Hearing Date: No hearing scheduled
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Judge: Calendar, 14

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

John Doe #1, John Doe #2, Jane Doe #1, Jane Doe #2, John Doe #3, John Doe #4, John Doe #5, John Doe #6, Jane Doe #3, Jane Doe #4, Jane Doe #5,

Plaintiffs,

v.

Alden Group, Ltd., Alden Management Services, Inc., Alden Heather Health Care Center, Alden Town Manor, Alden Terrace McHenry, Alden Village North, Alden - Lakeland Rehabilitation and Health Care Center, Inc., and Princeton Rehabilitation and Health Care Center,

Defendants.

Case No. 2022-CH-09574

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES

Plaintiffs John Doe #1, John Doe #2, Jane Doe #1, Jane Doe #2, John Doe #3, John Doe #4, John Doe #5, John Doe #6, Jane Doe #3, Jane Doe #4, and Jane Doe #5 (collectively "Named Plaintiffs"), by and through their guardian the Office of State Guardian and attorneys AARP Foundation, Equip for Equality, Levin & Perconti, and Hughes, Socol, Piers, Resnick & Dym, Ltd., file this complaint pursuant to the Illinois Nursing Home Care Act (210 ILCS 45/1-101 *et seq*.) and Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*), individually and on behalf of a class of nursing facility residents against the Alden Group, Ltd. ("Alden Group"), Alden Management Services, Inc. ("AMS"), Alden Lakeland, Alden Terrace McHenry, Alden Town Manor, Alden Heather Health Care Center, Alden Princeton Rehabilitation and Health Care Center, and Alden Village North (collectively, "Alden

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Facilities") (Alden Group, AMS and the Alden Facilities are collectively referred to herein at "Alden") for injunctive and declaratory relief, damages, interest, and attorneys' fees and costs.

PRELIMINARY STATEMENT

1. For many years Alden has engaged in an ongoing practice of profiting from systematically and knowingly understaffing the Alden Facilities, causing dangerous, distressing, and grossly unsanitary living conditions for thousands of residents.

2. Named Plaintiffs and members of the proposed class are vulnerable people who are Medicaid eligible and who require long-term care and assistance with activities of daily living due to their medical conditions.

3. Alden is a large, for-profit Illinois nursing facility chain operating more than 50 facilities with more than $250 million in annual revenue that houses thousands of residents. Alden does not hire the staff or provide the care required to protect those residents from physical and psychological harm.

4. For many years leading up to and continuing through the coronavirus pandemic, Alden has systematically and knowingly failed to hire sufficient staff to responsibly care for its residents or even provide the bare minimum level of hours of care mandated by Illinois statutes. Alden endangers residents because it does not have enough staff to implement residents' plans of care, to monitor residents' conditions, to protect residents from injury, to give basic nutrition and personal care for residents, or even to provide safe and sanitary conditions.

5. Residents at Alden Facilities also suffer neglect because, due to inadequate staffing, their plans of care mandated by law are based on stale, incomplete, or inaccurate assessments, which leaves each resident without the services they need, jeopardizes their safety, and places them at risk of harm each day.

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6. The Illinois Nursing Home Care Act ("NHCA") (210 ILCS 45/1-117) outlaws the "neglect" of any resident, which includes failing to provide staffing and care "necessary to avoid physical harm, mental anguish, or mental illness of a resident." 210 ILCS 45/1-117.

7. Alden neglects each resident of each Alden facility by placing them at unreasonable risk of harm through failing to ensure that there is adequate staff to provide reasonable care.

8. And indeed, this risk of harm has materialized into actual harm time and time again. For example, due to the lack of adequate staff, Alden residents suffer severe injuries from falls, acquire pressure ulcers that worsen without treatment, and wait indefensibly long periods to be diagnosed with critical and at time life threatening conditions. Residents have fallen down stairs while strapped to a wheelchair, fractured their neck when dropped by one person using a mechanical lift that requires two people, and ingested poisonous chemicals due to lack of care and supervision. They suffer debilitating pain when staff fail to notice and address fractures. They experience unexplained weight loss and dehydration that lead them to further deteriorate and become confused. Residents endure the inappropriate use of antipsychotic medication as chemical restraints for staff convenience. These drugs even increase the risk of death when administered to people who have dementia.

9. Alden engages in systematic understaffing to decrease expense and increase profits. Alden saves millions of dollars every year by operating Alden Facilities with inadequate numbers of certified nursing assistants, licensed practical nurses, registered nurses, dietary staff, and therapists. Alden's residents pay the price.

10. For the three years from 2018 through 2020, for example, Alden Facilities should have provided more than 1 million additional nursing assistant ("CNA") hours, and 300,000

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more hours of skilled nursing care from registered nurses (RNs) and licensed practical nurses (LPNs). Alden staffing also fell short of the absolute statutory minimum nursing hours at every Alden Facility during this time.

11. To perpetuate this scheme of systematic understaffing and evade liability, Alden also requires residents to sign illegal and unenforceable admission agreements and arbitration provisions that purport to broadly waive their rights to seek redress for injuries in court and burden residents with hefty fees if they want to proceed with arbitration.

12. Alden's neglect of its residents and oppressive business practices violate the Illinois Nursing Home Care Act ("NHCA") (210 ILCS 45/1-117) and the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") (815 ILCS 505/2).

13. The NHCA prohibits Illinois nursing facilities from neglecting residents. Statutory neglect under the NHCA includes the "failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident." 210 ILCS 45/1-117.

14. The NHCA also contains a resident "Bill of Rights" that guarantees residents the right to live free from abuse and neglect.

15. Alden violates the NHCA because it systematically neglects residents by ignoring their mental and physical needs and rendering substandard and dangerous care with insufficient staff.

16. Alden's practice of neglecting its residents and using unfair business practices to conceal the fact that its nursing facilities are understaffed and provide substandard care also substantially harms vulnerable nursing facility residents in violation of the ICFA.

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17. Plaintiffs sue on behalf of themselves and a class of the residents of Alden Facilities for all monetary, declaratory, and injunctive relief provided by the NHCA and ICFA.

PARTIES

A. Plaintiffs

18. Plaintiff John Doe #1 is a 64-year-old Medicaid beneficiary who resides in Cook County, Illinois, and Office of State Guardian is his court-appointed guardian. He has been a resident at Alden Lakeland from 2020 to the present.

19. Plaintiff John Doe #2 is a 26-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is his court-appointed guardian. He has been a resident at Alden Village North from 2016 to the present.

20. Plaintiff Jane Doe #1 is an 82-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is her court-appointed guardian. She has been a resident at Alden Village North from 2019 to the present.

21. Plaintiff Jane Doe #2 is 38-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is her court-appointed guardian. She has been a resident of Alden Village North from in or about 2008 to the present.

22. Plaintiff John Doe #3 is a 76-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is his court-appointed guardian. He has been a resident of Alden Town Manor from 2020 to the present.

23. Plaintiff John Doe #4 is a 77-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is his court-appointed guardian. He has been a resident of Princeton Rehabilitation & Health Care Center from 2019 to the present.

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24. Plaintiff John Doe #5 is a 61-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is his court-appointed guardian. He has been a resident of Princeton Rehabilitation & Health Care Center from 2017 to the present.

25. Plaintiff John Doe #6 is a 67-year-old Medicaid beneficiary who resides in McHenry County, Illinois, and the Office of State Guardian is his court-appointed guardian. He has been a resident at Alden Terrace McHenry from 2015 to the present.

26. Plaintiff Jane Doe #3 is a 74-year-old Medicaid beneficiary who resides in McHenry County, Illinois, and the Office of State Guardian is her court-appointed guardian. She has been a resident at Alden Terrace McHenry from 2010 to the present.

27. Plaintiff Jane Doe #4 is a 71-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is her court-appointed guardian. She has been a resident at Heather Health Care Center from 2013 to the present.

28. Plaintiff Jane Doe #5 is a 39-year-old Medicaid beneficiary who resides in Cook County, Illinois, and the Office of State Guardian is her court-appointed guardian. She has been a resident at Heather Health Care Center from 2018 to the present.

29. Under Alden policies, each Plaintiff only has access to a personal needs allowance of $30 per month from their income. Without appropriate or reliable care, each Plaintiff is at constant risk of injury and harm.

B. Defendants Alden Group and Alden Management Services

30. Defendant Alden Group, Ltd. (“Alden Group”) is an Illinois corporation headquartered in Chicago, Illinois. Alden Group is the owner of the Alden Facilities and Alden Management Services. Alden Group is also a related entity to each Alden Facility as defined by

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the State of Illinois and the federal government for purposes of regulation, transparency, and legal compliance.

31. Defendant Alden Management Services ("AMS") is an Illinois corporation, f/k/a The Alden Group, Ltd. AMS manages and controls the operation of more than four dozen nursing and rehabilitation facilities in northern Illinois and southern Wisconsin, including the seven named Alden Facilities described below. At all times relevant to this Complaint, Defendant AMS, as the management company, owner, and/or operator of the Alden Facilities, exercised significant control over the necessary components of the day-to-day operations of the Alden Facilities including, but not limited to, budgetary decisions, hiring and firing, staffing of the facility, training of the staff, the contracting for services with consultants, including nurses, the management of facility finances, the development and revision of facility policies and procedures, the monitoring of the quality of care provided by staff and physicians to facility residents, and the provision of financial resources for nursing and medical supplies.

32. Defendant AMS also tracks every resident in each Alden Facility, including dates of residence, payments, and sources of payment. AMS collects approximately $5 million per year in fees from the Alden Facilities.

33. On information and belief, AMS, Alden Group, and all of the Alden Facilities are ultimately owned and entirely controlled by Floyd Schlossberg and his family, including, but not limited to, Ina Schlossberg, Randi Schlossberg-Schullo, Lauren Magnusson, Terry Magnusson, and Audra Elisco, who are also senior executives for the various Alden entities and serve on their Boards of Directors.

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34. Each of the Defendants is the agent, servant or employee of all of the remaining Defendants and in doing the things herein alleged was acting within the course and scope of such agency or employment and with the consent and permission of the remaining Defendants.

35. Alden Group and AMS act as one interconnected enterprise such that the actions of each can be imputed to the acts of the others.

C. Alden Facility Defendants

36. Defendant Heather Health Care Center is an Illinois corporation. It is the licensee of a long-term nursing care facility located at 15600 S. Honore, Harvey, Cook County, Illinois 60426. Heather Health Care is licensed for up to 173 residents. Heather Health Care generates approximately $9.4 million in annual revenue, approximately $8.1 million of which comes from Medicaid, $870,547 comes from Medicare, and $121,925 comes from residents. The Alden Group is its 100 percent owner.

37. Defendant Alden Town Manor Rehabilitation and Health Care Center is an Illinois corporation. It is the licensee of a long-term nursing care facility commonly known as Alden Town Manor, located at 6120 W. Ogden, Cicero, Cook County, Illinois 60804. Alden Town Manor is licensed for up to 249 residents. Alden Town Manor generates approximately $14 million in annual revenue, of which approximately $10 million comes from Medicaid, $1.75 million comes from Medicare, and $318,000 comes from residents. The Alden Group is its 100 percent owner.

