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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND**

17 June Newirth, by and through her Guardian  
18 ad Litem, Frederick J. Newirth; Barbara  
19 Feinberg; and Elizabeth Barber, Andrew  
20 Bardin, and Thomas Bardin as successors-in-  
21 interest to the Estate of Margaret Pierce; on  
22 their own behalves and on behalf of others  
23 similarly situated,

24 Plaintiffs,

25 vs.

26 Aegis Senior Communities, LLC, dba Aegis  
27 Living; and Does 1 Through 100,

28 Defendants.

CASE NO. 4:16-cv-03991-JSW

**CLASS ACTION**

**NOTICE OF LODGMENT OF EXHIBITS  
IN SUPPORT OF STIPULATED MOTION  
TO AMEND THE SCHEDULING ORDER,  
FOR LEAVE TO FILE THIRD AMENDED  
COMPLAINT, AND FOR PERMISSIVE  
JOINDER**

Date: May 7, 2021

Time: 9:00 a.m.

Place: Courtroom 5, 2nd Floor

Judge: Hon. Jeffrey S. White

Action Filed: April 12, 2016

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Plaintiffs and the Proposed Class hereby lodge the following exhibits in support of the parties' Stipulated Motion to Amend the Scheduling Order, For Leave to File Third Amended Complaint, and For Permissive Joinder.

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>
Exhibit A	Proposed Third Amended Complaint (clean version with attachments)
Exhibit B	Proposed Third Amended Complaint (redlined version)

DATED: March 23, 2021

Respectfully submitted,

STEBNER AND ASSOCIATES

/s/ Kathryn A. Stebner

Kathryn Stebner

Attorneys for Plaintiffs and Proposed Class

# **EXHIBIT A**

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Kathi Troy, as Successor-in-Interest to the  
Estate of June Newirth; Barbara Feinberg;  
and Elizabeth Barber, Andrew Bardin, and  
Thomas Bardin as successors-in-interest to  
the Estate of Margaret Pierce; Carol  
Morrison, by and through her Attorney-in-  
Fact Stacy Van Vleck, on their own behalves  
and on behalf of others similarly situated,

Plaintiffs,

vs.

Aegis Senior Communities, LLC, dba Aegis  
Living; and Does 1 Through 100,

Defendants.

CASE NO. **4:16-cv-03991-JSW**

**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT (Civ. Code §  
1750 *et seq.*)
2. UNLAWFUL, UNFAIR AND  
FRAUDULENT BUSINESS PRACTICES  
(B&P Code § 17200 *et seq.*)
3. ELDER FINANCIAL ABUSE (CA W&I  
Code § 15610.30)
4. VIOLATION OF THE WASHINGTON  
CONSUMER PROTECTION ACT (RCW  
§ 19.86.020 *et seq.*)
5. FINANCIAL EXPLOITATION OF  
VULNERABLE ADULTS (RCW §§  
74.34.020 and 74.34.200)

**JURY TRIAL DEMANDED**

## **INTRODUCTION**

1  
2           1.       Plaintiff Kathi Troy, as Successor-in-Interest to the Estate of June Newirth;  
3 Plaintiff Barbara Feinberg; Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas Bardin as  
4 successors-in-interest to the Estate of Margaret Pierce; Plaintiff Carol Morrison, by and through  
5 her Attorney-in-Fact Stacy Van Vleck, (collectively “Plaintiffs”), and the proposed Class bring  
6 this action for declaratory and injunctive relief and damages to stop the unlawful and fraudulent  
7 practices of Aegis Senior Communities, LLC (“Aegis” or “Defendant”).

8           2.       Defendant has engaged in a scheme to defraud seniors, persons with disabilities and  
9 their family members at its assisted living facilities in California and Washington by falsely  
10 representing that each resident will be provided the care services (through facility staff) that the  
11 resident needs as determined by the resident assessment conducted by facility personnel. Aegis  
12 makes this misrepresentation to all its residents in standard resident admission contracts. It is  
13 false and misleading because Aegis does not use the results generated by its resident assessment  
14 system to determine or provide staffing at its facilities. Aegis conceals and fails to disclose this  
15 material fact to its residents and their family members prior to, during and after admission to the  
16 facility. Aegis conceals and fails to disclose that, as a matter of corporate policy, Aegis sets  
17 facility staffing per shift based on pre-determined labor budgets and does not alter the number of  
18 staff or staffing hours per facility or shift regardless of changes in occupancy or resident needs as  
19 determined by resident assessments. Aegis’ failure to staff based on resident assessments results  
20 in Aegis’ facilities being staffed at levels far below those required to meet the resident needs that  
21 Aegis itself has identified. As such, Aegis residents have not received the amount of care that  
22 Aegis promised in their admission contracts and/or are placed at a substantial risk that they will  
23 not receive their promised care in the future. As a result of Aegis’ failure to staff based on  
24 resident assessments, the named Plaintiffs did not receive the care Aegis promised to provide. As  
25 a result of Aegis’ failure to staff based on resident assessments, the putative class members have  
26 not received the care Aegis promised to provide and/or are subjected to a substantial risk that  
27 they will not receive the care that Aegis has promised to provide.

28           3.       Aegis’s standard admission contract specifies that all facility residents will receive

1 comprehensive assessments to determine the amount and type of care they need. A point-value  
2 system, which Aegis represents is based on the amount of staff time required to perform the  
3 necessary services, determines the resident's daily fee for care services; a pre-determined amount  
4 (e.g., \$.60 per point per day) is multiplied by the number of points generated by the resident's  
5 assessment, and the resident is subsequently charged a daily fee for care services, in addition to  
6 the general services fee.

7 4. In its form admission agreements, Aegis uniformly represents to each new resident  
8 that (a) each resident will receive the care that he/she requires; (b) the facility's professional staff  
9 will determine the care required for each resident through the resident assessment process; and (c)  
10 the amount of care needed by the resident will be translated into a specific number of care points  
11 for which the resident will be charged on a daily basis. The reasonable consumer understands  
12 these representations to mean that, as a matter of policy and practice, Aegis will use its resident  
13 assessment system and care points generated by it to determine and provide staffing levels at its  
14 facilities and will, accordingly, provide sufficient staff at each facility to deliver to all facility  
15 residents the amount and type of care and corresponding staff time that Aegis has determined to  
16 be necessary based on resident assessments and overall census.

17 5. In fact, Aegis does not use the care points generated by its resident assessment  
18 system in determining or providing staffing at its facilities. Specifically, Aegis does not aggregate  
19 the amount of time corresponding to the care points generated by the resident assessments, or  
20 otherwise use the resident assessments to determine and provide the number and type of staff  
21 needed to deliver the amount of care promised to residents. Instead, as a matter of corporate  
22 policy and of standard operating procedure, Aegis sets and provides facility staffing per shift  
23 based on pre-determined labor budgets and does not alter staffing levels or staffing hours when  
24 resident assessments indicate a change of resident needs and staffing requirements.

25 6. The result of this policy and procedure of staffing based on budget considerations  
26 rather than resident needs, as determined by the resident assessments and care points, is that  
27 Aegis's facilities are staffed at levels far below those required to meet the resident needs that  
28 Aegis itself has identified. As a result, the residents of Aegis's facilities are receiving significantly

1 less care than is specified in their resident assessments and for which they are paying Aegis.

2 7. Aegis does not disclose and affirmatively conceals these crucial and material facts  
3 from residents (including Plaintiffs), their family members and the consuming public. Through  
4 Aegis' failures to disclose and concealment, Plaintiffs and the Class are deceived into believing  
5 that, as a matter of policy and practice, Aegis will use its resident assessment system and care  
6 points generated by it to determine and provide staffing levels at its facilities and will,  
7 accordingly, provide sufficient staff at each facility to deliver to all facility residents the amount  
8 and type of care and corresponding staff time that Aegis has determined to be necessary based on  
9 resident assessments and overall census.

10 8. Aegis's misrepresentations, misleading statements, and omissions about the manner  
11 in which its facilities are staffed and the failure to consider the aggregate staffing needs dictated by  
12 the comprehensive assessments and care point determinations are material to the reasonable  
13 consumer. Seniors and/or their family members choose an *assisted* living facility based on the  
14 expectation that they will receive the quantity and quality of care that they need. A system or  
15 policy that ensures a level of staffing based on the overall needs of residents as quantified through  
16 aggregation of current residents' regular comprehensive resident assessments is likely to provide  
17 such care at the outset and on an ongoing basis. A system of care that provides pre-determined  
18 staffing based solely on budget considerations and desired profit margins results in facility staffing  
19 levels much lower than necessary to meet the needs identified in residents' assessments and  
20 precludes Aegis from providing all promised care to the residents of its facilities. It is therefore a  
21 matter of fundamental importance to the reasonable consumer that Aegis does not staff and has no  
22 intention of staffing its facilities based on the number of staff hours Aegis has itself determined  
23 are necessary to provide the services for which it is charging its residents.

24 9. Through its representations and nondisclosures, Aegis dupes residents and family  
25 members into paying large sums in the form of move-in fees and initial monthly payments. For  
26 example, Ms. Newirth was charged a new resident fee (labeled by Aegis as a "Community Fee")  
27 of \$15,000 prior to her entry to the Corte Madera Facility. Similarly, Barbara Feinberg, Margaret  
28 Pierce, and Carol Morrison were charged Community Fees of \$4,000, \$7,000, and \$8,000,

1 respectively, before they moved into Aegis facilities.

2       10. Aegis's failure to use its resident assessment system when it sets and provides  
3 facility staffing places all residents at an unnecessary risk of harm. That risk is particularly acute,  
4 given the vulnerable nature of the targeted population of seniors and residents with disabilities. It  
5 also forces residents to live in an unpleasant and unsafe environment due to the resulting  
6 inadequate supervision and care of residents in general.

7       11. Aegis's promotion of its system of comprehensive resident assessments and  
8 corresponding care fees in its form contract and marketing materials contributes to its  
9 competitiveness in the marketplace of assisted living facilities and is a factor in its pricing  
10 structure. Its purported use of such a system to accurately assess the needs of residents and provide  
11 sufficient staffing to meet those needs enables it to charge more for residency and services at its  
12 facilities than it otherwise could. In effect, residents pay a premium for a system that is  
13 represented by Aegis to provide comprehensive resident needs assessments and the staff necessary  
14 to provide the promised care.

15       12. If Plaintiffs, through their agents and attorneys in fact ("POAs"), had known the  
16 true facts about Aegis's corporate policy of ignoring its resident assessment system and the  
17 personal care levels generated by it in determining and providing facility staffing, they would not  
18 have agreed to enter Aegis or paid Aegis significant amounts of money in new resident fees and  
19 monthly charges. If the putative class members had known the true facts, in all reasonable  
20 probability they would not have agreed to enter Aegis facilities and paid new resident fees and  
21 monthly charges to Aegis.

22       13. Aegis has engaged in an unfair and deceptive practice by its failures to disclose to  
23 Plaintiffs, the proposed Class, and their family members and/or representatives that the facility  
24 staffing and care services Aegis provides are not determined by resident assessments and  
25 corresponding care points generated. These material failures to disclose affect and mislead all  
26 Aegis consumers. As a result of Aegis' failure to staff based on resident assessments, Plaintiffs  
27 and the Class have not received, and do not receive, the care Aegis deemed necessary based on the  
28 resident assessments and/or are subject to a substantial risk that they will not receive the care that





1           17.     Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas Bardin are the surviving  
2 grandchildren of decedent Margaret Pierce, a resident of Aegis of Moraga in Moraga, California  
3 from April 2013 to January 2015. They are the beneficiaries to the Margaret Pierce Revocable  
4 Living Trust, and the successors-in-interest to the Estate of Margaret Pierce pursuant to California  
5 Code of Civil Procedure §§ 377.11 and 377.32. The appropriate declarations pursuant to §  
6 377.32 are attached hereto as Attachments 1, 2, and 3. At all times relevant to this complaint,  
7 Margaret Pierce was an elder as defined under California Welfare & Institutions Code §  
8 15610.27 and a senior citizen as defined under California Civil Code § 1761(f). Linda Bardin  
9 was her surviving child and held durable power of attorney from 2011 until the date of her  
10 mother's death in March 2016. Margaret Pierce was at all times herein mentioned a resident of  
11 the State of California. Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas Bardin bring  
12 this action on behalf of decedent Margaret Pierce and all others similarly situated.

13           18.     Plaintiff Carol M. Morrison executed a durable power of attorney on May 20, 2015,  
14 appointing her daughter Stacy A. Van Vleck as her Attorney-in Fact. Carol M. Morrison was a  
15 resident of Aegis of Aegis in Issaquah, Washington from approximately June 24, 2015 to July 25,  
16 2016. At all times relevant to this complaint, Carol M. Morrison was a Washington resident, a  
17 senior citizen and a vulnerable adult as defined under the Revised Code of Washington ("RCW")  
18 § 74.34.020(22). When Ms. Morrison moved to Aegis, Aegis' standard contract stated certain  
19 core services would be provided to Ms. Morrison in exchange for a monthly base rate. Prior to  
20 entering Aegis of Issaquah's memory care unit, Ms. Morrison paid Defendant a new resident fee  
21 ("Community Fee") of \$8,000. Additionally, she paid a daily general services fee and daily fees  
22 for care services.

23           **Defendant**

24           19.     Defendant is a Washington corporation with its principal place of business in  
25 Bellevue, WA.

26           20.     Aegis operates and holds the licenses for approximately fourteen (14) assisted  
27 living facilities in California under the Aegis name. In Washington, Aegis operates and holds the  
28 licenses, for approximately seventeen (17) assisted living facilities under the Aegis name.

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

#### 8                                   **JURISDICTION AND VENUE**

9           22.     This lawsuit was initially filed in the California Superior Court (Alameda County)  
10 and was removed by Defendant Aegis on July 14, 2016. The Court granted the California  
11 Plaintiffs’ unopposed Motion for Leave to Amend the Second Amended Complaint to allow the  
12 permissive joinder of the Washington Plaintiff, Carol Morrison, to this action on [DATE]. This  
13 Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).  
14 Approximately half of putative class members and Defendant are residents and citizens of  
15 different states. The class size is greater than 100. According to Defendant, its records indicate  
16 that approximately 10,000 individuals lived in Aegis facilities in California and Washington from  
17 the start of the Class Periods to October 2020. The aggregate amount in controversy, based on  
18 damages in the form of monthly charges averaging an estimated \$5,000 to \$20,000 per class  
19 member over a period of four years is greatly in excess of \$5,000,000.

20           23.     This Court has jurisdiction over all of the claims alleged herein. Defendant is  
21 subject to the personal jurisdiction of this Court because it has sufficient minimum contacts in  
22 California, or otherwise intentionally avails itself of the California market through ownership and  
23 management of 14 assisted living facilities located in California, derivation of substantial  
24 revenues from California, and other activities, so as to render the exercise of jurisdiction over  
25 Aegis by the California courts consistent with traditional notions of fair play and substantial  
26 justice. This Court has supplemental jurisdiction over the Washington state claims alleged herein  
27 pursuant to 28 U.S.C. § 1367 in that they form part of the same case or controversy under Article  
28 III of the United States Constitution.

24. Venue is proper in this District under 28 U.S.C. § 1391(a), based on the following facts: Defendant conducts substantial business in this District, including but not limited to the ownership, operation and management of assisted living facilities in the counties of Alameda, Santa Clara, and Sonoma; a portion of Defendant's liability arose in this District; and the acts upon which this action is based occurred in part in this District.

**GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

25. Aegis provides assisted living and memory care for senior citizens and persons with disabilities at facilities nationwide, including approximately thirty-one (31) facilities that it owns and/or operates in California and Washington.

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

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

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

29. At Aegis facilities, residents are charged a base rate, which includes room, board, and basic maintenance, cleaning and laundry. Aegis assesses each resident before admission and then again at quarterly intervals and/or whenever there is a change of the resident's condition. By performing these assessments, Aegis determines what additional services a resident needs, such as assistance with ADLs. Each additional need correlates to a number of points, which depend on how much more time Aegis staff must spend caring for the resident and what type of staff should

1 perform the services. The total number of points is multiplied by a dollar amount resulting in a  
 2 per-day care fee charge. Thus, the higher the points assessed, the more money Defendant charges  
 3 the resident.

4 **Uniform Representations in Aegis' Standardized Contracts and Other Corporate**  
 5 **Materials**

6 30. Defendant represents to residents that it will use its resident assessment system to  
 7 determine and then provide the amount of caregiver time Aegis has itself decided is necessary to  
 8 provide the services and care for which its residents are paying.

9 31. Aegis makes the affirmative representation to each resident in its standardized  
 10 contracts, specifically in Section 1.B of the Aegis Living Residence and Care Agreement  
 11 "Residence Agreement") that it:

12 will provide YOU with personal assistance and care on an as needed basis. . . . When You  
 13 applied for admission to the Community, the professional staff of Aegis performed a  
 14 comprehensive assessment of your needs . . . Aegis will perform reassessments in light of  
 your changing needs to determine the services that You may require. You will receive the  
 services appropriate to your individual need.

15 32. Appendix A to each Residence Agreement states that "Care fees are charged based  
 16 on assessment points." Each care assessment point is then multiplied by a charge amount that  
 17 produces a "per day" fee.

18 33. In addition, the Resident Service Plan prepared for each resident represents that  
 19 staffing will be based on the point-value system through the resident reassessment program.  
 20 Specifically, the service plan assigns each task to a particular job category (i.e. caregiver, care  
 21 director) and indicates how the need will be met *by staff*. For example, under the category  
 22 "Grooming," a care plan might list the following need: "Resident requires reminders to perform  
 23 grooming tasks (shave, comb hair, nail care, brush teeth, wash hair, etc.)." The "Action" listed is  
 24 "Staff will remind resident to groom and monitor grooming needs," and Aegis will charge nine (9)  
 25 points for this service. Aegis adds fewer points to the total when a service requires less staff time.  
 26 For example, a resident whose listed need is "Resident is occasionally restless and/or has  
 27 repetitive behaviors and verbalizations but *minimal staff time is needed*" may be assessed only one  
 28 (1) point. These statements underline the obvious—care can only be provided by people/staff, and

1 a resident who has additional needs requires additional staff time. The promise of additional staff  
 2 time is what allows Aegis to charge these residents more.

3 34. A binder given to prospective and incoming residents by Aegis contains a two-page  
 4 description of the assessments called “Assessing Resident Care Needs”. Under a section titled  
 5 “Fees for care services”, it states:

6 We believe that residents should only be charged for the services they need and receive.  
 7 That is why we use a point system rather than care levels. The number of “care points” that  
 8 is assigned to a particular service is based on the average amount of staff time required to  
 9 provide that service, the frequency, and the cost of the staff person that will be performing  
 10 the task.

11 Nowhere in those two pages does Aegis disclose that the facility does not use these points, or the  
 12 resident assessment process from which the assigned points are derived, in setting facility staffing.

13 35. In a standardized brochure provided to prospective residents and their families,  
 14 Aegis states that care services “are based on a personalized assessment done prior to move-in.  
 15 These services are assessed on a point system so residents only pay for what they specifically  
 16 need.”

17 36. Aegis’ resident handbook boasts that its memory care units have a staff-to-resident  
 18 ratio that is “one of the highest in the industry.” Again, the clear message to the consuming public,  
 19 including Plaintiff and the putative class, is that staffing levels matter at Aegis facilities.

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

24 38. Based on these representations, Plaintiffs, the putative class members and the  
 25 general consuming public reasonably expect that Aegis uses a system that ensures adequate staffing  
 26 to meet all current resident needs based on their comprehensive needs assessments and the number  
 27 and type of staff hours Aegis has itself determined are necessary to satisfy those needs.

#### 28 **Aegis’s Non-Disclosure and Concealment**

39. Contrary to the express and implied representations in the Aegis standardized

1 contract and other uniform written statements, Aegis does not use the resident assessment system  
2 or consider assessment points in setting or providing facility staffing. Aegis conceals this  
3 material fact from the residents, their family members and the general public.

4 40. Plaintiffs are informed and believe, and on that basis allege, that Aegis has the  
5 capability to determine, to the minute, the facility staffing levels required to meet the aggregate  
6 care points promised to residents. With its resident assessment system, Aegis can calculate the  
7 amount and type of staff needed by a facility for the population or group of residents therein  
8 viewed as a whole on any given shift based on the evaluated needs and assessed points of  
9 residents.

10 41. While Defendant uses this resident assessment system to set and charge daily rates,  
11 it does not use the resident assessment system to set staffing at its facilities. Aegis conceals this  
12 material fact from Plaintiffs and the Class, who are deceived into believing that, as a matter of  
13 policy and practice, Aegis will use its resident assessment system and care points generated by it  
14 to determine and provide staffing levels at its facilities and will, accordingly, provide sufficient  
15 staff at each facility to deliver to all facility residents the amount and type of care and  
16 corresponding staff time that Aegis has determined to be necessary.

17 42. As stated in various corporate policies and procedures, Aegis directs its facilities to  
18 make meeting labor budgets and operating income targets a paramount concern, regardless of the  
19 impact on the care and staffing needs of facility residents.

20 43. Aegis's General Managers/Executive Directors ("GMs" or "EDs") are given pre-  
21 determined budgets—including labor budgets—from corporate headquarters. Regardless of  
22 changes in the needs of the resident population, General Managers of Aegis facilities may not  
23 increase these budgets without approval from corporate headquarters. Job postings for facility  
24 General Managers on Aegis' website state that the GM is "[r]esponsible for the financial  
25 performance of the community, operating within the approved budget, meeting or exceeding  
26 established outcomes and company's targeted operating income."

27 ([http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/general-](http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/general-manager/)  
28 [manager/](http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/general-manager/), last visited February 9, 2016).



1           44.     Aegis' job description for the Director of Operations, an assistant to the GM/ED,  
2 lists as one of his or her responsibilities: "Ensure labor, payroll costs and expenses are properly  
3 monitored and controlled with budgeted productivity levels and cost per occupied room."

4           45.     GMs/EDs and other divisional and regional managers are given a disincentive to  
5 request a staffing increase because under corporate compensation policies, they can only receive a  
6 bonus if they meet earnings targets set by corporate headquarters.

7           46.     Information gathered from former Aegis facility employees, current and former  
8 residents, and records of the Department of Social Services' Community Care Licensing division  
9 confirms that Aegis uses pre-determined staffing schedules at its facilities and does not change  
10 these schedules or the number of staff hours worked when resident assessment results indicate a  
11 need for additional staff.

12           47.     Terrence A. Ervin—a Regional Vice President of Operations for Aegis in  
13 California from approximately 2009 to 2013, as well as the interim ED at Aegis of Corte Madera  
14 from approximately May 2012 to March 2013—testified at a deposition in another case on March  
15 20, 2015 that although Aegis used its resident assessment software to determine care points and  
16 fees, it did not use that software to determine staffing levels or in developing the staffing budget  
17 for each facility at the corporate level.

18           48.     Dave Peper—an Executive Director at Aegis of Fremont—testified in a deposition  
19 in another case on June 20, 2014 that the care directors at the facility set the schedule for the  
20 staffing a month in advance.

21           49.     Records maintained by the Department of Social Services ("DSS"), Community  
22 Care Licensing Division ("CCL"), the state agency that regulates assisted living facilities in  
23 California, contain staffing schedules for Aegis facilities that indicate a fixed staffing schedule for  
24 the entire month in advance, without regard to fluctuating resident needs based on re-assessments,  
25 changes in condition and occupancy changes.

26           50.     As a result of Aegis's failure to use its resident assessment system and consider  
27 care points in setting staffing levels at its facilities, those levels are substantially lower than those  
28 Aegis itself has determined are necessary to meet the assessed needs of residents. Further,



1 because Aegis' failure to use its residential assessment system for staffing decisions results in  
2 lower staffing levels than it has determined are necessary, the residents of Aegis' facilities run the  
3 continuing risk of not having their care needs met and of suffering injury from the lack of care or  
4 from other residents who are insufficiently supervised or cared for.

5 51. Aegis' failure to use its resident assessment system when it sets and provides  
6 facility staffing places all residents at an unnecessary risk of harm. That risk is particularly acute,  
7 given the vulnerable nature of the targeted population of seniors and residents with disabilities. It  
8 also forces residents to live in an unpleasant and unsafe environment due to the resulting  
9 inadequate supervision and care of residents in general.

10 52. The consequences of Aegis' common policy and standard operating procedure of  
11 providing staffing without regard to the assessed personal care levels of its current residents are  
12 significant. They include, but are not limited to: resident falls, elopements, injured residents left  
13 unattended, dehydration, urinary tract infections, weight loss/malnutrition, choking, slow or no  
14 responses to resident call buttons, failures to assist with toileting resulting in incontinence,  
15 inconsistent incontinence care resulting in residents sitting in soiled and/or wet briefs for long  
16 periods of time, decubitus ulcers, medication errors, and inadequate grooming and hygiene  
17 assistance.

18 53. Aegis' failures to disclose and concealment regarding the true manner in which its  
19 facilities are staffed, and the promotion of its system of comprehensive resident assessments in its  
20 form contract and marketing materials, contributes to Aegis' competitiveness in the marketplace  
21 of assisted living facilities and enables it to charge more for residency and services at its facilities  
22 than it otherwise could.

23 54. Through its failures to disclose and concealment, Aegis misleads residents and  
24 family members into paying large sums in the form of move-in fees and monthly payments.  
25 Residents pay a premium for a system that they are misled into believing will provide  
26 comprehensive resident needs assessments and the staff necessary at Aegis to provide the care  
27 Aegis deemed necessary based on the resident assessments.

28 //

**The Misrepresented and Concealed Facts Are Material**

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

56. Aegis knows the importance of staffing in choosing an assisted living facility. In an article featured on its website titled "Top tips for touring an assisted living community," Aegis tells prospective residents or their family members to ask staff, residents and family members, "What is the ratio of staff to residents?" Another article on the site titled "20 questions for the director of an assisted living community" includes among the top 20 inquiries, "How many staff members care for each resident?"

