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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DENNIS MESKER, by and through his Successor in Interest, Sonja Mesker, and SONJA MESKER, Plaintiff, vs. KAISER FOUNDATION HOSPITALS - SAN DIEGO; and DOES 1 through 250, inclusive, Defendant.	CASE NO. 37-2016-00006035-CU-NP-CTL **COMPLAINT FOR DAMAGES** 1) Elder Abuse (Pursuant to the Elder Adult and Dependent Adult Civil Protection Act - *Welfare & Institutions Code* §§15600, *et seq.*) 2) Negligence 3) Negligent Hiring and Supervision (CACI 426) 4) Wrongful Death Trial Date: None Set
MARK LEE MESKER, CAMERON DENNIS MESKER, and YONDA LYNN TRENGA, Nominal Defendants	

COMES NOW PLAINTIFFS and allege upon information and belief as follows:

THE PARTIES

1. Plaintiff DENNIS MESKER (hereinafter sometimes referred to as "PLAINTIFF") was at all times relevant hereto a resident of the County of Los Angeles, State of California. DENNIS MESKER brings this action by and through his Successor in Interest, Sonja Mesker.

2. Defendants KAISER FOUNDATION HOSPITALS – SAN DIEGO and DOES 1 through 50 (hereinafter referred to as the "HOSPITAL") were at all relevant times in the business of providing care as a general acute care hospital under the fictitious name Kaiser Foundation Hospital –

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San Diego which is located at 4647 Zion Ave, San Diego, CA 92120, and were subject to the requirements of federal and state law regarding the operation of general acute care hospitals operating in the State of California.

3. Defendants DOES 51 through 100 (hereinafter the "PARENT DEFENDANTS") were at all relevant times the HOSPITAL'S owners, operators, parent company, and/or management company of the HOSPITAL and actively participated and controlled the business of the HOSPITAL and thus provided care as a general acute care hospital (hereinafter the HOSPITAL and the PARENT DEFENDANTS are collectively sometimes jointly referred to as "DEFENDANTS").

4. DENNIS MESKER is informed and believes and therefore alleges that at all times relevant to this complaint, DOES 101-250 were licensed and unlicensed individuals and/or entities, and employees of the defendants rendering care and services to DENNIS MESKER and whose conduct caused the injuries and damages alleged herein. It is alleged that at all times relevant hereto, the DEFENDANTS were aware of the unfitness of DOES 101-250 to perform their necessary job duties and yet employed these persons and/or entities in disregard of the health and safety of DENNIS MESKER.

5. Plaintiff is ignorant of the true names and capacities of those Defendants sued herein as DOES 1 through 250, and for that reason has sued such Defendants by fictitious names. Plaintiff will seek leave of the Court to amend this Complaint to identify said Defendants when their identities are ascertained.

6. The liability of the PARENT DEFENDANTS for the abuse of DENNIS MESKER as alleged herein arises from their own direct misconduct as alleged herein as well as all other legal basis and according to proof at the time of trial.

7. The DEFENDANTS, by and through the corporate officers and directors including, Administrator Maggie Pierce, David Hoffmeister, Daniel Garcia, Thomas Chapman, William Graber, Eugene Grigsby, Kim Kaiser, Philip Marineau, Jeffrey Epstein, Judith Johansen, Cynthia Telles, Margaret Porfido, Edward Pei, Christine Cassell, Bernard Tyson, Richard Shannon and others presently unknown to Plaintiff and according to proof at time of trial, ratified the conduct of their co-defendants and the HOSPITAL, in that they were aware of the understaffing of the HOSPITAL, in

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both number and training, the relationship between understaffing and sub-standard provision of care to patients of the HOSPITAL, including DENNIS MESKER, the rash, and truth, of lawsuits against the DEFENDANTS general acute care hospitals including the HOSPITAL, and the HOSPITAL'S customary practice of being issued deficiencies by the State of California's Department of Public Health as alleged herein. That notwithstanding this knowledge, these officers, directors, and/or managing agents meaningfully disregarded the issues even though they knew the understaffing could, would and did lead to unnecessary injuries to patients of their HOSPITAL, including the DENNIS MESKER.

8. Upon information and belief, it is alleged that the misconduct of the DEFENDANTS, which led to the injuries to DENNIS MESKER as alleged herein, was the direct result and product of the financial and control policies and practices forced upon the HOSPITAL by the financial limitations imposed upon the HOSPITAL by the PARENT DEFENDANTS by and through the corporate officers and directors enumerated in paragraph 7 of the complaint and others presently unknown and according to proof at time of trial.

9. That, based upon information and belief, DOES 101-110 were members of the "Governing Body" of the HOSPITAL responsible for the creation and implementation of policies and procedures for the operation of the HOSPITAL pursuant to 22 C.C.R. §§70201 et seq., 70491 through 70499, and 70701 et seq.

