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

Thomas Carnes, by and through his Guardian  
ad Litem, Juliana Christine Clegg, on his  
own behalf and on behalf of others similarly  
situated,

Plaintiff,

vs.

Atria Senior Living, Inc. and Does 1 Through  
100,

Defendants.

CASE NO. 3:14-cv-02727-VC

**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT (Civ. Code §  
1750 *et seq.*)
2. UNLAWFUL, UNFAIR AND  
FRAUDULENT BUSINESS PRACTICES  
(B&P Code § 17200 *et seq.*)
3. ELDER FINANCIAL ABUSE (W&I Code  
§ 15610.30)

**JURY TRIAL DEMANDED**

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**INTRODUCTION**

1  
2 1. Named Plaintiff Juliana Christine Clegg (“Named Plaintiff”), as successor-in-  
3 interest to the Estate of Thomas Carnes (“Plaintiff”) and the proposed Class bring this action for  
4 declaratory and injunctive relief and damages to stop the unlawful and fraudulent practices of  
5 Atria Senior Living, Inc. (“Atria” or “Defendant”).

6 2. Defendant has engaged in a scheme to defraud seniors, persons with disabilities and  
7 their family members by falsely representing that Atria uses its resident evaluation system to  
8 determine and provide staffing at its assisted living facilities in California. This promise is made  
9 to all Atria residents in standard resident admission contracts. It is false and misleading, because  
10 Atria does not use or consider the results generated by its resident evaluation system to determine  
11 or provide staffing at its facilities. Rather, as a matter of corporate policy, Atria sets facility  
12 staffing per shift based on pre-determined labor budgets and does not alter the number of staff or  
13 staffing hours per facility or shift regardless of changes in occupancy or resident needs as  
14 determined by resident evaluations. Atria’s failure to staff based on resident assessments results  
15 in Atria’s facilities being staffed at levels far below those required to meet the resident needs that  
16 Atria itself has identified. As such, Atria residents have not received the amount of care that  
17 Atria promised in their admission contracts and/or are placed at a substantial risk that they will  
18 not receive their promised care in the future. As a result of Atria’s failure to staff based on  
19 resident assessments, Mr. Carnes did not receive the care Atria promised to provide. As a result  
20 of Atria’s failure to staff based on resident assessments, the putative class members have not or  
21 will not receive the care Atria has promised to provide.

22 3. Atria’s standard admission contract specifies that all facility residents will receive  
23 comprehensive evaluations to determine the amount and type of care they need. A point-value  
24 system, which Atria represents is based on the amount of staff time required to perform the  
25 necessary services, determines the resident’s level of care and corresponding “assisted living” or  
26 memory care fees.

27 4. In its contracts, Atria represents that it will provide its residents with the “amount  
28 of time and level of assistance” that the residents require based on Atria’s “comprehensive

1 assessment.” Atria bases monthly “Personal Care Level” charges on the amount of staff time Atria  
2 has itself represented is necessary to deliver those personal care services. The reasonable  
3 consumer understands these representations to mean that, as a matter of policy and practice, Atria  
4 will consider resident occupancy (also known as “census”) and use its resident evaluation system  
5 and the personal care levels generated by it to determine and provide staffing levels at its facilities  
6 and will, accordingly, provide sufficient staff at each facility to deliver to all facility residents the  
7 amount and type of care and corresponding staff time that Atria has determined to be necessary  
8 based on resident assessments and overall census.

9         5. In fact, Atria does not consider facility census or use its resident evaluation system  
10 and the personal care service levels of its residents in determining or providing staffing at its  
11 facilities. Specifically, it does not aggregate the amount of time specified in the assessments of  
12 those currently residing in the facility and then use that information to determine and provide the  
13 number and type of staff needed to deliver that amount of care. Instead, as a matter of corporate  
14 policy and of standard operating procedure, Atria sets and provides facility staffing per shift based  
15 on pre-determined labor budgets and does not alter staffing levels or staffing hours regardless of  
16 changes in occupancy or resident needs as determined by resident evaluations.