57. Aegis's promise to provide the care services (through facility staff) that each resident requires as calculated by the resident assessments conducted by Aegis is material to prospective residents and their family members. Further, residents (and their family members) reasonably expect that Aegis will provide staffing at levels sufficient to meet the assessed needs of facility residents. Staffing at levels sufficient to provide the care necessary to meet assessed resident needs is a substantial factor (and indeed often the most important factor) in deciding to enter an assisted living facility. Dr. Newirth and Linda Bardin would not have admitted their family members to Aegis, and Barbara Feinberg would not have agreed to enter the facility, if they had known that, although Defendant would charge them based on the staffing associated with their assessed care points, Defendant did not and does not use its resident assessment system and the assessed care points in setting staffing levels at its facilities. Likewise, members of the putative class would in all reasonable probability not have entered Aegis' facilities if they had known that Aegis did not and does not use its resident assessment system and the care points generated by it when determining staffing levels at its facilities.

1           58. This is true even for residents who currently are practically independent. These  
 2 residents choose an assisted living facility as opposed to remaining at home or moving into an  
 3 independent living community because they wish to “age in place.” They may not need  
 4 significant assistance with the activities of daily living initially, but they expect to (and will)  
 5 become more dependent as they age and do not want to move yet again when that happens.

6           59. Aegis emphasizes the benefit of “aging in place” on its website. In an article titled  
 7 “What does your loved one need in an assisted living community?” the company gives the  
 8 following advice:

9           While it’s not possible to anticipate just what kind of care your senior loved ones will  
 10 require as they age, it’s a good idea to plan for the most extreme circumstances. Will the  
 11 assisted living community you are looking at care for your mother if she develops  
 12 dementia? Will it be able to provide compassionate services to your father if he lives there  
 13 through the end of his life? These are important questions, whether or not you think your  
 14 parents are considering them. It can be disruptive to have to move from one assisted living  
 15 community to another to obtain the proper level of care, just as it can be disruptive for your  
 16 parents to have to live in different locations.

17 ([https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-](https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-living-community/)  
 18 [living-community/](https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-living-community/), last visited February 12, 2016).

19           60. A key factor for these residents in selecting Aegis is that the facility will provide  
 20 the staffing sufficient to provide the care services that Aegis itself has determined are necessary to  
 21 meet assessed residents’ needs, both now and as those needs, and corresponding care services  
 22 fees, increase.

23           61. Aegis has a duty to disclose to the consuming public that it does not use its resident  
 24 assessment system or the care points generated by it to set aggregate staffing levels because of,  
 25 among other things, the inherent and substantial safety risk to current and future residents from  
 26 Aegis’s conduct, particularly as Defendant serves a vulnerable population that needs assistance.  
 27 The non-disclosure is material because Aegis knows that its conduct risks the safety of its  
 28 residents. Yet, Aegis has failed to disclose and actively conceals from residents, prospective  
 residents and their family members the true facts about how it sets staffing at its facilities.

### **Barriers to Moving Out**

62. Defendant’s misrepresentations affect not only the decision of residents to enter an

1 Aegis facility, but also the decision to stay there.

2 63. In choosing assisted living in general and an Aegis facility in particular, the  
3 resident forgoes other options such as his or her former home, a senior community, or other  
4 facilities where the resident can try to build a new community. Once in a facility, there are  
5 significant physical, emotional and other burdens for the residents that are triggered if they  
6 terminate residency, including impacts such as “transfer trauma.” Aegis is aware of these  
7 burdens, as noted in Paragraph 53 above (“It can be disruptive to have to move from one assisted  
8 living community to another to obtain the proper level of care, just as it can be disruptive for your  
9 parents to have to live in different locations”) and makes the representations described herein  
10 with the knowledge that it will be difficult for residents to leave its facilities once they are enticed  
11 to enter based on its misrepresentations.

12 64. Aegis also repeats its misrepresentations when it conducts periodic re-assessments  
13 of residents. Often, the facility discovers additional care services needed by the resident that  
14 Aegis uses as a basis for a Care Fee increase. Aegis requires its management staff to “[g]enerate  
15 revenue for care services provided to residents. Ensure residents are properly billed for the level  
16 of care provided.” (Assisted Living Director job description at  
17 [http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/assisted-](http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/assisted-living-director/)  
18 [living-director/](http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/assisted-living-director/), last visited February 12, 2016)

19 65. Aegis thereby unjustly continues to profit from the original fraud by perpetuating  
20 its misrepresentations and failures to disclose.

21 **June Newirth**

22 66. Decedent June Newirth resided at Aegis Corte Madera in Corte Madera, California  
23 from approximately July 2010 until approximately July 26, 2014. When Ms. Newirth moved to  
24 Aegis on or around July 7, 2010, Aegis provided her husband, Frederick Newirth, who holds a  
25 durable power of attorney, with a standard contract under which it promised to provide certain  
26 core services in exchange for a monthly base rate. Additionally, the contract stated that Aegis  
27 would provide Ms. Newirth:

28 with personal assistance and care on an as needed basis. . . . When You applied for

1 admission to the Community, the professional staff of Aegis performed a comprehensive  
2 assessment of your needs and determined with You that the appropriate services for You  
3 total 149 assessment points. Aegis will perform reassessments in light of your changing  
4 needs to determine the services that You may require. You will receive the services  
5 appropriate to your individual need.

6 67. The “Individualized Service Plan” generated by Ms. Newirth’s pre-admission  
7 assessment, which accompanied her admission papers indicated that every service for which she  
8 was charged assessment points was to be provided by Aegis staff. For example, under Grooming,  
9 the Plan stated: “Staff will provide stand-by assistance with all grooming tasks. Staff will  
10 evaluate ongoing needs for assistance with grooming.” The responsible party is listed as  
11 “Caregiver”.

12 68. Plaintiff Newirth, through her representative and power of attorney, Frederick J.  
13 Newirth, reasonably understood Aegis’ representations in the contract as statements that Aegis  
14 used its resident assessment system and results generated by it to determine necessary staffing  
15 levels for its facilities and that the staff determined to be necessary through that system would be  
16 provided. Simply put, Dr. Newirth reasonably understood that if his wife’s care needs increased,  
17 Aegis staff would spend more time assisting her. As a result, her assessment points would  
18 increase, resulting in a higher care fee. Ms. Newirth through Dr. Newirth, read and relied on the  
19 representations made in the contract in making the decision to enter Aegis Corte Madera. As Ms.  
20 Newirth’s durable power of attorney and representative, Dr. Newirth signed the agreement  
21 acknowledging that he had read the agreement and its attachments.

22 69. Prior to entering Aegis Corte Madera, Ms. Newirth paid Defendant a Community  
23 Fee of \$15,000 on June 26, 2010. Additionally, she paid a daily general services fee of \$164 and  
24 daily fee for care services of \$74.50, totaling \$238.50 per day and approximately \$7,393.50 per  
25 month. On July 5, 2010, Ms. Newirth paid \$5,962.50 for the portion of July from the 7<sup>th</sup> to the  
26 31<sup>st</sup>.

27 70. Commencing in approximately July 2010 (shortly after Ms. Newirth entered the  
28 Aegis Corte Madera facility) and continuing through August 2014 (when she left), Aegis billed  
the Newirths on a monthly basis for care services that Aegis promised to deliver. Each quarter, or

1 whenever Ms. Newirth's health condition changed, Aegis re-assessed Ms. Newirth and generated  
2 a new Resident Services Plan with points assigned for staff time necessary to perform each care  
3 task. In each Resident Services Plan, Aegis made new representations that it would provide the  
4 services and staff time necessary to care for Ms. Newirth. Ms. Newirth, through Dr. Newirth,  
5 reviewed and signed each Resident Services Plan. The charge amount on each bill, which  
6 increased over time as the facility re-assessed Ms. Newirth, was based on the point system and  
7 Resident Services Plan. Dr. Newirth relied on the representations in each Resident Services Plan  
8 when he decided to pay the monies Aegis demanded to provide the promised care. At no time  
9 throughout Ms. Newirth's residency did Aegis disclose the true facts that, despite its promises,  
10 staffing at the Corte Madera facility was not determined based on resident assessments but  
11 instead set to meet labor budgets and profit objectives.

12 71. Initially, the care provided to Ms. Newirth gave no reason for her or her family to  
13 question the veracity of Aegis' representations and contractual promises. Many caregivers and  
14 certain management staff at the facility worked very hard and clearly cared for the residents.  
15 Indeed, for much of 2012, the Newirths were satisfied with the care Aegis provided in large part  
16 due to the relationship the family developed with the new Memory Care Director at the time.  
17 They liked and trusted this Memory Care Director because she seemed qualified, compassionate,  
18 hard-working, accessible to residents and their families, and directly involved in resident care. In  
19 August 2012, Kathi Troy, Ms. Newirth's daughter, expressed satisfaction with resident care and  
20 praised the then Memory Care Director, who worked at Aegis until October 2013, in a response to  
21 the Aegis Living Resident & Family Survey.

22 72. However, in the last few months of 2012, Ms. Troy, who was spending one to five  
23 hours at the facility every day, began to observe that staffing levels failed to keep up with the  
24 needs of many residents. Also, during this time, the Memory Care Director grew more candid  
25 with Ms. Troy about her inability to influence or control staffing levels.

26 73. The quality of care Aegis provided to Ms. Newirth started to gradually decline in  
27 late 2012 or early 2013. Despite the gradual decline in care, Aegis repeatedly increased Ms.  
28 Newirth's assessment points and corresponding daily care services fees in new Resident Services

Plans. Aegis did not, however, make corresponding adjustments to and increases in the staff time devoted to Ms. Newirth's care or adjust its facility staffing levels despite the representations in each Resident Services Plan, and as it increased Ms. Newirth's assessment points and care services fees. Around the same time in late 2012 or early 2013, Dr. Newirth and Ms. Troy began to realize that the Resident Services Plans had no bearing on staffing levels, and repeatedly told the various executive directors and managers on site that the facility was understaffed, and that Ms. Newirth was consequently paying for services that she was not receiving.

74. In August 2013, Ms. Troy voiced concerns in an Aegis Living Resident & Family Survey sent to Aegis' corporate offices. She wrote:

[A] social model of **assisted living and memory care is labor-intensive**; and a more effective staff-to-resident ratio must be established at Aegis of Corte Madera to ensure the health, welfare, and safety of the residents as well as the staff. An abundance of behavioral problems, wanderers and escape artists, and two-person lifts dictates that **there must be a minimum of four care managers assigned to each memory care unit for both the AM and PM shifts**. This should be a baseline standard and should never be downgraded to improve profit margins.

(emphasis in original). Further down, Ms. Troy noted that despite fee increases "[s]taffing levels have NOT been increased . . ."

75. In October 2013, Ms. Troy requested a meeting with the Executive Director and gave him a nine-page document she wrote describing the problems with staffing, among other things. She noted that staffing had been cut and that "[r]esidents are being left unattended for long periods of time – not out of neglect but because understaffed care managers have a long list of housekeeping chores to do before they can punch out." During the meeting, the Executive Director patiently listened to her concerns and vowed to address them. Ms. Troy left the meeting feeling heard and believed his assurances. However, Aegis did not increase staff time provided to Ms. Newirth, and her care continued to deteriorate. In early March 2014, Ms. Troy requested another meeting with the Executive Director. He met with her very briefly, but then shunted her to two staff members who had no authority to fix problems. Ms. Troy attempted to talk to the staff members, but ended the meeting after determining they could not and would not meet her mother's care needs.



1           76. By approximately July 2014, four years after Ms. Newirth moved to Aegis, the  
2 family realized that despite the repeated promises and assurances, Aegis would not increase  
3 facility staffing to correspond to the care residents (including Ms. Newirth) needed as evidenced  
4 by the resident assessments. Accordingly, Dr. Newirth sent the Executive Director a thirty-day  
5 notice on July 21, 2014. He stated that Ms. Newirth would be leaving Aegis of Corte Madera on  
6 August 20, 2014. He wrote:

7           It has been most disconcerting that Aegis has continued to increase rates for services that  
8 are not actually provided due to the fact that staffing in all departments has been reduced to  
9 less than a skeleton crew. After attempting to work with your predecessor on multiple  
10 occasions to remedy this situation, we have decided that it is better to leave Aegis to its  
11 own devices and move June to a place where compassionate care is the primary focus.

12           77. June Newirth moved from Aegis of Corte Madera to another assisted living facility  
13 on August 20, 2014.

14           78. Throughout Ms. Newirth's entire stay, Aegis never disclosed, and the family had  
15 no way of discovering, that Aegis' point system is not supported by sufficient staffing levels, and  
16 was (and is) geared only toward increasing revenue. Ms. Newirth did not receive the care Aegis  
17 promised in her contract and each Resident Service Plan, and for which she paid significant fees  
18 over a four-year period.

19                           **Barbara Feinberg**

20           79. Barbara Feinberg ("Ms. Feinberg") is a current resident of Aegis Laguna Niguel in  
21 Laguna Niguel, California. In early October 2013, she chose Aegis for temporary respite care  
22 after reviewing Aegis' marketing materials, meeting with the General Manager, and touring the  
23 facility. In choosing Aegis over other facilities, Ms. Feinberg relied on Aegis' representations  
24 that it would provide enough staff to meet all of her daily needs and charge her only for the  
25 services she received. She paid a deposit of \$4,140 to hold a room and began moving in on  
26 October 16, 2013.

27           80. On October 17, 2013, Aegis completed a Resident Service Plan that assigned Ms.  
28 Feinberg 95 points and charged her approximately \$.44 per point each day. Ms. Feinberg  
reasonably expected that the points were an accurate reflection of the amount of care she would



1 receive from staff each day, and that Aegis would ensure sufficient staffing levels to provide that  
2 care. Aegis charged her \$7,335 for general and daily care services each month during her respite  
3 care.

4 81. In January 2014, Ms. Feinberg became interested in permanent residency at Aegis.  
5 On January 20, 2014, Aegis provided her daughter, Sheri Feinberg, who holds durable power of  
6 attorney, a standard contract under which it promised to provide certain core services in exchange  
7 for a monthly base rate. Additionally, the contract stated that Aegis would provide Ms. Feinberg  
8 with personal assistance and care on an as needed basis. . . . When You applied for  
9 admission to the Community, the professional staff of Aegis performed a comprehensive  
10 assessment of your needs. Aegis will perform reassessments in light of your changing  
needs to determine the services that You may require. You will receive the services  
appropriate to your individual need.

11 It further stated that Ms. Feinberg must pay a Community Fee of \$4,000, \$200 a day for General  
12 Services, and \$.50 per day for each care point Aegis determined to be necessary. Before signing  
13 the contract and making a final decision, her daughter scrutinized the points Aegis had assigned  
14 and charged to Ms. Feinberg during the previous four months. On January 21, 2014, she asked  
15 Aegis why it had assigned points and charged her mother for grooming, medication, and  
16 transportation services that it was not providing. In response, on January 29, 2014, the Marketing  
17 Director assured her that the points were accurate based on her mother's needs and Aegis was  
18 providing those services.

19 82. Ms. Feinberg and her daughter reasonably understood from the contract and all of  
20 Aegis' representations that as her needs increased, her points would increase, and that she would  
21 be charged more because more points require more time from staff, and thus require adjustments  
22 to staffing levels. With this understanding, and in reliance on Aegis' representations, Ms.  
23 Feinberg, through her representative and power of attorney, signed the contract on January 31,  
24 2014 to become a permanent resident.

25 83. In approximately January 2015, however, Ms. Feinberg and her daughter began to  
26 notice that despite the best efforts of individual staff members, Aegis did not hire enough staff to  
27 ensure that Ms. Feinberg and the other facility residents received the care they paid for and  
28 needed. For example, the number of staff did not correspond to the number of residents in

1 wheelchairs who needed to be pushed to various essential services throughout the day. There  
2 were fewer staff on weekends, no coverage for staff who called in sick, and staff appeared  
3 stressed and overtaxed. Residents were seen lying on the floor after falling because staff was  
4 unavailable to help them up. In July 2016, Ms. Feinberg herself suffered in excruciating pain for  
5 40 minutes before a nurse had time to bring her pain medications.

6 84. During her stay, Ms. Feinberg's points were increased from 72 to 200 points. In  
7 the course of imposing these increases, facility personnel represented that the point system was  
8 related to staffing requirements. For example, on May 3, 2016, two Aegis managers came to Ms.  
9 Feinberg's room, on two separate occasions, and insisted that Ms. Feinberg sign a new care plan  
10 even though her daughter had just signed a new care plan only a few days before. They did not  
11 notify or consult with her daughter before approaching Ms. Feinberg. They wanted Ms. Feinberg  
12 to sign a new care plan that significantly increased the points, and thus fees, for grooming. When  
13 Sheri Feinberg later asked about the increased points, the General Manager responded:

14 "If [Barbara Feinberg] now requires 40+ min of assistance to do her hair every  
15 day, then that would be considered a higher number of points due to increased  
16 time demands on existing staff and we need to pay for the additional staff required  
to meet the time demands."

17 85. Ms. Feinberg constantly monitors Aegis to ensure it provides the services for which  
18 it charges. It would be traumatic for Ms. Feinberg to move out. She takes comfort in her routine,  
19 apartment, and community of friends at Aegis, and the prospect of leaving everything that is  
20 familiar terrifies her. Aegis takes advantage of Ms. Feinberg and other residents by manipulating  
21 their point assessments to generate revenue, and by short-staffing the facilities, knowing that the  
22 residents will keep paying because they are too afraid to leave, they have no other place to go,  
23 and/or the risk of harm from transfer trauma if they move is too great.

24 **Margaret Pierce**

25 86. Margaret Pierce lived at Aegis Moraga from April 2013 to January 2015. She died  
26 on March 6, 2016, in another facility. Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas  
27 Bardin are her surviving grandchildren. Her daughter, Linda Bardin, held durable power of  
28 attorney and chose Aegis over other facilities after speaking with the general managers at Aegis

1 Pleasant Hill and Aegis Moraga in February and March 2013. They explained that Aegis would  
2 assign a certain number of points to Ms. Pierce based on its resident assessment, and the number  
3 of points would encompass and represent all of her daily and medical needs.

4 87. Ms. Pierce qualified for and was accepted into the “Very Low Income Program” at  
5 Aegis Moraga. In March 2013, Aegis provided Ms. Bardin with a standard contract under which  
6 it promised to provide

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

10 It further provided, “Care fees are based on assessment points. Each assessment point results in a  
11 \$.50 per day fee.” The contract required her to pay a \$7,000 Community Fee and \$109 a day for  
12 care services.

13 88. Based on the general managers’ representations and the language in the admissions  
14 contract, Ms. Pierce, through her power of attorney Linda Bardin, trusted that Aegis had arrived at  
15 the fee of \$109 a day for care services based on the resident assessment setting a certain number of  
16 points, and that those points were commensurate with her needs. She reasonably understood that  
17 for every increase in points, her mother would require more attention from staff, and Aegis would  
18 charge her more for that increased staff attention. She reasonably expected that Aegis would  
19 maintain sufficient staffing levels to take care of her, including as her points increased. She relied  
20 on all of Aegis’ representations when she signed the contract, through her power of attorney Linda  
21 Bardin, on March 12, 2013, and paid the Community Fee of \$7,000 and \$3,254 for care services to  
22 be provided during the first month.

23 89. Aegis billed Ms. Pierce on a monthly basis for care services it promised to deliver.  
24 Monthly care fees were based on a point assessment, which changed frequently as the facility re-  
25 assessed Ms. Pierce. In May 2013, Aegis began increasing Ms. Pierce’s points after performing  
26 point assessments and generating new Resident Services Plans that promised to deliver increased  
27 services. By June 2013, Aegis had increased Ms. Pierce’s points and daily care fees from \$109 to  
28 \$113.50 a day. Aegis increased Ms. Pierce’s points, for example, because she needed medications

1 more frequently and to implement a fall-prevention plan that included wellness checks every two  
2 hours. Ms. Bardin initially believed it was reasonable for Aegis to increase the points because her  
3 mother needed more services from staff, and Aegis represented it would provide them. However,  
4 Ms. Bardin did not know, and Aegis did not disclose, that it was charging Ms. Pierce for services  
5 it was not providing.

6 90. By approximately December 2013, Ms. Bardin began to notice that Aegis was not  
7 providing increased attention from staff even though it had increased her mother's points. Ms.  
8 Bardin was visiting the facility at least several times a week in part because the wellness checks  
9 were not preventing her mother from falling frequently. She asked Aegis for documentation  
10 showing it was providing the two-hour checks, but they could not provide it. Staff also could not  
11 name the specific individual responsible for completing the checks. She observed that one  
12 caregiver was responsible for taking care of up to 15 residents, including housekeeping, showers,  
13 laundry, meals, grooming, and the wellness checks her mother and other residents were supposed  
14 to be receiving. One evening in January 2014, an overworked medical technician failed to  
15 adequately supervise a caregiver-trainee who left a basket of medications prescribed to other  
16 residents in Ms. Pierce's room. Ms. Bardin complained to DSS and Aegis management staff,  
17 including the Chief Operating Officer, Tom Laborde, about this incident.

18 91. The quality of care Aegis provided to Ms. Pierce continued to decline from January  
19 2014 until she left the facility. Ms. Bardin repeatedly emailed Aegis managers and requested  
20 meetings regarding her mother's care and the point assessments. The managers placated her with  
21 assurances that her mother's needs would be met. At the same time, Aegis repeatedly re-assessed  
22 Ms. Pierce and increased her monthly fees, thereby representing that the fee increases would result  
23 in additional staffing to meet her care needs. Aegis never disclosed to Ms. Bardin that the point  
24 assessments were wholly unrelated to staffing levels, and that it would not increase staffing as her  
25 mother's needs increased. Throughout her mother's stay at Aegis, Ms. Bardin had no way of  
26 discovering that Aegis set staffing levels based on fixed labor budgets or that staffing was not  
27 determined by resident needs assessments.

28 92. In May 2014, Ms. Pierce called her daughter over 250 times, alone and disoriented,

1 because there were not enough staff to address her needs. One night during that month she called  
2 Ms. Bardin from the floor after falling. Ms. Bardin tried to call staff, but no one would pick up the  
3 phone even though Aegis represented that staff would be available by phone 24 hours a day. Ms.  
4 Bardin had to drive to the facility and bang on the locked door for several minutes until a caregiver  
5 finally answered. Her mother was on the floor during this incident for at least an hour. A few  
6 weeks later, Ms. Bardin discovered that although she was paying Aegis to manage her mother's  
7 medications, overworked medical technicians had not reviewed the physician's orders and had  
8 been administering eye drops to both of Ms. Pierce's eyes for two months when they should have  
9 only been administered to one eye.

10 93. In June 2014, alarmed at the lack of attention Aegis was providing to her mother,  
11 Ms. Bardin initiated her mother's move into the Memory Care Unit. She hoped that her mother  
12 would benefit from the higher staff to resident ratio. However, even though Aegis raised Ms.  
13 Pierce's care points and charged her for more services, she continued to fall and suffer from  
14 serious injuries in the Memory Care Unit. In October 2014, for example, she was hospitalized and  
15 suffered from a concussion when she fell at her apartment door after walking down the hall alone  
16 and unsupervised.

17 94. Although it was clear that Ms. Pierce was not receiving the services she was paying  
18 for, Ms. Bardin feared her mother would suffer from severe physical and psychological symptoms  
19 from the stress of transferring if she moved out of Aegis. Instead, Ms. Bardin attempted to work  
20 with Aegis to ensure her mother received the full value of the fees she was charged. In August  
21 2014, the General Manager refused to reduce her mother's care points because it would  
22 "jeopardize [her] mom's care." Ms. Bardin reluctantly agreed with Aegis to place her mother on  
23 hospice care, but then terminated this service because her mother was not terminally ill and it  
24 resulted in Aegis providing even less supervision and care. Ms. Bardin had no choice but to hire  
25 outside caregivers at a rate of \$25 an hour (and more on holidays), on top of the fees she was  
26 already paying, to sit with Ms. Pierce at night when Aegis staffed the facility with only one  
27 caregiver for all of the residents in the Memory Care Unit.

28 95. On November 11, 2014, Aegis sent Ms. Pierce a 30-day notice to terminate her

1 contract, forcing her to move out of Aegis. It cited her repeated falls (ten from August 2, 2014 to  
 2 October 27, 2014), change in health condition, and refusal to pay for hospice service as cause for  
 3 the termination. It was not until January 2015 that Ms. Bardin realized that Aegis had not and  
 4 would not provide the care it promised to provide, and for which Ms. Pierce was paying  
 5 significant fees, and she moved her mother to another facility.

6 **Carol Morrison**

7 96. Carol Morrison resided at Aegis of Issaquah in Issaquah, Washington from  
 8 approximately June 24, 2015 until approximately July 25, 2016. When Ms. Morrison became a  
 9 resident of Aegis, Aegis provided a standard contract that stated certain core services would be  
 10 provided to Ms. Morrison in exchange for a monthly base rate.

11 97. Additionally, the contract indicated that Aegis would provide Ms. Morrison:  
 12 with personal assistance and care on an as needed basis ... When You  
 13 applied for admission to the Community, the professional staff of Aegis  
 14 performed a comprehensive assessment of your needs and determined with  
 15 You that the appropriate services for You total **80** assessment points. Aegis  
 16 will perform reassessments in light of your changing needs to determine the  
 17 services that You may require. You will receive the services appropriate  
 18 to your individual need.

19 98. The “Individualized Service Plan” generated by Ms. Morrison’s pre-admission  
 20 assessment, which accompanied her admission papers, indicated that every service for which she  
 21 was charged assessment points was to be provided by Aegis staff. For example, under Grooming,  
 22 the Plan stated: “Staff will provide stand-by assistance with all grooming tasks. Staff will evaluate  
 23 ongoing needs for assistance with grooming.” The responsible party is listed as “Caregiver.”

24 99. Ms. Morrison, through her representative and Attorney-in-Fact, Stacy Van Vleck,  
 25 reasonably understood that Aegis used its resident assessment system and results generated by it to  
 26 determine necessary staffing levels for its facilities and that the staff determined to be necessary  
 27 through that system would be provided.

28 100. Simply put, Stacy Van Vleck reasonably understood that if her mother’s care needs  
 increased, Aegis staff would spend more time assisting her. As a result, her assessment points  
 would increase, resulting in a higher care fee.

1           101. Prior to entering Aegis of Issaquah's memory care unit, Ms. Morrison paid Aegis a  
2 Community Fee of \$8,000. Additionally, she paid a daily general services fee and daily fee for  
3 care services.