10. That than provide the required services mandated by law as members of the "Governing Body," DOES 101-110, as executives, managing agents and/or owners of the HOSPITAL, were focused on unlawfully limiting necessary expenditures in the operation of DEFENDANTS' businesses as opposed to providing the legally mandated minimum care to be provided to elder and/or dependent patients in their HOSPITAL, including DENNIS MESKER, the net effect of which was, and is, to deny required services to HOSPITAL patients including DENNIS MESKER as more fully set forth herein.

11. The HOSPITAL and the PARENT DEFENDANTS operated in such a way as to make their individual identities indistinguishable, and are therefore, the mere alter-egos of one another.

12. At all relevant times, the HOSPITAL and PARENT DEFENDANTS and each of their

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tortious acts and omissions, as alleged herein, were done in concert with one another in furtherance of their common design and agreement to accomplish a particular result, namely maximizing profits from the operation of the HOSPITAL by underfunding and understaffing the HOSPITAL. Moreover, the DEFENDANTS aided and abetted each other in accomplishing the acts and omissions alleged herein. (See Restatement (Second) of Torts §876 (1979)).

FIRST CAUSE OF ACTION
ELDER ABUSE
[By DENNIS MESKER Against All Defendants]

13. DENNIS MESKER hereby incorporates the allegations asserted in paragraphs 1 through 12 above as though set forth at length below.

14. At all relevant times, DENNIS MESKER was over the age of 65 and thus was an "elder" as that term is defined in the *Welfare and Institutions Code* §15610.27, having been born on August 8, 1922.

15. That all DEFENDANTS were to provide "care or services" to DENNIS MESKER and were to be "care custodians" of DENNIS MESKER and in a trust and fiduciary relationship with DENNIS MESKER. That the DEFENDANTS provided "care or services" to dependent adults and the elderly, including DENNIS MESKER, and housed dependent adults and the elderly, including DENNIS MESKER.

16. That each DEFENDANT "neglected" DENNIS MESKER as that term is defined in *Welfare and Institutions Code* §15610.57 in that the DEFENDANTS themselves, as well as their employees, failed to exercise the degree of care that reasonable persons in a like position would exercise as is more fully alleged herein.

17. That the DEFENDANTS as care custodians willfully caused and allowed DENNIS MESKER to be injured and maliciously, fraudulently, oppressively, willfully and/or recklessly caused DENNIS MESKER to be placed in situations such that his health would be in danger in doing the acts specifically alleged herein.

18. At the time of admission to the HOSPITAL, DENNIS MESKER'S skin was free and clear of pressure ulcers. It was well known to the HOSPITAL when DENNIS MESKER was admitted to the HOSPITAL he had reduced mobility and loss of physical fitness which in turn made him highly

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likely to develop debilitating pressure sores and infection if all required care to prevent same was not provided to DENNIS MESKER.

19. On December 4, 2015, DENNIS MESKER was admitted to the HOSPITAL for multiple surgeries to reroute a major artery to his legs through his spine. The surgery was a result of a botched operation performed by doctors at the HOSPITAL in November of the same year where they perforated his bowel while removing aneurysms in his small intestine. The surgery resulted in a major infection which led to several hospital admissions, the last of which was back at the HOSPITAL on the above date, December 4, 2015.

20. After what would be the final surgery of his life on December 11, 2015, DENNIS MESKER was placed in a medically induced coma and put on a ventilator. He remained in a coma for four days. During this period of time, DENNIS MESKER was entirely dependent in that he needed 100% assistance in his Activities of Daily Living ("ADLs") as he was completely unconscious. DENNIS MESKER was bedbound, incontinent of both bowel and bladder, non-ambulatory and had zero bed-mobility in that he was completely unable to turn and reposition himself to relieve pressure from his bony prominences.

21. After his surgery and while he was in a coma, DENNIS MESKER'S family and responsible party expressed concern about his well-being, specifically in regards to his bed mobility and his ability to relieve pressure from his bony prominences. Both his family and his responsible party addressed the fact that he was often left unattended and rarely did they witness any assistance with his nutrition, hydration, or toileting needs.

22. DEFENDANTS warranted that they were aware of DENNIS MESKER'S condition and were sufficiently staffed and equipped with the resources to manage DENNIS MESKER'S care while he was in his coma in accordance with the fragile condition this series of surgeries left him in. HOSPITAL falsely and fraudulently made such promises as they knew that once DENNIS MESKER was in his helpless state after the surgery, he was nothing more a source of revenue for the HOSPITAL. In short, HOSPITAL had no intent to provide the care DENNIS MESKER so desperately needed. Knowing he was completely helpless, and confident they could sufficiently deceive DENNIS MESKER'S family into believing that he was receiving the care that he needed,

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HOSPTIAL utterly disregarded the needs of DENNIS MESKER and withheld from DENNIS MESKER required care so as to cause DENNIS MESKER to develop a painful, infected and avoidable pressure ulcer.