17         6. The result of this policy and procedure of staffing based on budget considerations  
18 rather than facility census and resident needs, as determined by the resident assessments and  
19 personal care levels, is that Atria’s facilities are staffed at levels far below those required to meet  
20 the resident needs that Atria itself has identified. As a result, the residents of Atria’s facilities are  
21 receiving significantly less care than is specified in their resident care evaluations.

22         7. Atria does not disclose and affirmatively conceals these crucial and material facts  
23 from residents (including Thomas Carnes), their family members and the consuming public.

24         8. Atria’s misrepresentations, misleading statements, and omissions about the manner  
25 in which its facilities are staffed and the failure to consider facility census or the aggregate staffing  
26 needs dictated by the comprehensive assessments and personal care level determinations are  
27 material to the reasonable consumer. Seniors and/or their family members choose an “assisted”  
28 living facility based on the expectation that they will receive the quantity and quality of care that

1 they need. A system or policy that ensures a level of staffing based on the overall needs of  
2 residents as quantified through aggregation of current residents' regular comprehensive resident  
3 assessments is likely to provide such care at the outset and on an ongoing basis. A system of care  
4 that provides pre-determined staffing based solely on budget considerations and desired profit  
5 margins results in facility staffing levels much lower than those necessary to meet the needs  
6 identified in residents' assessments and precludes Atria from providing all promised care to the  
7 residents of its facilities. It is, therefore, a matter of fundamental importance to the reasonable  
8 consumer that Atria does not staff and has no intention of staffing its facilities based on the  
9 number of staff hours Atria has itself determined are necessary to provide the services for which it  
10 is charging its residents.

11 9. Atria's failure to consider facility census or use its resident evaluation system as the  
12 basis for establishing staffing levels has resulted in staffing levels that preclude Atria from  
13 providing the levels of care that it has determined to be necessary through its comprehensive  
14 resident assessments.

15 10. Atria's failure to use its resident evaluation system when it sets and provides  
16 facility staffing also places all residents at an unnecessary risk of harm. That risk is particularly  
17 acute, given the vulnerable nature of the targeted population of seniors and residents with  
18 disabilities. It also forces residents to live in an unpleasant and unsafe environment due to the  
19 resulting inadequate supervision and inadequate care of residents in general.

20 11. Atria's promotion of its system of comprehensive resident assessments and  
21 personal care levels in its form contract and marketing materials contributes to its competitiveness  
22 in the marketplace of assisted living facilities and is a factor in its pricing structure. Its purported  
23 use of such a system to accurately assess the needs of residents and provide sufficient staffing to  
24 meet those needs enables it to charge more for residency and services at its facilities than it  
25 otherwise would. In effect, residents pay a premium for a system that is represented by Atria to  
26 provide comprehensive resident needs assessments and the staff necessary to provide the care  
27 necessary to satisfy the assessed needs.

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1 12. If the Plaintiff had known the true facts about Atria’s corporate policy of ignoring  
2 facility census and its resident evaluation system and the personal care levels generated by it in  
3 determining and providing facility staffing, he would not have agreed to enter Atria or paid Atria  
4 significant amounts of money in new resident fees and monthly charges. If the putative class  
5 members had known the true facts, in all reasonable probability they would not have agreed to  
6 enter Atria facilities and paid new resident fees and monthly charges to Atria.

7 13. This action seeks to require Atria to disclose to prospective and current residents,  
8 their family members, and/or responsible parties that it does not consider facility census or use its  
9 resident evaluation system or aggregate personal care levels in setting and providing staffing at its  
10 facilities. In addition to injunctive relief, this action seeks class wide damages based on  
11 Defendant’s misrepresentations and misleading statements and material omissions alleged herein.  
12 This action does not seek recovery for personal injuries, emotional distress or bodily harm that  
13 may have been caused by Defendant’s conduct alleged herein.

