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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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16 as personal representative of the Estate
17 of ALAN DEWEY, Decedent

18 **SUPERIOR COURT OF CALIFORNIA**
19 **COUNTY OF HUMBOLDT**

20 SHERRI MCKENNA, as personal
21 representative of the Estate of ALAN DEWEY,
22 Decedent;

23 Plaintiff,

24 vs.

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

Defendants

Case No.: **DR 170143**

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

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2 1. Plaintiff Sherri McKenna is a resident of Humboldt County, California. In
3 making the claims herein, plaintiff brings this action as the Personal Representative and the
4 executor of the Estate of Alan Dewey, who will be duly appointed by the Superior Court, and as
5 such has standing to bring this action on behalf of herself and the decedent, Alan Dewey, who
6 died on October 18, 2016. Pursuant to Code of Civil Procedure §377.60, et seq., plaintiff acts
7 as the personal representative of her now deceased brother. Plaintiff has complied with Code of
8 Civil Procedure sections 364 and 377.32. In addition, plaintiff is informed and believes that she
9 has standing under Welfare and Institutions Code section 15657.3(d) to commence and maintain
10 this action as decedent's lawful heir and has standing as an individual to bring this said cause of
11 action for the wrongful death of her brother.

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

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

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

1 5. Plaintiff is also informed and believes, and based thereon alleges, that at all times
2 mentioned herein defendant BRIUS MANAGEMENT CO., INC. was and is a California
3 corporation formed for the purpose of protecting the revenue generated at Eureka.

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

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

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

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

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

1 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 herein mentioned, each of the defendants was the agent, partner, joint venturer, aider and
3 abettor, alter ego, and/or employee of each of the remaining defendants, and was acting within
4 the course and scope of such agency, partnership, joint venture, and/or employment or in the
5 capacity of an aider and abettor or alter ego.

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

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

18 14. Recognizing the problems described in the preceding paragraph, the California
19 legislature promulgated the Elder Abuse and Dependent Adult Civil Protection Act
20 ("EADACPA"). This act is codified in Welfare and Institutions Code section 15600 *et seq.*
21 Pursuant to additions, the California legislature found and declared that infirm, elderly, and
22 dependent adults are a disadvantaged population, and that few civil cases are brought in
23 connection with their abuse due to the problems of proof and delays, plus the lack of incentive
24 to prosecute such suits.

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

2 16. As further defined by EADACPA, "abuse" of a dependent adult includes: (a)
3 physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment
4 with resulting physical harm or pain or mental suffering; or (b) the deprivation by a care
5 custodian of goods or services necessary to avoid physical harm or mental suffering. (Welfare
6 & Institutions Code section 15610.07.)

7 17. Welfare and Institutions Code section 15610.57 defines "neglect" to include:
8 "The negligent failure of any person having the care or custody of an elder or a dependent adult
9 to exercise that degree of care that a reasonable person in a like position would exercise."
10 (Welfare & Institutions Code section 15610.57(a)(1).) Under the code, neglect includes but is
11 not limited to: (a) Failure to provide medical care for physical or mental health needs; and (b)
12 Failure to protect from health and safety hazards. (Welfare & Institutions Code section
13 15610.57(b).)

14 18. Alan Dewey was admitted to Eureka for skilled nursing services and
15 rehabilitation on December 22, 2014 from the Humboldt County Jail. He was 63 years of age
16 and a "dependent adult" within the legal definition. He suffered a significant brain injury in
17 1975 and a stroke, which affected his vision. He had a seizure disorder and multiple complex
18 medical problems, including bi-polar disorder, chronic pain, anxiety, blindness, and
19 encephalopathy due to hypertension and COPD. He also suffered from dementia, became easily
20 agitated, and had angry outbursts of behavior. At the time of his admission, he was not able to
21 self-administer his own medications.

22 19. Mr. Dewey resided in Eureka for approximately two-and-one-half years.

23 20. On October 13, 2016, Eureka informed plaintiff that Mr. Dewey could no longer
24 reside in its facility.

25 21. On October 14, 2016, Eureka deposited plaintiff at the Clarion Hotel, a hotel in
26 Eureka, California, simply telling Mr. Dewey that he could stay there for 30 days. Eureka drove
27 Mr. Dewey to the hotel in its van, and left Mr. Dewey at the hotel with his many medications,
28

1 one of which he was to take because he was a "danger to others", a half-gallon of milk, instant
2 noodles, and Velveeta macaroni and cheese. Eureka also left Mr. Dewey with a cpap machine
3 without the oxygen concentrator that he had used while a resident at Eureka. Eureka also
4 promised to institute home health visits.

5 22. Mr. Dewey could not see well enough to attend breakfast in the lobby of the
6 hotel, could not see well enough to sort and take his medications appropriately, and could not
7 see well enough to use the key card to enter his room or navigate his surroundings.

8 23. No home health visit was made to Mr. Dewey at the Clarion Hotel.

9 24. Four days after defendants abandoned Mr. Dewey at the Clarion Hotel, Mr.
10 Dewey was found unresponsive in his hotel room. He died on October 18, 2016.

11 25. During this time period, Eureka had notified the public through its Brius and
12 Rockport entities that it would close its facility. Prior to closing, Eureka is required to give 30
13 days' prior notice to each resident, perform an appropriate assessment of each resident, and
14 arrange for appropriate future medical care and services. Plaintiff is informed and believes that
15 defendant Eureka discharged Mr. Dewey in an effort to clear its facility and decrease the
16 onerous requirements for resident transfers.

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

18 26. Plaintiff refers to and incorporates herein by reference all preceding paragraphs
19 above as though fully set forth herein.

20 27. During Mr. Dewey's residency at Eureka, he was (a) a "dependent adult" within
21 the meaning of California's Welfare & Institutions Code section 15610.23 and (b) in the care
22 and custody of defendants.