23. Through a plot devised and executed by the HOSPITAL through their Governing Body identified in paragraph 8, the HOSPITAL received more than 23,000 Medicare outpatient visits yearly and nearly 45,000 Medicare acute visits. Although HOSPITAL receives large sums of money from its Medicare patients such as DENNIS MESKER every year, it has managed to avoid disclosure of such payments to the public. This scheme has resulted in a lucrative business model for the HOSPITAL and their Governing Body. All of this revenue flows directly into the pockets of the HOSPITAL and the specific direction of the Governing Body while the residents such as DENNIS MESKER receive little to no treatment in exchange for such compensation.

24. Indeed, integrated into the scheme set forth by the HOSPITAL through their Governing Body is the objective to limit costs so as to maximize profit at the expense of the health and safety of residents like HOSPITAL. Through such cost limitation, the HOSPITAL systematically fails to have the resources or the staff on hand to manage the care of residents like DENNIS MESKER. As a result, the HOSPITAL is repeatedly issued deficiencies by the Department of Public Health for failure to provide the patient care they have promised and are required to perform as a licensed healthcare facility. Once again however, HOSPITAL has managed to keep these deficiencies from the public view. These deficiencies are a prima facie illustration of the HOSPITAL'S intent to willfully and systematically withhold the care and treatment which is necessary to preserve the health and safety of their residents.

25. DENNIS MESKER was no exception to this policy to systematically withhold care from residents in favor of profit maximization. HOSPITAL knew DENNIS MESKER required care to prevent the formation and worsening of pressure sores however, specifically, and without limiting the generality of these allegations and according to proof at time of trial, during the coma, the HOSPITAL DEFENDANTS just flat out ignored the known needs of DENNIS MESKER and wrongfully withheld required services required by the standard of practice which included timely attention and care so as to not leave DENNIS MESKER in his own urine and feces for extended periods of time, provide

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adequate and proper assistance with personal hygiene, ensuring that DENNIS MESKER was turned and repositioned at least every two hours so as to relieve pressure from DENNIS MESKER'S bony prominences, providing DENNIS MESKER with adequate nutrition and hydration so as to stave off skin breakdown, properly and competently evaluating DENNIS MESKER as to clinical conditions, providing and implementing defined interventions to address the likelihood of pressure sore development and once developed to prevent worsening of the pressure sores, revising defined interventions to address the likelihood of pressure sore development and once developed to prevent worsening of the pressure sores were, as was the case here, clearly not working, ensuring adherence to physician orders and timely communication as to emergent medical conditions with the physician, to prevent the foreseeable development of pressure ulcers on DENNIS MESKER.

26. Specifically, and without limitation to that to be adduced in discovery and according to proof at time of trial, the HOSPITAL DEFENDANTS wrongfully withheld required care to DENNIS MESKER by failing to ensure that that his need for constant attention and care to for his skin via interventions such as turning and repositioning of DENNIS MESKER'S body at least every two hours to relieve pressure on bony prominences.

27. Specifically, and without limitation to that to be adduced in discovery and according to proof at time of trial, the HOSPITAL DEFENDANTS wrongfully withheld required care to DENNIS MESKER by failing to ensure that DENNIS MESKER was being provided with pressure-relieving devices so as to prevent skin breakdown.

28. Specifically, and without limitation to that to be adduced in discovery and according to proof at time of trial, the HOSPITAL DEFENDANTS wrongfully withheld required care to DENNIS MESKER, by failing to ensure that DENNIS MESKER was properly hydrated and received sufficient nutrition to fight off the development of pressure sores.

29. Specifically, and without limitation to that to be adduced in discovery and according to proof at time of trial, the HOSPITAL DEFENDANTS wrongfully withheld required care to DENNIS MESKER, HOSPITAL by failing to ensure that staff provided DENNIS MESKER with care and interventions which were called for by HOSPITAL Care Plan and physician orders and assessments.

30. When DENNIS MESKER came out of his coma on December 15, 2015, he complained

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to the HOSPITAL staff that his "butt hurt." Fully aware that he hand not receive any interventions during the period of time that he was left completely unconscious by the HOSPITAL, the HOSPITAL and their staff simply ignored his apparent signs of pain and did nothing to relieve the same.

31. The pain arose from a pressure ulcer that DENNIS MESKER developed while his was in his coma. Not surprisingly, as a result of being completely motionless and unattended to for at least four days, DENNIS MESKER developed a pressure ulcer on his sacral coccyx. By the time he had awoken, it had progressed to a Stage IV and was massive.