14 **PARTIES**

15 **Plaintiff**

16 14. Named Plaintiff Juliana Christine Clegg (“Clegg” or “Named Plaintiff”) is the sole  
17 successor-in-interest to the Estate of Thomas Carnes. Mr. Carnes was a resident of Atria  
18 Hillsdale in San Mateo, California from approximately July 26, 2012 to approximately January  
19 19, 2015. At all times relevant to this complaint, Thomas Carnes (“Carnes” or “Plaintiff”) was an  
20 elder as defined under California Welfare & Institutions Code § 15610.27 and a senior citizen as  
21 defined under California Civil Code § 1761(f). Mr. Carnes died on September 29, 2015. Juliana  
22 Christine Clegg is his daughter and the sole successor-in-interest to his estate. Ms. Clegg is and  
23 was at all times herein mentioned a resident of the State of California. Plaintiff brought and  
24 Named Plaintiff (as successor-in-interest to the Estate of Thomas Carnes) brings this action, on  
25 their behalf and on the behalf of all others similarly situated.

26 **Defendant**

27 15. Defendant Atria Senior Living, Inc. (“Atria”) is a Delaware Corporation with its  
28 principal place of business in Louisville, Kentucky.

1         16.         Atria owns and actively manages all of the real estate and buildings, as well as the  
 2 various LLCs and limited partnerships holding the licenses for thirty-five (35) assisted living  
 3 facilities in California under the Atria name.

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

11   **JURISDICTION AND VENUE**

12         18.         Defendant is a resident of Delaware and Kentucky. Plaintiff is a resident of  
 13 California.

14         19.         This Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. §  
 15 1332(d)(2). Plaintiff and Defendant are residents and citizens of different states. The class size is  
 16 greater than 100 and, in fact, is estimated to be in excess of 4,000 individuals. The aggregate  
 17 amount in controversy, based on damages in the form of monthly charges averaging an estimated  
 18 \$3,000 to \$5,000 per class member over a period four years is greatly in excess of \$5,000,000.

19         20.         This Court has jurisdiction over all of the claims alleged herein. Defendant is  
 20 subject to the personal jurisdiction of this Court because it has sufficient minimum contacts in  
 21 California, or otherwise intentionally avails itself of the California market through ownership and  
 22 management of 35 assisted living facilities located in California, derivation of substantial  
 23 revenues from California, and other activities, so as to render the exercise of jurisdiction over  
 24 Atria by the California courts consistent with traditional notions of fair play and substantial  
 25 justice.

26         21.         Venue is proper in this District under 28 U.S.C. § 1391(a) and California Civil  
 27 Code § 1780, based on the following facts: Defendant conducts substantial business in this  
 28 District, including but not limited to the ownership, operation and management of assisted living

1 facilities in the counties of San Mateo, Contra Costa, and Santa Clara; a portion of Defendant's  
2 liability arose in this District; and the acts upon which this action is based occurred in part in this  
3 District.

4 **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

5 22. Atria provides assisted living and memory care for senior citizens and persons with  
6 disabilities at facilities nationwide, including thirty-five facilities that it owns and/or operates in  
7 California.

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

12 24. Assisted living facilities are intended to provide a level of care appropriate for  
13 those who are unable to live by themselves, but who do not have medical conditions requiring  
14 more extensive nursing care and significant assistance with most of their ADLs. Atria's assisted  
15 living facilities also have "Life Guidance Neighborhoods," which serve individuals with dementia  
16 and other cognitive disorders.

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

21 26. At Atria facilities, residents are charged a base rate plus additional charges based  
22 on their assessed care level and the services and assistance associated with that level of care.  
23 Thus, the higher the personal care level determined by Atria for a resident, the more money  
24 Defendant charges the resident.

25 **Uniform Representations in Atria's Standard Form Contracts**

26 27. Defendant represents to residents that it will use its resident evaluation system to  
27 determine and then provide the amount of staff time Atria has itself decided is necessary to  
28 provide the services and care for which its residents are paying.

