required close monitoring of his skin. Despite the fact that
23 KAISER was on notice about MARK'S condition, KAISER failed to prevent the ulcer and also failed to
24 properly chart the pressure ulcer after it developed and failed to take sufficient action to treat and cure it.
25 In fact, on February 10, 2011 – the day MARK was discharged to COUNTRY VILLA from KAISER –
26 KAISER'S discharge notes summary failed to note the severity of MARK'S pressure ulcer.

27 45. Defendants, in accepting responsibility for caring for MARK and in committing failures
28 and acts described above violated the Elder Abuse and Dependent Adult Civil Protection Act, codified
under Welfare and Institutions Code § 15600 et seq., in that they intentionally, knowingly, and/or

recklessly failed to provide treatment, care, goods, and services necessary to preserve the health, safety, or welfare of MARK, as specifically alleged herein.

46. As a direct, actual, legal, and proximate cause of defendants' conduct, as alleged herein, MARK suffered unjustifiable and substantial physical pain and mental suffering.

47. By engaging in the conduct of neglect and abuse, as alleged herein, despite the known risk to dependent adults, including MARK, defendants' actions were malicious, oppressive, fraudulent and/or reckless, and subjected MARK to unjustifiable physical pain and mental suffering. MARK therefore seeks punitive damages, treble damages, and attorneys fees from defendants, in addition to the other remedies available to plaintiffs.

COUNTRY VILLA DEFENDANTS

48. Defendants were the care custodians of MARK from approximately February 10, 2011 through April 27, 2011 and June 7, 2011 through March 6, 2012 while MARK was a resident at COUNTRY VILLA.

49. Defendants owed statutory, regulatory and standard of care duties to MARK. These duties included protecting MARK from health and safety hazards and providing the care and services he required to maintain his well-being. Defendants failed to meet these obligations by failing to prevent the injuries suffered by MARK and failing to diagnose and treat his injuries after they were suffered. Specifically, while at COUNTRY VILLA, MARK developed severe medical problems, many of which were either not charted or not sufficiently addressed by defendants, including but not limited to the worsening of a horrific sacral pressure ulcer and resulting infection which caused him excruciating pain and suffering, and other injuries unknown at this time.

50. Defendants willfully, intentionally, and/or recklessly caused or permitted MARK to be injured and/or to be placed in a situation such that his health and safety were in danger and compromised.

51. Defendants' conduct, as alleged herein, created circumstances or conditions likely to produce great bodily harm, and they willfully caused or permitted MARK to suffer, or inflicted upon him, unjustifiable physical pain and mental suffering.

52. Defendants' conduct, as alleged herein, constitutes "abuse of an elder or dependent adult" as defined in Welfare & Institutions Code §15610.07.

1 53. Defendants' conduct, as alleged herein, constitutes "neglect" as defined in Welfare &
2 Institutions Code § 15610.57. COUNTRY VILLA ignored their duty and obligation to perform basic
3 assessments and custodial care with respect to MARK's pressure ulcer. In that regard, COUNTRY
4 VILLA failed to monitor MARK'S sacral pressure ulcer, and to treat it before its condition worsened
5 and became severely infected.

6 54. COUNTRY VILLA was on notice that MARK had a sacral pressure ulcer and was at risk
7 for further skin breakdown and infection. Furthermore, COUNTRY VILLA was on notice that because
8 of MARK'S medical condition and the fact that he was partly at COUNTRY VILLA for rehabilitation,
9 MARK'S mobility was impaired and therefore he was especially in need of close monitoring and
10 treatment of his sacral area. Despite the fact that COUNTRY VILLA was on notice about MARK'S
11 conditions, COUNTRY VILLA failed to timely take sufficient action to treat and cure MARK'S
12 pressure ulcer so as to prevent the infection that MARK would later suffer from. After approximately
13 two months at COUNTRY VILLA, on April 20, 2011, MARK went to the emergency room at KAISER
14 because his pressure ulcer had worsened to the point of exposing the underlying bone, was oozing blood,
15 and was causing him a tremendous amount of pain. On April 27, 2011, MARK was admitted to
16 KAISER once more because his pressure ulcer had become infected.