32. Knowing that this wound was a Stage IV or beyond, the HOSPITAL staff advised that the DENNIS MESKER'S wound was only a Stage II or Stage III. At an interdisciplinary care meeting DENNIS MESKER's family asked the staff how they could allow the wound to progress to the point that it did; instead of responding to his question, the staff promptly ended the meeting and told the family that they would need to talk to someone else about those concerns.

33. The HOSPITAL later promised that they were going to put DENNIS MESKER into a special bed and were turning and repositioning him regularly. While the HOSPITAL may have made such promised to the family to ease their concerns and quell any action taken by them which would lead to administrative discipline from the governing state and federal agencies, HOSPITAL knew full well that it had no intention or resources necessary to render such care as they were physically limited by the stringent financial constraints placed on it by the governing body in order to promote the HOSPITAL'S own financial gain.

34. That despite the HOSPITAL being fully aware upon DENNIS MESKER'S admission to the HOSPITAL, through assessment information, as well as physician notes and orders provided to the HOSPITAL that DENNIS MESKER was at high risk for skin breakdown and the development and deterioration of pressure sores due to DENNIS MESKER'S medical conditions, and that as a direct result of the chronic understaffing at the HOSPITAL in both number and training, the HOSPITAL failed to provide DENNIS MESKER with adequate personal hygiene, failed to ensure that DENNIS MESKER received adequate hydration and nutrition to stave off infections and skin breakdown, and failed to timely react to DENNIS MESKER'S emergent conditions including the development of avoidable pressure ulcers on his back, and buttocks.

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35. As a result, the wound worsened and became infected. By January 15, 2016 the wound was nearly a foot in diameter, was surrounded by necrotic tissue and appeared brown, black, yellow and red. It spanned all the way from the middle of his back down to his rectum. A photo of the wound he developed is attached hereto as Exhibit "1."

36. On January 15, 2016 a plastic surgeon asked permission to remove the top layer of necrotic skin and tissue on the bedsore as it was infected. After the procedure, DENNIS MESKER was in excruciating pain. This was pain that he would live with for the remainder of his life.

37. Furthermore, after the surgery to remove all of his dead tissue doctors at the HOSPITAL told family that the bedsore would probably never heal properly. That DENNIS MESKER would not be able to walk again and would not be able to ever sit in a wheelchair due to the sore. Doctors also advised that he would probably spend the rest of his life in a nursing home.

38. In light of the bleak news, DENNIS MESKER'S family made the decision to bring Dennis home on hospice. He was only home for two days when he ultimately passed away from his injuries.

39. As a matter of accepted practice this renders the horrific pressure sores developed by DENNIS MESKER in the HOSPITAL as defintionally "avoidable."[1] And, as determined by the

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[1] In 2010 the National Pressure Ulcer Advisory Panel convened a meeting of 24 stakeholders. The voting panel consisted of 24 professionals with expertise in pressure ulcer prevention and treatment primarily from North America and the Pan Pacific region. Specialties included geriatric medicine, surgery, specialty nursing, physical therapy, and nutrition. The panel represented professional wound organizations, accrediting bodies, hospitals, rehabilitation agencies, long-term care, hospice, and home care, all stakeholders in the issue of pressure ulcers. The stakeholders included American Association of Homes and Services for the Aging (AAHSA), American Association of Long Term Care Nursing, American Dietetic Association (ADA), Association for the Advancement of Wound Care (AAWC), American Health Care Association (AHCA), American Medical Directors Association (AMDA), American Physical Therapy Association (APTA), American Professional Wound Care Association (APWCA), American Society of Plastic Surgeons (ASPS), Association of Operating Room Nurses (AORN), Australian Wound Management Association (AWMA), Canadian Association of Enterostomal Therapy (CAET), Canadian Association of Wound Care (CAWC), Hong Kong Enterostomal Therapy Association, National Alliance of Wound Care (NAWC), National Association for Home Care and Hospice, National Pressure Ulcer Advisory Panel (NPUAP), Ontario Wound Care Interest Group, Rehabilitative Engineering and Assistive Technology Society (RESNA), The Joint Commission (TJC), Veterans Health Administration, US Department of Veterans' Affairs (VA), World Council of Enterostomal Therapists, Wound Healing Society (WHS)Wound Ostomy and Continence Nurses Society (WOCN).

An 80% agreement was set as a criterion for determining consensus on any given question because this amount was deemed to be "significantly" greater than the level of agreement that could be obtained by chance alone. This level of agreement also was based on the size of the group from which consensus is needed and a prediction of a reasonable level of agreement needed to obtain consensus. Thus, when 80% consensus was achieved the next question was posed. (footnote continued)

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United States Government in the promulgation of the Deficit reduction Act of 2005 (42 U.S.C. §11395ww(d)4(D) and Centers for Medicare and Medicaid Services (CMS) Rule 1390-F as well as the final rule of CMS on "provider-preventable conditions" addressing the Affordable Care Act §2702, has determined that a "never event" includes a HOSPITAL acquired Stage 3 or 4 pressure sore and generally does not happen in the absence of the provision of proper care by the HOSPITAL.