1           28.       Specifically, Atria makes the affirmative representation to each resident in its  
2 uniform contract that it “will provide you with the services appropriate for your needs.” Each  
3 resident’s monthly payment consists of a “Monthly Rate”—which purportedly includes lodging,  
4 meals, weekly laundry and apartment cleaning, planned activities, and observation of the  
5 resident’s well-being. Additionally, residents are charged an “Assisted Living Rate” which  
6 covers “the accommodations and services for the level of care determined in your initial  
7 assessment to be appropriate for you.”

8           **Atria Levels of Care – Initial Evaluation.** Your initial Monthly Rate and Assisted  
9 Living Rate are listed on page 1 of this Residency Agreement. These fees cover the  
10 accommodations and services for the level of care determined in your initial assessment to  
11 be appropriate for you. That level of care and the services and accommodations provided  
within that level of care are described in Sections 1 and 2 and Attachment B, “Atria  
Optional Services and Schedule of Rates”.

12           29.       Attachment B: Atria Services and Schedule of Rates contains the following  
13 representations:

14           **Personal Care Fee.** The Personal Care Fee is derived by assigning the resident to a  
15 Personal Care Level, as determined by the resident’s participation in a comprehensive  
16 assessment performed by a representative of the Community prior to move-in and  
17 periodically throughout the resident’s stay. If the comprehensive assessment indicates that  
18 the resident requires personal care services in excess of the standard services, then the  
19 resident will be placed in one of the additional Personal Care Levels and will be required to  
20 pay the associated additional monthly fee as follows:

PERSONAL CARE PER WEEK	PERSONAL CARE LEVEL	MONTHLY PERSONAL CARE FEE
Up to 3.5 hours	1	\$ 345
Up to 7 hours	2	\$ 645
Up to 10.5 hours	3	\$ 945
Up to 14 hours	4	\$1,245
Up to 17.5 hours	5	\$1,545
Up to 21 hours	6	\$1,845

25           30.       Additionally, residents who need assistance with medications must pay a  
26 Medication Program Fee based on their assigned “Medication Program Level” from 1 to 3, also  
27 determined by the resident assessment.

28       ///



1           31.       Those residents living in the unit of the facility dedicated to residents with dementia,  
2 the “Life Guidance Neighborhood”, must pay the Life Guidance Monthly Fee. “The Life Guidance  
3 Monthly Fee is derived by assigning the resident to a Life Guidance Care Level, as determined by  
4 the resident’s participation in a points-based comprehensive assessment performed by a  
5 representative of the Community prior to move-in and periodically throughout the resident’s stay.”

6           32.       Defendant reinforces the representation that staffing will be based on the point-value  
7 system through the resident reassessment program. Specifically, in its standardized contract, Atria  
8 promises to periodically re-evaluate residents to determine if their care needs require additional  
9 assistance. If so, Atria states that it shall be entitled to increase the resident’s “Personal Care Level”  
10 and corresponding monthly charges.

11           33.       Because these representations are presented through form contracts, potential and  
12 current residents of Atria facilities reasonably understand them to be representations of the policies  
13 and procedures followed by Atria for determining the needs of residents of its facilities generally  
14 and the overall facility staffing necessary to address those needs.

15           34.       Based on these representations, Plaintiff, the putative class members and the general  
16 consuming public reasonably expect that Defendant will use its resident evaluation system and the  
17 personal care levels of current facility residents when determining and providing facility staffing.

#### 18           **Atria’s Marketing Materials**

19           35.       Through its corporate website and other standardized corporate-issued marketing  
20 materials, Atria reinforces the misrepresentation made in every contract that its California assisted  
21 living facilities use Atria’s resident evaluation system and the overall personal care levels  
22 generated by it to determine and provide the necessary levels of staffing.

23           36.       On its website, for example, Atria makes the following statement:

#### 24                           **Pricing Options**

25           At Atria, residents find more than a place to live – they find a second family and a vibrant  
26 community filled with new opportunities. Our care is tailored to individual needs, and each  
resident's rate is determined by a thorough assessment performed by a licensed nurse.

