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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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16 as individual and as successor-in-interest
17 to Randy Lee Kruger, deceased

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF HUMBOLDT

15 THERESA KRUGER, as individual and as
16 successor-in-interest to RANDY KRUGER,
17 deceased,

18 Plaintiff,

19 vs.

20 EUREKA REHABILITATION & WELLNESS
21 CENTER, LP, EUREKA WELLNESS GP,
22 LLC, ROCKPORT ADMINISTRATIVE
23 SERVICES, LLC DBA ROCKPORT
24 HEALTHCARE SERVICES, BRIUS
25 MANAGEMENT CO., INC., BRIUS, LLC,
26 EUREKA-LET, LP, EUREKA-LET GP, LLC,
27 SHLOMO RECHNITZ, and DOES 1 through
28 100, inclusive,

Defendants

Case No.: DR 170144

COMPLAINT FOR DEPENDENT ADULT
ABUSE – NEGLECT (WELFARE AND
INSTITUTIONS CODE SECTION 15610.57)
AND WRONGFUL DEATH

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COMPLAINT FOR DEPENDENT ADULT ABUSE – NEGLECT
(WELFARE AND INSTITUTIONS CODE SECTION 15610.57) AND
WRONGFUL DEATH

GENERAL ALLEGATIONS

1
2 1. Plaintiff Theresa Kruger is a resident of Humboldt County, California. In
3 making the claims herein, plaintiff brings this action on behalf of herself and the decedent,
4 Randy Lee Kruger, who died on November 9, 2016. Pursuant to Code of Civil Procedure
5 §377.60, et seq., plaintiff acts as the personal representative of her now deceased husband.
6 Plaintiff has complied with Code of Civil Procedure sections 364 and 377.32. In addition,
7 plaintiff is informed and believes that she has standing under Welfare and Institutions Code
8 section 15657.3(d) to commence and maintain this action as decedent's lawful heir and has
9 standing as an individual to bring this said cause of action for the wrongful death of her
10 husband.

11 2. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 mentioned herein defendant EUREKA REHABILITATION & WELLNESS CENTER, LP
13 (hereinafter referred to as "Eureka"), was and is a limited partnership formed and existing under
14 the laws of the State of California. Eureka is skilled nursing facility, licensed to operate 99 beds
15 by the California Department of Public Health ("CDPH").

16 3. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein defendant EUREKA WELLNESS GP, LLC was and is a limited partnership
18 formed and existing under the laws of the State of California, formed for the purpose of
19 protecting the revenue generated at Eureka.

20 4. Plaintiff is further informed and believes, and based thereon alleges, that at all
21 times mentioned herein defendant ROCKPORT ADMINISTRATIVE SERVICES, LLC DBA
22 ROCKPORT HEALTHCARE SERVICES (hereinafter referred to as "Rockport") was and is a
23 limited liability company formed and existing under the laws of the State of California. Though
24 Rockport is not a licensed administrative company for Eureka, it functions as such and it was
25 involved in making many of the decisions herein on behalf of Eureka that resulted in Mr.
26 Kruger's death.

27 5. Plaintiff is also informed and believes, and based thereon alleges, that at all times
28 mentioned herein defendant BRIUS MANAGEMENT CO., INC. was and is a California

1 corporation formed for the purpose of protecting the revenue generated at Eureka.

2 6. Plaintiff is additionally informed and believes, and based thereon alleges, that at
3 all times mentioned herein defendant BRIUS, LLC, was and is a California limited liability
4 company formed for the purpose of protecting the revenue generated at Eureka.

5 7. Plaintiff is also informed and believes, and based thereon alleges, that at all times
6 mentioned herein defendant EUREKA-LET, LP was and is a limited partnership formed and
7 existing under the laws of the State of California formed for the purpose of protecting the
8 revenue generated at Eureka.

9 8. Plaintiffs is additionally informed and believes, and based thereon alleges, that at
10 all times mentioned herein defendant EUREKA-LET GP, LLC was and is a limited liability
11 company formed and existing under the laws of the State of California formed for the purpose
12 of protecting the revenue generated at Eureka.

13 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein defendant SHLOMO RECHNITZ is a citizen of the State of California, with a
15 place of residence in Los Angeles, California. Mr. Rechnitz is identified as the sole owner
16 having a five-percent or more equity interest in Eureka, and he is the sole governing board
17 officer and member identified for the facility in CDPH licensing documents.

