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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

EDWARD WILLIAM KUNTZ, by and
through his successor-in-interest, EDITH
KUNTZ; EDITH KUNTZ, individually;
EDWARD WADE KUNTZ, individually;
MICHAEL KUNTZ, individually; and
SHEILA LEWIS, individually,

Plaintiffs,

vs.

OLEANDER HOLDINGS LLC dba
SACRAMENTO SUB-ACUTE; PLUM
HEALTHCARE GROUP, INC.; KAISER
FOUNDATION HOSPITAL; THE
PERMANENTE MEDICAL GROUP,
INC.; and DOES 1 through 50, Inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES
ARISING OUT OF THE ABUSE
AND RECKLESS NEGLECT OF A
DEPENDENT**

1. Elder Abuse (W&I § 15600,
et seq.)
2. Negligent Infliction Of
Emotional Distress
3. Violation of Patients' Bill of
Rights
4. Wrongful Death



1 Plaintiffs allege as follows:

2 **PARTIES**

3 1. Plaintiff Edward William Kuntz was at all times material hereto a resident of
4 Sacramento County. On the day of his death and at all relevant times in this action, Mr.
5 Kuntz was sixty-four years old. During the relevant time periods, Mr. Kuntz was an
6 inpatient at Sacramento Sub-Acute and Kaiser Foundation Hospital both of which are 24-
7 hour health facility as defined in Section 1250 of the Health and Safety Code. Accordingly,
8 Mr. Kuntz was a "dependent" and within the class of persons protected by Welfare and
9 Institutions Code section 15600, *et seq.* and Penal Code section 368. Mr. Kuntz suffered
10 untold pain, suffering, injury, and death as a result of defendants' reckless neglect and
11 abuse.
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14 2. Plaintiff Edith Kuntz is the wife and successor-in-interest to Edward
15 William Kuntz. She will comply with California Welfare & Institutions Code section
16 15657.3(d) by filing a successor-in-interest affidavit pursuant to Code of Civil Procedure
17 section 377.32. At all times relevant to this action, Mrs. Kuntz was and is a resident of
18 Sacramento County.

19 3. Plaintiff Edward Wade Kuntz is the son of Edward William Kuntz. At all
20 times relevant to this action, Edward Wade Kuntz was and is a resident of Sacramento
21 County.
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23 4. Plaintiff Michael Kuntz is the son of Edward William Kuntz. At all times
24 relevant to this action, Michael Kuntz was and is a resident of Sacramento County.
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1 5. Plaintiff Sheila Lewis is the daughter of Edward William Kuntz. At all times
2 relevant to this action, Sheila Lewis was and is a resident of Sacramento County.

3 6. At all times mentioned herein, Oleander Holdings LLC dba Sacramento Sub-
4 Acute (hereafter "Sacramento Sub-Acute"), was and is in the business of providing long-
5 term care as a 24-hour health facility as defined in § 1250(c) of the Health and Safety Code
6 and was subject to the requirements of federal and state law and subject to the jurisdiction
7 of the Superior Court of California.
8

9 7. At all times mentioned herein, Plum Healthcare Group, Inc. ("Plum
10 Healthcare Group") was and is a corporation that owned, managed, controlled, maintained,
11 or operated Sacramento Sub-Acute. Plum Healthcare Group is a corporation qualified to
12 do business in, and subject to the jurisdiction of, the Superior Court of California. At all
13 times relevant to this action, Plum Healthcare Group did business at 100 E San Marcos
14 Boulevard, Suite 200, San Marcos, California 92069.
15

16 8. In this complaint, Plaintiffs refer to Sacramento Sub-Acute, Plum Healthcare
17 Group, and the Doe Defendants collectively as the "Sacramento Sub-Acute Defendants."
18 Whenever Plaintiffs refer to the "Sacramento Sub-Acute Defendants" they are referring to
19 Sacramento Sub-Acute, Plum Healthcare Group, and the Doe Defendants as if they had
20 identified each of them individually. In doing the things alleged in this complaint, the
21 Sacramento Sub-Acute Defendants, and each of them, acted as the agents, servants,
22 employees and alter-egos of their Sacramento Sub-Acute Co-Defendants. The Sacramento
23 Sub-Acute Defendants, and each of them, acted within the course and scope of their agency
24 and employment, and acted with the knowledge, consent and approval of their Sacramento
25

1 Sub-Acute Co-Defendants. Their conduct was approved and ratified by their Sacramento
2 Sub-Acute Co-Defendants.

3 9. At all times mentioned herein, Defendant Kaiser Foundation Hospital was
4 and is in the business of providing acute patient care by and through a network of acute
5 care hospitals operating under a license issued by the California Department of Health
6 Services and similar regulatory agencies in other states across the country.

7
8 10. At all times mentioned herein, The Permanente Medical Group, Inc. was and
9 is in the business of providing physician and physician related services to Kaiser members.
10 The Permanente Medical Group, Inc. hires as employees physicians and other health care
11 providers who provide health care services to Kaiser members. The Permanente Medical
12 Group, Inc.'s address is 2025 Morse Avenue, Sacramento, California 95825.

13
14 11. Whenever this complaint refers to the "Kaiser Defendants," Plaintiffs are
15 referring to Kaiser Foundation Hospital and The Permanente Medical Group, Inc. and Doe
16 Defendants 1 -50 as though each of them were identified independently.

17 12. In doing the things alleged in this complaint, each of the Kaiser Defendants,
18 acted as the agents, servants, employees and alter-egos of every other Kaiser Defendant.
19 The Kaiser Defendants, and each of them, acted within the course and scope of their
20 agency and employment, and acted with knowledge, consent and approval of each of the
21 Kaiser Defendants. Their conduct was approved and ratified by each of the Kaiser
22 Defendants.

23
24 13. Plaintiffs are ignorant of the true names and capacities of those defendants
25 named as Does 1 through 50 (hereafter "Doe Defendants"), and for that reason have sued

1 these defendants by fictitious names. Plaintiffs are informed and believe and on that basis
2 allege that each of the fictitiously named Doe Defendants is in some way liable and legally
3 responsible for the damages and injuries set forth in this complaint. Plaintiffs will seek
4 leave of the Court to amend this complaint to identify these Doe Defendants when their
5 identities are determined.