4           102. During the time Ms. Morrison was a resident at Aegis of Issaquah, Aegis billed Ms.  
5 Morrison on a monthly basis for care services that Plaintiff reasonably believed Aegis would  
6 deliver.

7           103. Each quarter, or whenever Ms. Morrison's health condition changed, Aegis  
8 assessed Ms. Morrison and generated a new Individualized Service Plan, with points assigned for  
9 staff time necessary to perform each care task.

10           104. During Ms. Morrison's time at Aegis of Issaquah, Aegis eventually increased her  
11 assessment points and corresponding care services fees in a new Individualized Service Plan. Ms.  
12 Morrison's family believed it was reasonable for Aegis to increase the points because Ms.  
13 Morrison needed more services from staff. However, they did not know, and Aegis did not  
14 disclose, that Aegis was charging Ms. Morrison for services it was not providing. Aegis did not  
15 make corresponding adjustments to and increases in the staff time devoted to Ms. Morrison's care  
16 or adjust its facility staffing levels despite the provisions in each Individualized Service Plan. With  
17 each Individualized Service Plan, Aegis continued to fail to disclose and conceal that it would not  
18 provide the services and staff time necessary to care for Ms. Morrison.

19           105. Ms. Morrison, through her representatives, reviewed and signed each  
20 Individualized Service Plan. The amount charged on each bill, which increased over time as the  
21 facility re-assessed Ms. Morrison, was based on the point system and Individualized Service Plan.

22           106. The Morrisons would not have paid the monies Aegis demanded had Aegis  
23 disclosed that they would not provide the care as determined by Ms. Morrison's assessments. At  
24 no time throughout Ms. Morrison's residency did Aegis disclose that staffing at the facility was  
25 not determined based on resident assessments but instead set to meet labor budgets and profit  
26 objectives.

27           107. Ms. Morrison did not receive the care and services she required or paid for. For  
28 example, Ms. Morrison's family members found her on multiple occasions in linens and adult



1 diapers soiled with urine. Her teeth, hair, and nails were often left uncleaned. On numerous other  
 2 occasions, Ms. Morrison's family members found her unattended on the floor. Ms. Morrison's  
 3 family members voiced concerns to Aegis corporate and facility staff regarding Ms. Morrison's  
 4 inadequate care throughout her admission to the Issaquah facility. Aegis listened to their concerns  
 5 and attempted to placate them by vowing to address the issues, including by increasing the staff.  
 6 Ms. Morrison's family believed their assurances. However, Aegis did not increase staff time  
 7 provided to Ms. Morrison, and her care continued to deteriorate.

8 108. Aegis never disclosed, and Ms. Morrison and her representatives had no way of  
 9 discovering, the critical fact that Aegis' point system is not supported by sufficient staffing levels,  
 10 and was (and is) geared only toward increasing revenue.

11 109. Ms. Morrison did not receive care as indicated in the assessments conducted by  
 12 Aegis, and for which Plaintiff and the Class paid significant fees.

13 110. The quality of care Aegis provided to Ms. Morrison continued to decline until she  
 14 left the facility.

### 15 **CLASS ALLEGATIONS**

16 111. The Named Plaintiffs bring this action as a class action pursuant to Federal Rule of  
 17 Civil Procedure 23(b)(3) as set forth below.

18 112. This action is brought by the Named Plaintiffs on behalf of all the members of the  
 19 following two State Classes:

#### 20 **California Class, represented by Plaintiffs Troy and Pierce:**

21 All persons who resided or reside at one of the  
 22 California assisted living facilities owned and/or operated by Aegis under the  
 23 Aegis name from April 12, 2012 through the present (the "California Class Period"),  
 and who contracted with Aegis for services for which Aegis was paid money.

#### 24 **Washington Class, represented by Plaintiff Morrison:**

25 All persons who resided or reside at one of the Washington assisted living facilities  
 26 owned and/or operated by Aegis under the Aegis name from March 8, 2014  
 27 through the present (the "Washington Class Period"), and who contracted with  
 Aegis for services for which Aegis was paid money.

28 113. Excluded from the above-referenced Classes are the officers, directors, and



1 employees of Defendant, and any of Defendant's shareholders or other persons who hold a  
2 financial interest in Defendant. Also excluded is any judge assigned to hear this case (or any  
3 spouse or family member of any assigned judge), or any juror selected to hear this case.

4 114. This action is brought as a class action and may properly be so maintained pursuant  
5 to Federal Rule of Civil Procedure 23 and applicable case law. In addition to injunctive relief,  
6 this action seeks class wide damages based on Defendant's misrepresentations and misleading  
7 statements and material omissions alleged herein. This action does not seek recovery for personal  
8 injuries, emotional distress or bodily harm that may have been caused by Defendant's conduct  
9 alleged herein.

10 115. **Ascertainability.** Members of the Classes are identifiable and ascertainable.  
11 Defendant retains admissions contracts, Resident Services Plans, and billing statements for all  
12 persons who currently reside or resided at Aegis facilities during the class periods. Thus,  
13 Defendants own records will reliably identify class members.

14 116. **Impracticability of Joinder (Numerosity of the Classes).** Members of the  
15 Classes are so numerous that their individual joinder herein is impracticable. The precise number  
16 of members of the Classes and their addresses are presently unknown to Plaintiffs. Defendant  
17 currently owns and/or operates approximately 14 assisted living facilities in California and  
18 approximately 17 assisted living facilities in Washington. According to Defendant, its records  
19 indicate that approximately 10,000 individuals lived in Aegis facilities, of which roughly 4,500  
20 are residents of Aegis' Washington facilities. The precise number of persons in the class and  
21 their identities and addresses may be ascertained from Defendant's records.

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

26 (a) whether Defendant has violated and continues to violate the Consumer  
27 Legal Remedies Act, California Civil Code § 1770 *et seq.* by falsely representing that Aegis uses  
28 its resident assessment system and the care points generated by it to determine and provide

1 staffing at its California assisted living facilities, when, in fact, Defendant does not and has no  
2 intention to do so;

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

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

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

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

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

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

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

25 (i) whether the Plaintiffs, the class and the consuming public have a reasonable  
26 expectation that Defendant will use its resident assessment system to determine and provide  
27 staffing at its facilities;

28 (j) whether the Plaintiffs, the class and the consuming public have a reasonable

1 expectation that Defendant will provide staffing at its facilities to meet the aggregate care needs  
2 of the residents in its facilities as determined by Defendant's resident assessment system;

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

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

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

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

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

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

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

19 (r) whether Defendant failed to disclose and concealed the fact that Aegis does  
20 not use its resident assessment system and the care points generated by it to determine and  
21 provide staffing at its Washington assisted living facilities;

22 (s) whether Defendant failed to disclose and concealed the fact that Aegis's  
23 standard operating procedure and corporate policy of providing pre-determined staffing at its  
24 facilities, without regard to assessed care points, precludes it from providing its residents all of  
25 the care they have been assessed as requiring, and places all residents at an inherent and  
26 substantial risk that they will not receive the services they have paid for on any given day;

27 (t) whether Defendant has violated and continues to violate the Washington  
28 Consumer Protection Act, RCW § 19.86.020, *et seq.*;

1           (u) whether Defendant has committed financial exploitation of vulnerable  
2 adults under the RCW §§ 74.34.020 and 74.34.200 by the illegal or improper use, control over, or  
3 withholding of the property, income, resources, or trust funds of the vulnerable adult by any  
4 person or entity for any person's or entity's profit or advantage other than for the vulnerable  
5 adult's profit or advantage and/or the use of deception to obtain or use the property, income,  
6 resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the  
7 vulnerable adult.

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

28           119. **Adequacy.** The Named Plaintiffs are adequate representatives of the class on

1 whose behalf this action is prosecuted. Their interests do not conflict with the interests of the  
 2 class. Also, they have retained competent counsel with extensive experience in class action and  
 3 senior care litigation and who will prosecute this action vigorously.

4 120. **Predominance**. With respect to Plaintiffs' claims under the CLRA, the UCL,  
 5 California's Elder Abuse Act, the Washington Consumer Protection Act, and Washington's  
 6 Financial Exploitation of Vulnerable Adults statute, class certification is appropriate because  
 7 significant questions of law or fact common to class members, including but not limited to those  
 8 set forth above, predominate over any questions affecting only individual members of the  
 9 proposed class.

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

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

14 (b) relatively little individual litigation has been commenced over the  
 15 controversies alleged in this Complaint and individual class members are unlikely to have an  
 16 interest in separately prosecuting and controlling individual actions;

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

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

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

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

27 122. Without a class action, Defendant will likely retain the benefit of its wrongdoing  
 28 and will continue in its illegal course of conduct which will result in further damages to Plaintiffs

1 and the proposed class.

2 **FIRST CLAIM**

3 **CALIFORNIA CONSUMERS LEGAL REMEDIES ACT (Cal. Civil Code § 1750 *et seq.*)**

4 123. Plaintiffs refer to, and incorporate herein by reference, all preceding paragraphs.

5 124. Plaintiffs and the class members are “senior citizens” and/or “disabled persons” as  
6 defined in California Civil Code § 1761(f) and (g). They are also “consumers” as defined in  
7 California Civil Code § 1761(d).

8 125. Defendant is a “person” as defined under California Civil Code § 1761(c). The  
9 assisted living and memory care services provided by Defendant constitute “services” under  
10 California Civil Code § 1761(b). The agreement by Plaintiffs and the putative class members to  
11 provide new resident services fees and monthly payments to Defendant in exchange for assisted  
12 living and memory care services constitute a “transaction” under California Civil Code § 1761(e).

13 126. In its uniform resident contracts presented to prospective residents and their family  
14 members, Defendant represented and continues to represent that Aegis will provide care services  
15 (through its facility staff) that are sufficient to meet the needs of each resident, as determined by  
16 Aegis’ resident assessment system and confirmed in the care points assigned to each resident.  
17 That same representation is made in Aegis’s re-assessments of residents and other standardized  
18 corporate materials. As alleged herein, these uniform corporate representations are false and  
19 misleading, and are likely to deceive the reasonable consumer.

20 127. Contrary to Aegis’s uniform misrepresentations and misleading statements, Aegis  
21 does not use its resident assessment system or consider resident assessment points in setting the  
22 levels of facility staff necessary to meet promised care levels, but instead uses predetermined  
23 labor budgets designed to meet corporate profit goals. Aegis facilities use a predetermined  
24 staffing schedule that rarely, if ever, changes, despite changes in the assessed personal care levels  
25 of the current residents. Aegis does not disclose and actively conceals this corporate policy and  
26 practice from current and prospective residents and their family members.

27 128. The named Plaintiffs, through their legal representatives and power of attorneys,  
28 and the putative class members considered material Aegis’ promise to provide care services

1 (through its facility staff) that would be sufficient to meet the needs of each resident, as  
2 determined by Aegis' resident assessment system. If the named Plaintiffs and their  
3 representatives had known the true facts, they would not have agreed to place them in an Aegis  
4 facility. If the putative class members had known the true facts, they would in all reasonable  
5 probability not have agreed to enter Aegis.

6 129. The facts that Aegis misrepresents, fails to disclose and actively conceals are  
7 material and are likely to deceive the reasonable consumer. Consumers choose an assisted living  
8 facility because they need care and/or wish to age in place as their care needs change. Residents  
9 and their family members consider the overall staffing levels provided by the assisted living  
10 facility they select to be of great importance. The use of a system such as the one Aegis represents  
11 it uses, which ensures adequate staffing at the facilities by basing staffing decisions on resident  
12 assessments and personal care needs, is also, therefore, of great importance to residents and their  
13 family members and is a material factor in their decision to choose Aegis and to pay Aegis the  
14 amounts of money that it charges for occupancy and services.

15 130. Residents and their family members would consider material Defendant's uniform  
16 corporate policy and practice of not using its resident assessment system and the staffing numbers  
17 generated by it to set and provide staffing its facilities. They would consider material  
18 Defendant's policy and practice of maintaining predetermined staffing schedules regardless of  
19 increases in the assessed needs and corresponding care points assigned to current residents.  
20 Plaintiffs and the putative class members could not reasonably have been expected to learn or  
21 discover these non-disclosed facts, and in fact, Aegis affirmatively concealed them.

22 131. Aegis has violated and continues to violate the Consumers Legal Remedies Act,  
23 California Civil Code §§ 1750 *et seq.* ("CLRA") in at least the following respects: (a) in violation  
24 of section 1770(a)(5), Aegis has misrepresented, failed to disclose and concealed the true  
25 characteristics and/or quantities of services provided at its California facilities; (b) in violation of  
26 section 1770(a)(7), Defendant has misrepresented, failed to disclose and concealed the true  
27 standard, quality and/or grade of services provided at its California facilities; (c) in violation of  
28 section 1770(a)(9), Defendant has falsely advertised that it will provide staffing based on resident

1 assessments and the care points generated by those assessments, knowing that it does not intend  
2 to provide the services as advertised; and (d) in violation of section 1770(a)(14), Defendant has  
3 represented that the agreement signed by residents and/or their representatives, and under which  
4 they pay their monthly rate, confers on residents the right to reside in a facility that provides  
5 staffing based on the amount of time its own resident assessment system has determined is  
6 necessary to provide the care services for which residents are charged, when in fact, Defendant  
7 does not use its resident assessment system and the care points generated by it when determining  
8 and providing facility staffing.

9 132. These misrepresentations, misleading statements, acts, practices, and omissions by  
10 Defendant are and were intended to induce and lure elderly and dependent adult residents and  
11 their family members into agreeing to be admitted to Defendant's facilities and to pay new  
12 resident services fees and monthly rates based on Defendant's resident assessment system and  
13 assessed care points.

14 133. Defendant made the written misrepresentations and misleading statements alleged  
15 herein through various uniform means of communication, including without limitation, the  
16 admission agreement, subsequent agreements based on re-assessments of the resident, resident  
17 care plans, standardized corporate marketing and promotional materials, and other written  
18 corporate materials disseminated to the public in connection with Defendant's services. These  
19 representations were made directly to the named Plaintiffs, putative class members and their  
20 family members and/or representatives by Aegis in its standard resident admission contract and  
21 reinforced by the uniform means of communication listed above.

22 134. In addition to its affirmative misrepresentations, Defendant failed to disclose and  
23 concealed from Plaintiffs, the putative class members, and their family members that it does not  
24 use its resident assessment system to determine or provide facility staffing at levels sufficient to  
25 meet the assessed care needs of facility residents, but instead maintains predetermined levels of  
26 staffing, regardless of changes in the aggregate assessed care points of the facility residents and  
27 regardless of whether the residents' assessed care needs are being met.

28 135. Aegis had exclusive and superior knowledge of material facts not known to the



1 named Plaintiffs, class members or the general public at the time of the subject transactions and  
2 actively concealed these material facts.

3 136. Aegis had exclusive and superior knowledge of its corporate policy and practice of  
4 ignoring its resident assessment system and the care points generated by it in setting staffing  
5 levels. Further, Plaintiffs allege on information and belief that Defendant's officers, directors and  
6 managers were repeatedly advised by their own staff that Aegis facilities were not adequately  
7 staffed to meet resident needs. Aegis also knew that its failure to provide staffing based on the  
8 amount of time that Aegis had itself determined was necessary to provide the care and services  
9 for which it charged its residents posed a substantial health and safety risk to the named Plaintiffs  
10 and class members. Aegis intentionally concealed, suppressed and/or failed to disclose the true  
11 facts with the intent to defraud the named Plaintiffs and putative class members. The named  
12 Plaintiffs and the putative class members did not know these material undisclosed facts and could  
13 not reasonably have been expected to discover them.

14 137. As a direct and proximate result of the Defendant's conduct, Plaintiffs and the  
15 putative class members suffered actual damages. Specifically, Plaintiffs and the class members  
16 paid money to Defendant, in the form of the new resident fee (called a "Community Fee"), their  
17 initial monthly fees, and additional monthly fees, paid in exchange for residency and services in a  
18 facility that was falsely represented to be staffed based on Aegis's residential assessment and care  
19 point system. Plaintiffs and the class members paid a premium for the misrepresented services,  
20 and would not have entered Aegis's facilities and made payments to Aegis had they known the  
21 truth about Aegis's policies and practices for staffing its assisted living facilities. Members of the  
22 class continue to pay monthly fees based on their assessed care points.

23 138. As a further direct and proximate result of Defendant's failure to staff its facilities  
24 as represented, *i.e.* based on residents' needs as determined through its comprehensive  
25 assessments, Plaintiffs and the class members have been forced to reside in facilities that have  
26 less staff than necessary to satisfy their care needs, as determined by Aegis itself. As a result of  
27 Aegis's policy of staffing its facilities according to pre-determined labor budgets which do not  
28 permit staffing increases, regardless of increases in the overall care needs and assessed points of

1 current residents, it is not possible for the needs of all residents to be met, and there is a  
2 substantial likelihood that each resident, at any time, will not receive the care Aegis has  
3 determined necessary and promised to provide. Plaintiffs and the class members also face the  
4 substantial risk that they will suffer physical injuries from such lack of care and / or from other  
5 residents who are insufficiently supervised or cared for.

6 139. Plaintiffs sent Defendant a notice to cure under California Civil Code § 1782(a),  
7 which was received by Defendant on April 24, 2016. More than 30 days has passed since  
8 Defendant's receipt, and Defendant has not replied to the notice nor has it corrected or remedied  
9 the violations alleged in the notice and herein.

10 140. Accordingly, Plaintiffs and the class members are entitled to actual damages and  
11 restitution in an amount to be proven at trial.

12 141. Plaintiffs and all class members are also entitled to not less than \$1,000 in statutory  
13 damages pursuant to California Civil Code § 1780(a). Further, Plaintiffs and other class members  
14 are also each entitled to statutory damages of up to \$5,000 pursuant to California Civil Code §  
15 1780(b). Plaintiffs and many other class members are seniors and/or disabled persons as defined  
16 by California Civil Code § 1761(f) and (g) and have sustained substantial economic harm as a  
17 result of Defendant's conduct. Aegis knew that its conduct negatively impacted seniors and  
18 disabled persons.

19 142. Plaintiffs additionally seek treble damages under California Civil Code § 3345,  
20 punitive damages, reasonable attorneys' fees and costs, and all other relief the Court deems just  
21 and proper. Excluded from Plaintiffs' request are damages related to any personal injuries,  
22 emotional distress or wrongful death suffered by any member of the class.

23 143. Aegis's conduct presents a continuing threat of substantial harm to the public in  
24 that, among other things, Aegis continues to misrepresent how it uses its resident assessment  
25 system and how it determines and provides staffing at its facilities. Despite the knowledge that  
26 Aegis does not staff its facilities based on the resident assessments and assessed care points,  
27 Defendant continues to induce elderly and vulnerable citizens to enter its facilities. Additionally,  
28 the risk of harm to the class members from Defendant's conduct is substantial. Accordingly,

1 Plaintiffs seek an injunction that requires that Defendant immediately cease the CLRA violations  
 2 alleged herein, and to enjoin it from continuing to engage in any such acts or practices in the  
 3 future. Specifically, Plaintiffs seek an injunction requiring Defendant to disclose to Plaintiffs, the  
 4 putative class members and the consuming public that Aegis does not staff its facilities based on  
 5 the results of resident assessments but instead maintains staffing levels based on pre-determined  
 6 labor budgets, regardless of changes in the overall care needs and assessed care points of current  
 7 residents.

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

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

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

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

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

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

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

25 147. By virtue of the conduct alleged herein, Defendant has also engaged in fraudulent  
 26 business practices. Members of the general public (including without limitation persons admitted  
 27 to and/or residing in Aegis's California assisted living and memory care facilities during the Class  
 28 Period, and their family members and/or representatives) have been and are likely to be deceived

1 by Defendant's misrepresentations and failures to disclose as alleged herein.

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

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

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

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

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

1           153. Aegis had exclusive and superior knowledge of its corporate policy and procedure  
2 of ignoring the assessed care points and corresponding amounts of staff service time generated by  
3 its resident assessment system in setting staffing levels. Further, Plaintiffs allege on information  
4 and belief that Defendant's officers, directors and managers were repeatedly advised by their own  
5 staff that Aegis facilities were not adequately staffed to meet resident needs. Aegis also knew that  
6 its failure to provide staffing based on the amount of time that Aegis had itself determined was  
7 necessary to provide the care and services for which residents were charged posed a substantial  
8 health and safety risk to the named Plaintiffs and class members. Aegis intentionally concealed,  
9 suppressed and/or failed to disclose the true facts with the intent to defraud the named Plaintiffs  
10 and putative class members. The named Plaintiffs and the putative class members did not know  
11 these material undisclosed facts and could not reasonably have been expected to discover them.

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

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

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

24           156. Plaintiffs refer to, and incorporate herein by this reference, all preceding  
25 paragraphs.

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

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

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

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

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

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

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

1 care fees on care points that correspond to the amount of staff time Defendant represents is  
 2 necessary to provide the required services, when Defendant does not, as a matter of corporate  
 3 policy and procedure, use those numbers in setting staffing levels at its facilities.

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

9 **FOURTH CLAIM FOR VIOLATION OF THE WASHINGTON CONSUMER**  
 10 **PROTECTION ACT (Revised Code of Washington § 19.86.20, *et seq.*)**

11 165. Plaintiff refers to, and incorporates herein by reference, all preceding paragraphs.

12 166. Plaintiff and the Washington Class are and at all times were "vulnerable adults" as  
 13 defined under the RCW § 74.34.020(22). They are also "persons" as defined in the RCW §  
 14 19.86.010(1).

15 167. Defendant is a "person" as defined in the RCW § 19.86.010(1). The new resident  
 16 service fees and monthly payments paid by Plaintiff and the Class to Defendant constitute  
 17 "assets" under the RCW § 19.86.010(3).

18 168. Defendant has engaged in an unfair and deceptive practice by its failures to disclose  
 19 to Plaintiff Morrison and the Washington Class that the facility staffing and care services  
 20 provided through facility staff are not determined by the resident assessments conducted by  
 21 facility personnel and corresponding care points generated.

22 169. Aegis conceals and fails to disclose that as a matter of corporate policy, Aegis sets  
 23 facility staffing per shift based on pre-determined labor budgets and does not alter the number of  
 24 staff or staffing hours per facility or shift regardless of changes in occupancy or resident needs as  
 25 determined by resident assessments.

26 170. Aegis's failure to staff based on resident assessments results in Aegis's facilities  
 27 being staffed at levels far below those required to meet the resident needs that Aegis itself has  
 28 identified.

1           171. As such, Aegis residents have not received the amount of care that Aegis deemed  
2 necessary based on the resident assessments as indicated in their admission contracts and/or are  
3 placed at a substantial risk that they will not receive the care Aegis deemed necessary based on  
4 the resident assessments in the future.

5           172. Further, Defendant's officers, directors and managers were repeatedly advised by  
6 their own staff that Aegis facilities were not adequately staffed to meet resident needs.

7           173. Moreover, Defendant's conduct constituted financial exploitation of its vulnerable  
8 adult residents in violation of the RCW §§ 74.34.020 and 74.34.200 and therefore further  
9 constituted an unfair trade practice. As alleged herein, Defendant illegally and/or improperly  
10 used, controlled, and/or withheld the property, income, resources, or trust funds of the vulnerable  
11 adult for its own profit or advantage through the use of deception and continues to do so.  
12 Defendant carried out this unfair, deceptive and unlawful practice with a willful and conscious  
13 disregard for the rights and safety of Plaintiff, the Class, and the public interest.

14           174. The assisted living and memory care services provided by Defendant constitute  
15 "trade" and "commerce" under the RCW § 19.86.010(2). As alleged herein, Aegis owns and  
16 operates all of the real estate and buildings, and holds the licenses for approximately seventeen  
17 (17) assisted living facilities in Washington under the Aegis name. The agreement by Plaintiff  
18 and the Class to provide new resident services fees and monthly payments to Defendant in  
19 exchange for assisted living and memory care services constitute a "trade" and "commerce" under  
20 the RCW § 19.86.010(2). Therefore, Defendant's unfair and deceptive practice occurred during  
21 its conduct of trade and commerce.

22           175. Defendant's unfair and deceptive business practice are part of an ongoing  
23 generalized course of conduct that had and has the capacity to injure Plaintiff and the Class,  
24 thereby having an impact on the public interest.

25           176. The Washington legislature found the potential of injury to the public to be so  
26 pronounced that it codified its legislative intent in establishing a statutory right for vulnerable  
27 adults subjected by financial exploitation and other forms of abuse to bring a cause of action for  
28 damages on account of their injuries including loss of property. (RCW § 74.34.200.)



1           177. Furthermore, Aegis's conduct also presents a continuing threat of substantial injury  
2 to the public in that, among other things, Aegis continues to conceal the truth it does not staff its  
3 facilities based on the resident assessments and assessed care points. Defendant thereby continues  
4 to induce elderly and vulnerable citizens to enter its facilities.

5           178. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class  
6 suffered injury to their property including without limitation financial loss. Specifically, Plaintiff  
7 and the Class paid money to Defendant, in the form of the Community Fee, their monthly fees,  
8 and additional monthly fees, paid in exchange for residency and services in a facility that they  
9 were reasonably deceived into believing was to be staffed based on Aegis's residential assessment  
10 and care point system.

11           179. Plaintiff and the Class paid a premium for these purported services, which they did  
12 not receive. Class members continue to pay monthly fees based on their assessed care points,  
13 without receiving commensurate services.

14           180. But for Defendant's material failures to disclose and concealment, Plaintiff and the  
15 Class would not have entered Aegis's facilities and made payments to Aegis. Plaintiff and the  
16 Class would not have entered Aegis' facilities if they had known that Defendant did not and does  
17 not use its resident assessment system and the assessed care points to staff at levels sufficient to  
18 provide the services required to meet aggregate resident needs, as determined by those  
19 assessments.

20           181. As a direct and proximate result of Defendant's failure to staff its facilities based on  
21 residents' needs as determined through its comprehensive assessments, Plaintiff and the Class  
22 have been forced to reside in facilities that have less staff than necessary to satisfy their care  
23 needs, as determined by Aegis itself.