18 10. The true names and capacities, whether individual, corporate, associate, or
19 otherwise of the defendant designated herein as DOES 1 through 100 are presently unknown to
20 plaintiff, who, therefore, sues said defendants by such fictitious names. Plaintiff is informed
21 and believes, and based thereon, alleges, that each of the defendants designated herein as a
22 "Doe" is legally responsible for the events and happenings hereinafter referred to, and
23 proximately caused or contributed to the injuries and damages as hereinafter described.
24 Plaintiff will seek leave of the court to amend this complaint, to show the true names and
25 capacities of such parties, when the same has been ascertained.

26 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 herein mentioned, each of the defendants was the agent, partner, joint venturer, aider and
28 abettor, alter ego, and/or employee of each of the remaining defendants, and was acting within

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1 the course and scope of such agency, partnership, joint venture, and/or employment or in the
2 capacity of an aider and abettor or alter ego.

3 12. Plaintiff is informed and believes, and based thereon alleges that defendants are
4 required to provide skilled nursing care, room and board, twenty-four-hour supervision, and
5 personal care and assistance to the residents. Care and supervision required of said defendants
6 included custodial care and services, physician services, skilled nursing services, dietary
7 services, pharmaceutical services, and activities services as more specifically described in 22
8 California Code of Regulations section 72301, *et seq.*

9 13. It is well known and has been expressly noted by the California legislature in its
10 adoption of Welfare and Institutions Code section 15600(a)-(d), that the dependent adult
11 population is particularly subject to various forms of abuse and neglect. Physical infirmity or
12 mental impairment, such as those experienced by Mr. Kruger, often place one in a dependent
13 and vulnerable position. At the same time, such infirmity and dependence leave those such as
14 Mr. Kruger as incapable of asking for help or protection.

15 14. Recognizing the problems described in the preceding paragraph, the California
16 legislature promulgated the Elder Abuse and Dependent Adult Civil Protection Act
17 ("EADACPA"). This act is codified in Welfare and Institutions Code section 15600¹⁾ *et seq.*
18 Pursuant to additions, the California legislature found and declared that infirm, elderly, and
19 dependent adults are a disadvantaged population, and that few civil cases are brought in
20 connection with their abuse due to the problems of proof and delays, plus the lack of incentive
21 to prosecute such suits.

22 15. EADACPA defines a "dependent adult" as any person who resides in California
23 and is between 18 and 64 years old that has certain mental or physical disabilities that keep him
24 or her from being able to perform normal activities or protect himself or herself. (Welfare &
25 Institutions Code section 15610.23)

26 16. As further defined under EADACPA, "abuse" of a dependent adult includes: (a)
27 physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment
28 with resulting physical harm or pain or mental suffering; or (b) the deprivation by a care

1 custodian of goods or services necessary to avoid physical harm or mental suffering. (Welfare
2 & Institutions Code section 15610.07.)

3 17. Welfare and Institutions Code section 15610.57 defines "neglect" to include:
4 "The negligent failure of any person having the care or custody of an elder or a dependent adult
5 to exercise that degree of care that a reasonable person in a like position would exercise."
6 (Welfare & Institutions Code section 15610.57(a)(1).) Under the code, neglect includes but is
7 not limited to: (a) failure to provide medical care for physical or mental health needs; and (b)
8 failure to protect from health and safety hazards. (Welfare & Institutions Code section
9 15610.57(b).)

10 18. In or about May of 2015, Mr. Kruger became infected with *Baylisascaris*
11 *procynis* roundworms which caused a sudden and rapid neurologic decline. Following extensive
12 treatment at St. Joseph's Hospital in Eureka California and at the University of California, San
13 Francisco, Mr. Kruger was admitted to Eureka for continued rehabilitation. At the time of his
14 admission, he could ambulate with assistance, though his balance was impaired and he had
15 reduced strength. Mr. Kruger required assistance with daily living tasks such as eating,
16 ambulation, and toileting. At the time of his admission, he was not able to self-administer his
17 own medications.

18 19. Title 42 of the Code of Federal Regulations section 483.25(b) provides that a
19 nursing home facility must ensure that: (1) A resident who enters the facility without pressure
20 sores does not develop pressure sores unless the individual's clinical condition demonstrates
21 that they were unavoidable; and (2) a resident having pressure sores receives necessary
22 treatment and services to promote healing, prevent infection, and prevent new sores from
23 developing.

