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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

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17 JAMIE O'BRIEN, JESSICA MONTANO,
18 and JODY BENSON SHARP, as individuals and
19 as Successors-in-Interest to JEANNETTE J. SHARP,
20 deceased

21 **SUPERIOR COURT OF CALIFORNIA**
22 **COUNTY OF HUMBOLDT**

23 JENNIE FOWLER, JAMIE O'BRIEN,
24 JESSICA MONTANO, and JODY BENSON
25 SHARP, as individuals and as Successors-in-
26 Interest to JEANNETTE J. SHARP, deceased,

27 **Plaintiffs,**

28 vs.

29 GRANADA REHABILITATION &
30 WELLNESS CENTER, LP, GRANADA
31 WELLNESS GP, LLC, ROCKPORT
32 ADMINISTRATIVE SERVICES, LLC DBA
33 ROCKPORT HEALTHCARE SERVICES,
34 ROCKPORT HEALTHCARE SUPPORT
35 SERVICES, LLC, EUREKA-LET, LP,
36 EUREKA-LET GP, LLC, SHLOMO
37 RECHNITZ, BRIUS LLC, BRIUS
38 MANAGEMENT COMPANY, INC., ALICE
BRASIER and DOES 1 through 100, inclusive,

Defendants.

Case No.: DR170387

FIRST AMENDED COMPLAINT FOR
WRONGFUL DEATH; ELDER ABUSE –
NEGLECT (WELFARE AND
INSTITUTIONS CODE SECTION
15610.57); VIOLATION OF PATIENT
RIGHTS

1 **INTRODUCTION**

2 1. On November 1, 2010 Jeannette J. Sharp became a resident of Granada
3 Rehabilitation and Wellness Center. At the time of admission, she was 79 years old. She
4 remained a resident until April 4, 2017 when she was admitted to St. Joseph Hospital.

5 2. When she was at St. Joseph’s Hospital her abdomen was extremely distended. In
6 surgery, it was discovered she had a massive fecal impaction and that her colon was distended
7 to “the size of an eight month pregnant uterus.” She died shortly after her surgery on April 4,
8 2017.

9 **GENERAL ALLEGATIONS**

10 3. Plaintiff JENNIE FOWLER is a resident of Humboldt County, California.
11 Plaintiff JAMIE O’BRIEN is a resident of the Del Norte County, California. Plaintiff JESSICA
12 MONTANO is a resident of Huntington Beach, California. Plaintiff JODY BENSON SHARP
13 is a resident of Irvine, California. In making the claims herein, plaintiffs bring this action on
14 behalf of themselves and the decedent, JEANNETTE J. SHARP. Pursuant to Code of Civil
15 Procedure §377.60, et seq., plaintiffs act as personal representatives of their now deceased
16 mother. Plaintiffs have complied with Code of Civil Procedure sections 364 and 377.32. In
17 addition, plaintiffs have standing under Welfare and Institutions Code §15657.3(d) to
18 commence and maintain this action as decedent’s lawful heirs and have standing as individuals
19 to bring this said cause of action for the wrongful death of their mother.

20 4. The sole heirs of Jeannette J. Sharp are:

- 21 i. Jennie Fowler, her daughter;
- 22 ii. Jamie O’Brien, her daughter;
- 23 iii. Jessica Montano, her daughter; and
- 24 iv. Jody Benson Sharp, her son.

25 5. Plaintiffs are informed and believe, and based thereon allege, that all times
26 mentioned herein defendant Shlomo Rechnitz was, and is, a citizen of the State of California, with
27 his principal residence in Los Angeles, California. Mr. Rechnitz is described in a declaration
28 filed under penalty of perjury by his long-time accountant, Steven Stroll, as “one of the largest, if

1 not the largest, owner and operator of skilled nursing facilities in the State of California.” In a
2 letter to Defendant Rechnitz’ attorney dated April 6, 2015 from the California Department of
3 Public Health (hereinafter “CDPH”), CDPH indicated that “Mr. Rechnitz directly or indirectly
4 owns or operates mores SNFS (skilled nursing facilities) than any other person or entity in the
5 state.” Further, according to the California Attorney General in a filing before the United States
6 Bankruptcy Court, Central District, Santa Ana Division “Rechnitz and his companies (Brius
7 Management Company and Brius LLC) have a history of failing to comply with laws and
8 regulations enforced by the DHCS (California Department of Health Care Services) and the
9 Federal Centers for Medicare and Medicaid.”

10 6. Defendant Granada Rehabilitation and Wellness Center, LP, (“Granada”) is a
11 limited partnership licensed as a skilled nursing facility by the CDPH. Plaintiffs are informed,
12 and believe, based on documents filed by Granada with the CDPH, that Granada is 100%
13 owned by defendant Granada Wellness GP LLC. Granada’s agent for service of process is
14 Steven Stroll, its accountant. According to documents filed on behalf of Granada with the State
15 of California, its principal place of business is 5900 Wilshire Blvd., Suite 1600, Los Angeles,
16 CA, 90036. Defendant Rechnitz is the only governing board member and officer of Granada
17 disclosed in filings with the CDPH although employees of Defendant Rockport (below) have
18 filed letters with the CDPH claiming to be members of its governing body.