40. That at all times relevant hereto, the HOSPITAL owed a duty to DENNIS MESKER pursuant to Title 22 C.C.R. §70211 to provide nursing service that was organized, staffed, equipped and supplied to meet the needs of DENNIS MESKER. The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

41. That at all times relevant hereto, the HOSPITAL owed a duty to DENNIS MESKER pursuant to Title 22 C.C.R. §70213 to develop, maintain and implement written policies and procedures for patient care including assessment, nursing diagnosis, planning, intervention, and evaluation. The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

42. That the HOSPITAL owed a duty to DENNIS MESKER pursuant to 22 C.C.R. §70215(a)(1) to provide an ongoing patient assessment. The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

43. That the HOSPITAL owed a duty to DENNIS MESKER to provide planning and delivery of DENNIS MESKER'S care including assessment, diagnosis, planning, intervention, and evaluation pursuant to 22 C.C.R. §70215(b). The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

44. That the HOSPITAL owed a duty to DENNIS MESKER to provide a written,

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After discussion the Panel determined that determined that a pressure sore is defintionally avoidable when the provider did not do one or more of the following: evaluate the individual's clinical condition and pressure ulcer risk factors; define and implement interventions consistent with individual needs, individual goals, and recognized standards of practice; monitor and evaluate the impact of the interventions; or revise the interventions as appropriate.

organized in-service education program for its patient care personnel pursuant to 22 C.C.R. §70214. The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

45. That the HOSPITAL owed a duty to DENNIS MESKER to provide services with a sufficient budget and staffing to meet DENNIS MESKER'S care needs pursuant to 42 C.F.R. §482.23(b) and 22 C.C.R. §70217. The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

46. That the HOSPITAL owed a duty to DENNIS MESKER to provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each patient in accordance with a written plan of care pursuant to 22 C.C.R. §70709. The HOSPITAL wrongfully withheld this required service to DENNIS MESKER, thereby causing injury to DENNIS MESKER as alleged herein.

47. In sum, the HOSPITAL wrongfully withheld required services to DENNIS MESKER by failing to timely and/or accurately inform DENNIS MESKER'S family, physician, or legal representative about the development and worsening of preventable pressure sores or what was being done, or more accurately not done, to treat them. In an unfortunate effort to conceal the HOSPITAL'S failure to provide required care, HOSPITAL staff concealed these conditions from DENNIS MESKER'S family and physician, and untruthfully represented the scope, nature and cause of the injuries. As a result of the HOSPITAL'S failure to provide required care and failure to bring these conditions to the attention of DENNIS MESKER'S family and physician, DENNIS MESKER was allowed to suffer horrendous pressure sores that the HOSPITAL had ignored as the result of the inadequacy of HOSPITAL staff in both number and training.

48. Accordingly, and notwithstanding the HOSPITAL DEFENDANT'S knowledge that DENNIS MESKER was an extreme risk for the rapid progression of pressure sores and resulting infection, the HOSPITAL DEFENDANTS did not provide DENNIS MESKER with the proper care

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he required and ultimately the pressure ulcers became infected.[2]

49. In an effort to fraudulently conceal their neglect of DENNIS MESKER The HOSPITAL failed to report DENNIS MESKER'S pressure sores to the Department of Public Health pursuant to *Health & Safety Code* §1279.1. Instead the DEFENDANTS failed to provide this required report so that they could fraudulently conceal their ignorance of DENNIS MESKER'S needs. And the DEFENDANTS took this course recognizing fully that if they did report the event as required by law, they would not get paid—once again the DEFENDANTS place improper profit over the needs of their patients.[3]

50. That the HOSPITAL knew prior to the admission of DENNIS MESKER that when the HOSPITAL failed to provide the required care set forth above, that there was a high probability that patients such as DENNIS MESKER would suffer serious injury. That the HOSPITAL consciously disregarded this risk and failed to provide DENNIS MESKER with the aforementioned required care,

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[2] A pressure sore is a skin wound. Pressure sores usually develop on bony parts of the body such as the tailbone, hip, ankle, or heel. They are usually caused by constant pressure on one part of the skin. Pressure sores are sometimes called bedsores. These sores can be caused from the pressure on the skin from chairs, wheelchairs, or beds. Severe pressure sores may take a long time to heal. **Stage 1** – A persistent area of skin redness (without a break of the skin) that does not disappear when pressure is relieved. **Stage II** – A partial loss of thickness loss of skin layers that presents clinically as an abrasion, blister or shallow crater. **Stage III** – A full thickness of skin is lost, exposing the subcutaneous tissues – presents as a deep crater with or without undermining adjacent tissue. **Stage IV** – A full thickness of skin and subcutaneous tissue is lost, exposing muscle or bone.