24           182. As a result of Aegis's policy of staffing its facilities according to pre-determined  
25 labor budgets which do not permit staffing increases, regardless of increases in the overall care  
26 needs and assessed points of current residents, it is not possible for the needs of all residents to be  
27 met, and there is a substantial likelihood that each resident, at any time, will not receive the care  
28 Aegis has determined necessary to provide. Plaintiff and the Class members also face the

1 substantial risk that they will suffer physical injuries from such lack of care and/or from other  
2 residents who are insufficiently supervised or cared for.

3 183. Aegis violated and continues to violate the Consumer Protection Act, RCW §§  
4 19.86.020 *et seq.*, in at least the following respects: (a) Aegis failed to disclose and concealed the  
5 true characteristics and/or quantities of services provided at its Washington facilities; (b) Aegis  
6 failed to disclose and concealed that it will not, and does not, intend to use its resident assessment  
7 system and the care points generated by it when determining and providing facility staffing; and  
8 (c) Aegis failed to disclose and concealed that the monthly rate, including the resident assessment  
9 charged to residents is not commensurate with the budgeted staffing provided by Aegis.

10 184. Accordingly, Plaintiff and the Class are entitled to compensatory damages and  
11 restitution in an amount to be proven at trial.

12 185. Plaintiff and the Class are also entitled to treble damages under RCW §19.86.090,  
13 reasonable attorneys' fees and costs, and all other relief the Court deems just and proper. Plaintiff  
14 and many other Class members are seniors and are all vulnerable adults as defined by the RCW §  
15 74.34.020(22) and have sustained substantial economic harm as a result of Defendant's conduct.  
16 Aegis knew that its conduct negatively impacted seniors and other vulnerable adults.

17 186. Additionally, the risk of harm to the Class from Defendant's conduct is substantial.  
18 Accordingly, Plaintiff seeks an injunction that requires Defendant to immediately cease the  
19 Consumer Protection Act violations alleged herein, and to enjoin it from continuing to engage in  
20 any such acts or practices in the future. Specifically, Plaintiff seeks an injunction requiring  
21 Defendant to disclose to Plaintiff, the Class and the consuming public that Aegis does not staff its  
22 facilities based on the results of resident assessments but instead maintains staffing levels based  
23 on pre-determined labor budgets, regardless of changes in the overall care needs and assessed  
24 care points of current residents.

25 187. Plaintiff and the Class also seek an injunction prohibiting Defendant from basing  
26 its care fees on care points that correspond to the amount of staff time Defendant purports is  
27 necessary to provide the required services, when Defendant does not, as a matter of corporate  
28 policy and procedure, use those numbers in setting staffing levels at its facilities.

**FIFTH CLAIM FOR FINANCIAL EXPLOITATION OF VULNERABLE ADULTS**

**(Revised Code of Washington §§ 74.34.020 and 74.34.200)**

188. Plaintiff refers to, and incorporates herein by reference, all preceding paragraphs.

189. Plaintiff and the Class are and at all times were “vulnerable adults” as defined under the RCW § 74.34.020(22).

190. Defendant entered into a standard agreement with Plaintiff and the Class. In these agreements, Defendant improperly and deceptively failed to disclose and concealed the material fact that Aegis does not determine and provide staffing at its assisted living facilities sufficient to meet the needs of its residents as determined by Aegis’s assessments and confirmed in care points used to calculate resident charges.

191. These improper and deceptive failures to disclose by Defendant are and were intended to induce Plaintiff and the Class into agreeing to be admitted to Defendant’s facilities and to pay new resident services fees and monthly rates based on Defendant’s resident assessment system and assessed care points.

192. In fact, Defendant did not and had no intention of complying with its obligations under the contract. Defendant did not intend to and does not use its resident assessment system to set or provide staffing at its facilities. Rather, it has a policy and practice of providing pre-determined facility staffing that does not change with increases in resident care needs. This policy and practice precludes Aegis from providing facility residents with all of the care Aegis deemed necessary based on the resident assessments and for which the residents are paying Aegis.

193. Defendant never disclosed, and Plaintiff and the Class had no way of discovering, the critical fact that Aegis’s point system is not supported by sufficient staffing levels, and was (and is) geared only toward increasing revenue. Plaintiff and the Class did not receive the care Aegis deemed necessary based on the resident assessments and noted in each contract and resident service plan, for which Plaintiff and the Class paid significant fees.

194. Defendant knew or should have known that such conduct would likely be harmful to Plaintiff and the Class.

195. Defendant knew or should have known that Plaintiff and the Class had a right to the

1 funds used to pay new resident Community Fees and monthly fees to Defendant.

2 196. As such, Defendant illegally and/or improperly used, controlled, and/or withheld  
3 the property, income, resources, or trust funds of vulnerable adults for its own profit or advantage  
4 and continues to do so.

5 197. As such, Defendant obtained and/or used the property, income, resources, or trust  
6 funds of the vulnerable adults for its own benefit through the use of deception and continues to do  
7 so.

8 198. Defendant's conduct was illegal, improper, deceptive, reckless, and carried out with  
9 a willful and conscious disregard for the rights and safety of Plaintiff and the Class, and the  
10 public interest.

11 199. Defendant's conduct constituted financial exploitation of its vulnerable adult  
12 residents. Accordingly, Plaintiff and the Class seek actual damages, reasonable attorneys' fees,  
13 costs and expenses, treble damages pursuant to RCW § 19.86.090, and all other remedies  
14 permitted by law.

### 15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment as follows:

- 17 1. For a Court order certifying that the action may be maintained as a class action;
- 18 2. For statutory damages;
- 19 3. For actual and compensatory damages according to proof, excepting any damages  
20 for personal injury, emotional distress and/or wrongful death suffered by the named  
21 Plaintiff or any class member;
- 22 4. For restitution and any other monetary relief permitted by law;
- 23 5. For reasonable attorneys' fees, costs and expenses;
- 24 6. For treble damages pursuant to California Civil Code section 3345 and RCW §  
25 19.86.090;
- 26 7. For punitive damages;
- 27 8. For pre-judgment and post-judgment interest, according to law;
- 28 9. For an order requiring that Defendant immediately cease acts that constitute

1 unlawful, unfair and fraudulent business practices, false advertising and violations  
2 of the Consumer Legal Remedies Act, Business and Professions Code § 17200 *et*  
3 *seq.*, California's Elder Financial Abuse statute, the Washington Consumer  
4 Protection Act, and Washington's Vulnerable Adult Abuse statute, as alleged  
5 herein, and to enjoin Defendant from continuing to engage in any such acts or  
6 practices in the future;

7 10. Plaintiffs and the Classes further seek an injunction requiring Defendant to disclose  
8 to the putative class members and the consuming public that Aegis does not use its  
9 resident assessment or care points generated by it to set or provide staffing at its  
10 facilities; and

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

12 **JURY TRIAL DEMANDED**

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

14  
15 DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
/s/ Kathryn A. Stebner

16 Kathryn A. Stebner, State Bar No. 121088  
17 Sarah Colby, State Bar No. 194475  
18 Brian S. Umpierre, State Bar No. 236399  
19 George Kawamoto, State Bar No. 280358  
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22 **SCHNEIDER WALLACE**  
23 **COTTRELL KONECKY LLP**  
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Emeryville, California 94608

24 Attorneys for Plaintiffs and the proposed Class

25 Additional Counsel Listed on Service Page  
26  
27  
28

## **ATTACHMENT 1**

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Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

June Newirth, by and through her Guardian  
ad Litem, Frederick J. Newirth; Barbara  
Feinberg; and Elizabeth Barber, Andrew  
Bardin, and Thomas Bardin as successors-in-  
interest to the Estate of Margaret Pierce; on  
their own behalves and on behalf of others  
similarly situated,

Plaintiffs,

vs.

Aegis Senior Communities, LLC, dba Aegis  
Living; and Does 1 Through 100,

Defendants.

CASE NO. 4:16-CV-03991-JSW

**DECLARATION OF ANDREW BARDIN  
PURSUANT TO CALIFORNIA CODE OF  
CIVIL PROCEDURE SECTION 377.32**

1 I, ANDREW BARDIN, hereby declare as follows:

2 1. I am the grandson of decedent MARGARET PIERCE (hereinafter  
3 "Decedent").

4 2. Decedent died on March 6, 2016, in Palm Desert, California.

5 3. No proceeding is now pending in California for administration of the  
6 Decedent's estate.

7 4. I am a named plaintiff in this action. I am suing as a successor-in-interest to  
8 the estate of Decedent.

9 5. I am a successor-in-interest of Decedent as defined in Section 377.11 of the  
10 California Code of Civil Procedure, and succeed to the Decedent's interest in this action or  
11 proceeding.

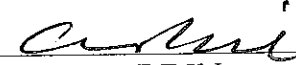
12 6. No other persons have a superior right to commence the action or proceeding  
13 or to be substituted for the Decedent in the pending action or proceeding.

14 7. A copy of Decedent's Death Certificate is attached as Exhibit A.

15  
16 I declare under the penalty of perjury under the laws of the State of California that  
17 the foregoing is true and correct.  
18

19  
20 This declaration was executed in Lafayette, California on August 16, 2016.

21  
22 By

23   
24 ANDREW BARDIN



# Exhibit A

## RIVERSIDE, CALIFORNIA

3052016050194

# CERTIFICATE OF DEATH

3201633003034

STATE OF CALIFORNIA  
USE BLACK INK ONLY / NO ERASURES, WHITEOUTS OR ALTERATIONS  
KS-14 (REV. 3/76)

LOCAL REGISTRATION NUMBER

STATE FILE NUMBER		USE BLACK INK ONLY / NO ERASERS, WHITEOUTS OR CORRECTIONS VS-1 (Rev. 2006)		LOCAL REGISTRATION NUMBER	
<b>DECEDENT'S PERSONAL DATA</b>		1. NAME OF DECEDENT - FIRST (Given) <b>MARGARET</b>		3. LAST (Family) <b>PIERCE</b>	
AKA, ALSO KNOWN AS -- Include full AKA (FIRST, MIDDLE, LAST) <b>MARGARET MARAK</b>		4. DATE OF BIRTH mm/dd/yyyy <b>03/08/1923</b>		5. AGE Yrs. <b>92</b>	
6. BIRTH STATE/FORIGN COUNTRY <b>CANADA</b>		10. SOCIAL SECURITY NUMBER <b>[REDACTED]</b>		11. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK	
12. EDUCATION -- Highest Level Attained (see worksheet on back) <b>HS GRADUATE</b>		14/15. WAS DECEDENT HISpanic/Latino/a? SPANISH? (if yes, see worksheet on back) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		16. DECEDENT'S RACE -- Up to 3 races may be listed (see worksheet on back) <b>CAUCASIAN</b>	
17. USUAL OCCUPATION -- Type of work for most of time. DO NOT USE RETIRED <b>CLERICAL</b>		18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.) <b>NEWSPAPER</b>		19. YEARS IN OCCUPATION <b>5</b>	
<b>USUAL RESIDENCE</b>		20. DECEDENT'S RESIDENCE (Street and number, or PO box) <b>[REDACTED]</b>			
21. CITY <b>PALM DESERT</b>		22. COUNTY/PROVINCE <b>RIVERSIDE</b>		23. ZIP CODE <b>92260</b>	
24. YEARS IN COUNTRY <b>0</b>		25. STATE/FORIGN COUNTRY <b>CALIFORNIA</b>			
<b>INFORMANT</b>		26. INFORMANT'S NAME, RELATIONSHIP <b>LINDA BARDIN, DAUGHTER</b>		27. ADDRESS (Include all aliases, addresses, street and number, or care facility, PO address, state and zip) <b>[REDACTED]</b>	
<b>SPOUSE/SRDP AND PARENT INFORMATION</b>		28. NAME OF SURVIVING SPOUSE/SRDP - FIRST <b>-</b>		29. MIDDLE <b>-</b>	
30. NAME OF FATHER/PARENT - FIRST <b>ANDREW</b>		31. MIDDLE <b>-</b>		32. LAST (BIRTH NAME) <b>MARAK</b>	
33. NAME OF MOTHER/PARENT - FIRST <b>CECELIA</b>		34. MIDDLE <b>-</b>		35. LAST (BIRTH NAME) <b>PAUL</b>	
36. DISPOSITION DATE mm/dd/yyyy <b>03/11/2016</b>		37. PLACE OF FINAL DISPOSITION <b>NAPA VALLEY MEMORIAL PARK</b> <b>2383 NAPA VALLEJO HIGHWAY, NAPA, CA 94558</b>		38. BIRTH STATE <b>UKRAINE</b>	
39. TYPE OF DISPOSITION(s) <b>CR/BU</b>		40. SIGNATURE OF EMBALMER <b>[NOT EMBALMED]</b>		41. LICENSE NUMBER <b>-</b>	
42. NAME OF FUNERAL ESTABLISHMENT <b>ROSE MORTUARY</b>		43. LICENSE NUMBER <b>FD 2058</b>		44. SIGNATURE OF LOCAL REGISTRAR <b>[CAMERON KAISER, MD]</b>	
45. DATE mm/dd/yyyy <b>03/11/2016</b>		46. IF HOSPITAL, SPECIFY ONE <input type="checkbox"/> IP <input type="checkbox"/> ER/ORP <input type="checkbox"/> DCA <input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/LTC <input type="checkbox"/> Occidental Here <input checked="" type="checkbox"/> Other		47. OTHER THAN HOSPITAL, SPECIFY ONE <input type="checkbox"/> P <input type="checkbox"/> ER/ORP <input type="checkbox"/> DCA <input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/LTC <input type="checkbox"/> Occidental Here <input checked="" type="checkbox"/> Other	
<b>PLACE OF DEATH</b>		101. PLACE OF DEATH <b>THORNHILL ESTATE</b>		102. CITY <b>PALM DESERT</b>	
103. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) <b>40924 HOVLEY COURT</b>		104. COUNTY <b>RIVERSIDE</b>		105. TIME INTERVAL BETWEEN Death and Death	
106. CAUSE OF DEATH Enter the chain of events --- diseases, injuries, or complications --- that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or complete fixation without showing the etiology. DO NOT abbreviate.		107. IMMEDIATE CAUSE (Final disease or condition resulting in death) <b>[REDACTED]</b>		108. DEATH PRECIPITATED BY CONDITION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
109. SEQUENTIALY, list conditions, if any, leading to cause on Line A. Enter UNDERLYING CAUSE (Disease or Injury that initiated the events resulting in death) LAST		110. BIOPSY PERFORMED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		111. AUTOPSY PERFORMED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
112. USED IN DETERMINING CAUSE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		113. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107 <b>[REDACTED]</b>		114. OPERATIVE REPORT PERFORMED WITH LAST YEAR? <b>[REDACTED]</b>	
115. WAS OPERATION PERFORMED FOR ANY CONDITION IN FIELD 107 OR 113? If yes, list type of operation and date. <b>[REDACTED]</b>		116. SIGNATURE AND TITLE OF CERTIFIER <b>AAYAD M GHARGHOURY M.D.</b>		117. LICENSE NUMBER <b>A50604</b>	
118. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE <b>AAYAD M GHARGHOURY M.D.</b> <b>36947 COOK STREET, PALM DESERT, CA 92211</b>		119. DATE mm/dd/yyyy <b>03/02/2016</b>		120. DATE mm/dd/yyyy <b>03/06/2016</b>	
121. MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		122. INJURED AT WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK		123. INJURY DATE mm/dd/yyyy <b>03/02/2016</b>	
124. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.) <b>[REDACTED]</b>		125. DESCRIBE HOW INJURY OCCURRED (events which resulted in injury) <b>[REDACTED]</b>		126. LOCATION OF INJURY (Street and number, or location, and city, and zip) <b>[REDACTED]</b>	
127. SIGNATURE OF CORONER / DEPUTY CORONER <b>[REDACTED]</b>		128. DATE mm/dd/yyyy <b>03/11/2016</b>		129. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER <b>[REDACTED]</b>	
130. STATE REGISTRAR <b>A</b>		131. FAX AUTH.# <b>B</b>		132. CENSUS TRACT <b>C</b>	

**CERTIFIED COPY OF VITAL RECORD**  
**STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

This is a true and exact reproduction of the document officially registered and placed on file in the office of the County of Riverside, Department of Public Health.

DATE ISSUED **Mar 14, 2016**

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the Registrar.

001399505

DR. CAMERON KAISER, MD  
COUNTY HEALTH OFFICER



CARIVERSB7

## **ATTACHMENT 2**

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Sarah Colby, State Bar No. 194475  
Jennifer A. Uhrowczik, State Bar No. 302212  
**SCHNEIDER WALLACE COTTRELL**  
**KONECKY WOTKYN, LLP**  
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Fax: (415) 421-7105

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

June Newirth, by and through her Guardian  
ad Litem, Frederick J. Newirth; Barbara  
Feinberg; and Elizabeth Barber, Andrew  
Bardin, and Thomas Bardin as successors-in-  
interest to the Estate of Margaret Pierce; on  
their own behalves and on behalf of others  
similarly situated,

Plaintiffs,

vs.

Aegis Senior Communities, LLC, dba Aegis  
Living; and Does 1 Through 100,

Defendants.

CASE NO. 4:16-CV-03991-JSW

**DECLARATION OF ELIZABETH BARBER  
PURSUANT TO CALIFORNIA CODE OF  
CIVIL PROCEDURE SECTION 377.32**

1 I, ELIZABETH BARBER, hereby declare as follows:

- 2 1. I am the granddaughter of decedent MARGARET PIERCE (hereinafter  
3 "Decedent").
- 4 2. Decedent died on March 6, 2016, in Palm Desert, California.
- 5 3. No proceeding is now pending in California for administration of the  
6 Decedent's estate.
- 7 4. I am a named plaintiff in this action. I am suing as a successor-in-interest to  
8 the estate of Decedent.
- 9 5. I am a successor-in-interest of Decedent as defined in Section 377.11 of the  
10 California Code of Civil Procedure, and succeed to the Decedent's interest in this action or  
11 proceeding.
- 12 6. No other persons have a superior right to commence the action or proceeding  
13 or to be substituted for the Decedent in the pending action or proceeding.
- 14 7. A copy of Decedent's Death Certificate is attached as Exhibit A.

15

16 I declare under the penalty of perjury under the laws of the State of California that  
17 the foregoing is true and correct.

18

19

20 This declaration was executed in Dallas, Texas on August 16, 2016.

21

22 By



23 ELIZABETH BARBER

24

25

26

27

28

# Exhibit A

## RIVERSIDE, CALIFORNIA

3052016050194

# CERTIFICATE OF DEATH

3201633003034

STATE FILE NUMBER

STATE OF CALIFORNIA  
USE BLACK INK ONLY / NO ERASURES, WHITEOUTS OR ALTERATIONS  
VS-11 (REV 3/09)

LOCAL REGISTRATION NUMBER

CARRIVERSO,

**CERTIFIED COPY OF VITAL RECORD**  
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

This is a true and exact reproduction of the document officially registered and placed on file in the office of the County of Riverside, Department of Public Health.

DATE ISSUED **Mar 14, 2016**

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the Registrar.

001399505

DR. CAMERON KAISER, MD  
COUNTY HEALTH OFFICER



## **ATTACHMENT 3**



Kathryn A. Stebner, State Bar No. 121088  
Kelly Knapp, State Bar No. 252013  
George Kawamoto, State Bar No. 280358  
**STEBNER AND ASSOCIATES**  
870 Market Street, Suite 1212  
San Francisco, CA 94102  
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Guy B. Wallace, State Bar No. 176151  
Sarah Colby, State Bar No. 194475  
Jennifer A. Uhrowczik, State Bar No. 302212  
**SCHNEIDER WALLACE COTTRELL**  
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2000 Powell Street, Suite 1400  
Emeryville, California 94608  
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Fax: (415) 421-7105

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

June Newirth, by and through her Guardian  
ad Litem, Frederick J. Newirth; Barbara  
Feinberg; and Elizabeth Barber, Andrew  
Bardin, and Thomas Bardin as successors-in-  
interest to the Estate of Margaret Pierce; on  
their own behalves and on behalf of others  
similarly situated,

Plaintiffs,

vs.

Aegis Senior Communities, LLC, dba Aegis  
Living; and Does 1 Through 100,

Defendants.

CASE NO. 4:16-CV-03991-JSW

**DECLARATION OF THOMAS BARDIN  
PURSUANT TO CALIFORNIA CODE OF  
CIVIL PROCEDURE SECTION 377.32**

1 I, THOMAS BARDIN, hereby declare as follows:

2 1. I am the grandson of decedent MARGARET PIERCE (hereinafter  
3 "Decedent").

4 2. Decedent died on March 6, 2016, in Palm Desert, California.

5 3. No proceeding is now pending in California for administration of the  
6 Decedent's estate.

7 4. I am a named plaintiff in this action. I am suing as a successor-in-interest to  
8 the estate of Decedent.

9 5. I am a successor-in-interest of Decedent as defined in Section 377.11 of the  
10 California Code of Civil Procedure, and succeed to the Decedent's interest in this action or  
11 proceeding.

12 6. No other persons have a superior right to commence the action or proceeding  
13 or to be substituted for the Decedent in the pending action or proceeding.

14 7. A copy of Decedent's Death Certificate is attached as Exhibit A.

15  
16 I declare under the penalty of perjury under the laws of the State of California that  
17 the foregoing is true and correct.  
18

19  
20 This declaration was executed in Concord, California on August 16, 2016.  
21

22 By

23 :

Thomas Bardin  
THOMAS BARDIN

# Exhibit A

CERTIFICATE OF VITAL RECORD

# COUNTY OF RIVERSIDE

RIVERSIDE, CALIFORNIA

3052016050194

## CERTIFICATE OF DEATH

3201633003034

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT - FIRST (Given) MARGARET		3. LAST (Family) PIERCE	
2. MIDDLE -		4. DATE OF BIRTH mm/dd/yyyy 03/08/1923	
5. AGE Yrs. 92		6. SEX F	
7. DATE OF DEATH mm/dd/yyyy 03/06/2016		8. HOUR (24 Hour) 1503	
9. BIRTH STATE/FOREIGN COUNTRY CANADA		10. SOCIAL SECURITY NUMBER REDACTED	
11. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		12. MARITAL STATUS/SROP (at Time of Death) DIVORCED	
13. EDUCATION - Highest Level/Degree HS GRADUATE		14. WAS DECEDENT HISPANIC/LATINO/SPANISH? (if yes, see worksheet on back) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
15. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED CLERICAL		16. DECEDENT'S RACE - Up to 3 races may be listed (see worksheet on back) CAUCASIAN	
17. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED CLERICAL		18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.) NEWSPAPER	
19. YEARS IN OCCUPATION 5			
20. DECEDENT'S RESIDENCE (Street and number, or location) REDACTED			
21. CITY PALM DESERT		22. COUNTY/PROVINCE RIVERSIDE	
23. ZIP CODE 92260		24. YEARS IN COUNTY 0	
25. STATE/FOREIGN COUNTRY CALIFORNIA			
26. INFORMANT'S NAME, RELATIONSHIP LINDA SARDIN, DAUGHTER			
27. INFORMANT'S ADDRESS (Street and number, or location, or P.O. Box, or other address) REDACTED			
28. NAME OF SURVIVING SPOUSE/SROP - FIRST -		29. MIDDLE -	
30. LAST (BIRTH NAME) -			
31. NAME OF FATHER/PARENT - FIRST ANDREW		32. MIDDLE -	
33. LAST MARAK		34. BIRTH STATE UKRAINE	
35. NAME OF MOTHER/PARENT - FIRST CECELIA		36. MIDDLE -	
37. LAST (BIRTH NAME) PAUL		38. BIRTH STATE CANADA	
39. DISPOSITION DATE mm/dd/yyyy 03/11/2016		40. PLACE OF FINAL DISPOSITION NAPA VALLEY MEMORIAL PARK 2383 NAPA VALLEJO HIGHWAY, NAPA, CA 94558	
41. TYPE OF DISPOSITION(S) CR/BU		42. SIGNATURE OF EMBALMER NOT EMBALMED	
43. LICENSE NUMBER -			
44. NAME OF FUNERAL ESTABLISHMENT ROSE MORTUARY		45. LICENSE NUMBER FD 2058	
46. SIGNATURE OF LOCAL REGISTRAR CAMERON KAISER, MD		47. DATE mm/dd/yyyy 03/11/2016	
101. PLACE OF DEATH THORNHILL ESTATE			
102. IF HOSPITAL, SPECIFY ONE <input type="checkbox"/> P <input type="checkbox"/> BYOP <input type="checkbox"/> DCA		103. IF OTHER THAN HOSPITAL, SPECIFY ONE <input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/CLC <input type="checkbox"/> Decedent's Home <input checked="" type="checkbox"/> Other	
104. COUNTY RIVERSIDE		105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) 40924 HOVLEY COURT	
106. CITY PALM DESERT			
107. CAUSE OF DEATH Enter the chain of events - diseases, injuries, or complications - that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or death by fire without a physician's diagnosis. DO ABOUT 1500004.111.			
IMMEDIATE CAUSE (final disease or condition resulting in death) REDACTED		108. LEARNED BY REPORT TO CORONER? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
109. BODY COPY PERFORMED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		110. AUTOPSY PERFORMED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
111. USED IN DETERMINING CAUSE? <input type="checkbox"/> YES <input type="checkbox"/> NO			
112. SIGNATURE OF PHYSICIAN AYAD M GHARGHOURY M.D.			
113. SIGNATURE AND TITLE OF CORONER AYAD M GHARGHOURY M.D.		114. LICENSE NUMBER A50804	
115. DATE 03/02/2016		116. DATE 03/06/2016	
117. MAILING ADDRESS, ZIP CODE 36947 COOK STREET, PALM DESERT, CA 92211			
118. I CERTIFY THAT IN MY OWN JUDGMENT, I AM A QUALIFIED PHYSICIAN AND I HAVE EXAMINED THE BODY OF THE DECEDENT AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.			
119. MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined			
120. INJURED AT WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK			
121. INJURY DATE mm/dd/yyyy -			
122. HOUR (24 Hour) -			
123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.) -			
124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury) -			
125. LOCATION OF INJURY (Street and number, or location, and city, and zip) -			
126. SIGNATURE OF CORONER / DEPUTY CORONER		127. DATE mm/dd/yyyy	
128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER			
STATE REGISTRAR			

CERTIFIED COPY OF VITAL RECORD  
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

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DATE ISSUED **Mar 14, 2016**

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001399505

DR. CAMERON KAISER, MD  
COUNTY HEALTH OFFICER

CARIVERSOJ

## **ATTACHMENT 4**

1 Kathryn A. Stebner, State Bar No. 121088  
2 Brian S. Umpierre, State Bar No. 236399  
3 George Kawamoto, State Bar No. 280358  
4 **STEBNER AND ASSOCIATES**  
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9  
10 Guy B. Wallace, State Bar No. 176151  
11 **SCHNEIDER WALLACE COTTRELL KONECKY, LLP**  
12 2000 Powell Street, Suite 1400  
13 Emeryville, California 94608  
14 Tel: (415) 421-7100  
15 Fax: (415) 421-7105

16 [Additional counsel listed on service page]

17 Attorneys for Plaintiff and the Proposed Class

18 UNITED STATES DISTRICT COURT  
19  
20 NORTHERN DISTRICT OF CALIFORNIA

21 Kathi Troy, as Successor-in-Interest to the  
22 Estate of June Newirth; Barbara Feinberg;  
23 and Elizabeth Barber, Andrew Bardin, and  
24 Thomas Bardin as successors-in-interest to  
25 the Estate of Margaret Pierce; Carol  
26 Morrison, by and through her Attorney-in-  
27 Fact Stacy Van Vleck, on their own behalves  
28 and on behalf of others similarly situated,

Plaintiffs,

vs.