19 7. Defendant Granada Wellness GP, LLC (“Granada GP”) is a limited liability
20 company formed under the laws of the State of California. Defendant Rechnitz owns 100% of
21 Granada GP. Granada GP’s agent for service of process is Steven Stroll, its accountant. Its
22 principal place of business is listed with the State as 5900 Wilshire Blvd., Suite 1600, Los
23 Angeles, CA 90036. Plaintiffs are informed and believe, and based thereon allege, that Granada
24 GP is the general partner of Granada and defendant Rechnitz is its limited partner. Thus,
25 ultimately, Rechnitz owns 100% of Granada.

26 8. Brius, LLC is a limited liability company formed under the laws of the State of
27 California. According to documents filed by Brius, LLC with the California Secretary of State,
28 its sole manager and owner is defendant Rechnitz. Further, its agent for service of process is

1 Steven Stroll, its accountant, and its principal place of business is listed with the State as 5900
2 Wilshire Blvd., Suite 1600, Los Angeles, CA, 90036.

3 9. Defendant Brius Management Company, Inc. is a California corporation formed
4 under the laws of the State of California. According to documents filed with the California
5 Secretary of State, its CEO is defendant Rechnitz and its CFO is also defendant Rechnitz.
6 According to a declaration filed by Mr. Stroll under penalty of perjury in 2014, Brius
7 Management Company is “controlled by Shlomo Rechnitz.” Its agent for service of process is
8 listed as Steven Stroll, its accountant, and, once again, its principal place of business is listed as
9 5900 Wilshire Blvd., Suite 1600, Los Angeles, CA, 90036. Plaintiffs are informed and believe,
10 and based thereon allege, that Brius Management Company, Inc. is wholly owned by Defendant
11 Shlomo Rechnitz and his wife, Tamar Rechnitz.

12 10. Defendant Rockport Healthcare Support Services, LLC (“Rockport”) is a limited
13 liability company formed under the laws of the State of California. According to documents
14 Rockport has filed with the State of California, its manager is Steven Stroll. According to its
15 application for licensure filed with CDPH, Rockport is owned 99% by Mr. Stroll and 1% by his
16 wife, Marsha Stroll. Mr. Stroll is also its agent for service of process and its accountant, and
17 Rockport’s address, like all the other entities listed above, is 5900 Wilshire Blvd., Suite 1600,
18 Los Angeles, CA, 90036. The State of California has determined that, for cost reporting
19 purposes, defendant Rockport is a “related party” to defendant Rechnitz and the entities
20 defendant Rechnitz owns or controls.

21 11. Eureka-LET, GP, LLC is a limited liability company formed under the laws of
22 the State of California. Its sole manager is defendant Rechnitz. It is 100% owned by defendant
23 Shlomo Rechnitz and his wife, Tamar Rechnitz (99% defendant and 1% Mrs. Rechnitz). It, in
24 turn, is the 100% owner of Eureka-LET LP. Its agent for service of process and its accountant
25 is Steven Stroll, and its business is listed as 5900 Wilshire Blvd., Suite 1600, Los Angeles, CA,
26 90036.

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1 12. Eureka-LET, LP is a limited partnership formed under the laws of the State of
2 California. Eureka-LET, LP is 100% owned by Eureka-LET GP, LLC which, in turn, is owned
3 by defendant Rechnitz and Tamar Rechnitz (99% and 1%, respectively). Eureka-LET, LP
4 leases all five Humboldt County skilled nursing facilities from SHG Resources, LP through a
5 “master lease.” The lease indicates that these facilities and Eureka-LET, LP are to be considered
6 as a “single, integrated...economic unit.” Eureka-LET, LP in turn sublets the Granada facility
7 to Granada and Granada GP. The person signing the sublease on behalf of Granada and
8 Granada GP is defendant Rechnitz. Defendant Rechnitz also signed the sublease on behalf of
9 Eureka-LET LP. The agent for service of process for Eureka-LET, LP, and its accountant, is
10 Steven Stroll and its principal place of business is 5900 Wilshire Blvd, Suite 1600, Los Angeles,
11 CA 90036.

12 13. Defendant Alice Brasier is a resident of Humboldt County, California, and at all
13 times mentioned herein, was and is the administrator at Granada Rehabilitation & Wellness
14 Center, LP.

15 14. The true names and capacities, whether individual, corporate, associate, or
16 otherwise, of the defendants named herein as Does 1 through 100, inclusive are presently
17 unknown to the plaintiffs. On information and belief, each of the defendants designated as a
18 “Doe” is legally responsible for the events or injuries alleged herein, and proximately caused
19 the damages described.

20 15. In owning, operating, managing, and/or supervising the subject facility,
21 defendants and DOES 1 through 100, inclusive, and each of them, held themselves out to the
22 general public, and Jeannette J. Sharp in particular, as being in compliance with all applicable
23 federal and state laws.