[3] The CMS exercised its authority under section 5001(c) of the Deficit Reduction Act by announcing that Medicare will no longer pay the extra cost of treating the following categories of conditions that occur while the patient is in the hospital.

pressure ulcer stages III and IV;
falls and trauma;
surgical site infection after bariatric surgery for obesity, certain orthopedic procedures, and bypass surgery (mediastinitis);
vascular-catheter associated infection;
catheter-associated urinary tract infection;
administration of incompatible blood;
air embolism; and
foreign object unintentionally retained after surgery.

Beginning October 1, 2008, Medicare no longer paid the higher MS-DRG for these conditions. In the 2009 Medicare Inpatient Prospective Payment System Update Regulation (CMS-1390-F), Medicare announced that certain categories of conditions would be covered under the HAC policy effective October 1, 2008. Newly added conditions include deep vein thromboses and pulmonary emboli associated with knee and hip replacements, and certain manifestations of poor glycemic control. In addition, Medicare is announcing it is initiating the National Coverage Determination process to review Medicare coverage of three Never Events (surgery on wrong body part, surgery on wrong patient, and performing the wrong surgery on a patient).

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leading directly to DENNIS MESKER'S injuries as alleged herein.

51. In the operation of the HOSPITAL, DEFENDANTS, and each of them, held themselves out to the general public, to DENNIS MESKER, and others similarly situated, that their general acute care hospital provided services which were in compliance with all applicable federal and state laws, rules and regulations governing the operation of a general acute care hospital in the State of California. In the operation of the subject HOSPITAL, the DEFENDANTS, and each of them, held themselves out to DENNIS MESKER that the HOSPITAL would be able to meet the needs of DENNIS MESKER These representations of the nature and quality of services to be provided were, in fact, false, and DENNIS MESKER suffered injuries as fully alleged herein.

52. The HOSPITAL DEFENDANTS, by and through the corporate officers, directors and managing agents set forth above, and other corporate officers and directors presently unknown to DENNIS MESKER and according to proof at time of trial, ratified the conduct of their co-defendants and HOSPITAL, in that they were, or in the exercise of reasonable diligence should have been, aware of the understaffing of HOSPITAL, in both number and training, the relationship between understaffing and sub-standard provision of care to patients of the HOSPITAL including DENNIS MESKER, and the HOSPITAL'S practice of being issued deficiencies by the State of California's Department of Public Health. Furthermore, the HOSPITAL DEFENDANTS, by and through the corporate officers and directors enumerated above and others presently unknown to DENNIS MESKER and according to proof at time of trial, ratified the conduct of themselves and their co-defendants in that they were aware that such understaffing, deficiencies, and insufficiency of financial budgets to lawfully operate the HOSPITAL would lead to injury to patients of the HOSPITAL, including DENNIS MESKER. This ratification by the DEFENDANTS itself, is that ratification of the customary practice and usual performance of HOSPITAL as set forth in *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 791-792 and *Schanafelt v. Seaboard Finance Company* (1951) 108 Cal.App.2d 420, 423-424.

53. Upon information and belief, the DEFENDANTS enacted, established and implemented the financial plan and scheme which led to the HOSPITAL being understaffed, in both number and training, by way of imposition of financial limitations on the HOSPITAL in matters such

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as, and without limiting the generality of the foregoing, the setting of financial budgets which clearly did not allow for sufficient resources to be provided to DENNIS MESKER by the HOSPITAL. These choices and decisions were, and are, at the express direction of the DEFENDANTS' management personnel including the corporate officers and directors enumerated above and others presently unknown to DENNIS MESKER and according to proof at time of trial, having power to bind DEFENDANTS as set forth in *Bertero v. National General Corporation* (1974) 13 Cal.3d 43, 67 and *McInerney v. United Railroads of San Francisco*, (1920) 50 Cal.App.538, 549.

54. The Corporate authorization and enactment of the DEFENDANTS, alleged in the preceding paragraphs, constituted the permission and consent of HOSPITAL'S misconduct by the DEFENDANTS, by and through the corporate officers and directors enumerated above and others presently unknown to DENNIS MESKER and according to proof at time of trial, who had within their power the ability and discretion to mandate that the HOSPITAL employ adequate staff to meet the needs of their patients, including DENNIS MESKER, as required by applicable rules, laws and regulations governing the operation of general acute care hospitals in the State of California. The conduct constitutes ratification of the HOSPITAL'S misconduct by the DEFENDANTS, which led to injury to DENNIS MESKER as set forth in *O'Hara v. Western Seven Trees Corp.,* (1977) 75 Cal.App.3d. 798, 806 and *Kisesky v. Carpenters Trust for So. Cal* (1983) 144 Cal.App.3d 222, 235.