38. Defendant Alden Terrace of McHenry County Rehabilitation Center is an Illinois corporation. It is the licensee of a long-term nursing care facility commonly known as Alden Terrace McHenry located at 803 Royal Drive, McHenry, McHenry County, Illinois 60050. Alden McHenry is licensed for up to 316 residents. Alden McHenry Terrace generates

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approximately $12 million in annual revenue, of which approximately $7.6 million comes from Medicaid, $2.8 million comes from Medicare, and $476,000 comes from residents. The Alden Group is its 100 percent owner.

39. Defendant Alden Village North is an Illinois corporation. It is the licensee of a long-term nursing care facility located at 7464 N. Sheridan Road, Chicago, Cook County, Illinois 60626. Alden Village North is licensed for up to 150 residents. Alden Village North generates approximately $9.8 million in annual revenue, of which approximately $9.7 million comes from Medicaid and $129,000 comes from Medicare. The Alden Group is its 100 percent owner.

40. Defendant Alden Lakeland Rehabilitation and Health Care Center is an Illinois corporation. It is the licensee of a long-term nursing care facility commonly known as Alden Lakeland, located at 820 W. Lawrence Avenue, Chicago, Cook County, Illinois 60640. Alden Lakeland is licensed for up to 300 residents. Alden Lakeland generates approximately $15.4 million in annual revenue, of which approximately $13 million comes from Medicaid, $1.7 million comes from Medicare, and $334,417 comes from residents. The Alden Group is the 100 percent owner.

41. Defendant Alden Princeton Rehabilitation and Health Care Center is an Illinois corporation. It is the licensee of a long-term nursing care facility commonly known as Alden Princeton located at 255 W. 69th Street, Chicago, Cook County, Illinois, 60621. Alden Princeton is licensed for up to 225 residents. Alden Princeton generates approximately $9.7 million in annual revenue, of which approximately $8.7 million comes from Medicaid, $600,000 comes from Medicare, and $80,000 comes from residents. The Alden Group is its 100 percent owner.

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42. Each of the Alden Facilities described above is a "nursing facility" as defined by the NHCA and is subject to the Act's requirements and the Illinois Department of Public Health's regulations, promulgated pursuant to the Act.

43. Both the owner and the licensee of each nursing facility are liable for violations of the NHCA. 210 ILCS 45/3-601.

STATUTORY AND REGULATORY STANDARDS

A. Illinois Nursing Home Care Act

44. The NHCA was adopted "amid concern over reports of 'inadequate, improper and degrading treatment of patients in nursing homes.'" *Eads v. Heritage Enters., Inc.*, 204 Ill.2d 92, 97 (2003).

45. A principal component of the NHCA is the "Residents' Bill of Rights," which guarantees nursing facility residents certain rights, including the right to be free from abuse and neglect. 210 ILCS 45/2-101 through 2-113.

46. The NHCA defines neglect as "a facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living ('ADLs') that is necessary to avoid physical harm, mental anguish, or mental illness of a resident." 210 ILCS 45/1-117.Thus, the statute requires facilities to provide the care necessary to *avoid* harm, and legal claims under the NHCA do not require a resident to already have suffered physical harm or injury.

47. To prevent neglect and ensure adequate care, the NHCA and its implementing regulations require each nursing facility owner and operator to provide enough staff to:

a. provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of the resident, 77 Ill. Admin. Code § 300.1210(a);

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b. develop and implement a comprehensive care plan for each resident to attain or maintain the highest practicable level of independent functioning, 210 ILCS 45/3-202.2(a) and 77 Ill. Admin. Code § 300.1210(a);

c. administer all treatments and procedures as ordered by the physician, 77 Ill. Admin. Code § 300.1210(d)(2);

d. ensure no resident's ability to engage in activities of daily living diminishes unless the individual's clinical condition demonstrates that diminution was unavoidable. Examples of activities of daily living include the ability to bathe, dress, and groom; transfer and ambulate; toilet; eat; and talk. 77 Ill. Admin. Code § 300.1210(b)(4);

e. ensure the resident receives the services necessary to maintain good nutrition, grooming, and personal hygiene, 77 Ill. Admin. Code § 300.1210(b)(4);

f. assist residents with ambulation and safe transfer as often as necessary to retain or maintain their highest practicable level of functioning, 77 Ill. Admin. Code § 300.1210(b)(5);

g. ensure every resident of all rights, benefits or privileges guaranteed by law, 77 Ill. Admin. Code § 300.3210(a); and

h. protect each resident's right to be free from any medically unnecessary physical or chemical restraints used for discipline or convenience, 210 ILCS 45/2-106.

48. Proper and safe resident care cannot be provided without adequate staff. Thus, as to staffing, Illinois law also specifically requires that each nursing facility shall at least:

a. set the number of staff based on the needs of the residents as determined by the number of hours of direct care each resident requires on each shift of the day; 77 Ill. Admin. Code § 300.1230(b);

b. provide at a minimum direct care staff sufficient to meet the needs of direct care staffing of its residents, 77 Ill. Admin. Code § 300.1230;

c. provide as an absolute floor every single day at least 3.8 hours of direct care for each resident needing skilled care and 2.5 hours for each resident needing intermediate care, 77 Ill. Admin. Code § 300.1230;

d. schedule nursing personnel such that the needs of all residents are met, 77 Ill. Admin. Code § 300.1230(i); and,

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e. ensure all direct care staff review and know each residents' care plan, 77 III. Admin. Code § 300.1210(c).

49. Both the owner and licensee of a nursing facility are liable for any intentional or negligent act or omission of their agents or employees. 210 ILCS 45/3-601.

C. Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA")

50. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") (815 ILCS 505/1 *et seq.*) prohibits unfair and deceptive practices, including "use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact… in the conduct of trade or commerce …" 815 ILCS 505/2.

51. The ICFA also prohibits immoral, unethical, oppressive, or unscrupulous practices that offend public policy and cause substantial injury to customers. *Toulon v. Cont'l Cas. Co.*, 877 F.3d 725, 740 (7th Cir. 2017).

52. The ICFA provides that "[a]ny person who suffers actual damages as a result of a violation of this Act committed by any other person may bring an action against such person." 815 ILCS 505/10a. The term "person" as used in the ICFA includes "any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof." 815 ILCS 505/1.

53. All Defendants are subject to the ICFA.

FACTUAL BACKGROUND

54. For years, Alden has engaged in a profit-driven scheme in which it entices thousands of residents to its facilities, and then systematically and knowingly under-staffs those

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facilities leading to dangerous, distressing, and grossly unsanitary living conditions for the residents. Alden perpetrates this scheme by:

a. failing to ensure that the adequate number of staff are present in the facilities for each shift to undertake necessary care and tasks;

b. failing to ensure that qualified staff are present in the facilities for each shift to undertake necessary care and tasks;

c. attempting to nullify residents' statutory rights under the NHCA and to avoid legal accountability through unlawful "waivers" of a resident's right to bring an action in court and illegal arbitration documents that render arbitration rights illusory; and,

d. requiring absolute confidentiality about legal claims so that the dangerous manner in which Alden runs its facilities is concealed from future residents, government regulators and the public.

55. Alden places its residents at continual risk of physical and mental injury as a direct result of its neglect that largely stems from a lack of appropriate staffing.

56. Alden's conduct violates the NHCA and the ICFA.

A. Alden Chronically Understaffs its Facilities

57. Alden consistently and knowingly fails to provide legally mandated staffing or care to the residents of the Alden Facilities. Instead, Alden operates its businesses to maximize profits by sacrificing the quality of care.

58. Nursing home regulations require Alden to provide enough staff with the right skills and credentials for the ***hours necessary*** to meet the care needs of every resident and to implement the residents' individual plans of care. 210 ILCS 45/3-202.2(a) and 77 Ill. Admin. Code § 300.1210. Failure to provide the hours of care that each resident needs, neglects residents and puts them at tremendous risk of harm.

59. Separately, Alden must also provide at least the ***statutory minimum*** number of hours of care to:

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a. Provide 2.5 hours of "nursing and personal care each day" for a resident who needs "intermediate care" from qualified professionals,

b. Provide 3.8 hours of care per day for "a resident needing skilled care" from qualified professionals, and,

c. Ensure that at least 25% of this care is provided by a licensed nurse (LPN) and at least 10% by a registered nurse (RN). 210 ILCS 45/3-202.05(e).

60. Thus, for a resident who needs skilled care, the statutory floor for the minimum hours of care that Alden must provide would be at least 3.8 hours of nursing care (from a CNA, LPN, or RN), of which at least an hour must by from an LPN and at least 0.4 hours must be provided by an RN.

61. Alden does not provide the staff necessary to care for residents or even to meet the statutory minimum. Alden falls woefully short of both standards at the Alden Facilities.

62. Each year, each Alden Facility submits to the Illinois Department of Public Health cost reports that state the number of residents by the level of care required, the number of hours of resident care for which Alden paid (broken down by staff position/credential), and the average hourly cost of care from each type of staff. These cost reports confirm and quantify the residents' experience of neglect resulting from understaffing.

63. From 2018 through 2020, for example, Alden Facilities fell far short of the hours necessary to provide resident care: Alden Facilities should have provided more than 1 million additional certified nursing assistant ("CNA") hours, and 300,000 more skilled nursing hours (i.e., hours of care provided by registered nurses ("RNs") and licensed practical nurses ("LPNs"), together, "skilled nurses").

64. Over the same time, Alden even fell short of the statutory minimum for nursing care required by Illinois regulations by over 334,000 hours.

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65. At the hourly rates Alden itself reports to the State, Alden can save over $3 million dollars a year in a single facility through understaffing.

66. For example, at Heather Healthcare in 2020, Alden provided less than 20% of the necessary hours of care from registered nurses and less than 50% of the necessary hours of care CNAs to meet residents' needs. Alden also failed to provide even half of the statutory minimum of hours of care from registered nurses. To meet the Illinois statutory minimum hours, Alden Heather Health Care was required to provide an additional 68,000 hours of nursing care over the course of 2018, 2019, and 2020. At the hourly rates Alden reports for registered nurses, licensed nurses, and CNAs, understaffing at Heather Healthcare saves Alden approximately $2.2 million annually.

67. Likewise in 2020, Alden Town Manor provided just one-third (1/3) of the necessary hours of CNA and registered nursing care for its residents. In 2019 and 2020, Alden fell short of the Illinois statutory minimum care hours at Town Manor by 20%. Alden Town Manor should have provided—at a minimum— 100,000 additional hours of care from 2018 to 2020 to comply with the Illinois statutory requirement. At the hourly rates Alden reports for registered nurses, licensed nurses, and CNAs, the understaffing at Alden Town manor saves Alden approximately $3.3 million annually.

68. In 2020, Alden Terrace McHenry provided just 40% of the necessary hours of CNA care and 27% fewer RN hours than necessary to meet residents' needs. To reach even the Illinois statutory minimums, Alden owed its residents at least 55,000 more hours of care from 2018 to 2020. At the hourly rates Alden reports for registered nurses, licensed nurses, and CNAs, the understaffing at Alden Terrace McHenry saves Alden approximately $1.8 million annually.

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69. In 2020, Alden provided the residents of Alden Village North with only 63% of the RN nursing hours necessary to meet residents' needs. Alden Village North's nursing hours were even below the Illinois statutory minimum for nursing hours in 2019 and 2020. At the hourly rates Alden reports for registered nurses, licensed nurses, and CNAs, the understaffing at Alden Village North saves Alden approximately $750,000 annually.