Aegis Senior Communities, LLC, dba Aegis  
Living; and Does 1 Through 100,

Defendants.

CASE NO. 4:16-CV-03991-JSW

**DECLARATION OF KATHI TROY  
PURSUANT TO CALIFORNIA CODE OF  
CIVIL PROCEDURE SECTION 377.32**



1 I, KATHI TROY, hereby declare as follows:

2 1. I am the daughter of decedent JUNE NEWIRTH (hereinafter "Decedent").

3 2. Decedent died on January 15, 2018, in San Rafael, California.

4 3. No proceeding is now pending in California for administration of the  
5 Decedent's estate.

6 4. I am a named plaintiff in this action. I am suing as a successor-in-interest to  
7 the estate of Decedent.

8 5. I am a successor-in-interest of Decedent as defined in Section 377.11 of the  
9 California Code of Civil Procedure, and succeed to the Decedent's interest in this action or  
10 proceeding.

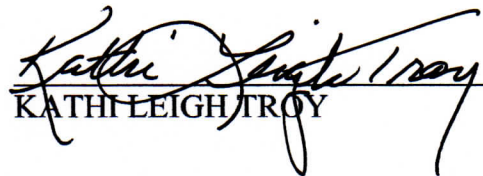
11 6. No other persons have a superior right to commence the action or proceeding  
12 or to be substituted for the Decedent in the pending action or proceeding.

13 7. A copy of Decedent's Death Certificate is attached as Exhibit A.

14 I declare under the penalty of perjury under the laws of the State of California that  
15 the foregoing is true and correct.

16 This declaration was executed in Novato, California on September 22, 2020.

17 By:

18   
19  
20 KATHI LEIGH TROY  
21  
22  
23  
24  
25  
26  
27  
28

## **EXHIBIT A**



# COUNTY OF MARIN

SAN RAFAEL, CALIFORNIA

## CERTIFICATE OF DEATH

3201821000085

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT—FIRST (Given) JUNE		3. LAST (Family) NEWIRTH	
2. MIDDLE LEE		4. DATE OF BIRTH mm/dd/ccyy 01/24/1934	
5. AGE Yrs. 83		6. SEX F	
AKA, ALSO KNOWN AS—Include full AKA (FIRST, MIDDLE, LAST) JUNE LEE JOHNSON			
9. BIRTH STATE/FOREIGN COUNTRY CA		10. SOCIAL SECURITY NUMBER REDACTED	
11. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		12. MARITAL STATUS/SRDP* (at Time of Death) WIDOWED	
13. EDUCATION—Highest Level/Degree (see worksheet on back) BACHELOR <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		14. DATE OF DEATH mm/dd/ccyy 01/15/2018	
15. WAS DECEDENT HISPANIC/LATINO(A)/SPANISH? (If yes, see worksheet on back) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		16. DECEDENT'S RACE—Up to 3 races may be listed (see worksheet on back) CAUCASIAN	
17. USUAL OCCUPATION—Type of work for most of life. DO NOT USE RETIRED TEACHER		18. YEARS IN OCCUPATION 30	
19. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.) INSURANCE		20. DECEDENT'S RESIDENCE (Street and number, or location) REDACTED	
21. CITY SAN RAFAEL		22. COUNTY/PROVINCE MARIN	
23. ZIP CODE 94903		24. YEARS IN COUNTY 49	
25. STATE/FOREIGN COUNTRY CA		26. INFORMANT'S NAME, RELATIONSHIP KATHI TROY, DAUGHTER	
27. INFORMANT'S SIGNATURE REDACTED		28. NAME OF SURVIVING SPOUSE/SRDP—FIRST -	
29. MIDDLE -		30. LAST (BIRTH NAME) -	
31. NAME OF FATHER/PARENT—FIRST TROY		32. MIDDLE -	
33. LAST HUTCHINS		34. BIRTH STATE TX	
35. NAME OF MOTHER/PARENT—FIRST NORMA		36. MIDDLE -	
37. LAST (BIRTH NAME) MADSEN		38. BIRTH STATE CA	
39. DISPOSITION DATE mm/dd/ccyy 01/25/2018		40. PLACE OF FINAL DISPOSITION RESIDENCE OF KATHI TROY	
41. TYPE OF DISPOSITION(S) CR/RES		42. SIGNATURE OF EMBALMER NOT EMBALMED	
43. LICENSE NUMBER -		44. NAME OF FUNERAL ESTABLISHMENT KEATON'S REDWOOD CHAPEL OF MARIN	
45. LICENSE NUMBER FD1137		46. SIGNATURE OF LOCAL REGISTRAR MATTHEW WILLIS, MD MPH	
47. DATE mm/dd/ccyy 01/19/2018		48. IF HOSPITAL, SPECIFY ONE <input type="checkbox"/> P <input type="checkbox"/> EPOV <input type="checkbox"/> DOA	
49. IF OTHER THAN HOSPITAL, SPECIFY ONE <input checked="" type="checkbox"/> Nursing Home/LTC <input type="checkbox"/> Decedent's Home <input type="checkbox"/> Other		50. PLACE OF DEATH ALMAVIA OF SAN RAFAEL	
51. COUNTY MARIN		52. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) 515 NORTHGATE DRIVE	
53. CITY SAN RAFAEL		54. CAUSE OF DEATH Enter the chain of events—diseases, injuries, or complications—that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. REDACTED	
55. IMMEDIATE CAUSE (final disease or condition resulting in death) REDACTED		56. SEQUENTIALLY, list conditions, if any, leading to cause on Line A. Enter UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST REDACTED	
57. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107 REDACTED		58. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date.) REDACTED	
59. IF FEMALE, PREPREGNANT IN LAST YEAR REDACTED		60. SIGNATURE AND TITLE OF CERTIFIER JOHN H FULLERTON M.D.	
61. LICENSE NUMBER G59000		62. DATE mm/dd/ccyy 01/19/2018	
63. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE JOHN H FULLERTON M.D. 515 NORTHGATE DRIVE, SAN RAFAEL, CA 94901		64. TYPE OF DEATH Natural <input type="checkbox"/> Accident <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Pending investigation <input type="checkbox"/> Could not be determined <input type="checkbox"/>	
65. INJURED AT WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK		66. INJURY DATE mm/dd/ccyy	
67. HOUR (24 Hours)		68. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)	
69. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)		70. LOCATION OF INJURY (Street and number, or location, and city, and zip)	
71. SIGNATURE OF CORONER / DEPUTY CORONER		72. DATE mm/dd/ccyy	
73. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		74. STATE REGISTRAR	
75. FAX AUTH.#		76. CENSUS TRACT	

### CERTIFIED COPY OF VITAL RECORD STATE OF CALIFORNIA, COUNTY OF MARIN

This is a true and exact reproduction of the document officially registered and placed on file in the vital record section, Marin County Public Health Department.

01/25/2018

DATE ISSUED

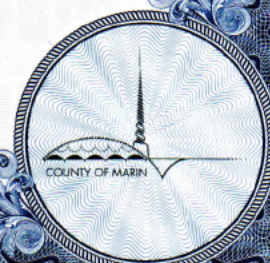
This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the County Health Officer.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



000527366

MATTHEW WILLIS, MD, MPH  
COUNTY HEALTH OFFICER



CAMARIN-01



# **EXHIBIT B**

Kathryn A. Stebner, State Bar No. 121088

Sarah Colby, State Bar No. 194475

Brian S. Umpierre, State Bar No. 236399

George Kawamoto, State Bar No. 280358

Kelly Knapp, State Bar No. 252013

**STEBNER AND ASSOCIATES**

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Sarah Colby, State Bar No. 194475

Jennifer A. Uhrowicz, State Bar No. 302212

**SCHNEIDER WALLACE**

**COTTRELL KONECKY**

**WOTKYNs, LLP**

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Tel: (415) 421-7100

Fax: (415) 421-7105

[Additional counsel listed on signature page]

Attorneys for PlaintiffPlaintiffs and the Proposed Class

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

June Newirth, by and through her Guardian  
ad Litem, Frederick J. Kathi Troy, as  
Successor-in-Interest to the Estate of June  
Newirth; Barbara Feinberg; and Elizabeth  
Barber, Andrew Bardin, and Thomas Bardin  
as successors-in-interest to the Estate of  
Margaret Pierce; Carol Morrison, by and  
through her Attorney-in-Fact Stacy Van  
Vleck, on their own behalves and on behalf  
of others similarly situated,

Plaintiffs,

vs.

Aegis Senior Communities, LLC, dba Aegis  
Living; and Does 1 Through 100,

Defendants.

CASE NO. 4:16-cv-03991-JSW

**SECOND~~THIRD~~ AMENDED CLASS  
ACTION COMPLAINT FOR:**

1. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT (Civ. Code §  
1750 *et seq.*)
2. UNLAWFUL, UNFAIR AND  
FRAUDULENT BUSINESS PRACTICES  
(B&P Code § 17200 *et seq.*)
3. ELDER FINANCIAL ABUSE (CA W&I  
Code § 15610.30)
4. VIOLATION OF THE WASHINGTON  
CONSUMER PROTECTION ACT (RCW  
§ 19.86.020 et seq.)
5. FINANCIAL EXPLOITATION OF  
VULNERABLE ADULTS (RCW §§  
74.34.020 and 74.34.200)

**JURY TRIAL DEMANDED**

## INTRODUCTION

1. Plaintiff Kathi Troy, as Successor-in-Interest to the Estate of June Newirth, by and through her Guardian ad Litem, Frederick J. Newirth; Plaintiff Barbara Feinberg; Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas Bardin as successors-in-interest to the Estate of Margaret Pierce; Plaintiff Carol Morrison, by and through her Attorney-in-Fact Stacy Van Vleck, (collectively “Plaintiffs”), and the proposed Class bring this action for declaratory and injunctive relief and damages to stop the unlawful and fraudulent practices of Aegis Senior Communities, LLC (“Aegis” or “Defendant”).

2. Defendant has engaged in a scheme to defraud seniors, persons with disabilities and their family members at its assisted living facilities in California and Washington by falsely representing that each resident will be provided the care services (through facility staff) that the resident needs as determined by the resident assessment conducted by facility personnel. Aegis makes this misrepresentation to all its residents in standard resident admission contracts. It is false and misleading because Aegis does not use the results generated by its resident assessment system to determine or provide staffing at its facilities. Aegis conceals and fails to disclose this material fact to its residents and their family members prior to, during and after admission to the facility. Aegis conceals and fails to disclose that, as a matter of corporate policy, Aegis sets facility staffing per shift based on pre-determined labor budgets and does not alter the number of staff or staffing hours per facility or shift regardless of changes in occupancy or resident needs as determined by resident assessments. Aegis’ failure to staff based on resident assessments results in Aegis’ facilities being staffed at levels far below those required to meet the resident needs that Aegis itself has identified. As such, Aegis residents have not received the amount of care that Aegis promised in their admission contracts and/or are placed at a substantial risk that they will not receive their promised care in the future. As a result of Aegis’ failure to staff based on resident assessments, the named Plaintiffs did not receive the care Aegis promised to provide. As a result of Aegis’ failure to staff based on resident assessments, the putative class members have

1 not received the care Aegis promised to provide and/or are subjected to a substantial risk that  
2 they will not receive the care that Aegis has promised to provide.

3 3. Aegis's standard admission contract specifies that all facility residents will receive  
4 comprehensive assessments to determine the amount and type of care they need. A point-value  
5 system, which Aegis represents is based on the amount of staff time required to perform the  
6 necessary services, determines the resident's daily fee for care services; a pre-determined amount  
7 (e.g., \$.60 per point per day) is multiplied by the number of points generated by the resident's  
8 assessment, and the resident is subsequently charged a daily fee for care services, in addition to  
9 the general services fee.

10 4. In its form admission agreements, Aegis uniformly represents to each new resident  
11 that (a) each resident will receive the care that he/she requires; (b) the facility's professional staff  
12 will determine the care required for each resident through the resident assessment process; and (c)  
13 the amount of care needed by the resident will be translated into a specific number of care points  
14 for which the resident will be charged on a daily basis. The reasonable consumer understands  
15 these representations to mean that, as a matter of policy and practice, Aegis will use its resident  
16 assessment system and care points generated by it to determine and provide staffing levels at its  
17 facilities and will, accordingly, provide sufficient staff at each facility to deliver to all facility  
18 residents the amount and type of care and corresponding staff time that Aegis has determined to  
19 be necessary based on resident assessments and overall census.

20 5. In fact, Aegis does not use the care points generated by its resident assessment  
21 system in determining or providing staffing at its facilities. Specifically, Aegis does not aggregate  
22 the amount of time corresponding to the care points generated by the resident assessments, or  
23 otherwise use the resident assessments to determine and provide the number and type of staff  
24 needed to deliver the amount of care promised to residents. Instead, as a matter of corporate  
25 policy and of standard operating procedure, Aegis sets and provides facility staffing per shift  
26 based on pre-determined labor budgets and does not alter staffing levels or staffing hours when  
27 resident assessments indicate a change of resident needs and staffing requirements.

28 6. The result of this policy and procedure of staffing based on budget considerations

1 rather than resident needs, as determined by the resident assessments and care points, is that  
2 Aegis's facilities are staffed at levels far below those required to meet the resident needs that  
3 Aegis itself has identified. As a result, the residents of Aegis's facilities are receiving significantly  
4 less care than is specified in their resident assessments and for which they are paying Aegis.

5 7. Aegis does not disclose and affirmatively conceals these crucial and material facts  
6 from residents (including Plaintiffs), their family members and the consuming public. Through  
7 Aegis' failures to disclose and concealment, Plaintiffs and the Class are deceived into believing  
8 that, as a matter of policy and practice, Aegis will use its resident assessment system and care  
9 points generated by it to determine and provide staffing levels at its facilities and will,  
10 accordingly, provide sufficient staff at each facility to deliver to all facility residents the amount  
11 and type of care and corresponding staff time that Aegis has determined to be necessary based on  
12 resident assessments and overall census.

13 8. Aegis's misrepresentations, misleading statements, and omissions about the manner  
14 in which its facilities are staffed and the failure to consider the aggregate staffing needs dictated by  
15 the comprehensive assessments and care point determinations are material to the reasonable  
16 consumer. Seniors and/or their family members choose an *assisted* living facility based on the  
17 expectation that they will receive the quantity and quality of care that they need. A system or  
18 policy that ensures a level of staffing based on the overall needs of residents as quantified through  
19 aggregation of current residents' regular comprehensive resident assessments is likely to provide  
20 such care at the outset and on an ongoing basis. A system of care that provides pre-determined  
21 staffing based solely on budget considerations and desired profit margins results in facility staffing  
22 levels much lower than necessary to meet the needs identified in residents' assessments and  
23 precludes Aegis from providing all promised care to the residents of its facilities. It is therefore a  
24 matter of fundamental importance to the reasonable consumer that Aegis does not staff and has no  
25 intention of staffing its facilities based on the number of staff hours Aegis has itself determined  
26 are necessary to provide the services for which it is charging its residents.

27 9. Through its representations and nondisclosures, Aegis dupes residents and family  
28 members into paying large sums in the form of move-in fees and initial monthly payments. For

1 example, Ms. Newirth was charged a new resident fee (labeled by Aegis as a “Community Fee”)  
 2 of \$15,000 prior to her entry to the Corte Madera Facility. Similarly, Barbara Feinberg~~and,~~  
 3 Margaret Pierce,~~and Carol Morrison~~ were charged Community Fees of \$4,000, ~~\$7,000,~~ and  
 4 ~~\$78,000,~~ respectively, before they moved into Aegis facilities.

5 10. Aegis’s failure to use its resident assessment system when it sets and provides  
 6 facility staffing places all residents at an unnecessary risk of harm. That risk is particularly acute,  
 7 given the vulnerable nature of the targeted population of seniors and residents with disabilities. It  
 8 also forces residents to live in an unpleasant and unsafe environment due to the resulting  
 9 inadequate supervision and care of residents in general.

10 11. Aegis’s promotion of its system of comprehensive resident assessments and  
 11 corresponding care fees in its form contract and marketing materials contributes to its  
 12 competitiveness in the marketplace of assisted living facilities and is a factor in its pricing  
 13 structure. Its purported use of such a system to accurately assess the needs of residents and provide  
 14 sufficient staffing to meet those needs enables it to charge more for residency and services at its  
 15 facilities than it otherwise could. In effect, residents pay a premium for a system that is  
 16 represented by Aegis to provide comprehensive resident needs assessments and the staff necessary  
 17 to provide the promised care.

18 12. If Plaintiffs, through their agents and attorneys in fact (“POAs”), had known the  
 19 true facts about Aegis’s corporate policy of ignoring its resident assessment system and the  
 20 personal care levels generated by it in determining and providing facility staffing, they would not  
 21 have agreed to enter Aegis or paid Aegis significant amounts of money in new resident fees and  
 22 monthly charges. If the putative class members had known the true facts, in all reasonable  
 23 probability they would not have agreed to enter Aegis facilities and paid new resident fees and  
 24 monthly charges to Aegis.

25 ~~13.~~ 13. Aegis has engaged in an unfair and deceptive practice by its failures to  
 26 disclose to Plaintiffs, the proposed Class, and their family members and/or representatives that the  
 27 facility staffing and care services Aegis provides are not determined by resident assessments and  
 28 corresponding care points generated. These material failures to disclose affect and mislead all

Aegis consumers. As a result of Aegis' failure to staff based on resident assessments, Plaintiffs and the Class have not received, and do not receive, the care Aegis deemed necessary based on the resident assessments and/or are subject to a substantial risk that they will not receive the care that Aegis deemed necessary based on the resident assessments.

14. This action seeks to require Aegis to disclose to prospective and current residents, their family members, and/or responsible parties that it does not use its resident assessment system or aggregate the results generated by that system in setting and providing staffing at its facilities. In addition to injunctive relief, this action seeks class wide damages based on Defendant's misrepresentations and misleading statements and material omissions alleged herein. This action does not seek recovery for personal injuries, emotional distress or bodily harm that may have been caused by Defendant's conduct alleged herein.

## **PARTIES**

### **Plaintiffs**

~~1415.~~ Plaintiff Kathi Troy is the surviving daughter of decedent June Newirth ~~was,~~ a resident of Aegis Corte Madera in Corte Madera, California from approximately July 2010 to July 2014. ~~She is currently a resident at AlmaVia of San Rafael, an assisted living facility with no connection to Defendant.~~ She is a beneficiary to the [Trust] and a successor-in-interest to the Estate of June Newirth pursuant to California Code of Civil Procedure §§ 377.11 and 377.32. The appropriate declaration pursuant to § 377.32 is attached hereto as Attachment 4. At all times relevant to this complaint, June Newirth was an elder as defined under California Welfare & Institutions Code § 15610.27 and a senior citizen as defined under California Civil Code § 1761(f). ~~Dr. Frederick J. Newirth is her husband and has been her durable power of attorney since 2003. The Superior Court of California for the County of Alameda appointed Dr. Newirth as his wife's guardian ad litem for the purposes of prosecuting this action on May 2, 2016.~~ June Newirth is and was at all times herein mentioned a resident of the State of California. Kathi Troy is her surviving daughter. She brings this action on behalf of ~~herself~~ decedent June Newirth and all others similarly situated.

~~1516.~~ Plaintiff Barbara Feinberg is a current resident of Aegis Laguna Niguel in Laguna



1 Niguel, California who entered for respite care in October 2013 and became a permanent resident  
 2 in January 2014. At all times relevant to this complaint, Barbara Feinberg is and was an elder as  
 3 defined under California Welfare & Institutions Code § 15610.27 and a senior citizen as defined  
 4 under California Civil Code § 1761(f). Sheri Feinberg is her daughter and has been her durable  
 5 power of attorney since 2008. Barbara Feinberg is and was at all times herein mentioned a  
 6 resident of the State of California. ~~She brings this action on behalf of herself and all others~~  
 7 ~~similarly situated.~~ Pursuant to the parties' stipulation and by order of this Court entered on  
 8 October 26, 2017, Barbara Feinberg was withdrawn as a class representative.

9 ~~16~~17. Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas Bardin are the surviving  
 10 grandchildren of decedent Margaret Pierce, a resident of Aegis of Moraga in Moraga, California  
 11 from April 2013 to January 2015. They are the beneficiaries to the Margaret Pierce Revocable  
 12 Living Trust, and the successors-in-interest to the Estate of Margaret Pierce pursuant to California  
 13 Code of Civil Procedure §§ 377.11 and 377.32. The appropriate declarations pursuant to §  
 14 377.32 are attached hereto as Attachments 1, 2, and 3. At all times relevant to this complaint,  
 15 Margaret Pierce was an elder as defined under California Welfare & Institutions Code §  
 16 15610.27 and a senior citizen as defined under California Civil Code § 1761(f). Linda Bardin  
 17 was her surviving child and held durable power of attorney from 2011 until the date of her  
 18 mother's death in March 2016. Margaret Pierce was at all times herein mentioned a resident of  
 19 the State of California. Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas Bardin bring  
 20 this action on behalf of decedent Margaret Pierce and all others similarly situated.

21 18. Plaintiff Carol M. Morrison executed a durable power of attorney on May 20, 2015,  
 22 appointing her daughter Stacy A. Van Vleck as her Attorney-in Fact. Carol M. Morrison was a  
 23 resident of Aegis of Aegis in Issaquah, Washington from approximately June 24, 2015 to July 25,  
 24 2016. At all times relevant to this complaint, Carol M. Morrison was a Washington resident, a  
 25 senior citizen and a vulnerable adult as defined under the Revised Code of Washington ("RCW")  
 26 § 74.34.020(22). When Ms. Morrison moved to Aegis, Aegis' standard contract stated certain  
 27 core services would be provided to Ms. Morrison in exchange for a monthly base rate. Prior to  
 28 entering Aegis of Issaquah's memory care unit, Ms. Morrison paid Defendant a new resident fee

1 (“Community Fee”) of \$8,000. Additionally, she paid a daily general services fee and daily fees  
 2 for care services.

### 3 **Defendant**

4 ~~17~~19. Defendant is a Washington corporation with its principal place of business in  
 5 ~~Redmond~~Bellevue, WA.

6 ~~18~~20. Aegis ~~owns and operates all of the real estate and buildings,~~ and holds the licenses  
 7 for approximately fourteen (14) assisted living facilities in California under the Aegis name. In  
 8 Washington, Aegis operates and holds the licenses, for approximately seventeen (17) assisted  
 9 living facilities under the Aegis name.

10 ~~19~~21. The true names and capacities, whether individual, corporate, associate, or  
 11 otherwise, of the Defendants designated herein as Does 1 through 100, inclusive, are presently  
 12 unknown to Plaintiff and thus sued by such fictitious names. On information and belief, each of  
 13 the Defendants designated herein as “Doe” is legally responsible for the events and actions  
 14 alleged herein, and proximately caused or contributed to the injuries and damages as hereinafter  
 15 described. Plaintiffs will seek leave to amend this Complaint, in order to show the true names  
 16 and capacities of such parties, when the same has been ascertained.

### 17 **JURISDICTION AND VENUE**

18 ~~20~~22. This lawsuit was initially filed in the California Superior Court (Alameda County)  
 19 and was removed by Defendant Aegis on July 14, 2016. The Court granted the California  
 20 Plaintiffs’ unopposed Motion for Leave to Amend the Second Amended Complaint to allow the  
 21 permissive joinder of the Washington Plaintiff, Carol Morrison, to this action on [DATE]. This  
 22 Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

23 ~~Plaintiffs~~Approximately half of putative class members and Defendant are residents and citizens  
 24 of different states. The class size is greater than 100. According to Defendant, its records  
 25 indicate that approximately ~~3,693~~10,000 individuals lived in Aegis facilities in California and  
 26 Washington from the start of the Class ~~Period through the date of removal~~Periods to October  
 27 2020. The aggregate amount in controversy, based on damages in the form of monthly charges  
 28 averaging an estimated \$5,000 to \$20,000 per class member over a period of four years is greatly

1 in excess of \$5,000,000.

2 ~~24~~23. This Court has jurisdiction over all of the claims alleged herein. Defendant is  
 3 subject to the personal jurisdiction of this Court because it has sufficient minimum contacts in  
 4 California, or otherwise intentionally avails itself of the California market through ownership and  
 5 management of 14 assisted living facilities located in California, derivation of substantial  
 6 revenues from California, and other activities, so as to render the exercise of jurisdiction over  
 7 Aegis by the California courts consistent with traditional notions of fair play and substantial  
 8 justice. This Court has supplemental jurisdiction over the Washington state claims alleged herein  
 9 pursuant to 28 U.S.C. § 1367 in that they form part of the same case or controversy under Article  
 10 III of the United States Constitution.

11 ~~22~~24. Venue is proper in this District under 28 U.S.C. § 1391(a), based on the following  
 12 facts: Defendant conducts substantial business in this District, including but not limited to the  
 13 ownership, operation and management of assisted living facilities in the counties of Alameda,  
 14 Santa Clara, and Sonoma; a portion of Defendant's liability arose in this District; and the acts  
 15 upon which this action is based occurred in part in this District.