7 **FACTUAL ALLEGATIONS**

8 14. All of the acts described herein constituted an ongoing practice and pattern
9 of neglect and abuse committed by the Sacramento Sub-Acute Defendants and Kaiser
10 Defendants.

11 15. On October 22, 2012, Mr. Kuntz suffered a stroke. Following his stroke he
12 was hospitalized at Kaiser (Morse) until November 28, 2012, when he was transferred to
13 Sacramento Sub-Acute. Mr. Kuntz resided at Sacramento Sub-Acute from November 28,
14 2012 to December 10, 2012. On the very day he was admitted, Mr. Kuntz' daughter Sheila
15 Lewis arrived to visit him in the evening hours. When she arrived, Mr. Kuntz was lying in
16 the bed unattended. He was wearing nothing other than a Depends type brief that was half
17 off. His body was covered in feces and he also was lying in feces which was scattered
18 throughout his bed. Mrs. Lewis immediately looked for a nurse in close proximity to Mr.
19 Kuntz' room. However, none was around. They then went to the nurse's station. They
20 advised the nurse there of Mr. Kuntz' deplorable condition and she casually responded that
21 she would send someone to Mr. Kuntz' room when a caregiver became available. Mr.
22 Kuntz' family waited in anguish for over twenty minutes while Mr. Kuntz lay in feces and in
23 obvious distress.

1 16. On November 30, 2012, Sacramento Sub-Acute improperly placed Mr. Kuntz
2 tracheostomy tube such that it fell out that evening. Sacramento Sub-Acute then transferred
3 Mr. Kuntz to Kaiser Hospital with no disclosure of any kind to his wife Edith Kuntz, which
4 course of conduct constituted a blatant violations of patient rights.

5
6 17. On December 2, 2012, Mr. Kuntz suffered a serious fall out of his bed. Mr.
7 Kuntz suffered bruising and other injury. From the outset, Sacramento Sub-Acute had
8 agreed to place a bed mat at Mr. Kuntz' bedside but it failed to do so. Sacramento Sub-
9 Acute's severe understaffing, among other things, resulted in him suffering a significant fall.

10 18. On December 8, 2012, Sacramento Sub-Acute improperly placed Mr.
11 Kuntz's tracheostomy tube and otherwise failed to monitor his ingestion of food and
12 liquids. As a result, Mr. Kuntz vomited profusely out of his tracheostomy tube, spiked a
13 fever, and thereafter was diagnosed with aspiration pneumonia. Mr. Kuntz subsequently
14 became more ill and "coded" at Sacramento Sub-Acute on December 10, 2012.

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16 19. During his entire time at Sacramento Sub-Acute, Mr. Kuntz was understood
17 to be at high risk for the development of pressure sores and, accordingly, Sacramento Sub-
18 Acute promised to have a low air loss mattress for Mr. Kuntz. However, at no time during
19 his stay did Sacramento Sub-Acute use such a mattress with Mr. Kuntz, a failure that lay the
20 initial foundation for the subsequent, horrific pressure sore that Mr. Kuntz suffered.

21
22 20. On December 12, 2012, two days after being re-admitted to Kaiser because
23 of the severe neglect he suffered at Sacramento Sub-Acute, Mr. Kuntz pulled out his
24 percutaneous endoscopic gastrostomy (PEG) tub. On that day, Kaiser doctor Darshan
25 Sonik replaced the PEG tube with a Foley catheter. Dr. Sonik wrote no note relating to

1 this action and there is no documentation regarding the size or placement of the Foley
2 catheter. On this same day, Mr. Kuntz was moved to the step-down unit from the ICU.

3 21. On December 13, 2012, Mr. Kuntz was complaining of abdominal pain. The
4 family told the attending nurse but not action was taken. Later that day, Mr. Kuntz
5 appeared to be septic and he had significant bloating in his abdomen.
6

7 22. On December 14, 2012, Mr. Kuntz' Foley catheter was leaking orange liquid.
8 Mr. Kuntz' family informed the nurses. No action was taken.

9 23. On December 15, 2012, Mr. Kuntz was transferred back to the ICU. At this
10 time, he had a rigid abdomen and the CT scan showed that the PEG tube was *outside the*
11 *stomach*. As a result, fluid had been accumulating in that space for a matter of days. As a
12 result of this reckless neglect of Mr. Kuntz, Kaiser doctors presented the family with two
13 options. One option was to just provide comfort care, e.g., make him comfortable while he
14 died. The other was to have an emergency surgery and suck out all of the fluid and hope
15 that he survived the surgery (because he was suffering from low blood pressure). The
16 family opted for the surgery. Indicative of his strong constitution, Mr. Kuntz survived the
17 surgery. The doctors informed Mr. Kuntz that they took two and a half liters of fluid out
18 of his body.
19

20 24. During this crisis that was brought about by the blatant and severe neglect of
21 Mr. Kuntz, Mr. Kuntz was rendered entirely immobile and in significant and constant
22 abdominal pain which only furthered his lack of mobility either in the bed or outside of the
23 bed. During this time period, Mr. Kuntz was on a regular mattress rather than an air
24 mattress despite the fact that he was at high risk for the development of pressure sores.
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1 During this time period and throughout his December 10, 2012 admission to Kaiser, Kaiser
2 failed to regularly reposition Mr. Kuntz. During this time period and up to and including
3 December 16, 2012, Kaiser personnel were not regularly inspecting Mr. Kuntz' sacrum for
4 pressure sores as is illustrated by the fact that at no time did Kaiser inform the Kuntz family
5 that Mr. Kuntz had a massive pressure sore on his sacrum.
6