17 55. Defendants, in accepting responsibility for caring for MARK and in committing failures
18 and acts described above violated the Elder Abuse and Dependent Adult Civil Protection Act, codified
19 under Welfare and Institutions Code § 15600 et seq., in that they intentionally, knowingly, and/or
20 recklessly failed to provide treatment, care, goods, and services necessary to preserve the health, safety,
21 or welfare of MARK, as specifically alleged herein.

22 56. As a direct, actual, legal, and proximate cause of defendants' conduct, as alleged herein,
23 MARK suffered unjustifiable and substantial physical pain and mental suffering.

24 57. By engaging in the conduct of neglect and abuse, as alleged herein, despite the known
25 risk to dependent adults, including MARK, defendants' actions were malicious, oppressive, fraudulent
26 and/or reckless, and subjected MARK to unjustifiable physical pain and mental suffering. MARK
27 therefore seeks punitive damages, treble damages, and attorneys fees from defendants, in addition to the
28 other remedies available to plaintiffs.

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1 **SECOND CAUSE OF ACTION**

2 **NEGLIGENCE**

3 **[Plaintiffs Against All Defendants]**

4 58. MARK hereby incorporates the allegations asserted in paragraphs 1 through 57 above as
5 though set forth at length below.

6 59. Defendants were the care custodians of MARK from approximately November 2010
7 through March 2012, and thereby owed MARK a duty to exercise that degree of care that a reasonable
8 person in a like position would exercise. As set forth above, defendants breached that duty of care owed
9 to MARK.

10 60. As a proximate result of the conduct alleged above perpetrated by defendants, MARK
11 suffered pain and injuries and damages, according to proof.

12 **THIRD CAUSE OF ACTION**

13 **WILLFUL MISCONDUCT**

14 **[Plaintiffs Against All Defendants]**

15 61. MARK hereby incorporates the allegations asserted in paragraphs 1 through 60 above as
16 though set forth at length below.

17 62. Defendants, and each of them, recklessly and intentionally breached their duty of care
18 to MARK. In particular and without limiting the generality of the foregoing, defendants and each of
19 them knew or should have known that MARK was prone to suffer pressure ulcers. MARK'S physical
20 disability was such that he was in need of constant medical supervision and assistance, and it was for
21 this reason that he was a patient at KAISER and subsequently a resident of COUNTRY VILLA.

22 63. Partly in recognition that residents of COUNTRY VILLA and patients of KAISER
23 suffered from conditions which left them prone to pressure ulcers and other injuries, defendants and
24 each of them had adopted policies to supervise the health status of patients, to prevent the spread of
25 infections and disease, and to prevent the occurrence of pressure sores and other injuries. Said
26 defendants had adopted such policies and made such policies in light of their knowledge that patients,
27 particularly those whose mobility was impaired and who needed constant assistance with their daily
28 needs, like MARK, were especially susceptible to the types of injuries suffered by MARK. These
formal written policies were created in order to meet the requirements of regulatory agencies concerned

1 with the safety of residents of their facility so that if inquiry were made of defendants' policies during
2 an inspection, the requirements of the inspection agency could thereby be met. However, such policies,
3 although created, were not adopted, or implemented. In particular, defendants' own policies were not
4 implemented to prevent the horrific Stage IV pressure ulcer and resulting infection suffered by MARK.

5 64. Despite such knowledge, duties and promises, defendants and each of them had adopted
6 practices, including the practice of allocating insufficient funds from revenue derived from operation of
7 their facilities for hiring staff to properly attend to the health and safety needs of their residents.
8 Furthermore, defendants and each of them failed to properly educate their employees on how best to
9 prevent their residents from suffering injuries, including the severe sacral Stage IV pressure ulcer
10 suffered by MARK. This practice made it impossible for defendants to have staff available to properly
11 attend to the health and safety needs of MARK. These failures and MARK'S subsequent injuries were
12 a direct result of defendants' policy and practice of not hiring enough staff in quantity and quality to
13 provide essential supportive care to residents and patients in order to increase their profits from
14 operation of their facilities, which caused the personal injuries as alleged herein.

15 65. Defendants knew that their failure to hire sufficient numbers of adequately trained
16 personnel, take preventive measures, and intentional concealment of MARK'S true condition posed the
17 high probability that they would be unable to prevent the injuries suffered by MARK. Despite this
18 knowledge defendants continued with their practices as set forth above.

19 66. As a direct and proximate result of the foregoing, MARK suffered severe personal injury
20 and emotional harm in a sum according to proof at trial.