#### 16 **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

17 ~~23~~25. Aegis provides assisted living and memory care for senior citizens and persons  
 18 with disabilities at facilities nationwide, including ~~fourteen (14)~~approximately thirty-one (31)  
 19 facilities that it owns and/or operates in California and Washington.

20 ~~24~~26. Assisted living facilities, also called Residential Care Facilities for the Elderly  
 21 (“RCFEs”~~;~~”) in California, offer room, board and daily assistance for seniors in certain activities  
 22 of daily living (“ADLs”), such as preparing meals, shopping, transportation, preparing and taking  
 23 medication, using the telephone, paying bills, housekeeping, and others.

24 ~~25~~27. Assisted living facilities are intended to provide a level of care appropriate for  
 25 those who are unable to live by themselves, but who do not have medical conditions requiring  
 26 more extensive nursing care and significant assistance with most of their ADLs. Aegis' assisted  
 27 living facilities also have Memory Care units, which serve individuals with dementia and other  
 28 cognitive disorders.

2628. In recent years, Aegis has increasingly been accepting and retaining more residents with conditions and care needs that were once handled almost exclusively in skilled nursing facilities. This has allowed it to increase not only the potential resident pool but also the amounts of money charged to residents and/or their family members.

2729. At Aegis facilities, residents are charged a base rate, which includes room, board, and basic maintenance, cleaning and laundry. Aegis assesses each resident before admission and then again at quarterly intervals and/or whenever there is a change of the resident's condition. By performing these assessments, Aegis determines what additional services a resident needs, such as assistance with ADLs. Each additional need correlates to a number of points, which depend on how much more time Aegis staff must spend caring for the resident and what type of staff should perform the services. The total number of points is multiplied by a dollar amount resulting in a per-day care fee charge. Thus, the higher the points assessed, the more money Defendant charges the resident.

#### **Uniform Representations in Aegis' Standardized Contracts and Other Corporate Materials**

2830. Defendant represents to residents that it will use its resident assessment system to determine and then provide the amount of caregiver time Aegis has itself decided is necessary to provide the services and care for which its residents are paying.

2931. Aegis makes the affirmative representation to each resident in its standardized contracts, specifically in Section 1.B of the Aegis Living Residence and Care Agreement ("Residence Agreement") that it:

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

3032. Appendix A to each Residence Agreement states that "Care fees are charged based on assessment points." Each care assessment point is then multiplied by a charge amount that produces a "per day" fee.

3133. In addition, the Resident Service Plan prepared for each resident represents that

1 staffing will be based on the point-value system through the resident reassessment program.  
 2 Specifically, the service plan assigns each task to a particular job category (i.e. caregiver, care  
 3 director) and indicates how the need will be met *by staff*. For example, under the category  
 4 “Grooming,” a care plan might list the following need: “Resident requires reminders to perform  
 5 grooming tasks (shave, comb hair, nail care, brush teeth, wash hair, etc.).” The “Action” listed is  
 6 “Staff will remind resident to groom and monitor grooming needs,” and Aegis will charge nine (9)  
 7 points for this service. Aegis adds fewer points to the total when a service requires less staff time.  
 8 For example, a resident whose listed need is “Resident is occasionally restless and/or has  
 9 repetitive behaviors and verbalizations but *minimal staff time is needed*” may be assessed only one  
 10 (1) point. These statements underline the obvious—care can only be provided by people/staff, and  
 11 a resident who has additional needs requires additional staff time. The promise of additional staff  
 12 time is what allows Aegis to charge these residents more.

13 ~~323~~4. A binder given to prospective and incoming residents by Aegis contains a two-page  
 14 description of the assessments called “Assessing Resident Care Needs”. Under a section titled  
 15 “Fees for care services”, it states:

16 We believe that residents should only be charged for the services they need and receive.  
 17 That is why we use a point system rather than care levels. The number of “care points” that  
 18 is assigned to a particular service is based on the average amount of staff time required to  
 19 provide that service, the frequency, and the cost of the staff person that will be performing  
 20 the task.

21 Nowhere in those two pages does Aegis disclose that the facility does not use these points, or the  
 22 resident assessment process from which the assigned points are derived, in setting facility staffing.

23 ~~333~~5. In a standardized brochure provided to prospective residents and their families,  
 24 Aegis states that care services “are based on a personalized assessment done prior to move-in.  
 25 These services are assessed on a point system so residents only pay for what they specifically  
 26 need.”

27 ~~343~~6. Aegis’ resident handbook boasts that its memory care units have a staff-to-resident  
 28 ratio that is “one of the highest in the industry.” Again, the clear message to the consuming public,  
 including Plaintiff and the putative class, is that staffing levels matter at Aegis facilities.

1 3537. Because these representations are presented through form contracts and other  
 2 standardized corporate materials, potential and current residents of Aegis facilities reasonably  
 3 understand them to be representations of the policies and procedures followed by Aegis both for  
 4 determining the needs of facility residents and for setting staffing levels at each of its California  
 5 facilities.

6 3638. Based on these representations, Plaintiffs, the putative class members and the  
 7 general consuming public reasonably expect that Aegis uses a system that ensures adequate staffing  
 8 to meet all current resident needs based on their comprehensive needs assessments and the number  
 9 and type of staff hours Aegis has itself determined are necessary to satisfy those needs.

#### 10 **Aegis's Non-Disclosure and Concealment**

11 3739. Contrary to the express and implied representations in the Aegis standardized  
 12 contract and other uniform written statements, Aegis does not use the resident assessment system  
 13 or consider assessment points in setting or providing facility staffing. Aegis conceals this  
 14 material fact from the residents, their family members and the general public.

15 3840. Plaintiffs are informed and believe, and on that basis allege, that Aegis has the  
 16 capability to determine, to the minute, the facility staffing levels required to meet the aggregate  
 17 care points promised to residents. With its resident assessment system, Aegis can calculate the  
 18 amount and type of staff needed by a facility for the population or group of residents therein  
 19 viewed as a whole on any given shift based on the evaluated needs and assessed points of  
 20 residents.

21 41. While Defendant uses this resident assessment system to set and charge daily rates,  
 22 it does not use the resident assessment system to set staffing at its facilities. -Aegis conceals this  
 23 material fact from Plaintiffs and the Class, who are deceived into believing that, as a matter of  
 24 policy and practice, Aegis will use its resident assessment system and care points generated by it  
 25 to determine and provide staffing levels at its facilities and will, accordingly, provide sufficient  
 26 staff at each facility to deliver to all facility residents the amount and type of care and  
 27 corresponding staff time that Aegis has determined to be necessary.

28 3942. As stated in various corporate policies and procedures, Aegis directs its facilities to

1 make meeting labor budgets and operating income targets a paramount concern, regardless of the  
2 impact on the care and staffing needs of facility residents.

3 4043. Aegis's General Managers/Executive Directors ("GMs" or "EDs") are given pre-  
4 determined budgets—including labor budgets—from corporate headquarters. Regardless of  
5 changes in the needs of the resident population, General Managers of Aegis facilities may not  
6 increase these budgets without approval from corporate headquarters. Job postings for facility  
7 General Managers on Aegis' website state that the GM is "[r]esponsible for the financial  
8 performance of the community, operating within the approved budget, meeting or exceeding  
9 established outcomes and company's targeted operating income."

10 ([http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/general-](http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/general-manager/)  
11 [manager/](http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/general-manager/), last visited February 9, 2016).

12 4144. Aegis' job description for the Director of Operations, an assistant to the GM/ED,  
13 lists as one of his or her responsibilities: "Ensure labor, payroll costs and expenses are properly  
14 monitored and controlled with budgeted productivity levels and cost per occupied room."

15 4245. GMs/EDs and other divisional and regional managers are given a disincentive to  
16 request a staffing increase because under corporate compensation policies, they can only receive a  
17 bonus if they meet earnings targets set by corporate headquarters.

18 4346. Information gathered from former Aegis facility employees, current and former  
19 residents, and records of the Department of Social Services' Community Care Licensing division  
20 confirms that Aegis uses pre-determined staffing schedules at its facilities and does not change  
21 these schedules or the number of staff hours worked when resident assessment results indicate a  
22 need for additional staff.

23 4447. Terrence A. Ervin—a Regional Vice President of Operations for Aegis in  
24 California from approximately 2009 to 2013, as well as the interim ED at Aegis of Corte Madera  
25 from approximately May 2012 to March 2013—testified at a deposition in another case on March  
26 20, 2015 that although Aegis used its resident assessment software to determine care points and  
27 fees, it did not use that software to determine staffing levels or in developing the staffing budget  
28 for each facility at the corporate level.



1        4548. Dave Peper—an Executive Director at Aegis of Fremont—testified in a deposition  
 2 in another case on June 20, 2014 that the care directors at the facility set the schedule for the  
 3 staffing a month in advance. \_\_\_\_\_

4        \_\_\_\_\_ 4649. Records maintained by the Department of Social Services (“DSS”),  
 5 Community Care Licensing Division (“CCL”), the state agency that regulates assisted living  
 6 facilities in California, contain staffing schedules for Aegis facilities that indicate a fixed staffing  
 7 schedule for the entire month in advance, without regard to fluctuating resident needs based on  
 8 re-assessments, changes in condition and occupancy changes.

9        4750. As a result of Aegis’s failure to use its resident assessment system and consider  
 10 care points in setting staffing levels at its facilities, those levels are substantially lower than those  
 11 Aegis itself has determined are necessary to meet the assessed needs of residents. Further,  
 12 because Aegis’ failure to use its residential assessment system for staffing decisions results in  
 13 lower staffing levels than it has determined are necessary, the residents of Aegis’ facilities run the  
 14 continuing risk of not having their care needs met and of suffering injury from the lack of care or  
 15 from other residents who are insufficiently supervised or cared for.

16        \_\_\_\_\_ 48     51.     Aegis’ failure to use its resident assessment system when it sets and  
 17 provides facility staffing places all residents at an unnecessary risk of harm. That risk is  
 18 particularly acute, given the vulnerable nature of the targeted population of seniors and residents  
 19 with disabilities. It also forces residents to live in an unpleasant and unsafe environment due to  
 20 the resulting inadequate supervision and care of residents in general.

21        \_\_\_\_\_ 52.     The consequences of Aegis’ common policy and standard operating procedure of  
 22 providing staffing without regard to the assessed personal care levels of its current residents are  
 23 significant. They include, but are not limited to: resident falls, elopements, injured residents left  
 24 unattended, dehydration, urinary tract infections, weight loss/malnutrition, choking, slow or no  
 25 responses to resident call buttons, failures to assist with toileting resulting in incontinence,  
 26 inconsistent incontinence care resulting in residents sitting in soiled and/or wet briefs for long  
 27 periods of time, decubitus ulcers, medication errors, and inadequate grooming and hygiene  
 28 assistance.



53. Aegis' failures to disclose and concealment regarding the true manner in which its facilities are staffed, and the promotion of its system of comprehensive resident assessments in its form contract and marketing materials, contributes to Aegis' competitiveness in the marketplace of assisted living facilities and enables it to charge more for residency and services at its facilities than it otherwise could.

54. Through its failures to disclose and concealment, Aegis misleads residents and family members into paying large sums in the form of move-in fees and monthly payments. Residents pay a premium for a system that they are misled into believing will provide comprehensive resident needs assessments and the staff necessary at Aegis to provide the care Aegis deemed necessary based on the resident assessments.

//

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

4955. Defendant's misrepresentations and the facts it conceals are material to the reasonable consumer. An important and significant factor in choosing to move oneself or one's relative to an Aegis facility is the provision of staffing that the facility itself has determined is necessary to meet the assessed needs of all facility residents. The use of a system that determines and assigns the staffing necessary for a facility based on comprehensive assessments of its residents' care needs, such as the one Aegis represented it uses, is likely to ensure that those needs are met and will be met in the future. .

5056. Aegis knows the importance of staffing in choosing an assisted living facility. In an article featured on its website titled "Top tips for touring an assisted living community," Aegis tells prospective residents or their family members to ask staff, residents and family members, "What is the ratio of staff to residents?" Another article on the site titled "20 questions for the director of an assisted living community" includes among the top 20 inquiries, "How many staff members care for each resident?"

5157. Aegis's promise to provide the care services (through facility staff) that each resident requires as calculated by the resident assessments conducted by Aegis is material to prospective residents and their family members. Further, residents (and their family members)

1 reasonably expect that Aegis will provide staffing at levels sufficient to meet the assessed needs of  
 2 facility residents. Staffing at levels sufficient to provide the care necessary to meet assessed  
 3 resident needs is a substantial factor (and indeed often the most important factor) in deciding to  
 4 enter an assisted living facility. Dr. Newirth and Linda Bardin would not have admitted their  
 5 family members to Aegis, and Barbara Feinberg would not have agreed to enter the facility, if they  
 6 had known that, although Defendant would charge them based on the staffing associated with their  
 7 assessed care points, Defendant did not and does not use its resident assessment system and the  
 8 assessed care points in setting staffing levels at its facilities. Likewise, members of the putative  
 9 class would in all reasonable probability not have entered Aegis' facilities if they had known that  
 10 Aegis did not and does not use its resident assessment system and the care points generated by it  
 11 when determining staffing levels at its facilities.

12 ~~5258~~. This is true even for residents who currently are practically independent. These  
 13 residents choose an assisted living facility as opposed to remaining at home or moving into an  
 14 independent living community because they wish to "age in place." They may not need  
 15 significant assistance with the activities of daily living initially, but they expect to (and will)  
 16 become more dependent as they age and do not want to move yet again when that happens.

17 ~~5359~~. Aegis emphasizes the benefit of "aging in place" on its website. In an article titled  
 18 "What does your loved one need in an assisted living community?" the company gives the  
 19 following advice:

20 While it's not possible to anticipate just what kind of care your senior loved ones will  
 21 require as they age, it's a good idea to plan for the most extreme circumstances. Will the  
 22 assisted living community you are looking at care for your mother if she develops  
 23 dementia? Will it be able to provide compassionate services to your father if he lives there  
 24 through the end of his life? These are important questions, whether or not you think your  
 25 parents are considering them. It can be disruptive to have to move from one assisted living  
 26 community to another to obtain the proper level of care, just as it can be disruptive for your  
 27 parents to have to live in different locations.

25 ~~([https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-](https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-living-community/)~~  
 26 ~~[living-community/](https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-living-community/), last visited February 12, 2016).~~

27 ~~———54([https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-](https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-living-community/)~~  
 28 ~~[assisted-living-community/](https://www.aegisliving.com/resource-center/what-does-your-loved-one-need-in-an-assisted-living-community/), last visited February 12, 2016).~~

\_\_\_\_\_60. A key factor for these residents in selecting Aegis is that the facility will provide the staffing sufficient to provide the care services that Aegis itself has determined are necessary to meet assessed residents' needs, both now and as those needs, and corresponding care services fees, increase.

5561. Aegis has a duty to disclose to the consuming public that it does not use its resident assessment system or the care points generated by it to set aggregate staffing levels because of, among other things, the inherent and substantial safety risk to current and future residents from Aegis's conduct, particularly as Defendant serves a vulnerable population that needs assistance. The non-disclosure is material because Aegis knows that its conduct risks the safety of its residents. Yet, Aegis has failed to disclose and actively conceals from residents, prospective residents and their family members the true facts about how it sets staffing at its facilities.

### **Barriers to Moving Out**

5662. Defendant's misrepresentations affect not only the decision of residents to enter an Aegis facility, but also the decision to stay there.

5763. In choosing assisted living in general and an Aegis facility in particular, the resident forgoes other options such as his or her former home, a senior community, or other facilities where the resident can try to build a new community. Once in a facility, there are significant physical, emotional and other burdens for the residents that are triggered if they terminate residency, including impacts such as "transfer trauma." Aegis is aware of these burdens, as noted in Paragraph 53 above ("It can be disruptive to have to move from one assisted living community to another to obtain the proper level of care, just as it can be disruptive for your parents to have to live in different locations") and makes the representations described herein with the knowledge that it will be difficult for residents to leave its facilities once they are enticed to enter based on its misrepresentations.

5864. Aegis also repeats its misrepresentations when it conducts periodic re-assessments of residents. Often, the facility discovers additional care services needed by the resident that Aegis uses as a basis for a Care Fee increase. Aegis requires its management staff to "[g]enerate

revenue for care services provided to residents. Ensure residents are properly billed for the level of care provided.” (Assisted Living Director job description at <http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/assisted-living-director/>~~http://www.aegisliving.com/about-us/senior-living-jobs/employment-opportunities/assisted-living-director/~~, last visited February 12, 2016)

~~59~~65. Aegis thereby unjustly continues to profit from the original fraud by perpetuating its misrepresentations and failures to disclose.

### **June Newirth**

~~60. — Plaintiff~~66. Decedent June Newirth resided at Aegis Corte Madera in Corte Madera, California from approximately July 2010 until approximately July 26, 2014. When Ms. Newirth moved to Aegis on or around July 7, 2010, Aegis provided her husband, Frederick Newirth, who holds a durable power of attorney, with a standard contract under which it promised to provide certain core services in exchange for a monthly base rate. Additionally, the contract stated that Aegis would provide Ms. Newirth:

with personal assistance and care on an as needed basis. . . . When You applied for admission to the Community, the professional staff of Aegis performed a comprehensive assessment of your needs and determined with You that the appropriate services for You total ~~149~~ assessment points. Aegis will perform reassessments in light of your changing needs to determine the services that You may require. You will receive the services appropriate to your individual need.

~~61~~67. The “Individualized Service Plan” generated by Ms. Newirth’s pre-admission assessment, which accompanied her admission papers indicated that every service for which she was charged assessment points was to be provided by Aegis staff. For example, under Grooming, the Plan stated: “Staff will provide stand-by assistance with all grooming tasks. Staff will evaluate ongoing needs for assistance with grooming.” The responsible party is listed as “Caregiver”.

~~62~~68. Plaintiff Newirth, through her representative and power of attorney, Frederick J. Newirth, reasonably understood Aegis’ representations in the contract as statements that Aegis used its resident assessment system and results generated by it to determine necessary staffing levels for its facilities and that the staff determined to be necessary through that system would be

1 provided. Simply put, Dr. Newirth reasonably understood that if his wife's care needs increased,  
2 Aegis staff would spend more time assisting her. As a result, her assessment points would  
3 increase, resulting in a higher care fee. Ms. Newirth through Dr. Newirth, read and relied on the  
4 representations made in the contract in making the decision to enter Aegis Corte Madera. As Ms.  
5 Newirth's durable power of attorney and representative, Dr. Newirth signed the agreement  
6 acknowledging that he had read the agreement and its attachments.

7 ~~63~~69. Prior to entering Aegis Corte Madera, Ms. Newirth paid Defendant a Community  
8 Fee of \$15,000 on June 26, 2010. Additionally, she paid a daily general services fee of \$164 and  
9 daily fee for care services of \$74.50, totaling \$238.50 per day and approximately \$7,393.50 per  
10 month. On July 5, 2010, Ms. Newirth paid \$5,962.50 for the portion of July from the 7<sup>th</sup> to the  
11 31<sup>st</sup>.

12 ~~64~~70. Commencing in approximately July 2010 (shortly after Ms. Newirth entered the  
13 Aegis Corte Madera facility) and continuing through August 2014 (when she left), Aegis billed  
14 the Newirths on a monthly basis for care services that Aegis promised to deliver. Each quarter, or  
15 whenever Ms. Newirth's health condition changed, Aegis re-assessed Ms. Newirth and generated  
16 a new Resident Services Plan with points assigned for staff time necessary to perform each care  
17 task. In each Resident Services Plan, Aegis made new representations that it would provide the  
18 services and staff time necessary to care for Ms. Newirth. Ms. Newirth, through Dr. Newirth,  
19 reviewed and signed each Resident Services Plan. The charge amount on each bill, which  
20 increased over time as the facility re-assessed Ms. Newirth, was based on the point system and  
21 Resident Services Plan. Dr. Newirth relied on the representations in each Resident Services Plan  
22 when he decided to pay the monies Aegis demanded to provide the promised care. At no time  
23 throughout Ms. Newirth's residency did Aegis disclose the true facts that, despite its promises,  
24 staffing at the Corte Madera facility was not determined based on resident assessments but  
25 instead set to meet labor budgets and profit objectives.

26 ~~65~~71. Initially, the care provided to Ms. Newirth gave no reason for her or her family to  
27 question the veracity of Aegis' representations and contractual promises. Many caregivers and  
28 certain management staff at the facility worked very hard and clearly cared for the residents.

1 Indeed, for much of 2012, the Newirths were satisfied with the care Aegis provided in large part  
 2 due to the relationship the family developed with the new Memory Care Director at the time.  
 3 They liked and trusted this Memory Care Director because she seemed qualified, compassionate,  
 4 hard-working, accessible to residents and their families, and directly involved in resident care. In  
 5 August 2012, Kathi Troy, Ms. Newirth's daughter, expressed satisfaction with resident care and  
 6 praised the then Memory Care Director, who worked at Aegis until October 2013, in a response to  
 7 the Aegis Living Resident & Family Survey.

8 6672. However, in the last few months of 2012, Ms. Troy, who was spending one to five  
 9 hours at the facility every day, began to observe that staffing levels failed to keep up with the  
 10 needs of many residents. Also, during this time, the Memory Care Director grew more candid  
 11 with Ms. Troy about her inability to influence or control staffing levels.

12 6773. The quality of care Aegis provided to Ms. Newirth started to gradually decline in  
 13 late 2012 or early 2013. Despite the gradual decline in care, Aegis repeatedly increased Ms.  
 14 Newirth's assessment points and corresponding daily care services fees in new Resident Services  
 15 Plans. Aegis did not, however, make corresponding adjustments to and increases in the staff time  
 16 devoted to Ms. Newirth's care or adjust its facility staffing levels despite the representations in  
 17 each Resident Services Plan, and as it increased Ms. Newirth's assessment points and care services  
 18 fees. Around the same time in late 2012 or early 2013, Dr. Newirth and Ms. Troy began to realize  
 19 that the Resident Services Plans had no bearing on staffing levels, and repeatedly told the various  
 20 executive directors and managers on site that the facility was understaffed, and that Ms. Newirth  
 21 was consequently paying for services that she was not receiving.

22 6874. In August 2013, Ms. Troy voiced concerns in an Aegis Living Resident & Family  
 23 Survey sent to Aegis' corporate offices. She wrote:

24 [A] social model of **assisted living and memory care is labor-intensive**; and a more  
 25 effective staff-to-resident ratio must be established at Aegis of Corte Madera to ensure the  
 26 health, welfare, and safety of the residents as well as the staff. An abundance of behavioral  
 27 problems, wanderers and escape artists, and two-person lifts dictates that **there must be a**  
 28 **minimum of four care managers assigned to each memory care unit for both the AM**  
**and PM shifts**. This should be a baseline standard and should never be downgraded to  
 improve profit margins.

(emphasis in original). Further down, Ms. Troy noted that despite fee increases “[s]taffing levels have NOT been increased . . .”

~~69~~75. In October 2013, Ms. Troy requested a meeting with the Executive Director and gave him a nine-page document she wrote describing the problems with staffing, among other things. She noted that staffing had been cut and that “[r]esidents are being left unattended for long periods of time – not out of neglect but because understaffed care managers have a long list of housekeeping chores to do before they can punch out.” During the meeting, the Executive Director patiently listened to her concerns and vowed to address them. Ms. Troy left the meeting feeling heard and believed his assurances. However, Aegis did not increase staff time provided to Ms. Newirth, and her care continued to deteriorate. In early March 2014, Ms. Troy requested another meeting with the Executive Director. He met with her very briefly, but then shunted her to two staff members who had no authority to fix problems. Ms. Troy attempted to talk to the staff members, but ended the meeting after determining they could not and would not meet her mother’s care needs.

~~70~~76. By approximately July 2014, four years after Ms. Newirth moved to Aegis, the family realized that despite the repeated promises and assurances, Aegis would not increase facility staffing to correspond to the care residents (including Ms. Newirth) needed as evidenced by the resident assessments. Accordingly, Dr. Newirth sent the Executive Director a thirty-day notice on July 21, 2014. He stated that Ms. Newirth would be leaving Aegis of Corte Madera on August 20, 2014. He wrote:

It has been most disconcerting that Aegis has continued to increase rates for services that are not actually provided due to the fact that staffing in all departments has been reduced to less than a skeleton crew. After attempting to work with your predecessor on multiple occasions to remedy this situation, we have decided that it is better to leave Aegis to its own devices and move June to a place where compassionate care is the primary focus.

~~74~~77. June Newirth moved from Aegis of Corte Madera to another assisted living facility on August 20, 2014.

~~72~~78. Throughout Ms. Newirth’s entire stay, Aegis never disclosed, and the family had



no way of discovering, that Aegis' point system is not supported by sufficient staffing levels, and was (and is) geared only toward increasing revenue. Ms. Newirth did not receive the care Aegis promised in her contract and each Resident Service Plan, and for which she paid significant fees over a four-year period.

### **Barbara Feinberg**

7379. Barbara Feinberg ("Ms. Feinberg") is a current resident of Aegis Laguna Niguel in Laguna Niguel, California. In early October 2013, she chose Aegis for temporary respite care after reviewing Aegis' marketing materials, meeting with the General Manager, and touring the facility. In choosing Aegis over other facilities, Ms. Feinberg relied on Aegis' representations that it would provide enough staff to meet all of her daily needs and charge her only for the services she received. She paid a deposit of \$4,140 to hold a room and began moving in on October 16, 2013.

7480. On October 17, 2013, Aegis completed a Resident Service Plan that assigned Ms. Feinberg 95 points and charged her approximately \$.44 per point each day. Ms. Feinberg reasonably expected that the points were an accurate reflection of the amount of care she would receive from staff each day, and that Aegis would ensure sufficient staffing levels to provide that care. Aegis charged her \$7,335 for general and daily care services each month during her respite care.