7 25. On December 16, Mr. Kuntz' son Michael Kuntz was visiting his dad when a
8 large group came into the room and said they wanted to check on Mr. Kuntz. They closed
9 the curtain and Michael asked why they would be closing the curtain given that Michael was
10 his son. Michael said he wanted to know what was going on with his dad and had a right to
11 know. The Kaiser nurses said Michael was "not allowed" to see what they were looking at.
12 Michael continued to listen and heard the Kaiser nurses talking about a wound on his
13 father's body. Michael then stood over their shoulder and saw for the first time a horrible
14 wound on his dad's bottom side.
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16 26. Michael felt sure that his mom was not aware of this wound and he
17 immediately expressed outrage both at the fact that Kaiser had let his father get this type of
18 wound and that they had never said anything of any kind to any of them about the wound.
19 Michael immediately called his mom (Edith), who also was not aware of the wound.
20 Shortly thereafter, Edith and Sheila demanded that Kaiser nurses take off the bandage of
21 the wound so that they could see it. They again said they would not show her. She
22 persisted and eventually they agreed to show her the wound. Upon observing the wound
23 Edith nearly fainted. The family took photographs of the wound at this time and
24 subsequently. A few of these photographs are attached hereto as **Exhibit A**.
25

1 27. The wound continued to worsen throughout the rest of Mr. Kuntz' stay at
2 Kaiser. Mr. Kuntz suffered immeasurable pain and suffering as a result of this massive to-
3 the-bone Stage IV pressure ulcer and also relating to the treatments he received for it.

4 28. Thereafter, on February 1, 2013, Mr. Kuntz was transferred to Kindred
5 Healthcare in Folsom where he resided until returning to Kaiser on March 18 because
6 Kaiser no longer wanted to fund Mr. Kuntz' stay at Kindred. Mr. Kuntz remained at
7 Kaiser until May 29, 2013, when he was transferred back to Sacramento Sub-Acute (again
8 for financial reasons).

9 29. Upon arriving at Sacramento Sub-Acute on May 29, Mr. Kuntz' family
10 quickly learned that Sacramento Sub-Acute was not prepared to administer Mr. Kuntz'
11 regularly scheduled medications because they had to get these medications from their own
12 pharmacy. This resulted in a twelve hour delay in the administration of necessary and
13 important medications for Mr. Kuntz, including critical pain medications. On May 29, Mr.
14 Kuntz was coughing up significant brown mucus and Sacramento Sub-Acute took no
15 concrete action to address this change of condition.

16 30. On May 30, 2013, Mrs. Kuntz received a call at 8:00 a.m. advising her that
17 they had found Mr. Kuntz on the floor. According to staff, Mr. Kuntz had hit the floor
18 with his left hip and head.

19 31. On June 1, 2013, Sacramento Sub-Acute found Mr. Kuntz without a pulse
20 and called 911. He was ambulated to Mercy San Juan Hospital where he was resuscitated
21 but then died a few days later on June 4, 2013.

1 **COUNT ONE**

2 **[Elder Abuse (Welfare And Institutions Code Section 15600, *et seq.*)**
3 **Plaintiffs vs. The Sacramento Sub-Acute Defendants]**

4 32. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through
5 31 above as though fully set forth at length below.

6 33. The Sacramento Sub-Acute Defendants had care or custody over Mr. Kuntz
7 from November 28, 2012 to December 10, 2012 and then again from May 29, 2013 to
8 June 1, 2013. On the day of his death and at all times relevant to this action, Mr. Kuntz
9 was sixty-four years old. Mr. Kuntz was an inpatient at Sacramento Sub-Acute, a 24-hour
10 health facility as defined in Section 1250 of the Health and Safety Code. Accordingly, Mr.
11 Kuntz was a "dependent" and within the class of persons protected by Welfare and
12 Institutions Code section 15600, *et seq.* and Penal Code section 368.

13 34. The Sacramento Sub-Acute Defendants neglected Mr. Kuntz within the
14 meaning of Welfare and Institutions Code section 15610.57 in numerous respects. First,
15 the Sacramento Sub-Acute Defendants neglected Mr. Kuntz by failing to ensure that he
16 was maintained in a sanitary condition. Specifically, Mr. Kuntz was found soiled in his
17 own feces while residing at Sacramento Sub-Acute and, even when defendants were
18 informed of this, was left in this condition for an additional twenty minutes. There were
19 other similar situations during his time at Sacramento Sub-Acute.

20 35. Second, the Sacramento Sub-Acute Defendants neglected Mr. Kuntz with
21 respect to fall prevention. Specifically, as detailed above, Mr. Kuntz had at least two
22 serious falls from his bed while under the Sacramento Sub-Acute Defendants care. These
23 defendants had a duty to take all measures necessary to prevent these falls, including
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1 putting into place fall prevention protocols, having pads adjacent to the beds to cushion
2 any fall, putting into place personal and bed alarms, using a sitter during periods of time
3 where Mr. Kuntz appeared to need one, and properly staffing the facility so that he would
4 be regularly checked on. The Sacramento Sub-Acute Defendants failed to take any of
5 these precautions resulting in falls that caused significant emotional and physical injury to
6 Mr. Kuntz.

8 36. Third, the Sacramento Sub-Acute Defendants neglected Mr. Kuntz by
9 repeatedly failing to properly place Mr. Kuntz' tracheostomy tube and by failing to monitor
10 his ingestion of food and liquids. As a result of these custodial failures, Mr. Kuntz
11 vomited profusely, spiked a fever, and thereafter was diagnosed with aspiration pneumonia
12 resulting in a significant set-back to Mr. Kuntz' efforts to recover and rehabilitate from his
13 stroke and a subsequent disastrous admission at Kaiser.

15 37. Fourth, the Sacramento Sub-Acute Defendants neglected Mr. Kuntz by
16 failing to take the necessary measures to ensure that Mr. Kuntz did not acquire a pressure
17 sore at its facility or at the Kaiser admission that followed. The Sacramento Sub-Acute
18 Defendants knew that Mr. Kuntz was at high risk for the development of pressure sores
19 and promised as a result to secure a low air loss mattress for his use. However, the
20 Sacramento Sub-Acute Defendants never secured such a low air loss mattress and
21 otherwise did not take aggressive measures to prevent Mr. Kuntz from securing a pressure
22 sore. This failure laid the groundwork for the subsequent significant pressure sore that Mr.
23 Kuntz' family witnessed while Mr. Kuntz was at Kaiser.