21 67. As a further direct and proximate result of the foregoing, MARK incurred medical
22 expenses in a sum according to proof at trial.

23 68. By virtue of the foregoing, defendants and each of them have violated Penal Code § 368
24 and have acted despicably. Defendants and each of them have acted with malice and oppression and/or
25 recklessness.

26 69. By virtue of the foregoing, an award of punitive damages in a sum according to proof at
27 trial is justified, warranted, and appropriate as to each defendant, and particularly as to Does 1 to 25
28 who are not licensed to provide care or treatment to patients such as MARK.

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1 **FOURTH CAUSE OF ACTION**

2 **VIOLATIONS OF HEALTH & SAFETY CODE SECTION 1430(b)**

3 **[Plaintiffs Against Defendants COUNTRY VILLA SOUTH BAY, LLC and COUNTRY VILLA**
4 **SERVICE CORP.]**

5 70. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through 69 above
6 as though set forth at length below.

7 71. Health & Safety Code § 1430(b) creates a private right of action for any resident or
8 patient of a skilled nursing facility against the licensee of the facility that violates any rights of the
9 resident or patient as set forth in the Patient Bill of Rights. Such rights are set forth in Health & Safety
10 Code Section 1599.1 and 22 CCR Section 72527, and include other rights set forth in State and Federal
11 rules and regulations.

12 72. Health & Safety Code § 1430(b) also provides that "a current or former resident or
13 patient of a skilled nursing facility as defined in subdivision (c) of section 1250 . . . may bring a civil
14 action against the licensee of a facility who violates any rights of the resident or patient as set forth in
15 the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations [which
16 incorporates Health & Safety Code § 1599.1], or any other right provided for by federal or state law or
17 regulation."

18 73. For the reasons set forth above and incorporated herein by reference, and for further
19 reasons as will be presented at trial, Defendants, through the operation of COUNTRY VILLA, a skilled
20 nursing facility, systematically and systemically violated a myriad of regulations governing the
21 operation of skilled nursing facilities in the State of California. The violation of these regulations also
22 amount to violations of Health and Safety Code § 1430(b).

23 74. Among other remedies, Health & Safety Code § 1430(b) authorizes the recovery of
24 statutory damages up to \$500.00 per violation, per day, and mandatory attorneys' fees and costs.
25 (Health & Saf. Code § 1430(b).) These remedies are cumulative to any other remedies provided by
26 law. (Health & Saf. Code § 1430(c).)

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PRAYER FOR RELIEF

WHEREFORE, on the First Cause of Action Plaintiffs pray for judgment and damages as follows:

1. For general damages according to proof against all defendants;
2. For special damages according to proof against all defendants;
3. For attorney's fees against all defendants under Welf & I C § 15657(a);
4. For punitive, treble and exemplary damages against all defendants;
5. For costs of suit against all defendants; and
6. For such other and further relief as the Court deems just and proper.

WHEREFORE, on the Second Cause of Action Plaintiffs pray for judgment and damages as follows:

1. For general damages according to proof against all defendants;
2. For special damages according to proof against all defendants;
3. For costs of suit against all defendants; and
4. For such other and further relief as the Court deems just and proper.

WHEREFORE, on the Third Cause of Action Plaintiffs pray for judgment and damages as follows:

1. For general damages according to proof against all defendants;
2. For special damages according to proof against all defendants;
3. For attorney's fees against all defendants under Welf & I C § 15657(a);
4. For punitive, treble and exemplary damages against all defendants;
5. For costs of suit against all defendants; and
6. For such other and further relief as the Court deems just and proper.

WHEREFORE, on the Four Cause of Action Plaintiffs pray for judgment and damages as follows:

1. For statutory damages pursuant to Health and Safety Code § 1430(b);

1 2. For attorney's fees against all defendants pursuant to law and including, but not limited to,
2 the equitable private attorney general doctrine, and the Code of Civil Procedure § 1021.5 as well as the
3 provisions of Health and Safety Code § 1430(b);

4 3. For punitive, treble and exemplary damages against all defendants;

5 4. For costs of suit against all defendants; and

6 5. For such other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand trial by jury of all issues triable by jury.

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10 Respectfully submitted,

11 Dated: January 10, 2013

12 LAW OFFICES OF BEN YEROUSHALMI

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14 By:

15 BEN YEROUSHALMI,
16 Attorneys for Plaintiff