27           We use a point-value system based on the amount of time and level of assistance the  
28 resident may require. The rate can then be adjusted as the resident's needs change. This

1 way, each resident receives just the right amount of discreet personal assistance he or she  
2 needs to remain as independent as possible.

3 <http://www.atriaseniorliving.com/pricing-options-senior-living.aspx?PageID=50> (last visited  
4 August 6, 2014).

5 37. These and similar statements made by Atria constitute, and are reasonably  
6 understood to be, representations that Atria uses a system that ensures adequate staffing to meet all  
7 current resident needs based on their comprehensive needs assessments and personal care levels.  
8 Based on these representations, potential and current residents reasonably understand and expect  
9 that Atria's policy and practice is to base its overall staffing levels at each of its California  
10 facilities on the aggregate assessed needs of its current residents and the number and type of staff  
11 hours Atria has itself determined are necessary to satisfy those needs.

#### 12 **Atria's Non-Disclosure and Concealment**

13 38. Contrary to the express and implied representations in the Atria standardized  
14 contract and other uniform written statements, Atria does not use the resident evaluation system  
15 or consider assessed personal care levels in setting or providing facility staffing. Atria conceals  
16 this material fact from the residents, their family members and the general public.

17 39. Named Plaintiff is informed and believes, and on that basis alleges, that Atria has  
18 the capability to determine, to the minute, the facility staffing levels required to meet the  
19 aggregate Personal Care Levels promised to residents. With its resident evaluation system, Atria  
20 can calculate the amount and type of staff needed by a facility for the population or group of  
21 residents therein viewed as a whole on any given shift based on the evaluated needs of residents.  
22 While Defendant uses this resident evaluation system to set and charge monthly rates, it does not  
23 use the resident evaluation system to set staffing at its facilities.

24 40. Atria's Executive Directors are given pre-determined budgets—including labor  
25 budgets—from corporate headquarters. Executive Directors of Atria facilities may not increase  
26 these budgets without approval from corporate headquarters. Executive Directors and other  
27 divisional and regional managers are given a disincentive to request a staffing increase because  
28 under corporate compensation policies, they can only receive a bonus if they meet earnings

1 targets set by corporate headquarters in Kentucky.

2 41. Former Atria employees who requested additional facility staff and/or staffing  
3 hours to meet resident needs were told that the budget did not allow for additional staff time.  
4 During regular conference calls with Atria regional directors, executive directors and resident  
5 services directors who requested additional staff to meet resident needs were told that they could  
6 not have additional staff regardless of the care needs of the residents of their facilities because  
7 there was no additional money in the budget.

8 42. Information gathered from former Atria facility employees, current and former  
9 residents, and records of the Department of Social Services' Community Care Licensing division  
10 confirms that Atria uses pre-determined staffing schedules at its facilities and does not change  
11 these schedules or the number of staff hours worked when the facility has more residents or  
12 residents with greater needs. Examples include set staffing schedules of: a) one caregiver and  
13 one medication technician ("med tech") for the overnight shift at Atria Vintage Hills, a three-floor  
14 facility with a capacity of 153 and an occupancy of more than 100 residents; b) one med tech and  
15 three caregivers for the morning shift, one med tech and two caregivers for the afternoon shift,  
16 and one med tech and one caregiver for the overnight shift at Atria Hillcrest, a facility that had  
17 127 residents at the time; c) three caregivers and one med tech for the morning shift, three  
18 caregivers and one med tech for the afternoon shift, and one caregiver and one med tech for the  
19 overnight shift at Atria Grand Oaks, a three-floor facility with a capacity of 140 residents; d) one  
20 caregiver for the entire Life Guidance unit of 25 residents at Atria Hillsdale; and e) 1.5 caregivers  
21 and one med tech during the morning shift, one caregiver and one med tech on the afternoon shift,  
22 and one med tech on the overnight shift at Atria Burlingame, a facility with a capacity of 90  
23 residents.