24 16. On information and belief, at all times mentioned herein each defendant was the
25 agent, partner, joint venturer, representative, and/or employee of the remaining defendants and
26 was acting within such agency, partnership, joint venture or employment.

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1 **PURCHASE OF THE HUMBOLDT COUNTY NURSING HOME FACILITIES**
2 **BY SHLOMO RECHNITZ AND HIS RELATED ENTITIES**

3 17. In 2010, there were five skilled nursing facilities in Humboldt County: Eureka
4 Rehabilitation, Pacific Rehabilitation, Seaview Rehabilitation, Granada Rehabilitation, and St.
5 Luke’s Rehabilitation. Though nominally separate entities, all were owned and operated by
6 Skilled Healthcare Group, Inc. In July of 2010, a verdict was returned against Skilled
7 Healthcare Group, Inc., Skilled Healthcare, LLC, and the five above Humboldt County
8 facilities, among others. Thereafter, as part of the verdict, the Humboldt County Superior Court
9 entered an injunction against Skilled Healthcare Group, Inc. and the five Humboldt County
10 entities requiring those entities to increase their staffing levels to meet minimum state staffing
11 standards. The effective date for the injunction to begin was February 2011.

12 18. In order to avoid compliance with the injunction, Skilled Healthcare Group, Inc.
13 decided to sell all of the Humboldt County facilities. According to a Skilled Healthcare press
14 release dated March 4, 2011, it sold all five entities to “Brius Healthcare.” Purported officers of
15 Brius have indicated at various times that “Brius Healthcare” is a dba of Brius, LLC and/or
16 Brius Management Company, Inc. The press release quotes defendant Rechnitz, as the owner
17 and chief executive officer of Brius Healthcare, indicating that “our company is looking forward
18 to working together with the medical community in Humboldt County to deliver the excellent
19 physical care Brius is known for.”

20 19. In the Spring of 2011, attorneys who claimed to represent defendants Brius
21 Healthcare and defendant Rechnitz met with Paul Gallegos, the then District Attorney for
22 Humboldt County. At that meeting, counsel for defendants indicated their belief that, because
23 “Brius” was a separate entity from Skilled Healthcare, it was no longer required to comply with
24 the injunction entered against Skilled Healthcare Group and the five Humboldt County
25 facilities. Mr. Gallegos, in turn, indicated that he didn’t care who owned the facilities, that if
26 the kind of understaffing that had occurred under Skilled Healthcare Group continued at the
27 facilities, “someone is going to go to jail.”
28

1 20. In April 2011, defendant Rockport entered into a management contract with
2 Granada, signed by defendant Rechnitz on behalf of Granada and Granada GP and Steven Stroll
3 on behalf of Rockport, to furnish healthcare management services to Granada. Pursuant to the
4 terms of the contract, Rockport agrees to be “fully responsible for the daily operations of
5 Facility” and to “ensure that the Facility complies with all statutes and regulations pertaining
6 thereto.” At the time of entry into the contract, Rockport was not a licensed healthcare
7 management company as required by Health and Safety Code §1253. In 2014, defendant
8 Rockport applied to the California Department of Public Health for licensure. That application
9 was never granted. While Rockport continues to provide healthcare management services to
10 Granada, to date, it remains unlicensed to do so. Defendant Rechnitz, as the ultimate owner of
11 Granada and its sole manager, is aware, and has been aware since 2011, of the lack of licensure
12 of Rockport and that its use as a management company is improper and in violation of the law.
13 Defendant Rechnitz nevertheless continues to utilize Rockport to run Granada.

14 **DEFENDANTS ARE ALTER-EGOS OF ONE ANOTHER AND FORM**
15 **PART OF A SINGLE ENTERPRISE**

16 21. There is sufficient unity of interest and ownership among the defendants, and
17 between each of them, such that acts of one are for the benefit and can be imputed to the acts of
18 the others. While defendants have formed multiple corporations, LLCs, and limited and general
19 partnerships, they in fact act as one entity and, ultimately, are all completely owned and
20 controlled by defendant Rechnitz.

21 22. As noted above, all of the named business entity defendants have the same
22 address and the same agent for service of process. All of the defendants, except defendant
23 Braiser, use the same accountant. Plaintiffs are informed and believe, and based thereon allege,
24 that all transactions between the entities are part of one general ledger. All of the defendants,
25 except Rockport, can be traced back through the various ownership trails to ultimately be
26 owned and controlled by either defendant Rechnitz, individually, or in conjunction with a 1%
27 interest by his wife, Tamar.

1 23. Rockport is allegedly owned by defendant Rechnitz's long-time accountant,
2 Steven Stroll, who also acts as the agent for service of process and accountant for over 200
3 other entities owned by defendant Rechnitz. Stroll has testified that he has an oral agreement
4 with Rechnitz that Rechnitz-related skilled nursing facilities will use Rockport for management
5 services. Plaintiffs are informed and believe, and based thereon allege, that ultimate control and
6 ownership of Rockport is by and through defendant Rechnitz.