70. In 2018, 2019, and 2020, Alden Lakeland provided just 50% of the necessary hours of care from CNAs. Alden even provided less than the Illinois statutory minimum of nursing hours. To meet the statutory minimums, Alden owed its residents *at least* 47,000 more hours of care over the course of 2018, 2019, and 2020. At the hourly rates Alden reports for registered nurses, licensed nurses, and CNAs, the understaffing at Alden Lakeland saves Alden approximately $1,700,000 per year.

71. In 2018, 2019, and 2020, Alden Princeton Rehab provided its residents with 50% of the necessary CNA hours, and only 25% of the registered nursing hours necessary to meet residents' needs. From 2018 through 2020, Princeton Rehab also consistently fell short of the minimum skilled nursing hours. To meet the Illinois statutory minimum, Alden owed its residents 46,000 more hours of nursing care over 2018, 2019, and 2020. At the hourly rates Alden reports for registered nurses, licensed nurses, and CNAs, the understaffing at Alden Princeton saves Alden approximately $1.9 million per year.

72. Alden's own employees have expressed concerns with Alden's understaffing. Employees report that at some facilities, staffing levels are as low as one CNA to care for 22 residents alone on a day shift—when many or most residents require care with dressing, eating, moving, toileting, and daily living. Overnight staffing at Alden Facilities falls as low as a single CNA for every 30 residents. At that level, Alden staff could never provide all of the required

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care. This understaffing is not limited or incidental. Rather, it occurs frequently because on a systemic level Alden chooses to maximize profits by failing to maintain required staffing levels in order to increase profits.

73. Alden is so short on staffing that it engages in what employees call "ghost staffing," wherein individuals are listed on official schedules even if not employed or scheduled to work during a particular day or shift. This model is meant to deceive state regulatory surveyors and conceal chronic understaffing. On any given day that a state survey team enters a facility and reviews the staff schedule, the Illinois Department of Public Health surveyors might wrongly conclude that Alden intended to fully staff a shift and the understaffing was caused by staff who failed to show up for work. In reality, Alden purposely schedules staff who they know will not come to work.

B. Due to Systemic Understaffing, Alden Neglects the Residents of Alden Facilities.

74. Because of its systemic understaffing, Alden does not meet its legal obligations to provide the care required for residents or protect them from the risk of harm. This systemic neglect guarantees that there will be a gap between Plaintiffs' and proposed class members' needs (based on resident acuity), and the number of staff available to meet those needs. While Alden's low staffing levels maximize the profit of its inter-related enterprises, insufficient staffing places every resident at risk of injury, illness, distress, and deterioration.

75. Because of insufficient staffing, all residents of Alden Facilities are in continual danger of falls, pressure ulcers, wounds, infections, weight loss, dehydration, and other medical ailments.

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76. Because of insufficient staffing, the residents of the Alden Facilities have suffered all manner of harm reported by the residents and uncovered by State inspectors. A few examples from the Alden Facilities include:

- A resident who fell from a mechanical lift to the floor and sustained an impacted right femoral neck fracture because Alden fails to ensure the lift was used with two staff persons as required.
- A resident who fell down the stairwell of their facility strapped to a wheelchair.
- A resident who did not receive timely diagnosis and treatment of an aggressive form of cancer.
- Residents who developed pressure ulcers in Alden Facilities that worsened because Alden failed to identify and treat them.
- A resident who ingested poisonous chemicals due to lack of required supervision by Alden staff.

77. Because of insufficient staffing, Alden does not and cannot provide the care Alden itself has determined is necessary and appropriate for residents. Alden is legally required to develop and implement a plan of care for each resident. These plans not only set forth proper and safe care of every resident, but also provide the basis upon which Alden collects government payments. Alden falls short of providing the care Alden itself admits is necessary to meet the basic needs of residents.

78. Because of insufficient staffing, Alden fails to provide residents with necessary physical assistance, including with moving, changing positions, transferring from a bed to a wheelchair, eating, drinking, changing clothes, showering, and continence care.

79. Because of insufficient staffing, Alden staff cannot timely respond to resident call light requests, leaving residents without their needs met.

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80. Because of insufficient staffing, Alden does not meet legal mandates to comprehensively assess residents, to develop and update care plans that meet the assessed needs of each resident, and to ensure that the plans are implemented.

81. Because of insufficient staffing, Alden does not respond to deteriorations in residents' condition. Alden Lakeland, for example, was recently cited by the Illinois Department of Public Health when it failed to implement interventions for residents with severe weight loss and dehydration.

82. Because of inadequate staffing levels, facility staff often perform duties that are outside of their certification and training, which results in inadequate, deficient, and dangerous resident care.

83. Alden does not provide care calculated to "avoid physical harm, mental anguish, or mental illness of a resident." 210 ILCS 45/1-117. Alden neglects its residents.

C. Alden Group Controls Each Alden Facility.

84. Alden Group owns each of the Alden Facilities, AMS, and many other related Alden entities and business that operate as a single unified enterprise.

85. Although each Alden Facility is separately incorporated, each Alden Facility is 100% owned by Alden Group.

86. Alden Group controls each Alden Facility as a wholly owned subsidiary.

87. Alden Group controls the facilities, in part, through its subsidiary AMS, which directly controls and operates the facilities, and then siphons off profits as fees.

88. AMS controls the budget, staffing, operation, practices, and condition of all Alden facilities, including at each Alden Facility named as a defendant.

89. AMS sets and approves the budget for each Alden Facility.

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90. AMS does government and cost reporting for each Alden Facility.

91. AMS receives and responds to state investigations and develops corrective action plans for each Alden Facility.

92. AMS sets the staffing levels for each Alden Facility.

93. AMS trains the staff and performs inspections for each Alden Facility.

94. AMS hires and fires the management for each Alden Facility.

95. AMS employs and directs management oversight for each Alden Facility.

96. AMS trains all managers and senior staff for each Alden Facility in uniform policies and practices.

97. AMS's training creates uniform policies, practices and documents for resident intake, including policies and practices related to obtaining arbitration agreements and policies and practices for dealing with state inspections.

98. AMS drafts all policies, procedures, documents, agreements, and contracts, which are materially uniform across Alden Facilities and the time frame covered by this lawsuit.

D. Alden Utilizes Unlawful Resident and Arbitration Agreements to Silence Residents and Evade Liability

99. To conceal its unlawful and unscrupulous business practices, as well as to evade liability for the mistreatment of residents, Alden utilizes two illegal contracts: the "Resident Agreement" (Exhibit A) and "Arbitration Agreement" (Exhibit B). AMS drafted these documents for use at all Alden Facilities and have not varied them materially, if at all, in the last five years.

100. The purpose and intended effect of the Resident and Arbitration Agreements is to illegally prevent residents from bringing any claim to enforce the NHCA, or any other legal claim, against any Alden entity.

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101. Both documents are invalid and unenforceable as they include provisions that are unlawful, unconscionable, unenforceable, and violate public policy.

102. The Resident Agreement attempts to immunize Alden from all liability. It purports to waive Alden liability to its residents:

a. "for death of Resident regardless of cause,"

b. "for injuries resulting from falls,"

c. "for injuries resulting from … mechanical units," and

d. "for injuries resulting … from any other cause or causes whatsoever."

Ex. A at 7.

103. The Resident Agreement further claims to prospectively release Alden from all causes of action "of any nature, kind or description or for any alleged act or acts of omission of the Facility." Ex. A at 7.

104. The Resident Agreement further provides that:

a. Residents on Public Aid forfeit "all income," save $30 per month, "whatever the source." Ex. A at 3.

b. Even the $30 per month must "be deposited with the Facility," against which Alden bills the resident further for alleged extra charges related to the resident's personal needs. Ex. A at 4.

c. Late payments are subject to interest at 21.6% per month, collectible from any funds of the resident and through a lien on any real property interest. Ex. A at 5.

105. Likewise, the Arbitration Agreement is designed to coerce residents not to enforce their rights under the NHCA and to conceal any claims a resident may assert.

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106. The Arbitration Agreement is designed to prevent claims by purporting to waive resident rights to attorneys' fees under the NHCA: "Resident further agrees to waive any and all costs and attorney's fees under the Illinois Nursing Home Care Act." Ex. B at 2.

107. The Arbitration Agreement seeks to limit the remedies available to residents by dictating arbitration to be conducted by and under the rules created by the company, ADR Systems ("ADR" and "ADR Rules," respectively). Ex. B at 2. Under the ADR Rules (Exhibit C), arbitrators "shall only decide the issues of bodily injury damages, proximate cause and negligence …" Ex. C at 6 (Rule 7.1.b). There is no provision for injunctive relief, compensatory damages, or other relief. *Id*.

108. The Arbitration Agreement precludes most residents from bringing an arbitration claim due to its requirement that residents, most of whom have no available assets, pay half of all arbitration and mediation costs over $2,000, including administrative fees, expenses, and arbitrator costs. Ex. B at 2. The Arbitration Agreement has no hardship exemption or consideration of a resident's ability to pay. Ex. B. There is no provision for shifting fees or costs for a resident who prevails. *Id.*

109. The ADR Rules likewise do not require the nursing facility to pay arbitration costs and do not have any hardship waiver of arbitration fees or costs. Ex. C. To the contrary, the ADR Rules are explicit that "[t]he parties are jointly and severally liable for the payment of ADR Systems' arbitration fees and expenses," that the arbitrator may ban "evidence of any affirmative claim" of any party that does not pay arbitration fees, and that ADR Systems may "stay the arbitration" and refuse "issuance of the award" if fees and expenses are not paid. Ex. C at 10.

110. Alden residents cannot afford to arbitrate under this system. Residents already forfeit "all income in excess of $30 per month…, whatever the source of said income be it social

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security, pension, etc., shall be paid to the Facility toward the cost of care." Ex. A at 3. To ensure Alden seizes all such income, Alden requires that "all future [income] payments be mailed directly to the Facility." *Id*.

111. In addition, most residents, including all members of the class proposed below, are on Medicaid and have extremely limited financial resources. To qualify for Medicaid, a single individual age 65 or older or with a disability must have an annual income below $1,073 per month and assets below $2,000. For a married couple, age 65 or older or with a disability, their income must be below $1,452 per month and assets below $3,000.

112. Filing this lawsuit in the Circuit Court of Cook County costs $835 in total for all claims, all named plaintiffs, and hundreds of class members. Under 735 ILCS 5/5-105 and Illinois Supreme Court Rules 298, qualifying Alden residents could have brought these claims with no court costs, assessments, or fees at all.

113. In contrast, arbitration of claims under the Arbitration Agreement at ADR Systems requires $350 from each party for filing fees ($700 total), plus an average of $16,000 in additional arbitration fees, plus the cost of travel, witnesses, experts, litigation expenses, and attorneys' fees. These costs are *per individual arbitration*. Thus, the arbitration costs of even 1,000 claims here would exceed $15 million.

114. By drafting the Arbitration Agreements in this manner, Alden makes arbitration prohibitively expensive and therefore an impossible and illusory forum for plaintiffs and all members of the proposed class to seek redress for Alden's violations.

115. The Arbitration Agreement is further designed to conceal claims against Alden by providing: "Each party shall keep all material aspects of the arbitration proceeding confidential." Ex. B at 2.