1 38. Fifth, the Sacramento Sub-Acute Defendants neglected Mr. Kuntz by failing
2 to ensure that they were prepared to administer his medications to him immediately upon
3 his arrival at the facility. This is basic custodial care, yet the Sacramento Sub-Acute
4 Defendants failed in their duties and, as a result, Mr. Kuntz was not administered necessary
5 medications for a period of over twelve hours.
6

7 39. Sixth, the Sacramento Sub-Acute Defendants neglected Mr. Kuntz by failing
8 to monitor Mr. Kuntz' change patent of condition on June 1, 2013. By the time, the
9 Sacramento Sub-Acute Defendants got around to looking at Mr. Kuntz on June1, he was
10 entirely without a pulse and had to be 911'd out of the facility. Mr. Kuntz was dead three
11 days later.
12

13 40. The Sacramento Sub-Acute Defendants' neglect of Mr. Kuntz was reckless,
14 oppressive and malicious. Specifically, the Sacramento Sub-Acute Defendants knew that
15 ignoring their obligations to perform basic assessments and to provide custodial care with
16 respect to maintaining sanitary conditions, preventing falls, properly placing and
17 monitoring his tracheostomy tube, preventing pressure sores, timely administering his
18 medications, and timely monitoring any changes of condition would cause Mr. Kuntz to
19 suffer substantial injuries and that there was a high probability that he would suffer severe
20 and lasting injuries, if not death. Further, the Sacramento Sub-Acute Defendants knew
21 that each of the aforementioned care issues were individually critical to Mr. Kuntz's health,
22 well-being, and prognosis. In the face of their knowledge as to how critical each of the
23 above patient care issues were to Mr. Kuntz's life, the Sacramento Sub-Acute Defendants'
24 ignored these patient care issues, and each of them, providing abysmal care that fell far
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1 below how reasonable persons in their position would have performed. By failing to
2 address Mr. Kuntz's patient care issues, the Sacramento Sub-Acute Defendants knew that
3 it was highly probable that their conduct would cause him harm and they knowingly
4 disregarded this risk.

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6 41. Further, the Sacramento Sub-Acute Defendants' neglect of Mr. Kuntz was
7 reckless, oppressive, and malicious, in that their failures were not merely isolated to one
8 area of patient care, but extended to numerous patient care issues, which collective failures
9 they clearly understood would cause Mr. Kuntz either serious harm or death, or both.

10 42. The Sacramento Sub-Acute Defendants, and each of them, are legally
11 responsible for the widespread neglect Mr. Kuntz suffered for numerous independent
12 reasons. First, managing agents of the Sacramento Sub-Acute Defendants, and each of
13 them, directly participated in the neglect of Mr. Kuntz. Personnel who the Sacramento
14 Sub-Acute Defendants, and each of them, vested with discretionary decision-making
15 authority relating to patient care issues involving Mr. Kuntz were part of the team that
16 ignored their obligations to perform basic assessments and to provide custodial care with
17 respect to maintaining sanitary conditions, preventing falls, properly placing and
18 monitoring his tracheostomy tube, preventing pressure sores, timely administering his
19 medications, and timely monitoring any changes of condition, among other things. Such
20 individuals were officers, directors, and/or managing agents of the Sacramento Sub-Acute
21 Defendants and each of them. The direct participation of these individuals in the abysmal
22 care provided to Mr. Kuntz subjects the Sacramento Sub-Acute Defendants, and each of
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1 them, to liability under the Elder Abuse and Dependent Adult Civil Protection Act
2 (hereafter "Elder Abuse Act").

3 43. Further, the Sacramento Sub-Acute Defendants, and each of them, are
4 legally responsible for the egregious neglect Mr. Kuntz suffered, because their officers,
5 directors and/or managing agents both directly and indirectly authorized the reckless
6 neglect that Mr. Kuntz suffered. Said officers, directors and/or managing agents directly
7 authorized the reckless neglect at issue by specifically knowing that Mr. Kuntz was being
8 neglected by Sacramento Sub-Acute personnel, allowing such neglect to continue to occur,
9 and failing to take any action to prevent the reckless neglect from further occurring.

10 44. Further, the Sacramento Sub-Acute Defendants, and each of them, are
11 legally responsible for the reckless neglect Mr. Kuntz suffered because their officers,
12 directors and/or managing agents were responsible for creating a patient care environment
13 that inevitably led to the reckless neglect of Mr. Kuntz and other similarly situated nursing
14 home patients under the care of the Sacramento Sub-Acute Defendants. Specifically, the
15 Sacramento Sub-Acute Defendants and their officers, directors and managing agents
16 purposely utilized insufficient staff, underpaid staff, and insufficiently supervised staff as
17 part of an overall plan, design, and scheme to maximize their profits at the expense of
18 patient care and well-being.

19 45. Specifically as to Sacramento Sub-Acute, it was the 24-hour health facility
20 that had care and custody over Mr. Kuntz at all relevant times. Sacramento Sub-Acute is
21 legally responsible for the widespread neglect of Mr. Kuntz because the personnel who it
22 vested with discretionary decision-making authority relating to patient care issues involving