7 24. In the fall of 2016, "Brius" threatened to close three of its five Humboldt County
8 skilled healthcare facilities, if the State Medi-Cal provider, Partnership HealthPlan of California
9 ("PHC") did not increase its reimbursement rates. In an "open letter" signed by "Brius" dated
10 on or about September 30, 2016, entitled "Dear Community Members," it wrote regarding its
11 plan to close three of the five skilled nursing facilities in Humboldt County. The letter refers to
12 the facilities as "our" facilities and claims that "Brius" had sustained a loss of \$5 million
13 running the facilities, describes what "Brius" did to improve staffing at the five Humboldt
14 County facilities, and finally indicates that "Brius" intended to close three of those facilities.
15 The letter complained of the lack of qualified staff in Humboldt County and indicated that this
16 was negatively impacting "Brius." It went on to state what "we" (Brius) had done to help solve
17 the staffing problem and signed the letter in question "Brius." The open letter did not indicate
18 which "Brius" entity had written the letter but defendant Rechnitz said in an interview with the
19 Lost Coast Outpost that the letter was written by him. Separately, according to a news article
20 quoting defendant Rechnitz, he referred to the five Humboldt facilities as "our facilities."
21 Further, defendant Rechnitz indicated he had negotiated with PHC to sell "my facilities" to
22 PHC.

23 25. Simultaneously, Rockport, purporting to act on behalf of the three facilities
24 slated for closure, submitted closure plans to CDPH and acted as agent for defendant Rechnitz
25 for all communications with the CDPH regarding those closure plans.

26 26. Further, in 2014, in an attempt to purchase a number of other skilled nursing
27 facilities out of bankruptcy, Steven Stroll filed a declaration in which he appeared to use the
28 terms Rechnitz and "Brius Management Company" interchangeably. Beth Garver, Senior Vice

1 President of Rockport, also filed a declaration in the same matter indicating that “(w)ith respect
2 to certain skilled nursing facilities owned or controlled by Shlomo Rechnitz (the “Rechnitz
3 facilities”), Shlomo Rechnitz utilizes the services of Rockport for management.”

4 **GRANADA IS UNDERCAPITALIZED**

5 27. In the fall of 2016, defendant Rechnitz issued a statement to the press indicating
6 that “he” had tried to give away all five Humboldt County facilities, including Granada, but that
7 no one would take them. Additionally, in the “open letter” referenced in paragraph 21, “Brius”
8 indicated it “had offered these facilities for free to anybody who wanted them.” Separately, the
9 last available cost report from the CDPH for the budget year 2016 indicated Granada’s total net
10 equity of negative \$85,183. Thus, it is apparent that Granada is undercapitalized for its risk
11 exposure. In the interim, Brius Management Company, Inc., in its attempt to purchase
12 additional facilities, filed a declaration in bankruptcy court in 2014 indicating it had total assets
13 of over 76 million dollars. Plaintiffs are informed and believe, and based thereon allege, that a
14 major reason for the undercapitalization of Granada is that its profits are stripped away by the
15 multiple other Rechnitz-owned or controlled entities. For example, according to Defendant
16 Rechnitz, Eureka-LET LLP rents the Granada facility from SHG, Inc. for \$500 a month per bed,
17 for a total of approximately \$486,800 per year. Simultaneously, in what amounts to a paper
18 transaction, it rents the same property to Granada for nearly \$800,000 per year. The Long-Term
19 Care Facility Integrated Disclosure and Medi-Cal Cost Report for 2016 (“OSHPD Report”)
20 discloses a charge of \$42,000 for “administrative supervisor” by “Boardwalk Financial Services
21 LLC” which, in turn is a limited liability company owned by defendant Rechnitz. Plaintiffs are
22 informed and believe, and based thereon allege, that this is simply another paper transaction by
23 defendant Rechnitz to strip funds from the facility. Granada also buys its supplies from Twin
24 Med, LLC which is owned by Defendant Rechnitz and his twin brother, Steve Rechnitz.

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1 **TO NOT TREAT THE DEFENDANTS AS ALTER-EGOS**
2 **WOULD WORK AN INJUSTICE**

3 28. Injustice will result if the Court does not disregard the fiction of the separate
4 corporate entities that the defendants have constructed to conceal and misrepresent the identity
5 of the responsible party and the ultimate ownership, control, and operation of Granada.

6 29. Plaintiffs are informed and believe and based thereon allege that the defendants
7 created the corporate maze set forth above for the express purpose of allowing those who
8 actually make the decisions regarding care at Granada to avoid responsibility and so that those
9 who are actually responsible for the lack of care at the facility can avoid liability.

10 **DEFENDANTS ROCKPORT, GRANADA, BRIUS LLP, BRIUS MANAGEMENT**
11 **COMPANY, INC., AND RECHNITZ FURTHER ARE PART OF A CONSPIRACY TO**
12 **VIOLATE THE LAW IN ORDER TO INCREASE PROFITS**

13 30. At various times throughout 2015 and 2016, defendants Granada, Rockport,
14 “Brius” (both Brius LLC and/or Brius Management Company), and Rechnitz have each
15 indicated that they have control over the staffing and nursing services provided (or not
16 provided) at Granada.