7581. In January 2014, Ms. Feinberg became interested in permanent residency at Aegis. On January 20, 2014, Aegis provided her daughter, Sheri Feinberg, who holds durable power of attorney, a standard contract under which it promised to provide certain core services in exchange for a monthly base rate. Additionally, the contract stated that Aegis would provide Ms. Feinberg with personal assistance and care on an as needed basis. . . . When You applied for admission to the Community, the professional staff of Aegis performed a comprehensive assessment of your needs. Aegis will perform reassessments in light of your changing needs to determine the services that You may require. You will receive the services appropriate to your individual need.

It further stated that Ms. Feinberg must pay a Community Fee of \$4,000, \$200 a day for General Services, and \$.50 per day for each care point Aegis determined to be necessary. Before signing



1 the contract and making a final decision, her daughter scrutinized the points Aegis had assigned  
2 and charged to Ms. Feinberg during the previous four months. On January 21, 2014, she asked  
3 Aegis why it had assigned points and charged her mother for grooming, medication, and  
4 transportation services that it was not providing. In response, on January 29, 2014, the Marketing  
5 Director assured her that the points were accurate based on her mother's needs and Aegis was  
6 providing those services.

7 7682. Ms. Feinberg and her daughter reasonably understood from the contract and all of  
8 Aegis' representations that as her needs increased, her points would increase, and that she would  
9 be charged more because more points require more time from staff, and thus require adjustments  
10 to staffing levels. With this understanding, and in reliance on Aegis' representations, Ms.  
11 Feinberg, through her representative and power of attorney, signed the contract on January 31,  
12 2014 to become a permanent resident.

13 7783. In approximately January 2015, however, Ms. Feinberg and her daughter began to  
14 notice that despite the best efforts of individual staff members, Aegis did not hire enough staff to  
15 ensure that Ms. Feinberg and the other facility residents received the care they paid for and  
16 needed. For example, the number of staff did not correspond to the number of residents in  
17 wheelchairs who needed to be pushed to various essential services throughout the day. There  
18 were fewer staff on weekends, no coverage for staff who called in sick, and staff appeared  
19 stressed and overtaxed. Residents were seen lying on the floor after falling because staff was  
20 unavailable to help them up. In July 2016, Ms. Feinberg herself suffered in excruciating pain for  
21 40 minutes before a nurse had time to bring her pain medications.

22 7884. During her stay, Ms. Feinberg's points were increased from 72 to 200 points. In  
23 the course of imposing these increases, facility personnel represented that the point system was  
24 related to staffing requirements. For example, on May 3, 2016, two Aegis managers came to Ms.  
25 Feinberg's room, on two separate occasions, and insisted that Ms. Feinberg sign a new care plan  
26 even though her daughter had just signed a new care plan only a few days before. They did not  
27 notify or consult with her daughter before approaching Ms. Feinberg. They wanted Ms. Feinberg  
28 to sign a new care plan that significantly increased the points, and thus fees, for grooming. When

1 Sheri Feinberg later asked about the increased points, the General Manager responded:

2 “If [Barbara Feinberg] now requires 40+ min of assistance to do her hair every  
3 day, then that would be considered a higher number of points due to increased  
4 time demands on existing staff and we need to pay for the additional staff required  
5 to meet the time demands.”

6 ~~79~~

7 85. Ms. Feinberg constantly monitors Aegis to ensure it provides the services for which  
8 it charges. It would be traumatic for Ms. Feinberg to move out. She takes comfort in her routine,  
9 apartment, and community of friends at Aegis, and the prospect of leaving everything that is  
10 familiar terrifies her. Aegis takes advantage of Ms. Feinberg and other residents by manipulating  
11 their point assessments to generate revenue, and by short-staffing the facilities, knowing that the  
12 residents will keep paying because they are too afraid to leave, they have no other place to go,  
13 and/or the risk of harm from transfer trauma if they move is too great.

#### 14 **Margaret Pierce**

15 ~~80~~86. Margaret Pierce lived at Aegis Moraga from April 2013 to January 2015. She died  
16 on March 6, 2016, in another facility. Plaintiffs Elizabeth Barber, Andrew Bardin, and Thomas  
17 Bardin are her surviving grandchildren. Her daughter, Linda Bardin, held durable power of  
18 attorney and chose Aegis over other facilities after speaking with the general managers at Aegis  
19 Pleasant Hill and Aegis Moraga in February and March 2013. They explained that Aegis would  
20 assign a certain number of points to Ms. Pierce based on its resident assessment, and the number  
21 of points would encompass and represent all of her daily and medical needs.

22 ~~84~~87. Ms. Pierce qualified for and was accepted into the “Very Low Income Program” at  
23 Aegis Moraga. In March 2013, Aegis provided Ms. Bardin with a standard contract under which  
24 it promised to provide

25 personal assistance and care on an as needed basis. . . . When You applied for admission  
26 to the Community, the professional staff of Aegis performed a comprehensive  
27 assessment of your needs. Aegis will perform reassessments in light of your changing  
28 needs to determine the services that You may require. You will receive the services  
appropriate to your individual need.

It further provided, “Care fees are based on assessment points. Each assessment point results in a  
\$.50 per day fee.” The contract required her to pay a \$7,000 Community Fee and \$109 a day for

1 care services.

2 ~~8288~~. Based on the general managers' representations and the language in the admissions  
3 contract, Ms. Pierce, through her power of attorney Linda Bardin, trusted that Aegis had arrived at  
4 the fee of \$109 a day for care services based on the resident assessment setting a certain number of  
5 points, and that those points were commensurate with her needs. She reasonably understood that  
6 for every increase in points, her mother would require more attention from staff, and Aegis would  
7 charge her more for that increased staff attention. She reasonably expected that Aegis would  
8 maintain sufficient staffing levels to take care of her, including as her points increased. She relied  
9 on all of Aegis' representations when she signed the contract, through her power of attorney Linda  
10 Bardin, on March 12, 2013, and paid the Community Fee of \$7,000 and \$3,254 for care services to  
11 be provided during the first month.

12 ~~8389~~. Aegis billed Ms. Pierce on a monthly basis for care services it promised to deliver.  
13 Monthly care fees were based on a point assessment, which changed frequently as the facility re-  
14 assessed Ms. Pierce. In May 2013, Aegis began increasing Ms. Pierce's points after performing  
15 point assessments and generating new Resident Services Plans that promised to deliver increased  
16 services. By June 2013, Aegis had increased Ms. Pierce's points and daily care fees from \$109 to  
17 \$113.50 a day. Aegis increased Ms. Pierce's points, for example, because she needed medications  
18 more frequently and to implement a fall-prevention plan that included wellness checks every two  
19 hours. Ms. Bardin initially believed it was reasonable for Aegis to increase the points because her  
20 mother needed more services from staff, and Aegis represented it would provide them. However,  
21 Ms. Bardin did not know, and Aegis did not disclose, that it was charging Ms. Pierce for services  
22 it was not providing.

23 ~~8490~~. By approximately December 2013, Ms. Bardin began to notice that Aegis was not  
24 providing increased attention from staff even though it had increased her mother's points. Ms.  
25 Bardin was visiting the facility at least several times a week in part because the wellness checks  
26 were not preventing her mother from falling frequently. She asked Aegis for documentation  
27 showing it was providing the two-hour checks, but they could not provide it. Staff also could not  
28 name the specific individual responsible for completing the checks. She observed that one

1 caregiver was responsible for taking care of up to 15 residents, including housekeeping, showers,  
2 laundry, meals, grooming, and the wellness checks her mother and other residents were supposed  
3 to be receiving. One evening in January 2014, an overworked medical technician failed to  
4 adequately supervise a caregiver-trainee who left a basket of medications prescribed to other  
5 residents in Ms. Pierce's room. Ms. Bardin complained to DSS and Aegis management staff,  
6 including the Chief Operating Officer, Tom Laborde, about this incident.

7 8591. The quality of care Aegis provided to Ms. Pierce continued to decline from January  
8 2014 until she left the facility. Ms. Bardin repeatedly emailed Aegis managers and requested  
9 meetings regarding her mother's care and the point assessments. The managers placated her with  
10 assurances that her mother's needs would be met. At the same time, Aegis repeatedly re-assessed  
11 Ms. Pierce and increased her monthly fees, thereby representing that the fee increases would result  
12 in additional staffing to meet her care needs. Aegis never disclosed to Ms. Bardin that the point  
13 assessments were wholly unrelated to staffing levels, and that it would not increase staffing as her  
14 mother's needs increased. Throughout her mother's stay at Aegis, Ms. Bardin had no way of  
15 discovering that Aegis set staffing levels based on fixed labor budgets or that staffing was not  
16 determined by resident needs assessments.

17 8692. In May 2014, Ms. Pierce called her daughter over 250 times, alone and disoriented,  
18 because there were not enough staff to address her needs. One night during that month she called  
19 Ms. Bardin from the floor after falling. Ms. Bardin tried to call staff, but no one would pick up the  
20 phone even though Aegis represented that staff would be available by phone 24 hours a day. Ms.  
21 Bardin had to drive to the facility and bang on the locked door for several minutes until a caregiver  
22 finally answered. Her mother was on the floor during this incident for at least an hour. A few  
23 weeks later, Ms. Bardin discovered that although she was paying Aegis to manage her mother's  
24 medications, overworked medical technicians had not reviewed the physician's orders and had  
25 been administering eye drops to both of Ms. Pierce's eyes for two months when they should have  
26 only been administered to one eye.

27 8793. In June 2014, alarmed at the lack of attention Aegis was providing to her mother,  
28 Ms. Bardin initiated her mother's move into the Memory Care Unit. She hoped that her mother

1 would benefit from the higher staff to resident ratio. However, even though Aegis raised Ms.  
 2 Pierce's care points and charged her for more services, she continued to fall and suffer from  
 3 serious injuries in the Memory Care Unit. In October 2014, for example, she was hospitalized and  
 4 suffered from a concussion when she fell at her apartment door after walking down the hall alone  
 5 and unsupervised.

6 8894. Although it was clear that Ms. Pierce was not receiving the services she was paying  
 7 for, Ms. Bardin feared her mother would suffer from severe physical and psychological symptoms  
 8 from the stress of transferring if she moved out of Aegis. Instead, Ms. Bardin attempted to work  
 9 with Aegis to ensure her mother received the full value of the fees she was charged. In August  
 10 2014, the General Manager refused to reduce her mother's care points because it would  
 11 "jeopardize [her] mom's care." Ms. Bardin reluctantly agreed with Aegis to place her mother on  
 12 hospice care, but then terminated this service because her mother was not terminally ill and it  
 13 resulted in Aegis providing even less supervision and care. Ms. Bardin had no choice but to hire  
 14 outside caregivers at a rate of \$25 an hour (and more on holidays), on top of the fees she was  
 15 already paying, to sit with Ms. Pierce at night when Aegis staffed the facility with only one  
 16 caregiver for all of the residents in the Memory Care Unit.

17 8995. On November 11, 2014, Aegis sent Ms. Pierce a 30-day notice to terminate her  
 18 contract, forcing her to move out of Aegis. It cited her repeated falls (ten from August 2, 2014 to  
 19 October 27, 2014), change in health condition, and refusal to pay for hospice service as cause for  
 20 the termination. It was not until January 2015 that Ms. Bardin realized that Aegis had not and  
 21 would not provide the care it promised to provide, and for which Ms. Pierce was paying  
 22 significant fees, and she moved her mother to another facility. —

### 23 Carol Morrison

24 96. Carol Morrison resided at Aegis of Issaquah in Issaquah, Washington from  
 25 approximately June 24, 2015 until approximately July 25, 2016. When Ms. Morrison became a  
 26 resident of Aegis, Aegis provided a standard contract that stated certain core services would be  
 27 provided to Ms. Morrison in exchange for a monthly base rate.

28 97. Additionally, the contract indicated that Aegis would provide Ms. Morrison:

1           with personal assistance and care on an as needed basis ... When You  
 2           applied for admission to the Community, the professional staff of Aegis  
 3           performed a comprehensive assessment of your needs and determined with  
 4           You that the appropriate services for You total 80 assessment points. Aegis  
 5           will perform reassessments in light of your changing needs to determine the  
 6           services that You may require. You will receive the services appropriate  
 7           to your individual need.

8           98.     The “Individualized Service Plan” generated by Ms. Morrison’s pre-admission  
 9           assessment, which accompanied her admission papers, indicated that every service for which she  
 10           was charged assessment points was to be provided by Aegis staff. For example, under Grooming,  
 11           the Plan stated: “Staff will provide stand-by assistance with all grooming tasks. Staff will evaluate  
 12           ongoing needs for assistance with grooming.” The responsible party is listed as “Caregiver.”

13           99.     Ms. Morrison, through her representative and Attorney-in-Fact, Stacy Van Vleck,  
 14           reasonably understood that Aegis used its resident assessment system and results generated by it to  
 15           determine necessary staffing levels for its facilities and that the staff determined to be necessary  
 16           through that system would be provided.

17           100.    Simply put, Stacy Van Vleck reasonably understood that if her mother’s care needs  
 18           increased, Aegis staff would spend more time assisting her. As a result, her assessment points  
 19           would increase, resulting in a higher care fee.

20           101.    Prior to entering Aegis of Issaquah’s memory care unit, Ms. Morrison paid Aegis a  
 21           Community Fee of \$8,000. Additionally, she paid a daily general services fee and daily fee for  
 22           care services.

23           102.    During the time Ms. Morrison was a resident at Aegis of Issaquah, Aegis billed Ms.  
 24           Morrison on a monthly basis for care services that Plaintiff reasonably believed Aegis would  
 25           deliver.

26           103.    Each quarter, or whenever Ms. Morrison’s health condition changed, Aegis  
 27           assessed Ms. Morrison and generated a new Individualized Service Plan, with points assigned for  
 28           staff time necessary to perform each care task.

          104.    During Ms. Morrison’s time at Aegis of Issaquah, Aegis eventually increased her  
assessment points and corresponding care services fees in a new Individualized Service Plan. Ms.

1 Morrison's family believed it was reasonable for Aegis to increase the points because Ms.  
2 Morrison needed more services from staff. However, they did not know, and Aegis did not  
3 disclose, that Aegis was charging Ms. Morrison for services it was not providing. Aegis did not  
4 make corresponding adjustments to and increases in the staff time devoted to Ms. Morrison's care  
5 or adjust its facility staffing levels despite the provisions in each Individualized Service Plan. With  
6 each Individualized Service Plan, Aegis continued to fail to disclose and conceal that it would not  
7 provide the services and staff time necessary to care for Ms. Morrison.

8 105. Ms. Morrison, through her representatives, reviewed and signed each  
9 Individualized Service Plan. The amount charged on each bill, which increased over time as the  
10 facility re-assessed Ms. Morrison, was based on the point system and Individualized Service Plan.

11 106. The Morrisons would not have paid the monies Aegis demanded had Aegis  
12 disclosed that they would not provide the care as determined by Ms. Morrison's assessments. At  
13 no time throughout Ms. Morrison's residency did Aegis disclose that staffing at the facility was  
14 not determined based on resident assessments but instead set to meet labor budgets and profit  
15 objectives.

16 107. Ms. Morrison did not receive the care and services she required or paid for. For  
17 example, Ms. Morrison's family members found her on multiple occasions in linens and adult  
18 diapers soiled with urine. Her teeth, hair, and nails were often left uncleaned. On numerous other  
19 occasions, Ms. Morrison's family members found her unattended on the floor. Ms. Morrison's  
20 family members voiced concerns to Aegis corporate and facility staff regarding Ms. Morrison's  
21 inadequate care throughout her admission to the Issaquah facility. Aegis listened to their concerns  
22 and attempted to placate them by vowing to address the issues, including by increasing the staff.  
23 Ms. Morrison's family believed their assurances. However, Aegis did not increase staff time  
24 provided to Ms. Morrison, and her care continued to deteriorate.

25 108. Aegis never disclosed, and Ms. Morrison and her representatives had no way of  
26 discovering, the critical fact that Aegis' point system is not supported by sufficient staffing levels,  
27 and was (and is) geared only toward increasing revenue.

28 109. Ms. Morrison did not receive care as indicated in the assessments conducted by



Aegis, and for which Plaintiff and the Class paid significant fees.

110. The quality of care Aegis provided to Ms. Morrison continued to decline until she left the facility.

### **CLASS ALLEGATIONS**

~~90~~111. The Named Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) as set forth below.

~~91.~~ **Class Definition.** ~~112.~~ This action is brought ~~on behalf of~~ by the ~~named~~ Named Plaintiffs on behalf of all the members of the following two State Classes:

**California Class, represented by Plaintiffs Troy and** ~~all similarly situated~~ **Pierce:**

All persons who resided or reside at one of the California assisted living facilities owned and/or operated by Aegis under the Aegis name from April 12, 2012 through the present (the “California Class Period”), and who contracted with Aegis for services for which Aegis was paid money.

~~92~~  
**Washington Class, represented by Plaintiff Morrison:**

All persons who resided or reside at one of the Washington assisted living facilities owned and/or operated by Aegis under the Aegis name from March 8, 2014 through the present (the “Washington Class Period”), and who contracted with Aegis for services for which Aegis was paid money.

~~113.~~ Excluded from the above-referenced ~~class~~ Classes are the officers, directors, and employees of Defendant, and any of Defendant’s shareholders or other persons who hold a financial interest in Defendant. Also excluded is any judge assigned to hear this case (or any spouse or family member of any assigned judge), or any juror selected to hear this case.

~~93~~114. This action is brought as a class action and may properly be so maintained pursuant to Federal Rule of Civil Procedure 23 and applicable case law. In addition to injunctive relief, this action seeks class wide damages based on Defendant’s misrepresentations and misleading statements and material omissions alleged herein. This action does not seek recovery for personal injuries, emotional distress or bodily harm that may have been caused by Defendant’s conduct alleged herein.

~~94~~115. **Ascertainability.** Members of the ~~class~~ Classes are identifiable and ascertainable. Defendant retains admissions contracts, Resident Services Plans, and billing statements for all



persons who currently reside or resided at Aegis facilities during the class ~~period~~periods. Thus, Defendants own records will reliably identify class members.

95116. Impracticability of Joinder (Numerosity of the ~~Class~~Classes). Members of the ~~class~~Classes are so numerous that their individual joinder herein is impracticable. The precise number of members of the ~~class~~Classes and their addresses are presently unknown to Plaintiffs. Defendant currently owns and/or operates approximately 14 assisted living facilities in California and approximately 17 assisted living facilities in Washington. According to Defendant, its records indicate that approximately ~~3,693~~10,000 individuals lived in Aegis facilities ~~in California from the start~~of the Class Period through July 14, 2016 which roughly 4,500 are residents of Aegis' Washington facilities. The precise number of persons in the class and their identities and addresses may be ascertained from Defendant's records.

96117. Questions of Fact and Law Common to the ~~Class~~Classes. Numerous important common questions of law and fact exist as to all members of the ~~class~~Classes and predominate over the questions affecting only individual members of the ~~class~~Classes. These common legal and factual questions include without limitation:

(a) whether Defendant has violated and continues to violate the Consumer Legal Remedies Act, California Civil Code § 1770 *et seq.* by falsely representing that Aegis uses its resident assessment system and the care points generated by it to determine and provide staffing at its California assisted living facilities, when, in fact, Defendant does not and has no intention to do so;

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

(c) whether Defendant's misrepresentations, misleading statements and

1 omissions regarding the staffing of its facilities as alleged herein were and are material to the  
2 reasonable consumer;

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

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

8 (f) whether by making the misrepresentations, misleading statements, and  
9 material omissions alleged in this Complaint Defendant violated and continues to violate  
10 California Business & Professions Code §§ 17200, *et seq.* ("UCL");

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

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

15 (i) whether the Plaintiffs, the class and the consuming public have a reasonable  
16 expectation that Defendant will use its resident assessment system to determine and provide  
17 staffing at its facilities;

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

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

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

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

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

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

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

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

9 ~~97.~~ (r) whether Defendant failed to disclose and concealed the fact that  
 10 Aegis does not use its resident assessment system and the care points generated by it to determine  
 11 and provide staffing at its Washington assisted living facilities;

12 (s) whether Defendant failed to disclose and concealed the fact that Aegis's  
 13 standard operating procedure and corporate policy of providing pre-determined staffing at its  
 14 facilities, without regard to assessed care points, precludes it from providing its residents all of  
 15 the care they have been assessed as requiring, and places all residents at an inherent and  
 16 substantial risk that they will not receive the services they have paid for on any given day;

17 (t) whether Defendant has violated and continues to violate the Washington  
 18 Consumer Protection Act, RCW § 19.86.020, et seq.;

19 (u) whether Defendant has committed financial exploitation of vulnerable  
 20 adults under the RCW §§ 74.34.020 and 74.34.200 by the illegal or improper use, control over, or  
 21 withholding of the property, income, resources, or trust funds of the vulnerable adult by any  
 22 person or entity for any person's or entity's profit or advantage other than for the vulnerable  
 23 adult's profit or advantage and/or the use of deception to obtain or use the property, income,  
 24 resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the  
 25 vulnerable adult.

26 118. **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the  
 27 Class. As alleged above, Defendant misrepresented to Plaintiffs and the class members and/or  
 28 their family members that Defendant uses its resident assessment system to determine the care

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

18 98119. Adequacy. The Named Plaintiffs are adequate representatives of the class on  
 19 whose behalf this action is prosecuted. Their interests do not conflict with the interests of the  
 20 class. Also, they have retained competent counsel with extensive experience in class action and  
 21 senior care litigation and who will prosecute this action vigorously.

22 99120. Predominance. With respect to Plaintiffs' claims under the CLRA, the UCL ~~and~~  
 23 ~~the~~, California's Elder Abuse Act, the Washington Consumer Protection Act, and Washington's  
 24 Financial Exploitation of Vulnerable Adults statute, class certification is appropriate because  
 25 significant questions of law or fact common to class members, including but not limited to those  
 26 set forth above, predominate over any questions affecting only individual members of the  
 27 proposed class.

28 ~~100121.~~ Superiority. A class action is superior to other methods for the fair and

1 efficient adjudication of the controversies raised in this Complaint because:

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

4 (b) relatively little individual litigation has been commenced over the  
5 controversies alleged in this Complaint and individual class members are unlikely to have an  
6 interest in separately prosecuting and controlling individual actions;

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

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

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

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

17 ~~+01~~122. Without a class action, Defendant will likely retain the benefit of its  
18 wrongdoing and will continue in its illegal course of conduct which will result in further damages  
19 to Plaintiffs and the proposed class.

## 20 **FIRST CLAIM**

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

22 ~~+02~~123. Plaintiffs refer to, and incorporate herein by reference, all preceding  
23 paragraphs.

24 ~~+03~~124. Plaintiffs and the class members are "senior citizens" and/or "disabled  
25 persons" as defined in California Civil Code § 1761(f) and (g). They are also "consumers" as  
26 defined in California Civil Code § 1761(d).

27 ~~+04~~125. Defendant is a "person" as defined under California Civil Code § 1761(c).  
28 The assisted living and memory care services provided by Defendant constitute "services" under

1 California Civil Code § 1761(b). The agreement by Plaintiffs and the putative class members to  
2 provide new resident services fees and monthly payments to Defendant in exchange for assisted  
3 living and memory care services constitute a “transaction” under California Civil Code § 1761(e).

4 ~~+05~~126. In its uniform resident contracts presented to prospective residents and their  
5 family members, Defendant represented and continues to represent that Aegis will provide care  
6 services (through its facility staff) that are sufficient to meet the needs of each resident, as  
7 determined by Aegis’ resident assessment system and confirmed in the care points assigned to  
8 each resident. That same representation is made in Aegis’s re-assessments of residents and other  
9 standardized corporate materials. As alleged herein, these uniform corporate representations are  
10 false and misleading, and are likely to deceive the reasonable consumer.

11 ~~+06~~127. Contrary to Aegis’s uniform misrepresentations and misleading statements,  
12 Aegis does not use its resident assessment system or consider resident assessment points in  
13 setting the levels of facility staff necessary to meet promised care levels, but instead uses  
14 predetermined labor budgets designed to meet corporate profit goals. Aegis facilities use a  
15 predetermined staffing schedule that rarely, if ever, changes, despite changes in the assessed  
16 personal care levels of the current residents. Aegis does not disclose and actively conceals this  
17 corporate policy and practice from current and prospective residents and their family members.

18 ~~+07~~128. The named Plaintiffs, through their legal representatives and power of  
19 attorneys, and the putative class members considered material Aegis’ promise to provide care  
20 services (through its facility staff) that would be sufficient to meet the needs of each resident, as  
21 determined by Aegis’ resident assessment system. If the named Plaintiffs and their  
22 representatives had known the true facts, they would not have agreed to place them in an Aegis  
23 facility. If the putative class members had known the true facts, they would in all reasonable  
24 probability not have agreed to enter Aegis.

25 ~~+08~~129. The facts that Aegis misrepresents, fails to disclose and actively conceals  
26 are material and are likely to deceive the reasonable consumer. Consumers choose an assisted  
27 living facility because they need care and/or wish to age in place as their care needs change.  
28 Residents and their family members consider the overall staffing levels provided by the assisted

1 living facility they select to be of great importance. The use of a system such as the one Aegis  
 2 represents it uses, which ensures adequate staffing at the facilities by basing staffing decisions on  
 3 resident assessments and personal care needs, is also, therefore, of great importance to residents  
 4 and their family members and is a material factor in their decision to choose Aegis and to pay  
 5 Aegis the amounts of money that it charges for occupancy and services.

6 ~~109~~130. Residents and their family members would consider material Defendant's  
 7 uniform corporate policy and practice of not using its resident assessment system and the staffing  
 8 numbers generated by it to set and provide staffing its facilities. They would consider material  
 9 Defendant's policy and practice of maintaining predetermined staffing schedules regardless of  
 10 increases in the assessed needs and corresponding care points assigned to current residents.  
 11 Plaintiffs and the putative class members could not reasonably have been expected to learn or  
 12 discover these non-disclosed facts, and in fact, Aegis affirmatively concealed them.