1 Mr. Kuntz were part of the team at the facility that ignored their obligations to perform
2 basic assessments and to provide custodial care. Such individuals had first-hand
3 knowledge of the failures with respect to maintaining sanitary conditions, preventing falls,
4 properly placing and monitoring his tracheostomy tube, preventing pressure sores, timely
5 administering his medications, and timely monitoring any changes of condition, among
6 other things, yet allowed such neglect to continue to occur, failed to take any action to
7 prevent the reckless neglect from further occurring, and otherwise purposely utilized
8 insufficient staff, underpaid staff, and insufficiently supervised staff as part of an overall
9 plan, design, and scheme to maximum their profits at the expense of patient care and well-
10 being.
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12 46. Specifically as to Plum Healthcare Group, it was and is the corporation that
13 owned, managed, controlled, maintained, and operated Sacramento Sub-Acute. Plum
14 Healthcare Group is legally responsible for the widespread neglect of Mr. Kuntz because it
15 was responsible for creating a patient care environment that inevitably led to the reckless
16 neglect of Mr. Kuntz and other similarly situated nursing home patients under the care of
17 the Sacramento Sub-Acute Defendants. The personnel who Plum Healthcare Group
18 vested with discretionary decision-making authority relating to the management and
19 operation of Sacramento Sub-Acute ignored their obligations to ensure that basic
20 assessments and custodial care was being provided. Instead, Plum Healthcare Group
21 managed and operated Sacramento Sub-Acute in a manner designed to purposely utilize
22 insufficient staff, underpaid staff, and insufficiently supervised staff as part of an overall
23 plan, design, and scheme to maximum their profits at the expense of patient care and well-
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1 being. Even after learning of the neglect of Mr. Kuntz as alleged herein, Plum Healthcare
2 Group allowed such neglect to continue to occur and failed to take any action to prevent
3 the reckless neglect from further occurring.

4 47. In choosing to maximize profits at the expense of patient care, the
5 Sacramento Sub-Acute Defendants knew that their plan posed a substantial and imminent
6 danger to the health, safety and well-being of the patients they provided services to.
7 Indeed, the Sacramento Sub-Acute Defendants, and their officers, directors and managing
8 agents had specifically been put on notice of the egregious failures of their personnel to
9 provide adequate patient care by, among other things, the numerous deficiencies and
10 citations imposed by the California Department of Public Health, the public entity
11 statutorily entrusted with providing regulatory oversight of these facilities. Further,
12 plaintiffs are informed and believe that the Sacramento Sub-Acute Defendants have been
13 subjected to numerous civil lawsuits for which they have been forced to pay millions of
14 dollars in settlements relating specifically to the abysmal patient care provided by the
15 Sacramento Sub-Acute Defendants. Despite being placed on specific notice of the
16 repeated and significant shortcomings of patient care at Sacramento Sub-Acute, the
17 Sacramento Sub-Acute Defendants have continued to operate Sacramento Sub-Acute
18 without making the necessary changes to address identified shortcomings in patient care.

19 48. The conduct of the Sacramento Sub-Acute Defendants, and each of them,
20 as detailed above resulted in physical and mental harm to Mr. Kuntz and, ultimately, in his
21 death. In addition to the physical and mental harm caused by the Sacramento Sub-Acute
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1 Defendants' flagrant disregard for his health and well-being, the Sacramento Sub-Acute
2 Defendants' conduct caused Mr. Kuntz to suffer horrific mental pain and suffering.

3 49. Under Welfare and Institutions Code sections 15657(a) and (b), the
4 Sacramento Sub-Acute Defendants are liable to Plaintiffs for damages for Mr. Kuntz' pain
5 and suffering, injuries, medical expenses, and attorneys' fees and costs.
6

7 50. Further, under Civil Code section 3345, the Sacramento Sub-Acute
8 Defendants are liable to Plaintiffs for a trebling of the damages awarded under the Elder
9 Abuse Act because (1) the Sacramento Sub-Acute Defendants knew or should have known
10 that their conduct was directed toward a dependent and/or (2) Mr. Kuntz was substantially
11 more vulnerable to the Sacramento Sub-Acute Defendants' conduct because of his
12 infirmities and he actually suffered substantial physical, emotional, or economic damages
13 resulting from the Sacramento Sub-Acute Defendants' conduct.
14

15 51. The Sacramento Sub-Acute Defendants' violations of the various provisions
16 of the Elder Abuse Act, which provisions embody a substantial public interest to protect
17 the health and welfare of elderly and dependent persons, was despicable and in conscious
18 disregard of Edward William Kuntz's rights, health and welfare.

19 52. As is discussed more fully above, the Sacramento Sub-Acute Defendants
20 acted with fraud, malice, oppression and recklessness in doing so, thereby entitling
21 Plaintiffs to punitive damages in connection with the Sacramento Sub-Acute Defendants'
22 conduct.
23

24 Wherefore, Plaintiffs pray for damages as set forth below.
25

COUNT TWO
[Elder Abuse (Welfare And Institutions Code Section 15600, *et seq.*)
Plaintiffs vs. Kaiser Defendants]

53. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through 52 above as though fully set forth at length below.

54. The Kaiser Defendants had care or custody over Mr. Kuntz from October 22, 2012 to November 28, 2012, from December 10, 2012 to February 1, 2013, and from March 18, 2013 to May 29, 2013. On the date of his death and at all times relevant to this action, Mr. Kuntz was sixty-four years old. Mr. Kuntz was an inpatient at Sacramento Kaiser, a 24-hour health facility as defined in Section 1250 of the Health and Safety Code. Accordingly, Mr. Kuntz was a "dependent" and within the class of persons protected by Welfare and Institutions Code section 15600, *et seq.* and Penal Code section 368.

55. The Kaiser Defendants neglected Mr. Kuntz within the meaning of Welfare and Institutions Code section 15610.57 in numerous respects. First, the Kaiser Defendants neglected Mr. Kuntz by failing to monitor his condition as it related to his PEG tube after the PEG tube came out on December 12, 2012. In particular, Kaiser failed to ensure that the Foley catheter with which the PEG tube was replaced was properly placed and, even more significantly, failed to monitor Mr. Kuntz condition relating to the PEG tube shift after shift, day after day, until December 15, 2012 when a CT scan was finally done revealing that the PEG tube was outside of Mr. Kuntz' stomach. As a result of this patent custodial failure to monitor Mr. Kuntz' condition, despite numerous complaints and concerns expressed by the family and by Mr. Kuntz, despite oozing orange fluid coming from his stomach, and despite Mr. Kuntz having a distended

1 and bloated abdomen, Mr. Kuntz experienced pain, suffering, an unnecessary and
2 debilitating surgery, and complete immobilization which substantially contributed to the
3 massive to-the-bone stage IV pressure sore that he suffered.