55. That were there sufficient staff at the HOSPITAL in both numbers and competency, then the injuries to DENNIS MESKER as alleged herein would not have occurred. Specifically, had there been sufficient staff to comply with applicable rules, laws, and regulations and to provide care to DENNIS MESKER as should have been specifically called for by the HOSPITAL Care Plan relating to DENNIS MESKER and physician orders and assessments, then DENNIS MESKER would not have been suffered the painful injuries alleged herein; DENNIS MESKER would have received proper assistance so as prevent the suffering of the painful injuries alleged herein; DENNIS MESKER would have received adequate supervision to protect DENNIS MESKER from health and safety hazards; DENNIS MESKER would have received the physician-ordered care to prevent the injuries alleged herein; and DENNIS MESKER would have been treated with other interventions so as to prevent suffering of the painful injuries alleged herein. As a direct result of the HOSPITAL DEFENDANTS'

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failure to comply with applicable rules, laws, and regulations, DENNIS MESKER did not receive the care set forth hereinabove which led to the injuries alleged herein.

56. The HOSPITAL DEFENDANTS, and each of them, were aware (and thus had notice and knowledge) of the danger to their patients when they violated applicable rules, laws and regulations, yet they acted in conscious disregard of these known perils and at the expense of legally mandated minimum care to be provided to patients in general acute care hospitals in the state of California.

57. That *prior* to the injuries as alleged herein the HOSPITAL DEFENDANTS was chronically under staffed so as to be in violation of applicable rules, laws, and regulations. This knowledge was transmitted to HOSPITAL DEFENDANTS through their corporate officers named herein above through daily census reports, key factor summary reports, profit and loss reports, and other mechanisms presently unknown to DENNIS MESKER and according to proof at the time of trial.

58. Notwithstanding the knowledge of HOSPITAL DEFENDANTS, and their managing agents as alleged herein above, HOSPITAL DEFENDANTS consciously chose not to increase staff, in number or training, at the HOSPITAL and as the direct result thereof DENNIS MESKER suffered injuries alleged herein. This ignorance, on the part of HOSPITAL DEFENDANTS and their corporate officers named above, constituted at a minimum, a reckless disregard for the health and safety of DENNIS MESKER.

59. That HOSPITAL DEFENDANTS as care custodians willfully caused and allowed DENNIS MESKER to be injured and maliciously, fraudulently, oppressively, willfully or recklessly caused DENNIS MESKER to be placed in situations such that his health would be in danger in doing the acts specifically alleged herein.

60. That at all times relevant hereto the HOSPITAL DEFENDANTS knew that by wrongfully withholding required services to DENNIS MESKER occasioned by understaffing, lack of training, failure to allot sufficient economic resources, unfitness of staff in capacity and competency and the improper withholding of required medical and/or custodial services to residents of the HOSPITAL that it was highly probable that the HOSPITAL DEFENDANTS conduct would cause

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injury to DENNIS MESKER And notwithstanding this known probability, the HOSPITAL DEFENDANTS wrongfully withheld required services to DENNIS MESKER occasioned by understaffing, lack of training, failure to allot sufficient economic resources, unfitness of staff in capacity and competency and the improper withholding of required medical and/or custodial services to residents of the HOSPITAL DEFENDANTS thereby knowingly disregarded the known risk of injury to DENNIS MESKER which led to the wrongful withholding of required care to DENNIS MESKER

61. That the HOSPITAL DEFENDANTS and the HOSPITAL PARENT DEFENDANTS as care custodians willfully caused and allowed DENNIS MESKER to be injured and maliciously, fraudulently, oppressively, willfully or recklessly caused DENNIS MESKER to be placed in situations such that his health would be in danger in doing the acts specifically alleged herein.

SECOND CAUSE OF ACTION
NEGLIGENCE
[By DENNIS MESKER Against All Defendants.]

62. DENNIS MESKER hereby incorporates the allegations asserted in paragraphs 1 through 61 above as though set forth below.

63. The DEFENDANTS owed statutory, regulatory, and common law duties of care to DENNIS MESKER .

64. The DEFENDANTS breached their statutory, regulatory, and common law duties of care to DENNIS MESKER as more fully alleged above.

65. As the proximate result of the DEFENDANTS' breach of their statutory, regulatory, and common law duties of care to DENNIS MESKER he suffered injury in an amount and manner more specifically alleged above and according to proof at time of trial.

THIRD CAUSE OF ACTION
NEGLIGENT HIRING AND SUPERVISION
[By DENNIS MESKER Against All Defendants.]

66. DENNIS MESKER hereby incorporates the allegations asserted in paragraphs 1 through 65 above as though set forth below.