23 28. Defendants are "care custodians" within the meaning of California's Welfare &
24 Institutions Code section 15610.17.

25 29. At all times herein mentioned, the residents at Eureka, including Mr. Dewey,
26 were relatively helpless, infirm, disabled, frail, vulnerable, and dependent individuals, in
27 constant need of adequate and reasonable care and services.

1 30. As such, defendants, and each of them, had a duty, under applicable federal and
2 state laws (which were designed for the protection and benefit of residents such as Mr. Dewey)
3 to provide for and to protect plaintiff's health and safety, including his mental well-being.
4 Defendants, and each of them, also had a common law duty to provide for the health and
5 welfare of Mr. Dewey.

6 31. With respect to Mr. Dewey, defendants abandoned him within the meaning of
7 California Welfare and Institutions Code section 15610.05, with the desertion and/or willful
8 forsaking of Mr. Dewey under circumstances in which a reasonable person would continue to
9 provide care and custody.

10 32. Defendants also neglected Mr. Dewey within the meaning of Welfare and
11 Institutions Code section 15610.57 in that defendants failed to exercise the degree of care that a
12 reasonable person having the care and custody of Mr. Dewey would exercise. Defendants'
13 conduct as herein alleged also constitutes the reckless and wanton neglect of Mr. Dewey's
14 health and safety. In particular, and without limiting the generality of the foregoing, defendants
15 were required to employ appropriate discharge and/or transfer procedures before summarily
16 discharging Mr. Dewey from Eureka. Defendants failed to document the resident's clinical
17 record by a physician if the ostensible reason for discharge is the health of others in the facility;
18 notify the resident and family member of the discharge and reasons therefor in a writing that
19 includes the reasons for transfer, the effective date of transfer, the location to which the resident
20 is transferred; provide Mr. Dewey with notice of Mr. Dewey's right to appeal the discharge
21 decision, as well as the name and address of the Long-Term Care Ombudsman, and provide Mr.
22 Dewey with certain requirements for residents with mental illnesses and/or developmental
23 disabilities. Nor did defendant provide notice as soon as practicable before discharge.
24 Defendants also failed to provide Mr. Dewey with sufficient preparation and orientation to
25 ensure the safe and orderly transition from the facility.

26 33. As a result of said defendants' continuing pattern of dependent adult abuse, as
27 alleged above, Mr. Dewey suffered the following damages for which plaintiff seeks

1 compensation:

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

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

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

7 and .

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

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

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

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

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1 40. Additionally, Title 22 C.C.R. §72311(a)(3) required Eureka to promptly notify
2 Mr. Dewey's healthcare practitioner of "[a]ny sudden and/or marked adverse change in signs,
3 symptoms or behavior exhibited by a patient," and § 72329.1 requires specific levels and types
4 of nursing staff to meet resident needs. Eureka violated all of these regulations.

5 41. During Mr. Dewey's residency at Eureka, defendants, and each of them, failed to
6 use the degree of care that a reasonable person in the same situation would have used in
7 protecting Mr. Dewey from health and safety hazards. Defendants, and each of them, declined
8 to provide Mr. Dewey with appropriate assessment with respect to his risk of injury or death at
9 discharge. Defendants, and each of them, deliberately did not staff Eureka in such a way as to
10 permit Eureka's employees to properly care Mr. Dewey, and defendants discharged Mr. Dewey
11 in an effort to decrease their obligation in closing the facility. Defendants' deliberate decision
12 was in an effort to avoid increased labor costs with Mr. Dewey's continued residency. As a
13 result, defendants withheld care from Mr. Dewey and deliberately disregarded the high degree
14 of probability that injury to Mr. Dewey would result. Defendants' actions were a conscious
15 choice of a course of action with respect to Mr. Dewey's risk assessment and the determination
16 of his needs, with knowledge of the serious danger in which Mr. Dewey was placed as a result
17 such actions.

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

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

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

1 **THIRD CAUSE OF ACTION FOR WRONGFUL DEATH**

2 45. Plaintiff refers to and incorporate herein by reference all preceding paragraphs
3 above as though fully set forth herein.

4 46. As a consequence of the injuries suffered by Mr. Dewey at Eureka, he died on
5 October 18, 2016.

6 47. As a result of the acts of defendants Eureka and DOES 1 through 100, inclusive,
7 and each of them, as alleged above, Mr. Dewey died, and plaintiff lost the love, companionship,
8 comfort, affection, and society of her brother, for which plaintiff seeks general damages.

9 48. As a further result of the acts of the defendants, and each of them, as alleged
10 above, the decedent's family incurred funeral and burial expenses for the burial of Mr. Dewey,
11 for which the plaintiff seeks special damages.

12 **FOURTH CAUSE OF ACTION FOR NEGLIGENCE**

13 49. Plaintiff refers to and incorporates herein by reference all preceding paragraphs
14 above as though fully set forth herein.

15 50. At all times herein mentioned, defendants failed to exercise the degree of skill
16 and care commonly required of skilled nursing facilities for dependent adults pursuant to state
17 laws detailed above.

18 51. As a legal result of defendants' negligence and carelessness, Mr. Dewey was
19 severely injured and thereafter died.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiffs pray for judgment as follows:

- 22 1. For damages pursuant to Health and Safety Code §1430(b);
23 2. For general damages in a sum to be proven at the time of trial;
24 3. For special damages in a sum to be proven at the time of trial;
25 4. For pre-death pain and suffering pursuant to Welfare and Institutions
26 Code §15657;
27 5. For punitive damages;
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6. For pre-judgment and post-judgment interest, according to law;
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 Sherri McKenna, as individual and
as successor-in-interest to Alan Dewey