4 56. Second, the Kaiser Defendants neglected Mr. Kuntz by failing to take all
5 necessary measures to prevent Mr. Kuntz from developing a massive to-the-bone stage IV
6 pressure sore on his buttocks. During the course of Mr. Kuntz's December 10 admission
7 to Kaiser Morse, the Kaiser Defendants took no measures to ensure that Mr. Kuntz did
8 not develop this massive sore and, in fact, entirely concealed the existence of the sore from
9 the family until they accidentally saw the wound and it was already a massive stage IV
10 wound.

11
12 57. Third, the Kaiser Defendants neglected Mr. Kuntz by failing to take all
13 necessary measures to properly care for Mr. Kuntz's pressure ulcer once it was observed.
14 Between the time the wound was noted and Mr. Kuntz was discharged to Kindred on
15 February 1, Mr. Kuntz' wound did not heal but continued to worsen to the condition
16 depicted in the photographs attached here as **Exhibit A**. The wound went all the way to
17 the bone and had tunneling and undermining. Mr. Kuntz suffered extreme pain as a result
18 of this horrific wound.

19
20 58. Third, the Kaiser Defendants neglected and abused Mr. Kuntz by failing to
21 ensure that he was free from unnecessary pain and by failing to ensure that he was being
22 maintained at his highest practicable level of physical, emotional and psychosocial
23 functioning. Specifically, during his time at Kaiser Mr. Kuntz suffered unnecessary pain
24 relating to a large pressure wound on his buttock. Clearly, Mr. Kuntz was not maintained
25

1 at his highest practicable level of functioning because in less than two months Mr. Kuntz's
2 condition dramatically and unnecessarily deteriorated from a relatively healthy and stable
3 condition with the prospect of rehabilitation to suffering from a severe pressure ulcer. All
4 of this was unnecessary and only occurred because of the abject failure by the Kaiser
5 Defendants to perform basic assessments and to provide appropriate care.
6

7 59. The Kaiser Defendants' neglect of Mr. Kuntz was reckless, oppressive and
8 malicious. Specifically, the Kaiser Defendants knew that performing basic assessments and
9 providing custodial care with respect to monitoring his condition relating to his PEG tube,
10 preventing pressure ulcers, properly caring for the pressure ulcer once observed, and
11 ensuring that Mr. Kuntz was free from unnecessary pain were each individually critical to
12 Mr. Kuntz's health, well-being, and prognosis. Further, the Kaiser Defendants knew that
13 the failure to perform any of these obligations would create a high probability that Mr.
14 Kuntz would suffer severe and lasting injuries, if not death. In the face of their knowledge
15 as to how critical each of the above patient care issues were to Mr. Kuntz's life, the Kaiser
16 Defendants ignored these patient care issues, and each of them, providing abysmal care
17 that fell far below how reasonable persons in their position would have performed. By
18 failing to address Mr. Kuntz's patient care issues, The Kaiser Defendants knew that it was
19 highly probable that their conduct would cause him harm and they knowingly disregarded
20 this risk.
21

22
23 60. Further, the Kaiser Defendants' neglect of Mr. Kuntz was reckless,
24 oppressive, and malicious, in that their failures were not merely isolated to one area of
25

1 patient care, but extended to numerous patient care issues, which collective failures they
2 clearly understood would cause Mr. Kuntz serious harm and death.

3 61. The Kaiser Defendants are legally responsible for the widespread neglect
4 Mr. Kuntz suffered for numerous independent reasons. First, managing agents of the
5 Kaiser Defendants directly participated in the neglect of Mr. Kuntz. Personnel who the
6 Kaiser Defendants vested with discretionary decision-making authority relating to patient
7 care issues involving Mr. Kuntz were part of the team that ignored their obligations to
8 perform basic assessments and provide custodial care with respect to monitoring his
9 condition relating to the PEG tube, preventing pressure ulcers, properly caring for the
10 pressure ulcer once it was observed, and ensuring that he was free from unnecessary pain.
11 Such individuals were officers, directors, and/or managing agents of the Kaiser
12 Defendants. The direct participation of these individuals in the abysmal care provided to
13 Mr. Kuntz subjects the Kaiser Defendants to liability under the Elder Abuse Act.
14

15 62. Further, the Kaiser Defendants are legally responsible for the egregious
16 neglect Mr. Kuntz suffered, because their officers, directors and/or managing agents both
17 directly and indirectly authorized the reckless neglect that Mr. Kuntz suffered. Said offers,
18 directors and/or managing agents directly authorized the reckless neglect at issue by
19 specifically knowing that Mr. Kuntz was being neglected by the Kaiser Defendants'
20 personnel, allowing such neglect to continue to occur, and failing to take any action to
21 prevent the reckless neglect from further occurring.
22

23 63. Further, the Kaiser Defendants are legally responsible for the reckless
24 neglect Mr. Kuntz suffered because their officers, directors and/or managing agents were
25

1 responsible for creating a patient care environment that inevitably led to the reckless
2 neglect of Mr. Kuntz and other similarly situated patients under the care of the Kaiser
3 Defendants. Specifically, the Kaiser Defendants and their officers, directors and managing
4 agents purposely utilized insufficient staff, underpaid staff, and insufficiently supervised
5 staff as part of an overall plan, design, and scheme to maximum their profits at the expense
6 of patient care and well-being.
7

8 64. In choosing to maximize profits at the expense of patient care, the Kaiser
9 Defendants knew that its plan posed a substantial and imminent danger to the health,
10 safety and well-being of the patients it provided services to. Indeed, The Kaiser
11 Defendants and their officers, directors and managing agents had specifically been put on
12 notice of the egregious failures of their personnel to provide adequate patient care by,
13 among other things, the numerous deficiencies and citations imposed by the California
14 Department of Public Health, the public entity statutorily entrusted with providing
15 regulatory oversight of these facilities. Despite being placed on specific notice of the
16 repeated and significant shortcomings of patient care at Kaiser facilities, the Kaiser
17 Defendants continued to operate without making the necessary changes to address
18 identified shortcomings in patient care.
19

20 65. The conduct of the Kaiser Defendants as detailed above resulted in
21 substantial physical and mental harm to Mr. Kuntz. In addition to the physical and mental
22 harm caused by the Kaiser Defendants' flagrant disregard for his health and well-being, the
23 Kaiser Defendants' conduct caused Mr. Kuntz to suffer horrific mental pain and suffering.
24
25

1 66. Under Welfare and Institutions Code sections 15657(a) and (b), the Kaiser
2 Defendants are liable to Plaintiffs for damages for Edward William Kuntz's pain and
3 suffering, injuries, medical expenses, and attorneys' fees and costs.