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116. The Arbitration Agreement is also designed to artificially limit claims and minimize potential liability by providing: "[T]here shall be no right … for any dispute … to be arbitrated on a class action basis or on any basis involving claims brought in a purported representative capacity …. claims … may not be joined or consolidated." Ex. B at 1. It further purports to waive the right to participate in a class action, stating that residents "waive" their right to "participate as a member of any class of claimants." Ex. B at 3.

117. The Arbitration Agreement also waives a resident's right to an appeal. Ex. B at 1-2.

118. Not surprisingly, the only legal claim Alden exempts from arbitration is *its own claim* against residents for fees: "Notwithstanding the foregoing, any legal controversy, dispute, disagreement or claim of any kind … regarding nonpayment by Resident … shall be adjudicated in a court of law." Ex. B at 1.

119. Alden collects signatures on these unconscionable Arbitration Agreements by concealing the nature and effect of the agreements from residents.

120. The Arbitration Agreements are presented among a stack of forms to sign and not considered or reviewed in full by residents. The representatives of Alden run through entire packets of forms and collect numerous signatures in a matter of minutes.

121. Further, Alden trains its employees to mislead and misinform the residents about the nature and contents of these agreements. For example, Ms. Regina Long, an Alden admissions director for twenty years, testified in 2018 that she does not explain agreement terms related to the NHCA, venue, successor, punitive damages, indemnification, statute of limitations, or even residents' substantive statutory rights. Instead, she tells residents that:

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a. Arbitration is where "both parties can come together in agreement in arbitration with their lawyers legally and the corporate lawyer to settle things out of court,"

b. The "Illinois Nursing Home Care Act" is "a legal act put in place for residents and facilities to waive any court fees or juries, trials," and,

c. The "Illinois Nursing Home Care Act" is "like an arbitration agreement" waiving a jury trial and attorneys' fees.

122. Alden Group and AMS designed and implement the Resident Agreement and Arbitration Agreement in an attempt to unlawfully insulate Alden from all liability, scrutiny, and oversight of their negligent care, and unfair and unlawful business practices.

123. For these and other reasons, the Arbitration Agreements are unconscionable and unenforceable under Illinois as to the proposed class.

E. Alden Was Not Rendering Assistance to the State of Illinois in Response to the COVID-19 Outbreak.

124. At all times relevant for this action, Alden, by and through its actual, implied, and/or apparent agents, servants and employees, was not rendering assistance to the State of Illinois in response to the COVID-19 outbreak by providing health care services consistent with any guidance issued by the Illinois Department of Public Health.

125. At all times relevant for this action, Alden, by and through its actual, implied, and/or apparent agents, servants and employees, was not rendering assistance to the State of Illinois in response to the COVID-19 outbreak by increasing the number of beds at its facility.

126. At all times relevant for this action, Alden, by and through its actual, implied, and/or apparent agents, servants and employees, was not rendering assistance to the State of Illinois in response to the COVID-19 outbreak by providing, preserving and properly employing personal protective equipment ("PPE").

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127. At all times relevant for this action, Alden, by and through its actual, implied, and/or apparent agents, servants and employees, was not rendering assistance to the State of Illinois in response to the COVID-19 outbreak by conducting widespread testing of residents, including Plaintiffs, for COVID-19.

128. At all times relevant for this action, Alden, by and through its actual, implied, and/or apparent agents, servants and employees, was not rendering assistance to the State of Illinois in response to the COVID-19 outbreak by conducting widespread and regular testing of staff, including the staff providing care and services to Plaintiffs, for COVID-19.

129. At all times relevant for this action, Alden, by and through its actual, implied, and/or apparent agents, servants and employees, was not rendering assistance to the State of Illinois in response to the COVID-19 outbreak by taking the necessary steps to provide medical care to patients with COVID-19 and to prevent further transmission of COVID-19.

CLASS ALLEGATIONS

130. Plaintiffs bring this lawsuit pursuant to 735 ILCS 5/2-801 on behalf of themselves and all other residents defined as follows:

a. Residents who are Medicaid eligible and resided in an Alden Facility on or after September 27, 2017.

131. The proposed Class satisfies the requirements of 735 ILCS 5/2-801.

132. This Class, which exceeds 1,000 persons, is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action will provide substantial benefits to both the parties and the Court.

133. Common questions of law and fact predominate over individual issues affecting only individual class members. The common questions of law and fact include, among others:

a. Whether Alden knowingly and unlawfully understaffed Alden facilities?

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b. Whether inadequate staffing by Alden neglects residents when it fails to provide the care necessary to avoid physical and mental harm?

c. Whether Alden engaged in unlawful and unfair business practices that caused substantial injury to residents as consumers?

d. Whether the Arbitration Agreement is unenforceable because it denies Plaintiffs' access to a remedy for statutory rights?

e. Whether purported waivers in the Resident Agreement are unlawful and invalid?

f. Whether the Alden entities operate as a unified enterprise such that the actions of each Alden entity can be attributed to the others?

g. Whether the injunctive relief and declaratory relief sought by Plaintiffs is appropriate to address Alden's violations of law?

h. Whether and in what amount Alden owes punitive damages?

134. Plaintiffs will fairly and adequately protect the interests of all class members. Named Plaintiffs are members of the class, and their claims are typical of the claims of all class members. Their interest in obtaining injunctive and monetary relief for Alden's violations of the class members' rights are consistent with and are not antagonistic to those of any person within the class. Plaintiffs have retained counsel competent and highly experienced in complex and class action litigation and in nursing facility abuse and neglect litigation.

135. Further, to the extent any members of the class may have signed an arbitration agreement, members of the class cannot be compelled to arbitrate their claims. Class members cannot afford to arbitrate their claims and the Alden arbitration forum does not provide relief guaranteed by statute.

136. A class action is an appropriate method for the fair and efficient adjudication of this controversy because, among other benefits, it will:

a. Avoid the heavy burden of multiple, duplicative suits by thousands of residents;

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b. Allow the Court, upon adjudication of Alden's liability, to determine the claims of all class members; and,

c. Allow the Court to enter appropriate injunctive, declaratory, and/or final monetary relief with respect to the class as a whole.

Count I: Violation of the Illinois Nursing Home Care Act

137. Plaintiffs reallege and incorporate the above paragraphs.

138. The NHCA requires that "[n]o resident" be "deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of his status as a resident of a facility." 210 ILCS 45/2-101.

139. The Act provides that the owner and licensee of a nursing facility are liable to a resident for any intentional or negligent act or omission of their agents or employees. *See* 210 ILCS 45/3-601.

140. The Act makes it unlawful for nursing facilities or their employees to "abuse or neglect a resident." 210 ILCS 45/2-107.

141. "'Neglect' means a facility's failure to provide … adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident." 210 ILCS 45/1-117.

142. A facility's failure to provide personal care, assistance, and other care sufficient to avoid harm violates Section 1-117 of the NHCA.

143. Statutory neglect under the NHCA does not require any resident to suffer physical harm or injury.

144. To ensure the robust public oversight of nursing facilities and protection of all nursing home residents, the Act expressly authorizes private actions for damages, actions for "injunctive and declaratory relief," actions for "any other type of relief … permitted by law,"

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class action proceedings, and provides for attorneys' fee shifting. 210 ILCS 45/3-602 and 210 ILCS 45/3-604.

145. Through the actions described above, and others, Defendants neglected the residents of the Alden Facilities in violation of the NHCA.

146. Alden's violation of the Act caused the residents of the Alden Facilities grave injuries, distress, actual damages, economic harm, and placed them in grave physical and psychological danger.

Count II: Violation of the Illinois Consumer Fraud and Deceptive Practices Act

147. Plaintiffs reallege and incorporate the above paragraphs.

148. The ICFA prohibits "unfair as well as deceptive conduct." *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417 (2002); 815 ILCS 505/2 (barring "unfair or deceptive acts or practices."). Unfair practices are those that (1) offend public policy, (2) are "immoral, unethical, oppressive or unscrupulous," or (3) cause "substantial injury to consumers." *Id.* at 417.

149. Alden engages in unfair practices whereby it lures thousands of residents to live in Alden Facilities. Alden collects government payments while neglecting these residents by providing inadequate care, including by knowingly understaffing its facilities.

150. Alden's neglect of its residents through poor care, understaffing, and related practices offends public policy as a blatant violation of state law care and staffing requirements.

151. Alden's neglect of its residents through poor care, understaffing, and related practices traps and victimizes older adults and people with disabilities who reside at the Alden Facilities with few alternatives. Alden's practice of admitting people into their facilities and then refusing to provide necessary care or even enough staff to keep residents safe—only to drive

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profits for related corporations and the owners—exemplifies immoral and oppressive business practices.

152. Alden compounds the harm of its illegal operations with the unfair and unlawful Resident and Arbitration Agreements. These documents purport to require residents to sign away their legal rights and remedies, and effectively avoid public scrutiny of allegations against Alden through unfair confidential arbitration proceedings that provide inadequate and incomplete remedies along with a bill of costs and expenses the residents cannot afford.

153. The Resident Agreement and Arbitration Agreement contain flatly unlawful and illegal provisions. As a major corporation operating nursing facilities, Alden must know that such contracts are unconscionable and unenforceable. The only reason to require residents to sign these oppressive and unlawful contracts is to avoid, conceal and bury claims of neglect and other conduct against Alden. This unfair practice, too, violates the ICFA.

154. The residents of Alden Facilities, who by definition are limited in physical capacity, and often in cognitive and/or financial capacity too, have little ability and virtually no means to move or avoid Alden's unscrupulous and dangerous conduct.

155. Alden's business practices include taking in thousands of residents only to neglect and mistreat them through poor care and chronic and knowing understaffing, concealing the maltreatment and legal violations by hiding evidence from government regulators, and using illegal contracts in an attempt to conceal allegations, escape liability, and silence residents.

156. These and related practices are not only immoral and unethical, but unfair and thus unlawful practices that violate the ICFA.

PRAYER FOR RELIEF

Plaintiffs ask the Court to enter judgment against Alden and issue an Order:

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a. Certifying this case as a class action pursuant to 735 ILCS 5/2-801;

b. Appointing Plaintiffs as representatives of the class;

c. Appointing the undersigned counsel as counsel for the class;

d. Declaring that Alden has violated the NHCA and ICFA;

e. Providing injunctive relief to prohibit Alden from neglecting its residents and desist from the unfair and unlawful practices;

f. Appointing a court monitor to ensure the implementation of injunctive relief and care of all Alden residents, with all costs paid by Alden;

g. Awarding monetary damages;

h. Awarding punitive damages;

i. Awarding reasonable attorneys' fees and costs; and,

j. Awarding such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand trial by jury on all issues as to which a jury trial is available.