24 43. As a result of Atria's failure to use its resident evaluation system and consider  
25 assessed personal care in set staffing levels at its facilities, the staffing levels at such facilities are  
26 substantially lower than those Atria itself has determined are necessary to meet the assessed needs  
27 of residents. Further, because Atria's failure to use its residential evaluation system for staffing  
28 decisions results in lower staffing levels than it has determined are necessary, the residents of

1 Atria's facilities run the continuing risk of not having their care needs met and of suffering injury  
2 from the lack of care or from other residents who are insufficiently supervised or cared for.

3 44. The consequences of Atria's common policy and standard operating procedure of  
4 providing staffing without regard to the assessed personal care levels of its current residents are  
5 significant. The following examples are illustrative and not exhaustive.

6 45. During the last year, Atria Vintage Hills, a facility with 153 beds, has had one med  
7 tech and one caregiver on duty during the 10 p.m. to 6:30 a.m. shift. Because the primary  
8 responsibilities of the med tech involve delivering medications, maintaining the medication room  
9 and monitoring changes in resident conditions, s/he is not readily available to provide standard  
10 caregiving assistance or respond to resident calls. This left one caregiver to shower residents,  
11 help them to bed, check on residents, respond to call buttons, assist residents with toileting needs,  
12 and lift residents who needed a two-person transfer. When the caregiver sought additional  
13 assistance, citing her inability to lift certain residents on her own, she was told that no additional  
14 staff would be provided to assist her. Residents often waited long periods of time for their call  
15 buttons to be answered because the caregiver was assisting other residents. Some residents, while  
16 waiting for assistance to the bathroom, fell or slid off their beds to the floor.

17 46. Because the facility did not have enough staff on duty, on many occasions during  
18 the class period, Residents at Atria Burlingame have had to wait long periods of time for their call  
19 lights to be answered (*i.e.*, twenty minutes or more). They were not receiving all of the promised  
20 showers, grooming, dressing assistance or escorting that Atria had promised and which they had  
21 paid for. Residents often waited long periods of time for assistance with toileting and as a result  
22 had accidents or became incontinent.

23 47. According to a former "concierge" (receptionist) at Atria Hillsdale approximately  
24 August 2012 to August 2013, staff ran around doing their best to provide care but were always  
25 apologizing that they could not meet all resident needs because they did not have enough staff.  
26 Residents often waited so long for their call buttons to be answered that they became frustrated  
27 and called the front desk from an outside line. Often residents waited long beyond the prescribed  
28 time to get their medications, including one woman with diabetes who had to be transported to the

1 hospital because her blood sugar got too low. Long wait times for meals posed similar problems  
2 for diabetic residents who would begin to shake. Another woman frequently soiled and wet  
3 herself waiting hours in the TV room for someone to help her to the bathroom, despite repeated  
4 pages from the front desk. Residents' relatives often resorted to providing the care promised by  
5 the facility because it would not otherwise happen.

6 48. The staffing at Atria Hillsdale remained constant, even when occupancy increased  
7 from approximately 85% to 100%. During a monthly meeting with the executive director at the  
8 time, during which she boasted about achieving 100% occupancy, a resident asked whether the  
9 facility would be adding staff given the increase in residents. The executive director for the  
10 facility reportedly replied, "No. There is no reason for that." Yet residents were not receiving  
11 promised services and waiting long periods of time for assistance they did receive.

12 49. In February 2014, the Department of Social Services cited Atria Las Posas for  
13 failing to have enough staff to support the needs of the residents in the Life Guidance unit. The  
14 citation reveals that staff often took 20 minutes or more to respond to emergency calls from at  
15 least one resident in that unit.

16 50. Until as recently as Spring 2014, the inadequate numbers of staff at Atria Montego  
17 Heights meant that residents frequently did not receive their medications on time or for many  
18 hours after. Staff sometimes did not respond to resident call buttons for hours. Residents did not  
19 receive the timely staff escorts needed to participate in activities. Additionally, Atria had  
20 promised residents that they could use a facility van to get to appointments in the community,  
21 including church on Sunday. Yet Atria did not hire a van driver on the weekends.