4 67. Further, under Civil Code section 3345, the Kaiser Defendants are liable to
5 Plaintiffs for a trebling of the damages awarded under the Elder Abuse Act because (1)
6 The Kaiser Defendants knew or should have known that their conduct was directed
7 toward an elder or dependent and/or (2) Mr. Kuntz was substantially more vulnerable to
8 the Kaiser Defendants' conduct because of his infirmities and he actually suffered
9 substantial physical, emotional, or economic damages resulting from the Kaiser
10 Defendants' conduct.

11 68. The Kaiser Defendants' violations of the various provisions of the Elder
12 Abuse Act, which provisions embody a substantial public to protect the health and welfare
13 of elderly and dependent persons, was despicable and in conscious disregard of Mr. Kuntz
14 rights, health and welfare.

15 69. As is discussed more fully above, the Kaiser Defendants acted with fraud,
16 malice, oppression and recklessness in doing so, thereby entitling Plaintiffs to punitive
17 damages in connection with the Kaiser Defendants' conduct.

18 Wherefore, Plaintiffs pray for damages as set forth below.

19
20
21
22 **COUNT THREE**
23 **[Negligent Infliction Of Emotional Distress**
24 **Plaintiffs Edith Kuntz, Sheila Lewis, And Michael Kuntz**
25 **vs. The Kaiser Defendants]**

70. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through
69 above as though set forth fully below.

1 71. As set forth more fully above, the Kaiser Defendants, and each of them,
2 neglected Mr. Kuntz by ignoring their obligations to perform basic assessments and to
3 provide custodial care with respect to monitoring his condition as it related to his PEG
4 tube, preventing pressure sores, caring for his buttocks pressure sore once it was identified,
5 and failing to ensure that he was free from unnecessary pain and otherwise maintaining
6 him at his highest practicable level.
7

8 72. Edith Kuntz is the wife of Edward William Kuntz. At the time of Mr.
9 Kuntz' death, the two had been married for forty-four years and had three children
10 together. As Mr. Kuntz's wife, Mrs. Kuntz was very attuned to her husband's needs and
11 to the Kaiser Defendants' utter failure to attend to those needs. Mrs. Kuntz visited her
12 husband Ed on nearly a daily basis when he was a patient residing at Kaiser.
13

14 73. Sheila Lewis is the daughter of Edward William Kuntz. At the time of his
15 death, the two were extremely close and Mrs. Lewis, who is a veterinary technician, closely
16 observed the care that Mr. Kuntz was receiving. Mrs. Lewis visited her father on nearly a
17 daily basis when he was a patient residing at Kaiser.
18

19 74. Michael Kuntz is the son of Edward William Kuntz. At the time of his
20 death, Michael was very close to his father. Mr. Kuntz regularly visited his father while he
21 was a patient residing at Kaiser.
22

23 75. After Mr. Kuntz was admitted to Kaiser on December 10, 2012, Edith
24 Kuntz, Sheila Lewis, and Michael Kuntz, and each of them, frequently visited Mr. Kuntz at
25 while he was at Kaiser. As a result, each of these plaintiffs directly witnessed the
maltreatment and neglect of Mr. Kuntz by the Kaiser Defendants including, but not

1 limited to, Kaiser's failure to monitor Mr. Kuntz' condition relating to his PEG tube.
2 Specifically, almost immediately after Kaiser replaced Mr. Kuntz' PEG tube on December
3 12, 2012, each of Mr. Kuntz' family members observed that something was very wrong
4 with the new placement and Mr. Kuntz' stomach. They (each of them) watched as fluid
5 oozed from his stomach. They (each of them) saw his stomach become bloated and
6 distended. They (each of them) saw Mr. Kuntz in pain as a result of the misplacement of
7 the PEG tube and the failure to monitor this misplacement. They (Edith and Sheila)
8 requested and insisted that an x-ray be done to demonstrate that the PEG tube was not
9 properly placed. Notwithstanding the obvious and patent problems with the PEG tube
10 and Mr. Kuntz' stomach, Kaiser personnel sat on their hands for *three days* and allowed Mr.
11 Kuntz to suffer the horrific consequences of their failures, which included a life
12 threatening surgery and the development and worsening of what ended up being a stage IV
13 to-the-bone pressure sore.

16 76. During the above discussed time period, Edith Kuntz, Sheila Lewis, and
17 Michael Kuntz suffered severe emotional distress. They watched Mr. Kuntz suffer from
18 what obviously was – and what they understood to be – failed placement of the PEG tube,
19 made numerous complaints about the same, but watched on powerlessly for days as Kaiser
20 personnel blithely ignored their request for an x-ray to confirm what was obvious to them
21 and would have been obvious to any lay person.

23 77. Given their very close relationship with Mr. Kuntz, Edith Kuntz, Sheila
24 Lewis, and Michael Kuntz gained enough of an understanding of the maltreatment and
25 neglect of Mr. Kuntz by the Kaiser Defendants at the time it was occurring to have

1 contemporary sensory awareness that the Kaiser Defendants' conduct was in fact
2 maltreatment and neglect and that it was causing Mr. Kuntz injury and to immediately
3 suffer emotional distress therefrom. As discussed above, the family and each of them not
4 only witnessed obvious and patent signs of Kaiser's failures but reported their observations
5 and concerns to Kaiser. The most obvious proof of the family's contemporary sensory
6 awareness of Kaiser's neglect and its injury to Mr. Kuntz is that *it was the family* who
7 ultimately compelled Kaiser to run the diagnostic tests that proved the family right.
8 Moreover, as stated above, as a result of this neglect, Mr. Kuntz was forced to undergo a
9 life-threatening and debilitating surgery and developed a massive stage IV to-the-bone
10 pressure sore.