Respectfully submitted,

/s/ Charles D. Wysong
One of the Attorneys for the Plaintiffs

Matthew J. Piers
mpiers@hsplegal.com
Charles D. Wysong
cwysong@hsplegal.com
Emily R. Brown
ebrown@hsplegal.com
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
Three First National Plaza
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312-580-0100
Firm No. 45667

Steve Levin
sml@levinperconti.com
Margaret Battersby Black

Kelly Bagby (*pro hac vice pending*)
kbagby@aarp.org
Maame Gyamfi (*pro hac vice pending*)
mgyamfi@aarp.org
Meryl Grenadier (*pro hac vice pending*)
mgrenadier@aarp.org
AARP FOUNDATION
601 E Street NW
Washington, DC 20049
202-434-2137

Barry Taylor
BarryT@equipforequality.org
Cristina Headley

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mpb@levinperconti.com
Zachary Weinberg
zsw@levinperconti.com
LEVIN & PERCONTI
325 North LaSalle, Suite 450
Chicago, Illinois 60654
312-332-2872
Firm No. 55019

Cristina@equipforequality.org
Andrea Rizor
AndreaR@equipforequality.org
EQUIP FOR EQUALITY
20 North Michigan Avenue, Suite 300
Chicago, IL 60602
(312) 341-0022
Firm No. 38641

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EXHIBIT

A

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Resident Agreement

Between

Heather Health Care Center

15600 Honore Avenue

Harvey IL, 60426

708-333-9550

Referred to herein as the "Facility", and the Resident as set forth herein.

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This Agreement, made and entered into, effective the [redacted] day of [redacted], [redacted], by and between the Facility, and [redacted], herein after referred to as "Resident" or "I", and [redacted], herein referred to as "Fiduciary Party" in consideration of the mutual covenants contained herein, do hereby agree to the following terms, conditions, and arrangements regarding the provision of nursing and/or personal care of the above named Resident.

This Agreement shall terminate on December 31, [redacted], and will automatically renew for successive one year periods thereafter, provided the Resident remains in the Facility and does not give notice of termination of the agreement.

Admission Documents: Resident and Fiduciary Party acknowledge that Resident's admission is based upon the representations contained in the Resident's application, financial summary form, and other admission documents. Due to the limited number of beds, which are certified for Medicare and Medicaid, it is critical that the Resident's financial information be accurate. Failure to provide accurate financial information could result in the Resident having to relocate to another facility. Failure to appropriately use the Resident's funds and assets for the Resident's care at Facility may constitute abuse and/or financial exploitation of the Resident. Inappropriate use of the Resident's funds and assets may be reported to the State and may result in criminal and civil liability. Resident and the Fiduciary Party represent that the statements made in all admission documents are true, correct and complete. False representations and statements made in Resident's admission documents are grounds for termination of this Agreement.

Fiduciary Party: Fiduciary Party shall act on behalf of Resident for all purposes permitted under applicable law. Fiduciary Party shall pay fees and charges incurred hereunder by or on behalf of Resident from Resident's assets or estate. Fiduciary Party may act in more than one capacity and shall be bound by the applicable terms and conditions of this Contract. Except as otherwise expressly provided to the contrary herein, if Fiduciary Party uses due care. Fiduciary Party will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. Resident acknowledges and consents to the execution of this Contract by Fiduciary Party.

Spouse: Resident and Fiduciary Party acknowledge that if the Fiduciary Party is a spouse of the Resident, then under the Illinois Family Expense Act, the spouse is responsible for any balance due to the Facility from the Resident irrespective of any provisions to the contrary herein.

SECTION I - FINANCIAL AGREEMENT

1. **PRIVATE PAY RESIDENTS:**
   A. For purposes of this Agreement, a "Private Pay Resident" is a Resident receiving no financial support from the Illinois Department of Public Aid, not covered by a contract with the Veteran's Administration, or is not eligible for Medicare (Part "A") coverage; and is subject to the total monthly rate set forth in the following paragraph.
   B. Resident and/or Fiduciary Party agrees to PAY MONTHLY IN ADVANCE upon receipt of billing, and the Facility will accept this arrangement in full consideration for care and services rendered as follows:
      1. MONTHLY RATE which includes room and board, routine services, and prescribed diets $ $6000.00 .

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If the room selection should change to a different type room or if Resident's status should require special medical equipment and monitoring the room rate will change accordingly, and will become effective immediately.

2. In the event the Resident is admitted or discharged during the month, the rate will be prorated based on a 30 day month. There will be no refunds for any days in which the Resident is absent from the Facility during the term of this Agreement for any reason, including hospital, except death or respite care.

3. The above room rate may be increased with 30 days prior notice.

2. PRIVATE PAY RESIDENT WITH MEDICAL ASSISTANCE OR WITH MEDICAL ASSISTANCE APPLIED FOR

A. If a Resident is admitted under an application for funding from the Illinois Department of Public Aid (IDPA), Resident shall be deemed a Private Pay Resident until IDPA accepts financial responsibility for the care of the Resident, and the parties further agree as follows:

1. Public Aid application shall be made pursuant to the rules and regulations promulgated by the Illinois Department of Public Aid, as the same are amended from time to time. Facility will provide assistance in the preparation of the Public Aid application; however, it is the Resident's and/or Fiduciary Party's sole responsibility to follow through with the application and to provide IDPA with all requested information and documents.
2. If the Resident is approved for Public Aid payments, Resident or Fiduciary Party understand that this contract shall be valid for Public Aid payments, Resident and/or Fiduciary Party shall pay for all Private Pay Resident charges up to the date that Public Aid assumes the financial responsibility for care of the Resident.
3. Should Resident be denied medical assistance or should Public Aid assume no financial responsibility from the date of admission, the Resident and/or Fiduciary Party understand and agree to accept the financial obligation as though Resident is a Private Pay Resident.
4. Under special consideration from the Facility, the Resident and/or Fiduciary Party will deposit, in advance, this month and every month until receipt of notification of the establishment of Medicaid eligibility (I.D.P.A. form #2299), the following: $_____.
5. Said monthly deposits shall be refunded within 30 days after notification to Facility of the establishment of Medicaid eligibility (I.D.P.A. form #2299) unless such deposit has been drawn upon or encumbered in accordance with Medicaid eligibility requirements established by the Illinois Department of Public Aid.
6. When the Resident has been approved for Public Aid all income in excess of $30 per month (which shall be deposited with the Facility in a trust fund account for the Resident's personal needs), whatever the source of said income be it social security, pension, etc., shall be paid to the Facility toward the cost of care for the Resident in the Facility.
7. To facilitate and guarantee payments of all the outside income to the Facility as directed by the Illinois Department of Public Aid, the Resident and/or Fiduciary Party hereby authorizes the Facility to file a change of address with the appropriate payor advising that all future payments be mailed directly to the Facility, or that said payments be directly deposited into an account at the Facility in Resident's name.

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8. Any amount refunded in error shall be billed to the Resident and/or Fiduciary Party. The Resident and/or Fiduciary Party understand and agree to pay back any such refunds.

B. Limited Power of Attorney. Resident and/or Fiduciary Party hereby grants Facility a Limited Power of Attorney to obtain any and all documents, statements and records, financial or otherwise, which IDPA may require during the processing of the Public Aid application. The aforesaid does not affect the Resident's and/or Fiduciary Party's obligation to pursue the Public Aid application process to its eventual acceptance or rejection.

3. PUBLIC AID RESIDENTS

If the Resident is a Public Aid Recipient, payments shall be made in accordance with the rules and regulations of the Illinois Department of Public Aid. In the event Public Aid payments are terminated, Resident and/or Fiduciary Party shall make all payments for Resident's Room, board, and care for so long as Resident shall remain in the Facility as though Resident is a Private Pay Resident.

4. VETERAN'S ADMINISTRATION AND HMO INSURANCE PLANS

If Resident's care is funded under a contract with the Veteran's Administration, or is receiving benefits through any HMO insurance plan, upon termination of the insurance benefits or contract, Resident and/or Fiduciary Party agree to accept the financial obligations as though Resident is a Private Pay Resident.

5. MEDICARE RESIDENTS

A. Resident must meet the technical and medical requirements for Medicare upon admission and during the Resident's stay, and must be periodically certified by his/her physician as needing such care.

B. If Resident's care is funded by direct Medicare payments to the Facility (Medicare Part "A" or "B"), Resident and/or Fiduciary Party shall pay all the co-insurance charges not paid by any other source, upon receipt of billing. Upon termination of all Medicare (Part "A") coverage, Resident and/or Fiduciary Party understand and agree to accept the financial obligations as though Resident is a Private Pay Resident.

6. CURRENT SOURCES OF INCOME

A. Resident and Fiduciary Party represent that as of this date Resident receives the following:

a. Social Security $_____

b. Trust Fund $_____

c. Pension Fund (_____) $_____

d. Other Source _____ $_____

7. RESIDENT'S AND/OR FIDUCIARY PARTY'S FINANICAL RESPONSIBILITY

A. While the Facility may assist in the procurement of third-party payor coverage, including Medicaid, Medicare and other insurance coverage, for the cost of residency and treatments, the Resident and/or Fiduciary Party acknowledge that the Facility does not guarantee coverage or the amount of payment by any payor source. The Resident and/or Fiduciary Party acknowledges that assistance by the Facility does not alter his or her responsibility to satisfy debts incurred for services rendered.

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B. Resident and Fiduciary Party acknowledge that if the Fiduciary Party is a spouse of the Resident, then under the Illinois Family Expense Act, the spouse is responsible for any balance due to the Facility from the Resident.

SECTION II - AGREEMENT OF RESIDENT AND/OR FIDUCIARY PARTY

1. In addition to the monthly rate as stated in Section I, Resident and/or Fiduciary Party do further agree to pay to the Facility the additional charges incurred by the Resident as set forth in Section VIII. This schedule will also include items whereby the cost cannot be established or predicted with any definitiveness. The bill for such items or services shall be due and payable upon receipt of billing.
2. Resident and/or Fiduciary Party agree that in the event of non-payment, Facility may, at its discretion, discharge the Resident, transporting said resident to the Fiduciary Party at the expense of the Resident and/or Fiduciary Party.
3. The Resident has not transferred any real or personal property owned by the Resident within 5 years (60 months) prior to the date of admission.
4. Resident and/or Fiduciary Party shall be responsible for repair or replacement of property owned by the Facility or other residents which is damaged by the Resident (ordinary wear and tear excluded).
5. The Resident and/or Fiduciary Party hereby grant to the Facility the absolute right to file a lien on all real property or interest therein owned in whole or in part by Resident to satisfy any charges or costs incurred during the Resident's stay.
6. The Fiduciary Party shall provide such personal clothing and effects as needed or required by the Facility on behalf of the Resident.
7. The Fiduciary Party shall be responsible for properly marking for identification purposes all personal clothing and effects of the Resident.
8. The Resident and/or Fiduciary Party shall be responsible for supplying the Facility with all personal information regarding the Resident.
9. The Resident and/or Fiduciary Party shall be responsible for supplying the Facility with a current doctor's physical examination report prior to admission of Resident to the Facility. The hospital transfer record shall accompany Resident upon admission.
10. The undersigned acknowledge and agree that visiting hours shall be in conformity to the Facility's published schedule, but the Facility may refuse admission of visiting guests when instructed by the doctor or when such visit or visitation shall not be to the best interest of the Resident.
11. At least a 30-day minimum advance payment at the established monthly rate shall be made prior to, or upon admission of Resident to the Facility. All additional charges as outlined in Section II paragraph 1, are payable at the end of the month incurred. Late charges for all accounts will be billed if payment is not made by the 3rd of each month and is subject to 1.8% per month Finance Charge which is equivalent to an Annual Percentage Rate of 21.6% per year.
12. Resident and/or Fiduciary Party agrees in the event of non-payment to pay cost of collection, including, but not limited to, attorney's fees and court costs, all Trust Fund monies held for or on behalf of Resident shall be applied to any unpaid balance at termination of Resident's occupancy.
13. In the event the Resident is being admitted under any Federal, State or Private Health Insurance Plan, and such plan is subject to approval by issuing parties, and should the Facility determine that approval shall for any reason not be forthcoming, the Facility will then invoice Resident and/or Fiduciary Party, and Resident and/or Fiduciary Party shall assume complete liability for the full amount of the charges incurred, and such total charges shall become immediately due and payable by the Resident and/or Fiduciary Party.