24 20. A "pressure ulcer" is a lesion caused by unrelieved pressure that results in
25 damage to the underlying tissues. A pressure ulcer is "avoidable" if a resident developed a
26 pressure ulcer and the facility did not do one or more of the following: evaluate the resident's
27 clinical condition and pressure ulcer risk factor; define and implement interventions that are
28 consistent with resident needs, resident goals, and recognized standards of practice; monitor and

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1 evaluate the impact of the interventions; or revise the intervention as appropriate.

2 21. A pressure ulcer can occur whenever pressure has impaired circulation to the
3 tissue. Critical steps in pressure ulcer prevention and healing include: identifying the individual
4 resident at risk for developing pressure ulcers, identifying and evaluating the risk factors and
5 changes in the resident's condition, identifying and evaluating factors that could be removed,
6 implementing individualized interventions in an attempt to stabilize, reduce, or remove
7 underlying risk factors, monitor the impact of the interventions, and modify the interventions as
8 appropriate.

9 22. Because pressure ulcers can develop within two to six hours of the onset of
10 pressure the at risk resident needs to be identified and have interventions implemented promptly
11 to attempt to prevent pressure ulcers.

12 23. Among the risk factors for pressure ulcers are:

- 13 • Impaired/decreased mobility and decreased functional ability;
- 14 • Cognitive impairment;
- 15 • Exposure of skin to urinary and fecal incontinence; and
- 16 • Nutrition and hydration deficits.

17 Whenever these factors are present it is absolutely critical that nursing staff regularly
18 conduct thorough skin assessments on each resident who is at risk for developing pressure
19 ulcers.

20 24. Mr. Kruger was admitted to Eureka for skilled nursing services and rehabilitation
21 on or about July 21, 2015. He was 63 years of age and a "dependent adult" within the legal
22 definition.

23 25. Mr. Kruger resided in Eureka for approximately fifteen months.

24 26. On August 24, 2016, the records note that defendants first observed a pressure
25 ulcer on Mr. Kruger's coccyx. By November 2, 2016, that pressure ulcer had progressed to the
26 point where it was a full thickness, stage four pressure ulcer protruding to the bone.

27 27. On November 2, 2016, Mr. Kruger complained of chest pain, fever, and pain to
28 his tail bone area. Mr. Kruger was transported by ambulance from Eureka to St. Joseph's

1 Hospital where he was admitted.

2 28. On November 9, 2016, Mr. Kruger died of pneumonia and osteomyelitis.

3 **FIRST CAUSE OF ACTION FOR DEPENDENT ADULT ABUSE**

4 29. Plaintiff refers to and incorporates herein by reference all preceding paragraphs
5 above as though fully set forth herein.

6 30. During Mr. Kruger's residency at Eureka, he was a "dependent adult" within the
7 meaning of California's Welfare & Institutions Code section 15610.23 and was in the care and
8 custody of defendants.

9 31. Defendants are "care custodians" within the meaning of California's Welfare &
10 Institutions Code section 15610.17.

11 32. At all times herein mentioned, the residents at Eureka, including Mr. Kruger,
12 were relatively helpless, infirm, disabled, frail, vulnerable, and dependent individuals, in
13 constant need of adequate and reasonable care and services.

14 33. As such, defendants, and each of them, had a duty, under applicable federal and
15 state laws (which were designed for the protection and benefit of residents such as Mr. Kruger)
16 to provide for and to protect plaintiff's health and safety, including his mental well-being.
17 Defendants, and each of them, also had a common law duty to provide for the health and
18 welfare of Mr. Kruger.

19 34. Defendants neglected Mr. Kruger within the meaning of Welfare and Institutions
20 Code section 15610.57 in that defendants failed to exercise the degree of care that a reasonable
21 person having the care and custody of Mr. Kruger would exercise. Defendants' conduct as
22 herein alleged also constitutes the reckless and wanton neglect of Mr. Kruger's health and
23 safety. In particular, and without limiting the generality of the foregoing, defendants failed to
24 consistently check Mr. Kruger's skin condition and failed to appropriately care for Mr. Kruger's
25 skin to avoid development of a stage four pressure ulcer.

26 35. As a result, Mr. Kruger developed a stage four pressure ulcer on his coccyx that
27 required hospitalization, lead to bone infections, and Mr. Kruger's death.