17 31. In multiple press releases in 2015 and 2016, defendants Granada, “Brius,”
18 Rockport, and Rechnitz claimed that they could not hire sufficient qualified staff to care for the
19 residents because they had insufficient funds to do so. Defendants knew at the time that the
20 failure to have sufficient staff at Granada to meet the needs of the residents was a violation of
21 both state and federal law, was a violation of patient rights, and could and would unreasonably
22 endanger residents. Nevertheless, in order to place pressure on PHC to raise reimbursement
23 rates, defendants Granada, Brius LLC, and/or Brius Management Company, Inc., Rockport, and
24 Rechnitz conspired to inadequately staff the Granada facility in order to increase profits.

25 32. According to Medicare.gov “the Official U.S. Government site for Medicare”
26 the quality of care at Granada is rated “Much Below Average.” Specifically, as to the quality of
27 staffing, it indicates:

	GRANADA REHABILITATION & WELLNESS CENTER, LP	CALIFORNIA AVERAGE	NATIONAL AVERAGE
Total number of residents	81	84.2	85.9
Total number of licensed nurse staff per hours per resident per day	41 minutes	1 hour and 56 minutes	1 hour and 42 minutes
RN hours per resident per day	14 minutes	52 minutes	50 minutes
PLN/LVN hours per resident per day	27 minutes	1 hour and 4 minutes	51 minutes
CNA hours per resident per day	3 hours and 41 minutes	2 hours and 41 minutes	2 hours and 28 minutes
Physical Therapy staff hours per resident per day	5 minutes	8 minutes	6 minutes

33. Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein, the defendants, and each of them, acting as agents and/or alter-egos and/or co-conspirators, conceived and implemented a plan to wrongfully increase their business profits at the expense of residents such as Jeannette J. Sharp. Integral to this plan was the custom and practice of the Defendants staffing of Granada with an insufficient number of care personnel, many of whom were not properly trained nor qualified to care for the elders whose lives were entrusted to them. This understaffing and lack of training was designed to reduce labor costs, put pressure on PHC to increase reimbursement rates, and to increase profits, resulting in the physical abuse and neglect on many residents at the facility, including Jeannette J. Sharp.

STATE PROTECTION FROM ELDER ABUSE

34. Plaintiffs are informed and believe, and based thereon allege that defendant Granada was and is required to provide skilled nursing care, room and board, twenty-four-hour supervision, and personal care and assistance to the residents. Care and supervision required of defendant Granada included custodial care and services, physician services, skilled nursing services, dietary services, pharmaceutical services, and activities services as more specifically described in 22 California Code of Regulations §72301, *et seq.*

1 35. It is well known and has been expressly noted by the California Legislature due
2 to its adoption of Welfare and Institutions Code §1560(a)-(d) that the elderly segment of the
3 population is particularly subject to various forms of abuse and neglect. Physical infirmity or
4 mental impairment, such as those experienced by Jeannette J. Sharp, often place the elder in a
5 dependent and vulnerable position. At the same time, such infirmity and dependence leave the
6 elderly, such as Jeannette J. Sharp, incapable of asking for help or protection.

7 36. Recognizing the problems described in the preceding paragraph, the California
8 legislature promulgated the Elder Abuse and Dependent Adult Civil Protection Act
9 (“EADACPA”). This act is codified in Welfare and Institutions Code §15600. Pursuant to
10 additions, the California legislature found and declared that infirm, elderly, and dependent
11 adults are a disadvantaged population, and that few civil cases are brought in connection with
12 their abuse due to the problems of proof and delays, plus the lack of incentive to prosecute such
13 suits.

14 37. The EADACPA defines an “elder” as any person residing in California who is an
15 adult sixty-five (65) years of age or older.

16 38. As further defined under EADACPA, “abuse of an elder” is either:

- 17 (a) Physical abuse, neglect, financial abuse, abandonment, isolation,
18 abduction, or other treatment with resulting physical harm or pain or
19 mental suffering; or
20 (b) The deprivation by a care custodian of goods or services necessary to
21 avoid physical harm or mental suffering. (Welfare & Institutions Code
22 §15610.07.)

23 39. The Welfare and Institutions Code §15610.57 defines “neglect” as: “The
24 negligent failure of any person having the care or custody of an elder or a dependent adult to
25 exercise that degree of care that a reasonable person in a like position would exercise.” (Welfare
26 & Institutions Code §15610.57(a)(1).) Under the code, neglect includes but is not limited to:

- 27 (a) Failure to provide medical care for physical or mental health needs; and
28 (b) Failure to protect from health and safety hazards.

1 (Welfare & Institutions Code §15610.57(b).)

2 **JEANNETTE J. SHARP'S INJURIES**

3 40. On November 1, 2010, Jeannette J. Sharp was admitted to Granada for skilled
4 nursing services. At the time of her admission she was 79 years of age. On April 3 Ms. Sharp
5 was discharged to St. Joseph Hospital because of a hip injury. On April 10, 2013 Jeannette
6 Sharp was readmitted to Granada. At that time she was 82 years old.