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14. Resident and/or Fiduciary Party agrees to abide by all rules and regulations established in connection with the operation and maintenance of the Facility.
15. No foodstuffs, liquids, or medicines will be brought into the Facility for Resident without prior permission being obtained from the Administrator or Nurse in charge. Food must not be kept overnight without the consent of the Administrator, and if such consent is given, all food must be kept in sealed containers.
16. Resident agrees to follow those reasonable rules adopted by the Facility for the protection, health, and comfort of the Resident and other Residents of the Facility. A copy of such rules, or any changes to the rules, shall be provided to the Resident and/or Fiduciary Party. Resident may select, or have selected on the Resident's behalf, qualified health care professionals who in all cases conform to Facility's policies, rules, applicable laws, and regulations. Resident must have, select, or have chosen on the Resident's behalf a personal physician who will be available, or whose agent will be available, at all times for notification of significant changes in the Resident's clinical condition. Resident agrees that if Resident's personal physician is not available for consultation in a medical emergency or as otherwise needed, as determined by Facility staff, an attending physician, Facility's Medical Director or his or her authorized agent may be contacted. If the Resident's physician or any other health care provider retained by the Resident fails or refuses to fulfill a statutory or regulatory requirement (including a Medicaid and/or Medicare requirement) as applicable, then Facility retains the right, after informing the Resident, to seek an alternate physician and/or other health care provider to assure the provision of appropriate and adequate care and treatment as required by applicable law and policy. The Resident's refusal to consent to treatment by an alternate physician or other health care provider under these circumstances shall constitute grounds for involuntary discharge of the Resident for medical reasons, for the Resident's physical safety and for the physical safety of other Residents, Facility staff and visitors under applicable involuntary discharge laws.
17. Resident and/or Fiduciary Party acknowledge that physicians and health care service providers, including but not limited to attending physicians, consulting physicians, psychiatrists, wound care specialists (physicians and nurses), physiatrists, nurse practitioners, rehabilitation specialists, therapists (occupational, physical, respiratory and speech), dentists, pharmacists, podiatrists, psychologists, radiologists, radiology technicians, laboratory service providers, and hospice providers are not employees or agents of the Facility, but are independent contractors who are permitted to practice or provide health care services within this Facility. The Facility is not responsible for the decision or actions of physicians or health care service providers it does not employ.
18. Except as specified in the Contract Addendum, Resident and/or Fiduciary Party shall be financially responsible for all medical and other services, equipment and supplies necessary for Resident's personal use. Resident hereby authorized the Facility to bill Medicare Part B or any other applicable payor for equipment, supplies and services furnished directly by the Facility or by others to Resident. Resident hereby assigns to the Facility his or her right to reimbursement for any services rendered to Resident and authorizes the Facility to receive payments for such services pursuant to this assignment.
19. If there is a dispute concerning health care issues, the venue to be used in any proceedings is the county in which the facility is located.

SECTION III - STATEMENT TO PERMIT PAYMENT OF INSURANCE BENEFITS TO FACILITY

1. Resident and/or Fiduciary Party certify that the information submitted in applying for payment under Title XVIII of the Social Security Act is correct. Resident and/or Fiduciary Party authorize release of any

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information needed to act on this request. Resident and/or Fiduciary Party requests that payment of authorized benefits be made on the Resident's behalf to Facility.

SECTION IV - STANDARD ADMISSION WAIVER

1. Facility does hereby agree to take reasonable precaution in the care and safety of Resident. The Facility, its officers, agents and/or employees shall not be held liable or responsible for death of Resident regardless of cause or for injuries resulting from falls, mechanical units, or from any other cause or causes whatsoever. Resident on behalf of his or herself, his or her heirs, executors, administrators, or assigns does hereby release and discharge the Facility, its officers, agents, employees, successors, and assigns from any and all liability, cause or causes of action, claims or demands of any nature, kind of description or for any alleged act or acts of omission of the Facility.
2. Failure of Resident and/or Fiduciary Party to accept and pay for nursing care when such care is deemed necessary and proper or prescribed by physician will release Facility from any and all liability which may result from the lack of such care.
3. It is further understood and agreed that Facility shall, under no circumstances be responsible nor shall any liability of any nature whatsoever attach to the Facility for loss or damage to wearing apparel, valuables or money brought to Facility by Resident. Employees of Facility, on their own behalf or on the behalf of the Facility, shall have no authority to accept for safekeeping the wearing apparel, valuables or money of Resident.
4. Facility reserves the right to restrict or bar visitation access to anyone who endangers the health or safety or Resident, any resident, Facility staff, or visitor who disrupts or interferes with any Resident's care, the operation of Facility or the duties of its staff.

SECTION V – INDEMNIFICATION

1. If the Resident's condition necessitating admission to the Facility for rehabilitation or any other method of care was caused by injuries due to the act or omissions of any third person(s) and a claim is being made against said third person(s) for the injuries to the Resident, whether directly or indirectly, the Facility will have a lien to the extent of the total amount of all charges not paid and incurred by the Resident. Such lien may be filed with the person whose act, or omission caused the injury, the person's agent and/or insurer, or the court in which any action is pending by the Resident or the representative thereof.
2. It is the Resident's and/or Fiduciary Party's responsibility to furnish any information, assistance or provide any documents that the Facility may request in order to obtain and preserve its rights under this section of the Contract.

SECTION VI - AGREEMENT BY NURSING FACILITY

1. To provide the Resident with all care and treatment as required by his/her physician, in addition to nursing and personal care to the extent required by the standards of the Illinois Department of Public Health, as amended from time to time.

SECTION VII - DURATION OF AGREEMENT

1. The Resident may terminate this Agreement and all obligations under it upon thirty (30) days advance written notice. The Resident or Fiduciary Party shall be responsible for all charges and fees for services

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performed up to the date of termination or thirty (30) days from the date notice is given, whichever is later.

2. Facility may terminate this Agreement and transfer or discharge the Resident upon thirty (30) days notice for any of the following reasons:
    a. Medical;
    b. The safety of the Resident;
    c. The safety of other Residents;
    d. Non-payment
3. In terminating this Agreement and/or transfer or discharge of Resident, Facility will follow current Illinois Department of Public Health rules or regulations.
4. Refunds due Resident or Fiduciary Party will be made within forty-five (45) days after receipt by Facility of all funds and monies due and owing to it from any third party payor on Resident's behalf, including, but not limited to, Social Security, Pension Funds, Private Medical Insurance, Medicare, and/or Medicaid, following the discharge or expiration of the Resident.

SECTION VIII - SCHEDULE OF ADDITIONAL CHARGES

1. Ancillary charges which includes, but is not limited to, Nursing Supplies (inclusive of oxygen), Pharmaceuticals, Occupational Therapy, Physical Therapy, Speech Therapy, Barber/Beautician Services, Clothing and Shoes, and Medical Supplies and Equipment, will be billed separately based on the Resident's needs using the current rates.

I, the undersigned, have read the aforesaid Agreement consisting of eight (8) pages and agree to pay any and all charges incurred by the Resident as billed and to all the terms and conditions set forth therein.

[redacted]
Resident

[redacted]

Printed Name

[redacted]

Signature *Date*

Reason Resident Can't Sign

Facility Representative

[redacted]

Title of individual signing *Printed Name*

[redacted]

Signature Date

Fiduciary Party executes this Contract in the capacity provided below and shall provide evidence of Fiduciary Party's capacity at the time of signing this Contract.

Fiduciary Party Capacity

[redacted]

Printed Name

[redacted]

Signature *Date*

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EXHIBIT
B

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ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") dated the [redacted] day of [redacted], [redacted] is entered into by and between Heather Health Care Center, Inc. ("Facility") and , [redacted] the resident or his/her representative (collectively referred to as, "Resident") pursuant to the Federal Arbitration Act.

The parties to this Agreement wish to work together to resolve any disputes that may arise in a timely fashion and in a manner that minimizes both of their legal costs. The parties to this agreement further acknowledge that Resident cannot be required to sign this agreement in order to receive treatment. Therefore, in consideration of the mutual promises contained in this Agreement, the parties hereby agree as follows:

I. Disputes to Be Arbitrated

Any legal controversy, dispute, disagreement or claim of any kind now existing or occurring in the future between the parties arising out of or in any way relating to this Agreement or any occurrence related to the Resident Agreement or the Resident's stay at the Facility shall be settled by binding arbitration, including, but not limited to, all claims based on breach of contract, negligence, medical malpractice, tort, breach of statutory duty, resident's rights, any departures from accepted standards of care, and all disputes regarding the scope, enforceability and/or interpretation of this Agreement, allegations of fraud in the inducement or requests for rescission of this Agreement. This includes claims against Facility, its employees, agents, officers, directors, any parent, subsidiary or affiliate of Facility. All claims based in whole or in part on the same incident, transaction, or related course of care and services provided by Facility to Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to Facility or received by Resident, and is not presented in the arbitration proceeding.

In the event of any such claim, the parties shall first use their best efforts to resolve the dispute through a mediation process. For the purpose of this Agreement, "mediation" means a non-binding process during which the parties meet in person to attempt to resolve a dispute with the assistance of a mutually selected, neutral third party. If the parties are unable to resolve the dispute informally, BOTH PARTIES AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL AND AGREE TO HAVE THE MATTER RESOLVED BY BINDING ARBITRATION BEFORE AN ARBITRATOR AS DESCRIBED IN THIS AGREEMENT AND SET FORTH HEREIN.

Resident agrees that there shall be no right or authority for any dispute, controversy or claim to be arbitrated on a class action basis or on any basis involving claims brought in a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. Furthermore, claims brought by or against a person or entity may not be joined or consolidated in the arbitration with claims brought by any other person or entity.

Notwithstanding the foregoing, any legal controversy, dispute, disagreement or claim of any kind between Resident and Facility regarding nonpayment by Resident for payments due to Facility shall be adjudicated in a court of law, or arbitrated as set forth herein if mutually agreed to by Facility and Resident.

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II. Arbitration Process

How to Request Arbitration. Any party desiring arbitration shall obtain information on how to request arbitration by contacting ADR Systems of America, LLC ("ADR Systems") via U.S. Mail at 20 N. Clark St. 29th Flr., Chicago, IL 60602 or via telephone at (312) 960-2260. The arbitration shall be conducted by a single arbitrator. All parties to the arbitration proceeding must agree in writing to the selection of the arbitrator. All arbitration proceedings under this Agreement, shall be conducted in accordance with the procedures established by ADR Systems. If the ADR Systems process is no longer in existence at the time of the dispute, or ADR Systems is unwilling or unable to conduct the arbitration, then the Facility shall choose another independent entity that is regularly engaged in providing alternative dispute resolution services to conduct the arbitration.