13 ~~110~~131. Aegis has violated and continues to violate the Consumers Legal Remedies  
 14 Act, California Civil Code §§ 1750 *et seq.* ("CLRA") in at least the following respects: (a) in  
 15 violation of section 1770(a)(5), Aegis has misrepresented, failed to disclose and concealed the  
 16 true characteristics and/or quantities of services provided at its California facilities; (b) in  
 17 violation of section 1770(a)(7), Defendant has misrepresented, failed to disclose and concealed  
 18 the true standard, quality and/or grade of services provided at its California facilities; (c) in  
 19 violation of section 1770(a)(9), Defendant has falsely advertised that it will provide staffing based  
 20 on resident assessments and the care points generated by those assessments, knowing that it does  
 21 not intend to provide the services as advertised; and (d) in violation of section 1770(a)(14),  
 22 Defendant has represented that the agreement signed by residents and/or their representatives, and  
 23 under which they pay their monthly rate, confers on residents the right to reside in a facility that  
 24 provides staffing based on the amount of time its own resident assessment system has determined  
 25 is necessary to provide the care services for which residents are charged, when in fact, Defendant  
 26 does not use its resident assessment system and the care points generated by it when determining  
 27 and providing facility staffing.

28 ~~111~~132. These misrepresentations, misleading statements, acts, practices, and



1 omissions by Defendant are and were intended to induce and lure elderly and dependent adult  
2 residents and their family members into agreeing to be admitted to Defendant's facilities and to  
3 pay new resident services fees and monthly rates based on Defendant's resident assessment  
4 system and assessed care points.

5 ~~++2~~133. Defendant made the written misrepresentations and misleading statements  
6 alleged herein through various uniform means of communication, including without limitation,  
7 the admission agreement, subsequent agreements based on re-assessments of the resident, resident  
8 care plans, standardized corporate marketing and promotional materials, and other written  
9 corporate materials disseminated to the public in connection with Defendant's services. These  
10 representations were made directly to the named Plaintiffs, putative class members and their  
11 family members and/or representatives by Aegis in its standard resident admission contract and  
12 reinforced by the uniform means of communication listed above.

13 ~~++3~~134. In addition to its affirmative misrepresentations, Defendant failed to  
14 disclose and concealed from Plaintiffs, the putative class members, and their family members that  
15 it does not use its resident assessment system to determine or provide facility staffing at levels  
16 sufficient to meet the assessed care needs of facility residents, but instead maintains  
17 predetermined levels of staffing, regardless of changes in the aggregate assessed care points of the  
18 facility residents and regardless of whether the residents' assessed care needs are being met.

19 ~~++4~~135. Aegis had exclusive and superior knowledge of material facts not known to  
20 the named Plaintiffs, class members or the general public at the time of the subject transactions  
21 and actively concealed these material facts.

22 ~~++5~~136. Aegis had exclusive and superior knowledge of its corporate policy and  
23 practice of ignoring its resident assessment system and the care points generated by it in setting  
24 staffing levels. Further, Plaintiffs allege on information and belief that Defendant's officers,  
25 directors and managers were repeatedly advised by their own staff that Aegis facilities were not  
26 adequately staffed to meet resident needs. Aegis also knew that its failure to provide staffing  
27 based on the amount of time that Aegis had itself determined was necessary to provide the care  
28 and services for which it charged its residents posed a substantial health and safety risk to the

1 named Plaintiffs and class members. Aegis intentionally concealed, suppressed and/or failed to  
 2 disclose the true facts with the intent to defraud the named Plaintiffs and putative class members.  
 3 The named Plaintiffs and the putative class members did not know these material undisclosed  
 4 facts and could not reasonably have been expected to discover them.

5 ~~116~~137. As a direct and proximate result of the Defendant's conduct, Plaintiffs and  
 6 the putative class members suffered actual damages. Specifically, Plaintiffs and the class  
 7 members paid money to Defendant, in the form of the new resident fee (called a "Community  
 8 Fee"), their initial monthly fees, and additional monthly fees, paid in exchange for residency and  
 9 services in a facility that was falsely represented to be staffed based on Aegis's residential  
 10 assessment and care point system. Plaintiffs and the class members paid a premium for the  
 11 misrepresented services, and would not have entered Aegis's facilities and made payments to  
 12 Aegis had they known the truth about Aegis's policies and practices for staffing its assisted living  
 13 facilities. Members of the class continue to pay monthly fees based on their assessed care points.

14 ~~117~~138. As a further direct and proximate result of Defendant's failure to staff its  
 15 facilities as represented, *i.e.* based on residents' needs as determined through its comprehensive  
 16 assessments, Plaintiffs and the class members have been forced to reside in facilities that have  
 17 less staff than necessary to satisfy their care needs, as determined by Aegis itself. As a result of  
 18 Aegis's policy of staffing its facilities according to pre-determined labor budgets which do not  
 19 permit staffing increases, regardless of increases in the overall care needs and assessed points of  
 20 current residents, it is not possible for the needs of all residents to be met, and there is a  
 21 substantial likelihood that each resident, at any time, will not receive the care Aegis has  
 22 determined necessary and promised to provide. Plaintiffs and the class members also face the  
 23 substantial risk that they will suffer physical injuries from such lack of care and / or from other  
 24 residents who are insufficiently supervised or cared for.

25 ~~118~~139. Plaintiffs sent Defendant a notice to cure under California Civil Code §  
 26 1782(a), which was received by Defendant on April 24, 2016. More than 30 days has passed  
 27 since Defendant's receipt, and Defendant has not replied to the notice nor has it corrected or  
 28 remedied the violations alleged in the notice and herein.

1 ~~119~~140. Accordingly, Plaintiffs and the class members are entitled to actual damages  
2 and restitution in an amount to be proven at trial.

3 ~~120~~141. Plaintiffs and all class members are also entitled to not less than \$1,000 in  
4 statutory damages pursuant to California Civil Code § 1780(a). Further, Plaintiffs and other class  
5 members are also each entitled to statutory damages of up to \$5,000 pursuant to California Civil  
6 Code § 1780(b). Plaintiffs and many other class members are seniors and/or disabled persons as  
7 defined by California Civil Code § 1761(f) and (g) and have sustained substantial economic harm  
8 as a result of Defendant's conduct. Aegis knew that its conduct negatively impacted seniors and  
9 disabled persons.

10 ~~121~~142. Plaintiffs additionally seek treble damages under California Civil Code §  
11 3345, punitive damages, reasonable attorneys' fees and costs, and all other relief the Court deems  
12 just and proper. Excluded from Plaintiffs' request are damages related to any personal injuries,  
13 emotional distress or wrongful death suffered by any member of the class.

14 ~~122~~143. Aegis's conduct presents a continuing threat of substantial harm to the  
15 public in that, among other things, Aegis continues to misrepresent how it uses its resident  
16 assessment system and how it determines and provides staffing at its facilities. Despite the  
17 knowledge that Aegis does not staff its facilities based on the resident assessments and assessed  
18 care points, Defendant continues to induce elderly and vulnerable citizens to enter its facilities.  
19 Additionally, the risk of harm to the class members from Defendant's conduct is substantial.  
20 Accordingly, Plaintiffs seek an injunction that requires that Defendant immediately cease the  
21 CLRA violations alleged herein, and to enjoin it from continuing to engage in any such acts or  
22 practices in the future. Specifically, Plaintiffs seek an injunction requiring Defendant to disclose  
23 to Plaintiffs, the putative class members and the consuming public that Aegis does not staff its  
24 facilities based on the results of resident assessments but instead maintains staffing levels based  
25 on pre-determined labor budgets, regardless of changes in the overall care needs and assessed  
26 care points of current residents.

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

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

1 ~~+23~~144. Plaintiffs refer to, and incorporate herein by this reference, all preceding  
2 paragraphs.

3 ~~+24~~145. Defendant has engaged in unlawful business acts and practices. Such acts  
4 and practices constitute unfair business practices in violation of California Business and  
5 Professions Code section 17200 *et seq.*

6 ~~+25~~146. In particular, Defendant has engaged in unlawful business acts and practices  
7 by violating numerous laws, statutes and regulations including, without limitation:

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

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

16 ~~+26~~147. By virtue of the conduct alleged herein, Defendant has also engaged in  
17 fraudulent business practices. Members of the general public (including without limitation  
18 persons admitted to and/or residing in Aegis's California assisted living and memory care  
19 facilities during the Class Period, and their family members and/or representatives) have been and  
20 are likely to be deceived by Defendant's misrepresentations and failures to disclose as alleged  
21 herein.

22 ~~+27~~148. The acts and practices of Defendant also constitute unfair business acts and  
23 practices within the meaning of California Business & Professions Code section 17200, *et seq.*, in  
24 that the conduct alleged herein is immoral, unscrupulous and contrary to public policy, and the  
25 detriment and gravity of that conduct outweighs any benefits attributable to such conduct.

26 ~~+28~~149. Defendant's misrepresentations, misleading statements, acts, practices, and  
27 omissions were intended to induce and lure elderly and dependent adult residents and their family  
28 members into agreeing to be admitted to Defendant's facilities and to pay a new resident services

1 fee and monthly rates to live in an assisted living facility that determines and provides staffing  
 2 according to the staff time and type of staff Defendant has determined is necessary to provide the  
 3 services identified in its resident assessments.

4 ~~129~~150. Defendant made these misrepresentations and misleading statements  
 5 through various uniform means of written corporate communications, including without  
 6 limitation, the admission agreement, subsequent agreements based on re-assessments of the  
 7 resident, resident care plan, marketing and promotional materials, Defendant's corporate website  
 8 and other materials disseminated to the public from its corporate headquarters in connection with  
 9 Defendant's services. These representations were made directly to the named Plaintiffs, class  
 10 members and their family members and/or representatives by Defendant in its standard resident  
 11 contracts and reinforced by the uniform means of communication listed above.

12 ~~130~~151. In addition to its affirmative misrepresentations that Aegis uses its resident  
 13 assessment system to determine and provide facility staffing in accordance with residents'  
 14 assessed needs, Defendant concealed from Plaintiffs, the putative class members, and their family  
 15 members that Defendant does not use its resident assessment system to set or provide facility  
 16 staffing but instead maintains predetermined facility staffing levels regardless of changes in the  
 17 overall assessed care points of current residents.

18 ~~131~~152. Defendant had exclusive and superior knowledge of material facts not  
 19 known to the named Plaintiffs, putative class members or the general public at the time of the  
 20 subject transactions and actively concealed these material facts.

21 ~~132~~153. Aegis had exclusive and superior knowledge of its corporate policy and  
 22 procedure of ignoring the assessed care points and corresponding amounts of staff service time  
 23 generated by its resident assessment system in setting staffing levels. Further, Plaintiffs allege on  
 24 information and belief that Defendant's officers, directors and managers were repeatedly advised  
 25 by their own staff that Aegis facilities were not adequately staffed to meet resident needs. Aegis  
 26 also knew that its failure to provide staffing based on the amount of time that Aegis had itself  
 27 determined was necessary to provide the care and services for which residents were charged  
 28 posed a substantial health and safety risk to the named Plaintiffs and class members. Aegis

intentionally concealed, suppressed and/or failed to disclose the true facts with the intent to defraud the named Plaintiffs and putative class members. The named Plaintiffs and the putative class members did not know these material undisclosed facts and could not reasonably have been expected to discover them.

~~133~~154. As a direct and proximate result of Defendant's conduct, Plaintiffs, the class members, and members of the general public (including without limitation persons admitted to and/or residing in the facilities, and their family members and/or representatives) have been harmed and continue to be harmed. Among other things, they paid money to Defendant to enter the facility and for services that were substandard to those promised by Defendant. Accordingly, Plaintiffs and the putative class members are entitled to restitution.

~~134~~155. Additionally, Plaintiffs seek an injunction that requires that Defendant immediately cease acts of unlawful, unfair and fraudulent business acts or practices as alleged herein, and to enjoin Defendant from continuing to engage in any such acts or practices in the future. Plaintiffs and the putative class members also seek reasonable attorneys' fees, costs and expenses, and all other remedies permitted by law.

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

~~135~~156. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs.

~~136~~157. Plaintiffs and the putative class members are and at all times were "elders" as defined under California W&I Code § 15610.27 and/or "dependent adults" as defined under California W&I Code § 15610.23.

~~137~~158. Defendant entered into a standard agreement with the named Plaintiffs, by and through their power of attorneys, the putative class members and/or their personal representatives. In these agreements, Defendant represented that Aegis determines and provides staffing at its assisted living facilities sufficient to meet the needs of its residents as determined by Aegis' assessments and confirmed in care points used to calculate resident charges. Defendant made this promise in exchange for new resident services fees and monthly payments that it received from the named Plaintiffs and the putative class members. Yet Defendant did not and

1 had no intention of complying with its obligations under the contract. Defendant did not intend to  
 2 and does not use its resident assessment system to set or provide staffing at its facilities. Rather,  
 3 it has a policy and practice of providing pre-determined facility staffing that does not change with  
 4 increases in resident care needs. This policy and practice precludes Aegis from providing facility  
 5 residents with all of the care Aegis has promised them and for which they are paying Aegis.

6 ~~138~~159. Defendant knew or should have known that such conduct would likely be  
 7 harmful to Plaintiffs and the putative class members.

8 ~~139~~160. Defendant knew or should have known that Plaintiffs and the putative class  
 9 members had a right to the funds used to pay new resident community fees and monthly fees to  
 10 Defendant.

11 ~~140~~161. As such, Defendant took, secreted, appropriated, obtained and retained the  
 12 funds of Plaintiffs and the putative class members for a wrongful use and/or with the intent to  
 13 defraud.

14 ~~141~~162. Defendant's conduct was despicable, fraudulent, reckless, and carried out  
 15 with a willful and conscious disregard for the rights and safety of Plaintiffs and the members of  
 16 the putative class.

17 ~~142~~163. Accordingly, Plaintiffs and the putative class seek an injunction requiring  
 18 Defendant to disclose to Plaintiffs, the putative class members and the consuming public that  
 19 Aegis does not use its resident assessment or assessed care points to set or provide staffing at its  
 20 facilities, but instead maintains pre-determined staffing levels, based on fixed labor budgets,  
 21 which do not change regardless of increases in the overall assessed care needs of current  
 22 residents. Plaintiffs and the class also seek an injunction prohibiting Defendant from basing its  
 23 care fees on care points that correspond to the amount of staff time Defendant represents is  
 24 necessary to provide the required services, when Defendant does not, as a matter of corporate  
 25 policy and procedure, use those numbers in setting staffing levels at its facilities.

26 ~~143~~164. Plaintiffs and the putative class members also seek compensatory damages,  
 27 reasonable attorneys' fees, costs and expenses, punitive damages, treble damages pursuant to  
 28 California Civil Code § 3345, and all other remedies permitted by law. Plaintiffs do not seek



certification of any claims for damages related to any personal injuries, emotional distress or wrongful death suffered by any member of the class.

**FOURTH CLAIM FOR VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT (Revised Code of Washington § 19.86.20, *et seq.*)**

165. Plaintiff refers to, and incorporates herein by reference, all preceding paragraphs.

166. Plaintiff and the Washington Class are and at all times were “vulnerable adults” as defined under the RCW § 74.34.020(22). They are also “persons” as defined in the RCW § 19.86.010(1).

167. Defendant is a “person” as defined in the RCW § 19.86.010(1). The new resident service fees and monthly payments paid by Plaintiff and the Class to Defendant constitute “assets” under the RCW § 19.86.010(3).

168. Defendant has engaged in an unfair and deceptive practice by its failures to disclose to Plaintiff Morrison and the Washington Class that the facility staffing and care services provided through facility staff are not determined by the resident assessments conducted by facility personnel and corresponding care points generated.

169. Aegis conceals and fails to disclose that as a matter of corporate policy, Aegis sets facility staffing per shift based on pre-determined labor budgets and does not alter the number of staff or staffing hours per facility or shift regardless of changes in occupancy or resident needs as determined by resident assessments.

170. Aegis’s failure to staff based on resident assessments results in Aegis’s facilities being staffed at levels far below those required to meet the resident needs that Aegis itself has identified.

171. As such, Aegis residents have not received the amount of care that Aegis deemed necessary based on the resident assessments as indicated in their admission contracts and/or are placed at a substantial risk that they will not receive the care Aegis deemed necessary based on the resident assessments in the future.

172. Further, Defendant’s officers, directors and managers were repeatedly advised by their own staff that Aegis facilities were not adequately staffed to meet resident needs.

1        173. Moreover, Defendant’s conduct constituted financial exploitation of its vulnerable  
2 adult residents in violation of the RCW §§ 74.34.020 and 74.34.200 and therefore further  
3 constituted an unfair trade practice. As alleged herein, Defendant illegally and/or improperly  
4 used, controlled, and/or withheld the property, income, resources, or trust funds of the vulnerable  
5 adult for its own profit or advantage through the use of deception and continues to do so.  
6 Defendant carried out this unfair, deceptive and unlawful practice with a willful and conscious  
7 disregard for the rights and safety of Plaintiff, the Class, and the public interest.

8        174. The assisted living and memory care services provided by Defendant constitute  
9 “trade” and “commerce” under the RCW § 19.86.010(2). As alleged herein, Aegis owns and  
10 operates all of the real estate and buildings, and holds the licenses for approximately seventeen  
11 (17) assisted living facilities in Washington under the Aegis name. The agreement by Plaintiff  
12 and the Class to provide new resident services fees and monthly payments to Defendant in  
13 exchange for assisted living and memory care services constitute a “trade” and “commerce” under  
14 the RCW § 19.86.010(2). Therefore, Defendant’s unfair and deceptive practice occurred during  
15 its conduct of trade and commerce.

16        175. Defendant’s unfair and deceptive business practice are part of an ongoing  
17 generalized course of conduct that had and has the capacity to injure Plaintiff and the Class,  
18 thereby having an impact on the public interest.

19        176. The Washington legislature found the potential of injury to the public to be so  
20 pronounced that it codified its legislative intent in establishing a statutory right for vulnerable  
21 adults subjected by financial exploitation and other forms of abuse to bring a cause of action for  
22 damages on account of their injuries including loss of property. (RCW § 74.34.200.)

23        177. Furthermore, Aegis’s conduct also presents a continuing threat of substantial injury  
24 to the public in that, among other things, Aegis continues to conceal the truth it does not staff its  
25 facilities based on the resident assessments and assessed care points. Defendant thereby continues  
26 to induce elderly and vulnerable citizens to enter its facilities.

27        178. As a direct and proximate result of Defendant’s conduct, Plaintiff and the Class  
28 suffered injury to their property including without limitation financial loss. Specifically, Plaintiff

1 and the Class paid money to Defendant, in the form of the Community Fee, their monthly fees,  
2 and additional monthly fees, paid in exchange for residency and services in a facility that they  
3 were reasonably deceived into believing was to be staffed based on Aegis's residential assessment  
4 and care point system.

5 179. Plaintiff and the Class paid a premium for these purported services, which they did  
6 not receive. Class members continue to pay monthly fees based on their assessed care points,  
7 without receiving commensurate services.

8 180. But for Defendant's material failures to disclose and concealment, Plaintiff and the  
9 Class would not have entered Aegis's facilities and made payments to Aegis. Plaintiff and the  
10 Class would not have entered Aegis' facilities if they had known that Defendant did not and does  
11 not use its resident assessment system and the assessed care points to staff at levels sufficient to  
12 provide the services required to meet aggregate resident needs, as determined by those  
13 assessments.

14 181. As a direct and proximate result of Defendant's failure to staff its facilities based on  
15 residents' needs as determined through its comprehensive assessments, Plaintiff and the Class  
16 have been forced to reside in facilities that have less staff than necessary to satisfy their care  
17 needs, as determined by Aegis itself.

18 182. As a result of Aegis's policy of staffing its facilities according to pre-determined  
19 labor budgets which do not permit staffing increases, regardless of increases in the overall care  
20 needs and assessed points of current residents, it is not possible for the needs of all residents to be  
21 met, and there is a substantial likelihood that each resident, at any time, will not receive the care  
22 Aegis has determined necessary to provide. Plaintiff and the Class members also face the  
23 substantial risk that they will suffer physical injuries from such lack of care and/or from other  
24 residents who are insufficiently supervised or cared for.

25 183. Aegis violated and continues to violate the Consumer Protection Act, RCW §§  
26 19.86.020 et seq., in at least the following respects: (a) Aegis failed to disclose and concealed the  
27 true characteristics and/or quantities of services provided at its Washington facilities; (b) Aegis  
28 failed to disclose and concealed that it will not, and does not, intend to use its resident assessment

1 system and the care points generated by it when determining and providing facility staffing; and  
 2 (c) Aegis failed to disclose and concealed that the monthly rate, including the resident assessment  
 3 charged to residents is not commensurate with the budgeted staffing provided by Aegis.

4 184. Accordingly, Plaintiff and the Class are entitled to compensatory damages and  
 5 restitution in an amount to be proven at trial.

6 185. Plaintiff and the Class are also entitled to treble damages under RCW §19.86.090,  
 7 reasonable attorneys' fees and costs, and all other relief the Court deems just and proper. Plaintiff  
 8 and many other Class members are seniors and are all vulnerable adults as defined by the RCW §  
 9 74.34.020(22) and have sustained substantial economic harm as a result of Defendant's conduct.  
 10 Aegis knew that its conduct negatively impacted seniors and other vulnerable adults.

11 186. Additionally, the risk of harm to the Class from Defendant's conduct is substantial.  
 12 Accordingly, Plaintiff seeks an injunction that requires Defendant to immediately cease the  
 13 Consumer Protection Act violations alleged herein, and to enjoin it from continuing to engage in  
 14 any such acts or practices in the future. Specifically, Plaintiff seeks an injunction requiring  
 15 Defendant to disclose to Plaintiff, the Class and the consuming public that Aegis does not staff its  
 16 facilities based on the results of resident assessments but instead maintains staffing levels based  
 17 on pre-determined labor budgets, regardless of changes in the overall care needs and assessed  
 18 care points of current residents.

19 187. Plaintiff and the Class also seek an injunction prohibiting Defendant from basing  
 20 its care fees on care points that correspond to the amount of staff time Defendant purports is  
 21 necessary to provide the required services, when Defendant does not, as a matter of corporate  
 22 policy and procedure, use those numbers in setting staffing levels at its facilities.

### 23 **FIFTH CLAIM FOR FINANCIAL EXPLOITATION OF VULNERABLE ADULTS**

#### 24 **(Revised Code of Washington §§ 74.34.020 and 74.34.200)**

25 188. Plaintiff refers to, and incorporates herein by reference, all preceding paragraphs.

26 189. Plaintiff and the Class are and at all times were "vulnerable adults" as defined  
 27 under the RCW § 74.34.020(22).

28 190. Defendant entered into a standard agreement with Plaintiff and the Class. In these

1 agreements, Defendant improperly and deceptively failed to disclose and concealed the material  
2 fact that Aegis does not determine and provide staffing at its assisted living facilities sufficient to  
3 meet the needs of its residents as determined by Aegis's assessments and confirmed in care points  
4 used to calculate resident charges.

5 191. These improper and deceptive failures to disclose by Defendant are and were  
6 intended to induce Plaintiff and the Class into agreeing to be admitted to Defendant's facilities  
7 and to pay new resident services fees and monthly rates based on Defendant's resident assessment  
8 system and assessed care points.

9 192. In fact, Defendant did not and had no intention of complying with its obligations  
10 under the contract. Defendant did not intend to and does not use its resident assessment system to  
11 set or provide staffing at its facilities. Rather, it has a policy and practice of providing pre-  
12 determined facility staffing that does not change with increases in resident care needs. This policy  
13 and practice precludes Aegis from providing facility residents with all of the care Aegis deemed  
14 necessary based on the resident assessments and for which the residents are paying Aegis.

15 193. Defendant never disclosed, and Plaintiff and the Class had no way of discovering,  
16 the critical fact that Aegis's point system is not supported by sufficient staffing levels, and was  
17 (and is) geared only toward increasing revenue. Plaintiff and the Class did not receive the care  
18 Aegis deemed necessary based on the resident assessments and noted in each contract and  
19 resident service plan, for which Plaintiff and the Class paid significant fees.

20 194. Defendant knew or should have known that such conduct would likely be harmful  
21 to Plaintiff and the Class.

22 195. Defendant knew or should have known that Plaintiff and the Class had a right to the  
23 funds used to pay new resident Community Fees and monthly fees to Defendant.

24 196. As such, Defendant illegally and/or improperly used, controlled, and/or withheld  
25 the property, income, resources, or trust funds of vulnerable adults for its own profit or advantage  
26 and continues to do so.

27 197. As such, Defendant obtained and/or used the property, income, resources, or trust  
28 funds of the vulnerable adults for its own benefit through the use of deception and continues to do

1 so.

2 198. Defendant's conduct was illegal, improper, deceptive, reckless, and carried out with  
3 a willful and conscious disregard for the rights and safety of Plaintiff and the Class, and the  
4 public interest.

5 199. Defendant's conduct constituted financial exploitation of its vulnerable adult  
6 residents. Accordingly, Plaintiff and the Class seek actual damages, reasonable attorneys' fees,  
7 costs and expenses, treble damages pursuant to RCW § 19.86.090, and all other remedies  
8 permitted by law.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment as follows:

- 11 1. For a Court order certifying that the action may be maintained as a class action;
- 12 2. For statutory damages;
- 13 3. For actual and compensatory damages according to proof, excepting any damages  
14 for personal injury, emotional distress and/or wrongful death suffered by the named  
15 Plaintiff or any class member;
- 16 4. For restitution and any other monetary relief permitted by law;
- 17 5. For reasonable attorneys' fees, costs and expenses;
- 18 6. For treble damages pursuant to California Civil Code section 3345 and RCW §  
19 19.86.090;
- 20 7. For punitive damages;
- 21 8. For pre-judgment and post-judgment interest, according to law;
- 22 9. For an order requiring that Defendant immediately cease acts that constitute  
23 unlawful, unfair and fraudulent business practices, false advertising and violations  
24 of the Consumer Legal Remedies Act, Business and Professions Code § 17200 *et*  
25 *seq.*, and the California's Elder Financial Abuse statute, the Washington Consumer  
26 Protection Act, and Washington's Vulnerable Adult Abuse statute, as alleged  
27 herein, and to enjoin Defendant from continuing to engage in any such acts or  
28 practices in the future;

10. Plaintiffs and the ~~class~~Classes further seek an injunction requiring Defendant to disclose to ~~the~~ putative class members and the consuming public that Aegis does not use its resident assessment or care points generated by it to set or provide staffing at its facilities; and
11. For such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs demand a jury trial on all issues so triable.

DATED: August 24, 2016, 2021 /s/ Kathryn A.

Stebner

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