7 41. Defendant Granada had care and custody of Jeannette from November 1, 2010 to
8 April 4, 2017. Jeannette suffered from dementia and was entirely reliant upon the staffing
9 personnel at Granada to caring out her activity of daily living and her bowel care in particular.

10 40. Jeannette's total reliance upon Granada to perform these functions is documented
11 throughout her records at Granada.

12 43. Skilled Nursing Facilities are required by law to develop care plans that describe
13 the resident's medical, nursing and psychological needs. By law the facility must meet these
14 needs. 42 USC 1395i-3(b)(2).

15 44. Here the care plan of Jeannette Sharp rewritten on July 6, 2016, required among
16 other things, the following:

- 17 a. Provide medication and treatment as ordered;
- 18 b. Monitor for:
 - 19 i. Abdominal distension
 - 20 ii. Nausea/vomiting
 - 21 iii. Impaction
 - 22 iv. Effectiveness of medication and treatment
- 23 c. Monitor bowel movements for consistency and frequency
- 24 d. Provide diet as ordered
- 25 e. Encourage resident to eat 75-100% of meal
- 26 f. Encourage increased fluids

1 The “goal” was that Jeannette would have a bowel movement every 2 to 3 days. According to
2 the care plan these interventions were to be conducted by the nursing and other employees at
3 Granada.

4 45. Dr. Han indicated in her prescription for “palliative care” dated February 7, 2017
5 that fecal impaction was expected and the facility should develop a plan to minimize the
6 development of such impactions.

7 46. Nevertheless, defendant failed to develop adequate plan to minimize fecal
8 impaction or properly monitor Jeannette’s bowel movement or bring her lack of bowel
9 movements to the attention of her physician. For example, depending on which chart or bowel
10 movement reports are believed she had no bowel movements for either 15 of the last 25 days of
11 her stay, 13 of the last 23 days or 20 of the last 23 days. As a result Jeannette developed a fecal
12 impaction that became so large it blocked the exit to her stomach, adding to her abdominal
13 distension. Jeannette was in excruciating pain yet was not provided pain relief. No one gave
14 Ms. Sharp an enema or checked to see why her stomach was distended.

15 47. Approximately 3 to 4 weeks prior to Jeannette’s death a CNA communicated to
16 Jennie Fowler, Jeannette’s daughter, that her mother has an “extention.” Jennie did not know
17 what the CNA was referencing and presumed it had been resolved.

18 48. An impaction of the size suffered by Jeannette doesn’t happen overnight. Such
19 an impaction takes months to develop. However, the records fail to reflect any notice of
20 Jeannette’s distended abdomen till the evening of April 3, 2017.

21 49. Jeannette was also prescribed multiple different laxatives which she was to be
22 given if she became constipated. However, the records reflect that not once during March and
23 April (the day before her death) was she provided such medicine.

24 50. On April 4, 2017 decedent was admitted to St. Joseph’s Hospital where the fecal
25 impaction was discovered.

26 51. On that date surgery was performed at which time it was discovered her fecal
27 impaction was the size of “an eight month pregnant uterus.” The operating physicians captured
28

1 3-4 liters of fecal matter from Ms. Sharp's colon with more spilling into her abdominal cavity.
2 Because of the severity of her fecal impaction, Mrs. Sharp died shortly after the surgery.

3 **FIRST CAUSE OF ACTION FOR VIOLATION OF PATIENT'S RIGHTS PURSUANT**
4 **TO HEALTH AND SAFETY CODE §1430(b)**

5 **(Against Defendant Granada Rehabilitation & Wellness Center, LP Only)**

6 52. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs
7 above as though fully set forth herein.

8 53. Pursuant to Health and Safety Code §1430(b), in addition to all other remedies
9 provided by law, plaintiffs are entitled to statutory damages against defendants for violation of
10 Jeannette J. Sharp's rights, as well as costs and attorneys' fees incurred in this proceeding.

11 54. Health and Safety Code §1430(b) provides in relevant part that a former resident
12 of a skilled nursing facility may bring an action against the licensee of a facility who violates
13 any of the rights of the residents as set forth in the Patient's Bill of Rights.

14 55. Under federal law, a nursing home resident has the right to receive necessary
15 care and services to attain or maintain the highest practicable physical, mental, and
16 psychological wellbeing. 42 U.S. Code 1396r(b); 22 CFR §483.26; 22 CFR §72315.

17 56. Under California law, a resident has a right to assurance that the nursing home
18 employ an adequate number of qualified personnel. Health and Safety Code §1599.1(a); 22
19 CCR §72501(e).

20 57. Further, under Health and Safety Code §1276.5, the facility shall provide at least
21 3.2 nursing hours per patient day.

22 58. At the time of her stay at Granada, Jeannette J. Sharp was an elderly resident of
23 defendants' skilled nursing facility and, as such, was entitled to the protection of the Nursing
24 Home Patient's Bill of Rights. Defendants, as owners, operators, managers, and alter-egos of
25 the subject licensee had a mandatory duty to ensure that Jeannette J. Sharp's rights were not
26 violated.