Rules and Laws Governing Arbitration. The arbitration shall be conducted in accordance with the ADR Systems' procedural rules for arbitration, which are hereby incorporated into this agreement by reference. Except as set forth in the Arbitration Rules, the arbitration proceedings shall follow all rules of civil procedure and evidence that would be applicable to a comparable civil action brought in the Circuit Court of Cook County, Illinois. This Agreement does not limit, impair, or waive any substantive rights or defenses of any party including, but not limited to, the statute of limitations.

Costs of Arbitration. Facility agrees to pay the mediator and/or arbitrator's fees and other reasonable costs associated with mediation and arbitration up to a maximum of $2,000. Any additional fees and costs shall be borne equally by the parties of this Agreement. Each party agrees to be responsible for their own attorney fees and costs incurred in relation to this Agreement. Resident further agrees to waive any and all costs and attorney's fees under the Illinois Nursing Home Care Act.

Binding Nature of Arbitration. The decision rendered by the arbitrator shall be final and binding, and judgment on the award, if any, shall be entered in accordance with applicable law in any court having jurisdiction thereof. The decision of the arbitrator shall be binding on all of the parties to the arbitration, and also on their successors and assigns, including agents and employees of the Facility, and all persons whose claim is derived through or on behalf of Resident, including but not limited to, that of any parent, spouse, child, guardian, executor, administrator, legal representative, survivor, heir, assignee, trustee, agent and/or third parties who are not signatories to this Agreement.

Confidentiality. Each party shall keep all material aspects of the arbitration proceeding confidential.

Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and partially invalid or unenforceable provisions to the extent valid and enforceable, shall nevertheless be binding, valid and enforceable.

III. Resident's Acknowledgements

By signing this Agreement, the Resident acknowledges that he/she has read and received a copy of this Agreement and has been informed that:

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(1) the decision whether to sign this Agreement is solely a matter for the Resident's determination without any influence;

(2) Resident has the right to seek independent legal counsel regarding the contents of this Agreement;

(3) this Agreement shall not limit in any way Resident's right to file formal or informal grievances with Facility or the State or Federal government; and,

(4) signing this Agreement is not a condition of admission, and that care and treatment will be provided whether or not Resident signs this Agreement.

By signing this agreement Resident agrees,

(1) to resolve any dispute, controversy or claim arising out of, relating to or in connection with this contract, including breach, termination or validity thereof, or services rendered thereon, by means of non-binding mediation and then binding arbitration;

(2) to waive your right to litigate any dispute, controversy or claim arising out of, relating to or in connection with this contract, including the breach, termination, or validity thereof, or services rendered thereon, in a Court of law and have a jury trial on any such dispute, controversy or claim;

(3) to waive your right to participate in a representative capacity, or participate as a member of any class of claimants, in any litigation regarding any dispute, controversy or claim arising out of, relating to or in connection with this contract, including the breach, termination, or validity thereof, or services rendered thereon, in a court of law and have a jury trial on any such dispute controversy or claim.

IN WITNESS WIIEREOF, the undersigned parties, each independently intending to be legally bound, have read and agree to the terms and conditions of this Agreement on this [redacted] (day) of [redacted] (month), [redacted] (year).

Resident

[redacted]

Printed Name

Signature

Facility Representative

[redacted]

Title of individual signing *Printed Name*

[redacted]

Signature

RESIDENT'S REPRESENTATIVE/ RESPONSIBLE PARTY*

[redacted]

Printed Name *Relationship*

[redacted]

Signature

** If Resident is unable to sign this Agreement, then his/her legal representative may sign on his/her behalf, and such representative hereby certifies that he/she has the legal authority to enter into this Agreement on Resident's behalf with the Facility either through a valid Power of Attorney, guardianship appointment or other legal authority.*

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EXHIBIT

C

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ADR Systems
Health Care Arbitration Rules
Effective October 15, 2019

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312.960.2260 • info@adrsystems.com • www.adrsystems.com

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ADR Systems Health Care Arbitration Rules

How to Submit an Existing Dispute to ADR Systems

Parties to an existing dispute who wish to refer the dispute to arbitration administered by ADR Systems may use the following language:

We agree to submit to arbitration in accordance with the current ADR Systems' Health Care Arbitration Rules the following dispute: [specific description of dispute][1]

Parties may also use the Stipulation to Arbitrate at ADR Systems – Health Care found on the ADR Systems website.

Arbitrator Disclosure

There are qualified arbitrators selected by ADR Systems to conduct and decide nursing home arbitrations. These arbitrators have specialized knowledge and experience relative to the difficult issues presented in these cases. These same arbitrators have presided over numerous mediations involving nursing home care. Often these mediations have involved plaintiff and defense attorneys who concentrate their practices on nursing home cases, as well as often having involved nursing homes that historically have used mediation services to resolve cases in which they have been named as defendants. If further information regarding arbitrator disclosure is desired, contact ADR Systems at info@adrsystems.com.

Mediation Option

Prior to the start of the arbitration, parties always have the option to mediate their dispute with ADR Systems. Upon agreement of the parties, the dispute can be mediated. Contact ADR Systems at info@adrsystems.com for more information.

[1] **Notice:** These clauses are not intended and should not be considered as providing legal advice or opinion. Although ADR Systems goes to great lengths to make sure this information is accurate, we recommend that you consult an attorney with regard to the specific use and interpretation of these clauses.

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GENERAL RULES

1. Scope

1.1. Where the parties to a contract have provided for arbitration by ADR Systems or for arbitration under the ADR Systems Health Care Arbitration Rules (Rules), or have otherwise agreed to arbitrate with or provided for arbitration with reference to "ADR Systems of America," "ADR Systems" or any other name that may reasonably be construed to be intended to refer to ADR Systems of America, LLC, they shall be deemed to have made these Rules part of their arbitration agreement and such disputes shall be administered in accordance with these Rules, including all limits on discovery and court intervention as set forth as default procedures under these Rules.

1.2. If ADR Systems amends these Rules, the Rules in effect at the time the arbitration commences shall govern.

2. Notice and Time

2.1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his/her habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last known residence or place of business. Such service or notice shall be deemed to have been received on the day it is so delivered.

2.2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3. Commencement of Arbitration

3.1. Arbitration may be commenced by:

a. If there is clause language providing for arbitration by ADR Systems, the parties must complete these steps: (a) complete and sign a Demand for Arbitration (Demand) form in duplicate, attaching the arbitration clause from the insurance policy or contract to each copy of the Demand; (b) send one copy of the completed Demand with a copy of the arbitration clause to the defendant(s); and (c) send a copy of the completed Demand with a copy of the arbitration clause, along with the non-refundable $300 administrative fee per party to ADR Systems; or

b. If the clause language does not provide for arbitration under ADR Systems Rules, or if there is no arbitration clause in the insurance policy or contract, the parties must complete these steps to commence the arbitration: (a) jointly complete and sign the Stipulation to Arbitrate at ADR Systems – Health Care (Stipulation) form in

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triplicate, each party retaining one copy of the Stipulation; and (b) send one copy of the completed Stipulation, along with the non-refundable $300 administrative fee per party to ADR Systems; or

c. The parties may correspond with ADR Systems regarding the arbitration, but the arbitration will not commence through correspondence until all necessary documents are provided, and the non-refundable administrative fee is paid.

d. Within 14 days after the service of the Demand, defendant(s) may file a response to the Demand pursuant to applicable state and federal law. The response shall be sent to opposing counsel, and a copy to ADR Systems with proof of service.

3.2. The arbitration shall be deemed "commenced" on the date on which all documents and payments specified in 3.1(a) or 3.1(b) are received by ADR Systems. In lengthier, more complex cases, additional fees may be assessed.

3.3. The Demand for Arbitration shall include in the text or in attachments thereto:

a. Full case caption and service list;

b. A demand that the dispute be referred to arbitration pursuant to these Rules;

c. The text of the applicable arbitration clause or submission agreement;

d. A copy of the contract containing the applicable arbitration clause, or the Stipulation to Arbitrate at ADR Systems – Health Care form found on ADR Systems website.

3.4. Upon receipt of the Demand for Arbitration, or the Stipulation and the $300 administrative fee per party, a case manager from ADR Systems shall communicate in writing to the parties that arbitration has commenced. The arbitration is commenced only when ADR Systems has received the administrative fee from all parties.

3.5. If, at any time, any party has failed to pay fees or expenses in full, ADR Systems reserves the right to suspend or terminate the proceedings. ADR Systems will inform the parties in order that one of them may advance the required payment on behalf of the other. If one party advances the payment owed by a non-paying party, the arbitration shall proceed and the arbitrator may allocate the non-paying party's share of the costs, in accordance with Rule 9.4.

4. Appointment of Arbitrators

4.1. The arbitration shall be conducted by one arbitrator unless the parties have agreed to three arbitrators prior to the commencement of the arbitration.

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4.2. If the parties have not already agreed to an arbitrator, ADR Systems shall appoint the arbitrator using a strike list procedure as follows:

a. Within 14 days of the commencement of the arbitration, a case manager from ADR Systems shall send the parties a list of five names of proposed arbitrators.

b. Within 10 days after the receipt of the list, each party shall strike two names, number the remaining names in order of preference, and return the list to ADR Systems. ADR Systems will take the lowest common number to select the arbitrator. If a group of plaintiffs or defendant(s) is affiliated and represented by the same representative, they shall not each have a separate right to delete names. A party is not required to serve its arbitrator preference list on the other party. ADR Systems shall then promptly appoint the sole arbitrator from among the remaining names on the returned lists in accordance with the order of preference indicated by the parties. In the event of a tie, ADR Systems will select the arbitrator.

c. If a party fails to respond to the proposed list of arbitrators within 10 days, that party shall be deemed to have accepted the appointment of any of the proposed arbitrators.

d. If for any reason the appointment cannot be made according to this procedure, ADR Systems may exercise its discretion in appointing the arbitrator.

e. Subject to the agreement of the parties as to the use of non-neutral party appointed arbitrators, if three arbitrators are to be appointed, all three ADR Systems' arbitrators shall be neutral arbitrators. ADR Systems shall use the strike list procedure referred to above to appoint the arbitrators; except that it will submit 10 proposed arbitrators and the parties may each delete three names from the list. ADR Systems will take the lowest common numbers to select the arbitrators.

f. If any arbitrator becomes unable to continue to serve, ADR Systems may use its discretion in appointing any successor arbitrator. The decision of ADR Systems regarding whether an arbitrator is unable to serve shall be final.

5. Jurisdiction

5.1. The arbitrator shall have the power to rule on issues under his or her own jurisdiction, including any objections with respect to the validity or scope of the arbitration agreement.

5.2. The arbitrator shall have the power to determine the existence or validity of a contract containing an arbitration clause. The arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render the arbitration clause invalid.

6. Arbitration Procedure

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6.1. Subject to these Rules, the arbitrator may conduct the arbitration in such manner as he or she considers appropriate, provided the parties are treated with equality and each party is given a full opportunity to present its case.