28 36. As a result of said defendants' continuing pattern of dependent adult abuse, as
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1 alleged above, Mr. Kruger suffered the following damages for which plaintiff seeks
2 compensation:

3 a. mental and emotional distress, all to Mr. Kruger's damage in a sum that
4 will be proven at trial;

5 b. Extra expenses for transportation and medical care, according to proof at
6 trial;

7 c. General and special damages in an amount that will be proven at trial;
8 and

9 d. Payment of funds for services which were not rendered, according to
10 proof at trial.

11 37. At all times herein mentioned, defendants knew of the need to comply with the
12 laws applicable to the ownership, operation, management, and/or supervision of Eureka, and
13 further knew that non-compliance with such laws would put the health and welfare of the
14 residents, including plaintiff, unreasonably at risk. Defendants also knew that the continual
15 failure or refusal to discharge their duties to Mr. Kruger would likely result in injury.

16 38. The conduct of defendants, as alleged above, constitutes "abandonment" and
17 "neglect," as those terms are defined in Welfare & Institutions Code section 15610.57, in that
18 defendants failed to exercise the degree of care that a reasonable person having the custody of
19 plaintiff would exercise. The continuing pattern of abuse, as alleged above, was a direct result
20 of defendants' conscious plan to operate Eureka at inadequate staffing and patient care levels to
21 wrongfully maximize their business profits, including patient dumping to avoid incurring costs
22 associated with transfer to another appropriate facility under the law. Under Welfare &
23 Institutions Code Section 15657(a)-(b), defendants are liable to plaintiff for damages related to
24 her personal injuries, medical expenses, plus attorneys' fees and costs.

25 39. As a result of the above-described oppressive, malicious and fraudulent conduct
26 of defendants, plaintiff alleges that she is entitled to an award of punitive and exemplary
27 damages pursuant to Civil Code §3294.

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1 Mr. Kruger's healthcare practitioner of "[a]ny sudden and/or marked adverse change in signs,
2 symptoms or behavior exhibited by a patient;" and § 72329.1 requires specific levels and types
3 of nursing staff to meet resident needs. Eureka violated all of these regulations.

4 44. In addition to federal rights, Mr. Kruger enjoyed numerous state rights,
5 including: (a) the facility shall employ an adequate number of qualified personnel to carry out
6 all of the functions of the facility and (b) each patient shall show evidence of good personal
7 hygiene and be given care to prevent bedsores. Eureka violated Mr. Kruger's state rights.

8 45. During Mr. Kruger's residency at Eureka, defendants, and each of them, failed to
9 use the degree of care that a reasonable person in the same situation would have used in
10 protecting Mr. Kruger from health and safety hazards, including the development of pressure
11 ulcers. Defendants, and each of them, declined to provide Mr. Kruger with appropriate
12 assessment with respect to his risk of injury or death. Defendants, and each of them,
13 deliberately did not staff Eureka in such a way as to permit Eureka's employees to properly care
14 Mr. Kruger, and Defendants' actions were a conscious choice of a course of action with respect
15 to Mr. Kruger's risk assessment and the determination of his needs, with knowledge of the
16 serious danger in which Mr. Kruger was placed as a result such actions.

17 46. As a direct result of each defendant's neglect, Mr. Kruger was injured in his
18 person and health, and sustained serious physical injuries and damages, and ultimately death.

19 47. Defendants' conduct constitutes "neglect" as that term is defined in Welfare and
20 Institutions Code §§15610.63 and 15610.57 in that defendants failed to use the degree of care
21 that a reasonable person having the custody of Mr. Kruger would exercise. Under Welfare and
22 Institutions Code §15651(a)-(b), defendants are liable to plaintiffs for damages related to Mr.
23 Kruger's damages related to personal injuries and medical expenses.

24 48. As a result of defendants' neglect as alleged, plaintiff, on behalf of herself and as
25 Mr. Kruger's personal representative, seeks all economic damages to which she is entitled
26 according to proof at trial.

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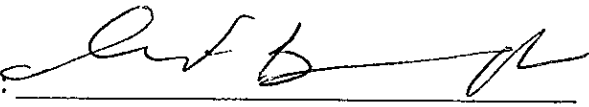
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- 7. For attorneys' fees;
- 8. For costs of suit herein; and
- 9. For such other and further relief as the Court may deem just and proper.

Dated March 10, 2017

JANSSEN MALLOY LLP

By: 

Amelia F. Burroughs
Attorneys for Theresa Kruger, as individual and
as successor-in-interest to Randy Kruger