27 59. Plaintiffs are informed and believe that at all times while decedent Jeannette J.
28 Sharp was in the facility, the facility failed to have sufficient staff to provide for the physical

1 wellbeing of decedent, failed to have adequate staff to meet the needs of the residents, including
2 decedent, and failed to staff the facility at the minimum requirements of 3.2 nursing hours per
3 patient day in violation of her rights. Plaintiffs are informed and believe and based thereon
4 allege, that the failure to have adequate trained staff was a cause of decedent Jeannette Sharp's
5 injury and her death.

6 60. Plaintiffs will seek to amend this cause of action or add additional causes of
7 action once the specific number of days in which the facility failed to have sufficient staff are
8 known.

9 WHEREFORE plaintiffs pray for damages as hereinafter set forth.

10 **SECOND CAUSE OF ACTION FOR VIOLATION OF PATIENT RIGHTS PURSUANT**

11 **TO HEALTH AND SAFETY CODE §1430(b)**

12 **(Against Defendant Granada Rehabilitation & Wellness Center, LP Only)**

13 61. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs
14 above as though fully set forth herein.

15 62. Decedent, as a resident of a skilled nursing facility over the age of 65, had a right
16 to be treated with dignity and respect and to not suffer bodily injury. 42 CFR §483.10,
17 483.15(a); 22 CCR §72527(a)(11). The conduct of defendants, as previously alleged, failed to
18 treat plaintiff with the dignity and respect and prevent bodily injury to which he was entitled
19 under the law.

20 63. As a result, Jeannette J. Sharp was deprived of her rights under the law.

21 WHEREFORE plaintiffs pray for damages as hereinafter set forth.

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

23 **(Against All Defendants)**

24 64. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs
25 above as though fully set forth herein.

26 65. At all times mentioned herein Defendants, as alter-egos and/or agents, owed a
27 duty to use ordinary care and such other care as required by law, in the treatment and protection
28 of their patient, Jeannette J. Sharp.

1 66. At the time of Jeannette J. Sharp's residency at Granada, there were also
2 statutory and regulatory duties which set forth the standard of care required at the facility,
3 including but not limited to:

- 4 a) Provide adequate monitoring, assessment and re-assessment of her
5 condition as set forth in 22 CCR Sect. 72311 and 420 CFR §483.20;
- 6 b) Assure that the facility had adequate qualified personnel to care for Mrs.
7 Sharp. Health and Safety Code §1599.1(a);

8 67. Defendants failed to use that degree of care that a reasonable person would use in
9 providing for the basic needs and treatment of Jeannette J. Sharp and failed to comply with the
10 basic statutory and regulatory standards of care.

11 68. As a result of the wrongful conduct, abuse and neglect as detailed above
12 Jeannette J. Sharp sustained a fecal impaction, causing her death on April 7, 2017.

13 69. Prior to her death, the decedent was the mother of plaintiffs Jennie Fowler, Jamie
14 O'Brien, Jessica Montano, and Jody Benson Sharp.

15 70. As a result of the acts of defendants and DOES 1 through 100, inclusive, and
16 each of them, as alleged above, Jeannette J. Sharp died, and plaintiffs have lost the love,
17 companionship, comfort, affection, and society of their mother, for which plaintiffs seek general
18 damages.

19 71. As a further result of the acts of the defendants, and each of them, as alleged
20 above, the decedent's family incurred funeral and burial expenses for the burial of Jeannette J.
21 Sharp, for which the plaintiffs seek special damages.

22 WHEREFORE plaintiffs pray for damages as hereinafter set forth.

23 **FOURTH CAUSE OF ACTION FOR ELDER ABUSE**

24 **(Against All Defendants)**

25 72. Plaintiffs refer to and incorporate herein by reference all preceding paragraphs
26 above as though fully set forth herein.

1 73. During Jeannette J. Sharp's residency at Granada, she was (a) older than 65 years
2 of age and (b) in the care and custody of defendants and an "elder" as that term is defined in
3 Welfare and Institutions Code §15610.27.

4 74. Welfare and Institutions Code §15610. 67 specifically defines "neglect" for
5 purposes of the EADACPA to mean either "(a) physical abuse, neglect, ... or other treatment
6 with resulting physical harm or mental suffering or (b) the deprivation by a care custodian of
7 goods or services that are necessary to avoid physical harm or mental suffering."