11
12 Wherefore, Plaintiffs pray for damages as set forth below.

13
14 **COUNT FOUR**
15 **[Violation of Patients' Bill Of Rights**
Plaintiffs vs. The Sacramento Sub-Acute Defendants]

16 78. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through
17 77 above as though set forth fully below.

18 79. Edward William Kuntz was a resident at Sacramento Sub-Acute, a skilled
19 nursing facility as defined in subdivision (c) of Health and Safety Code Section 1250, from
20 November 28, 2012 to December 10, 2012, and again from May 29, 2013 to June 1, 2013.

21 80. As a resident at a skilled nursing facility, Mr. Kuntz had certain patient rights
22 as enumerated in various statutes and regulations under the law of the State of California.
23 In particular, and without limiting the generality of the foregoing, Mr. Kuntz had the
24 following rights, among others:
25

- 1 (a) To be fully informed, prior to or at the time of admission and during his
2 stay, of services available in the facility;
- 3 (b) To be fully informed of his total health status and to be afforded the
4 opportunity to participate on an immediate and ongoing basis in the total
5 plan of care including the identification of medical, nursing, and
6 psychosocial needs and the planning of related services;
- 7 (c) To be free from mental and physical abuse;
- 8 (d) To be treated with consideration, respect, and full recognition of dignity
9 and individuality, including privacy in treatment and in care of personal
10 needs;
- 11 (e) To have the facility employ an adequate number of qualified personnel to
12 carry out all functions of the facility;
- 13 (f) To be provided the appropriate care necessary to ensure good personal
14 hygiene;
- 15 (g) To retain and use personal clothing and possessions;
- 16 (h) To be free from psychotherapeutic drugs used for the purpose of resident
17 discipline or staff convenience;
- 18 (i) To have measures taken to prevent incontinence;
- 19 (j) To have a system to call nurses that is maintained in good operating
20 order; and
- 21 (k) To have a physician notified promptly of all changes in condition.

22 81. As set forth above, the Sacramento Sub-Acute Defendants violated Mr.
23 Kuntz's legal rights as a resident by, among other things, failing to inform him and his
24 family of available services and care he should have received, including adequate daily
25 monitoring and assessments; failing to keep him and his family informed of his total health
status; failing to involve him and his family in his plan of care on an ongoing basis; abusing
and neglecting him as set forth above; failing to treat him with consideration, dignity,

1 respect, and privacy; failing to employ an adequate number of trained personnel to meet
2 his needs; and failing to notify his physician of changes in condition.

3 82. As a result of the Sacramento Sub-Acute Defendants' violations of his
4 patient rights, Mr. Kuntz suffered avoidable injuries and endured great pain. Pursuant to
5 Health and Safety Code Section 1430(b), the Sacramento Sub-Acute Defendants are civilly
6 liable to Mr. Kuntz for each and every violation of his patient's rights.
7

8 **COUNT FIVE**
9 **[Wrongful Death**
10 **Plaintiffs Edith Kuntz, Edward Wade Kuntz, Michael Kuntz and Sheila Lewis**
11 **vs. The Sacramento Sub-Acute Defendants]**

12 83. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through
13 82 above as though set forth fully below.

14 84. As a proximate result of the reckless neglect, abuse and fraud perpetrated by
15 the Sacramento Sub-Acute Defendants as set forth above, Mr. Kuntz died on June 4, 2013.

16 85. Prior to the death of Mr. Kuntz, Edith Kuntz, Sheila Lewis, Michael Kuntz,
17 and Edward Wade Kuntz enjoyed the love, society, comfort and attention of Mr. Kuntz.
18 As a proximate result of the reckless neglect, abuse and fraud perpetrated by the
19 Sacramento Sub-Acute Defendants, and each of them, Edith Kuntz, Sheila Lewis, Michael
20 Kuntz, and Edward Wade Kuntz are no longer able to enjoy the love, society, comfort and
21 attention of Mr. Kuntz.

22 Wherefore, Plaintiffs pray for damages as set forth below.
23
24
25

COUNT SIX
[Wrongful Death
Plaintiffs Edith Kuntz, Edward Wade Kuntz, Michael Kuntz and Sheila Lewis
vs. The Kaiser Defendants]

86. Plaintiffs hereby incorporate the allegations asserted in paragraphs 1 through 85 above as though set forth fully below.

87. As a proximate result of the reckless neglect, abuse and fraud perpetrated by the Kaiser Defendants as set forth above, Mr. Kuntz died on June 4, 2013.

88. Prior to the death of Mr. Kuntz, Edith Kuntz, Sheila Lewis, Michael Kuntz, and Edward Wade Kuntz enjoyed the love, society, comfort and attention of Mr. Kuntz. As a proximate result of the reckless neglect, abuse and fraud perpetrated by the Kaiser Defendants, and each of them, Edith Kuntz, Sheila Lewis, Michael Kuntz, and Edward Wade Kuntz are no longer able to enjoy the love, society, comfort and attention of Mr. Kuntz.

Wherefore, Plaintiffs pray for damages as set forth below.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For attorneys' fees pursuant to Welfare and Institutions Code section 15657(a) and Code of Civil Procedure section 1021.5;
4. For treble damages pursuant to Civil Code section 3345;
5. For punitive damages;
6. For disgorgement of benefits and return of profits; and

7. For costs of suit and for such other and further relief as the Court deems just and proper.

Dated: June 3, 2014

The Law Office

Zachary P. Dwyer

Edward P. Dudensing
Attorney for Plaintiffs

Attorney for Plaintiffs