67. That the DEFENDANTS negligently hired, supervised and/or retained employees including Jennifer Bishop, Sheryl Almandrez and many certified nursing assistants, registered nurses,

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licensed vocational nurses and others whose names are presently not known to DENNIS MESKER but will be sought via discovery.

68. That in fact Jennifer Bishop, Sheryl Almandrez and many certified nursing assistants, registered nurses, licensed vocational nurses and others whose names are presently not known to DENNIS MESKER but will be sought via discovery, were unfit to perform their job duties and the DEFENDANTS knew, or should have known, that that they were unfit and that this unfitness created a risk to elder and infirm residents of the HOSPITAL such as DENNIS MESKER.

69. This knowledge on the part of the DEFENDANTS was, or should have been, acquired by the DEFENDANTS through various mechanisms including the pre-employment interview process, reference checks, probationary period job performance evaluations, other periodic job performance evaluations and/or disciplinary processes.

70. The DEFENDANTS failed to properly and completely conduct a comprehensive pre-employment interview process and reference checks as to Jennifer Bishop, Sheryl Almandrez and many certified nursing assistants, registered nurses, licensed vocational nurses and others whose names are presently not known to DENNIS MESKER but will be sought via discovery. Had the DEFENDANTS done so they would have discerned that these persons were unfit to perform their job duties in a licensed skilled nursing HOSPITAL in California.

71. The DEFENDANTS failed to properly and completely conduct, and thereafter ignored the content of, probationary period job performance evaluations, other periodic job performance evaluations and/or disciplinary processes as to Jennifer Bishop, Sheryl Almandrez and many certified nursing assistants, registered nurses, licensed vocational nurses and others whose names are presently not known to DENNIS MESKER but will be sought via discovery, and had the DEFENDANTS done so they would have discerned that these persons were unfit to perform their job duties in a licensed skilled nursing HOSPITAL in California.

72. That as the result of the unfitness of Jennifer Bishop, Sheryl Almandrez and many certified nursing assistants, registered nurses, licensed vocational nurses and others whose names are presently not known to DENNIS MESKER but will be sought via discovery, DENNIS MESKER was injured in an amount and manner to be proven at time of trial.

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73. That the DEFENDANTS negligence in hiring, supervising and/or retaining Jennifer Bishop, Sheryl Almandrez and many certified nursing assistants, registered nurses, licensed vocational nurses and others whose names are presently not known to DENNIS MESKER but will be sought via discovery, caused DENNIS MESKER injury in an amount and manner to be proven at time of trial.

FOURTH CAUSE OF ACTION
WRONGFUL DEATH
[By SONJA MESKER Against All Defendants.]

74. SONJA MESKER hereby incorporate the allegations asserted in paragraphs 1 through 73 above as though set forth below.

75. SONJA MESKER is the wife and the surviving heir of DENNIS MESKER.

76. Nominal Defendants MARK LEE MESKER, CAMERON DENNIS MESKER, and VONDA LYNN TRENGA are the surviving heirs of is the surviving heir of DENNIS MESKER.

77. MARK LEE MESKER, CAMERON DENNIS MESKER, and VONDA LYNN TRENGA are "indispensable parties" to the action and is therefore named as a Nominal Defendant.

78. That DEFENDANTS owed statutory and common law duties to DENNIS MESKER as more fully set forth above.

79. That DEFENDANTS failed to meet their statutory and common law duties to DENNIS MESKER as more fully set forth above.

80. As a proximate result of the negligence and "neglect" (as that term is defined in *Welfare and Institutions Code* §15610.57) as more particularly alleged above perpetrated by all of the Defendants, and each of them, DENNIS MESKER died on January 17, 2016.

81. Prior to the death of SONJA MESKER enjoyed the love, society, comfort and attention of DENNIS MESKER.

82. As a proximate result of the negligent acts (both of negligence and neglect (as that term is defined in *Welfare and Institutions Code* §15610.57) of all of the Defendants as alleged herein, SONJA MESKER sustained loss of the society, comfort, attention and love of DENNIS MESKER in a sum according to proof at trial and within the jurisdictional limits of this Court.

WHEREFORE, Plaintiffs pray for judgment and damages as follows:

1. For general damages according to proof;

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2. For special damages according to proof;

3. For punitive and exemplary damages (as to the First and Fourth Causes of Action only);

4. For attorney's fees and costs as allowed by law according to proof at the time of trial (as to the First Cause of Action only);

5. For costs of suit; and

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

DATED: February 22, 2016

GARCIA, ARTIGLIERE & MEDBY

By: _____

Stephen M. Garcia
William M. Artigliere
David M. Medby
Attorneys for DENNIS MESKER, by and through his Successor in Interest, Sonja Mesker, and SONJA MESKER

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Exhibit 1