8 75. Defendants, and each of them, had a duty, under applicable federal and state laws
9 (which were designed for the protection and benefit of residents such as Jeannette J. Sharp) to
10 provide for and to protect Jeannette J. Sharp's health and safety. Defendants, and each of them,
11 also had a common-law duty to provide for the health and welfare of Jeannette J. Sharp.
12 Without limiting the generality of the foregoing, defendants had, among other duties, the duty
13 with respect to Jeannette J. Sharp's health and welfare to:

- 14 a. Protect Jeannette J. Sharp from sustaining injuries to her person;
- 15 b. Monitor and accurately record Jeannette J. Sharp's condition, and notify
16 the attending physician and family members of any meaningful change in
17 her condition;
- 18 c. Note and properly react to emergent conditions;
- 19 d. Establish and implement a care plan for Jeannette J. Sharp, based upon,
20 and including, an ongoing process of identifying her health and care
21 needs and making sure that such needs were timely met;
- 22 e. Accurately monitor and provide for Jeannette J. Sharp's health, comfort
23 and safety;
- 24 f. Maintain accurate records of Jeannette J. Sharp's condition and activities;
- 25 g. Adopt, observe, and implement written infection control policies;
- 26 h. Maintain in number and qualification sufficient staff to meet residents'
27 needs; and
- 28 i. Treat Jeannette J. Sharp with dignity and respect, without abuse.

1 76. Additionally, Title 22 CCR §72311(a)(3) required Granada to promptly notify
2 Jeannette J. Sharp’s healthcare practitioner of “[a]ny sudden and/or marked adverse change in
3 signs, symptoms or behavior exhibited by a patient.” And, 22 CCR §72329.1 requires specific
4 levels and types of nursing staff to meet resident needs. Plaintiffs are informed and believe, and
5 based thereon allege, that the defendants had a custom and practice of violating all of these
6 regulations.

7 77. During Jeannette J. Sharp’s residency at Granada, defendants, and each of them,
8 as agents, alter-egos and co-conspirators failed to use the degree of care that a reasonable person
9 in the same situation would have used in protecting Mrs. Sharp from health and safety hazards.
10 Defendants, and each of them, deliberately did not staff Granada in such a way as to permit
11 Granada employees to properly care for Mrs. Sharp or maintain and implement proper bowel
12 care. Defendants’ deliberate decision was part of an effort to avoid increased labor costs during
13 Mrs. Sharp’s continued residency. As a result, defendants withheld care from Mrs. Sharp and
14 deliberately disregarded Mrs. Sharp with the high degree of probability that injury to Mrs. Sharp
15 and other residents would result. Defendants’ actions were a conscious choice of a course of
16 action with respect to Mrs. Sharp’s risk assessment and the determination of her needs, with
17 knowledge of the serious danger in which Mrs. Sharp was placed as a result of such actions.
18 Additionally, defendants represented in billing records that Mrs. Sharp received some of the
19 highest levels of care and therapy available at a skilled nursing facility licensed as Granada is,
20 but defendants failed to provide such care, choosing instead to provide some level of care less
21 than needed and less than that for which it charged. Defendants’ decision to provide levels of
22 care less than needed but represent that ultimate care was provided was defendants’ conscious
23 decision, made with knowledge of the serious danger in which Mrs. Sharp was placed as a result
24 such decisions. Defendants’ decisions to offer care less than needed but bill for higher levels of
25 care than were provided were decisions made by management and ratified by all defendants,
26 including Granada.

1 78. As a direct result of each defendant's neglect, Jeannette J. Sharp was injured in
2 her person and health, and sustained serious physical injuries and damages, including serious
3 physical injuries such as a severe fecal impaction and ultimately death.

4 79. Defendants' conduct constitutes "neglect" as that term is defined in Welfare and
5 Institutions Code §§15610.63 and 15610.57 in that defendants failed to use the degree of care
6 that a reasonable person having the custody of Jeannette J. Sharp would exercise. Defendants'
7 acts were done with recklessness, oppression, fraud, or malice as defined in Welfare and
8 Institutions Code §15657.

9 80. As a result of defendants' reckless neglect as alleged, plaintiffs, on behalf of
10 themselves and as Jeannette J. Sharp's successors in interest, seek all economic damages to
11 which they are entitled according to proof at trial.

12 81. As a result of the recklessness, malice, oppression, or fraud herein alleged, the
13 Plaintiffs are entitled to an award of punitive damages pursuant to Civil Code §3294 and
14 trebling of those damages pursuant to Civil Code §3345.

15 WHEREFORE plaintiffs pray for damages as hereinafter set forth.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiffs pray for judgment as follows:


- 18 1. For damages pursuant to Health and Safety Code §1430(b);
- 19 2. For general damages in a sum to be proven at the time of trial;
- 20 3. For special damages in a sum to be proven at the time of trial;
- 21 4. For pre-death pain and suffering pursuant to Welfare and Institutions
22 Code §15657;
- 23 5. For pre-judgment and post-judgment interest, according to law;
- 24 6. For attorneys' fees;
- 25 7. For punitive damages;
- 26 8. For trebling of the punitive damages pursuant to Civil Code §3345;
- 27 9. For costs of suit herein; and
- 28 10. For such other and further relief as the Court may deem just and

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proper.

Dated: November 15, 2017

JANSSEN MALLOY LLP

By: 

W. Timothy Needham,
Attorneys for Jennie Fowler, Jamie O'Brien,
Jessica Montano, and Jody Benson Sharp as
individuals and as Successors-in-Interest to
Jeannette J. Sharp