6.2. The following rules apply to the arbitration procedure.

7. Rules Governing the Arbitration

7.1. Powers of the Arbitrator

a. The arbitrator shall have the power to administer oaths and affirmations to witnesses; to determine the admissibility of evidence; and to rule upon the law and the facts of the dispute. The arbitrator shall also have the power to rule on objections to evidence which arise before or during the hearing.

b. The arbitrator shall only decide the issues of bodily injury damages, proximate cause and negligence. Additionally, the arbitrator shall have the power to determine reasonable attorneys' fees and costs pursuant to state and federal law, e.g., the Nursing Home Care Act. Any other issues to be decided must be agreed upon by the parties, and included in the arbitration agreement.

c. In the event the parties cannot agree to a discovery schedule, the arbitrator shall have the authority to issue and enforce a reasonable discovery schedule and document exchange.

d. In the event of discovery disputes between the parties which arise before or during the hearing, the arbitrator shall have the authority to resolve the disputes.

e. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

7.2. Evidentiary Rules

a. The following documents are allowed into evidence, without foundation or other proof, provided that said items are served upon the arbitrator and the opposing party at least 30 days prior to the hearing date:

7.2.a.1. Medical records and medical bills for medical services;

7.2.a.2. Bills for drugs and medical appliances (for example, prostheses);

7.2.a.3. In lieu of live testimony: the written statement of any expert witness, the deposition of a witness, the statement of a witness, to which the witness would be allowed to express if testifying in person, if the statement is made by affidavit sworn to under oath or by certification as provided in section 1-109 of the Illinois Code of Civil Procedure;

7.2.a.4. Photographs;

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7.2.a.5. Any other document not specifically covered by any of the foregoing provisions that a party believes in good faith should be considered by the arbitrator; and

7.2.a.6. Each party may introduce any other evidence, including but not limited to documents or exhibits, in accordance with the rules of evidence of the State of Illinois.

b. The parties agree that live testimony will be allowed, without foundation or proof, provided that:

7.2.b.1. The parties will exchange all witness lists, expert reports and any other documents to be submitted for the arbitration 60 days in advance of the submission deadline.

7.2.b.2. It shall be assumed that the plaintiff(s) and defendant(s) will testify.

c. The parties agree that they will not disclose any and all dollar figures, any settlement negotiations, the limits of any applicable insurance policy, high/low parameters, if any, between the parties orally or in writing, to the arbitrator at any time before or during the arbitration (including during any pre-hearing conference or at the hearing, or at any time prior to the arbitrator's final decision).

7.2.c.1. A violation to the agreement set forth in paragraph 7.2(c) shall constitute a material rules violation. The non-disclosing party must formally object to the arbitrator upon learning of the violation, or the violation will be considered waived. The non-disclosing party shall then have the option to continue the arbitration from the point of objection to its completion; or to terminate the arbitration at the point of objection. The ADR Systems' case manager must be made aware of any rules violation at the time of the objection.

7.2.c.2. If the arbitration is terminated as null and void, all costs of the arbitration will be charged entirely to the disclosing party. A new arbitration shall then take place with a new arbitrator at a new date. If the arbitration is not terminated, the costs of the arbitration shall remain the responsibility of each party as outlined herein and in the arbitration agreement.

d. The parties agree that if a party has an objection to the evidence or material submitted by any other party, notice of the objection shall be given to the ADR Systems' case manager and opposing counsel by telephone and in writing at least 14 days prior to the arbitration. If resolution cannot be obtained, the case manager will forward the objection to the arbitrator to be ruled upon before or at the arbitration. The case manager will notify each of the parties of the objection. The objection may result in a postponement of the proceedings. If the objection is because of new material being disclosed with the submission for the first time (for example, new or additional reports, additional medical loss claims, etc.) then the disclosing party shall be charged for the total cost associated with the continuance.

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e. The parties agree that any party desiring to introduce any of the items above without foundation or other proof, must deliver those items to the arbitrator and to the other parties no later than 14 days prior to the arbitration.

f. The items are considered delivered as of the date that one of the following events occur:

7.2.f.1. If mailed, by the date of the postmark;

7.2.f.2. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and

7.2.f.3. The date transmitted by facsimile or email.

g. The parties agree to deliver any submissions or any of the items described in paragraph 7.2(d) to ADR Systems 20 North Clark Street, Floor 29, Chicago, IL 60602. If emailing submissions please send those to submissions@adrsystems.com, however, please do not email anything over 50 pages, including exhibits. If submissions exceed 50 pages, please send a hard copy.

7.3. Award Limits

a. The parties may agree 30 days prior to the arbitration that a minimum and maximum amount will serve as parameters for the award (sometimes referred to as a "high/low agreement"), such that the actual amount that must be paid to the plaintiff shall not exceed a certain amount (the "high" or "maximum award") and shall not be less than a certain amount (the "low" or "minimum award.") If no agreement on parameters is reached within the 30-day timeframe, the arbitration will proceed without a high/low agreement.

7.3.a.1. If negligence is asserted as an affirmative defense, the arbitrator shall make a finding regarding negligence.

8. Disclosure of Discovery

8.1. The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery.

8.2. In making rulings on disclosure or discovery of information, the arbitrator shall attempt to ascertain if any of the following modes of disclosure have been agreed to by the parties or should be considered given the nature of the dispute. If the parties agree on a mode, they shall email confirmation of the agreed upon mode to ADR Systems. In the absence of agreement by the parties as to a particular mode, or the failure of the parties to notify ADR Systems of the agreed upon mode, or absent extraordinary circumstances or the arbitrator's direction otherwise, Mode D cf Rule 8.3 shall be applied.[2]

8.3. Modes of Disclosure

[2] These modes are designed to facilitate a process that is as inexpensive, efficient and through as possible. Credit is given to the International Institute for Conflict Prevention and Resolution for creating the CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration © 2009 to assist commercial arbitrators in organizing and managing arbitrations.

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a. Mode A. No disclosure of documents other than the disclosure, prior to the hearing, of documents that each side will present in support of its case.

b. Mode B. Disclosure provided for under Mode A together with pre-hearing disclosure of documents significant to a matter of import in the proceeding for which a party has demonstrated a substantial need.

c. Mode C. Disclosure provided for under Mode B together with disclosure prior to the hearing, of documents relating to issues in the case that are in the possession of persons who are noticed as witnesses by the party requested to provide disclosure.

d. Mode D. Pre-hearing disclosure of documents regarding non-privileged matters that are relevant to any party's claim or defense, subject to limitations of reasonableness, duplication and undue burden.

9. Modes of Presenting Witnesses

9.1. Mode A. Each witness on whose testimony a party relies will submit a written statement in advance of the hearing, sufficient to serve as that witness' entire evidence. The witness may be cross-examined on only matters contained in the written statement. No depositions of witnesses who have submitted written statements.

9.2. Mode B. No witness statements. Direct testimony presented orally at the hearing. Each requesting party is limited to taking four depositions.

9.3. Mode C. As in Mode B, with additional depositions as allowed or determined to be necessary by the arbitrator. In most cases, party depositions should be adequate and depositions should take no more than three hours.

10. Compelling Evidence and Subpoenas

10.1. The arbitrator may issue subpoenas for the attendance of witnesses or for the production of documents upon request of a party or upon his or her own initiative. The arbitrator shall rule on any objections to a subpoena, weighing the benefit to the requesting party against the burden to the witness. The subpoena shall be issued in accordance with the applicable law of the place of arbitration, without regard to conflicts rules, and shall be deemed issued under that law. While the arbitrator may issue subpoenas as noted in this section, ADR Systems cannot guarantee the cooperation of a subpoenaed witness or for the production of subpoenaed documents.

11. The Final Award

11.1. The award shall be in writing. The award shall state the place of arbitration and the date on which the award was made and shall be deemed to be made at the place of arbitration. If no place of arbitration is stated, or if the place of arbitration is ambiguous, the award shall be deemed to have been made in Chicago, Illinois.

11.2. The arbitrator will render a reasoned award unless the parties agree otherwise.

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11.3. Within seven days after receipt of the award, either party, with written notice to the other party, may, through ADR Systems, submit a request to the arbitrator to clarify the award to correct any clerical typographical or computation errors, or any errors of a similar nature in the award. The arbitrator shall make any clarification or correction, if necessary.

11.4. Unless applicable law provides otherwise, the parties shall bear their own costs for attorneys' fees, expert witness fees, interpreters, transcripts, and court reporters.

11.5. By agreeing to arbitration under these Rules, the parties shall be deemed to have agreed that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.

12. Fees

12.1. All administrative fees and arbitrator fees must be paid in full.

12.2. ADR Systems may, in its discretion, stay the arbitration proceedings, including issuance of the award, until all requested fees have been paid. If, following the conclusion of the arbitration, any portion of the fee deposit remains, ADR Systems shall promptly refund the balance to the parties.

12.3. The arbitrator may preclude a party that has failed to deposit its portion of the fees and expenses from offering evidence of any affirmative claim at the arbitration hearing.

12.4. The parties are jointly and severally liable for the payment of ADR Systems' arbitration fees and expenses per the ADR Systems' arbitration agreement and the current ADR Systems' fee schedule.

12.5. ADR Systems has a four-hour minimum for health care arbitrations.

13. Claims against ADR Systems or Arbitrator

13.1. Neither ADR Systems, its employees, principals, assignees nor any arbitrator shall be liable to any party, person or entity, for any act or omission in connection with any arbitration conducted under these Rules. Nor shall ADR Systems, its employees or principals, or any arbitrator be a party to any litigation relating to the provision of arbitration services or any matter related to the dispute that is the subject of the arbitration.

13.2. The parties agree, jointly and severally, to indemnify and hold harmless ADR Systems, its employees and principals and any arbitrator for any expenses incurred in defending

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any subpoena directed to ADR Systems or the arbitrator by a third party relating to the arbitration, including reasonable attorneys' fees.

13.3. By agreeing to arbitration administered through ADR Systems, the parties agree to be bound by these Rules, unless parties agree to use other rules.

14. Confidentiality

14.1. The parties shall not call ADR Systems, its employees or principal, or any arbitrator as a witness in any pending or subsequent litigation relating to the provision of arbitration services or any matter related to the dispute that is the subject of the arbitration other than to provide evidence of the existence of the arbitration award.

15. Mediation

15.1. If a dispute arises from a contract step clause requiring mediation prior to arbitration, or if any other dispute arises after the commencement of the arbitration, but prior to the arbitration hearing that cannot be settled through negotiation, the parties will select a mediator from ADR Systems' panel of mediators to mediate the dispute before resorting to an adjudication procedure.

15.2. If the parties cannot agree on a mediator, ADR Systems shall appoint the mediator using a strike list procedure as follows:

a. ADR Systems will send the parties a list of mediators. Within 10 days after the receipt of the list of mediators, each party shall strike two names, number the remaining names in order of preference, and return the list to ADR Systems. ADR Systems will take the lowest common number to select the mediator. If a group of plaintiff(s) or defendant(s) is affiliated and represented by the same representative, they shall not each have a separate right to delete names. A party is not required to serve its mediator preference list on the other party. ADR Systems shall then promptly appoint the mediator;

b. If a party fails to respond to the proposed list of mediators within 10 days, that party shall be deemed to have accepted the appointment of any of the proposed mediators;

c. If for any reason the appointment cannot be made according to this procedure, ADR Systems may exercise its discretion in appointing a mediator.

For further questions, contact an ADR Systems' personal injury case manager at 312.960.2260 or visit our website at adrsystems.com.