22 51. In February 2011, the Department of Social Services cited Atria Covina for  
23 insufficient staffing that led to a resident receiving severe burns on her abdomen and thigh.  
24 Although the facility tried to attribute the burns to sun exposure, a certified burn specialist found  
25 that explanation implausible given the weather, time of day and location and severity of the burns.  
26 Instead, the investigator concluded that the burns resulted from a hot water spill, attributable to  
27 insufficient supervision.

28 ///

1           52.       Residents at Atria Carmichael Oaks do not receive their medications on time.  
2       When asked by one resident’s family member about the problem, the executive director replied  
3       that the facility was experiencing “staffing problems.” Although this resident’s main reason for  
4       living at the facility is management of her medication, a service that Atria promised to her and for  
5       which she is paying, the facility constantly fails to provide the resident’s medications in a timely  
6       manner or, in some cases, at all due to “staffing problems.”

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

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

15          54.       Atria’s promise to provide the staff time Atria has determined is necessary to meet  
16       resident care needs based on their assessed Personal Care Levels is material to prospective  
17       residents and their family members. Assurances that a facility will provide the amount of staffing  
18       the facility itself believes is necessary to meet the assessed needs of facility residents is a  
19       substantial factor (and indeed often the most important factor) in deciding to enter an assisted  
20       living facility. Plaintiff would not have entered, nor would Ms. Clegg have admitted her father to  
21       Atria, if they had known that, although Defendant would charge Mr. Carnes based on the staffing  
22       associated with his assessed Personal Care Level, Defendant did not and does not use its resident  
23       evaluation system and the Personal Care Levels generated by it when determining staffing levels  
24       at its facilities. Likewise, members of the putative class would in all reasonable probability not  
25       have entered Atria’s facilities if they had known that Atria did not and does not use its resident  
26       evaluation system and the Personal Care Levels generated by it when determining staffing levels  
27       at its facilities.

28       ///

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

6           56.     A key factor for these residents in selecting Atria is that the facility will provide the  
7 staffing that Atria itself has determined is necessary to meet their assessed needs, both now and as  
8 those needs, and corresponding Personal Care Level fees, increase. Atria recognizes this on its  
9 website:

10           Active assisted living communities should provide a vibrant, positive atmosphere. The  
11 needs of seniors vary, so the best assisted living option should typically include a  
12 community environment that offers personalized levels of care for each resident. This  
13 allows for seniors to have more choices for levels of care that may be needed in the future,  
14 and gives residents and family members peace of mind when making a long-term decision  
15 for assisted living services. More care options allow for residents to age in place – a  
16 preferred lifestyle choice for a majority of older adults.

17           <http://www.atriaseniorliving.com/assisted-living-what-you-should-know.aspx?PageID=150> (last  
18 visited August 6, 2014).

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

### 27           **Barriers to Moving Out**

28           58.     Defendant’s misrepresentations affect not only the decision of residents to enter an  
Atria facility, but also the decision to stay there.

///  
28

1           59.     In choosing assisted living in general and an Atria facility in particular, the resident  
2 forgoes other options such as his or her former home, a senior community, or other facilities  
3 where the resident can try to build a new community. Once in a facility, there are significant  
4 physical, emotional and other burdens for the residents that are triggered if they terminate  
5 residency, including impacts such as “transfer trauma.” Atria is aware of these burdens and  
6 makes the representations described herein with the knowledge that it will be difficult for  
7 residents to leave its facilities once they are enticed to enter based on its misrepresentations.

8           60.     Defendant puts great effort into increasing and maintaining facility occupancy to  
9 the detriment of its prospective and future residents. Employees are frequently reminded that  
10 occupancy, or census, is of prime importance.

11           61.     Atria also repeats its misrepresentations when it conducts periodic re-evaluations of  
12 residents. Often, the facility discovers additional personal care services needed by the resident  
13 that Atria uses as a basis for a Personal Care Fee increase. Atria’s Policy regarding reassessment  
14 directs Executive Directors to “insure billing rates are adjusted immediately,” but the policy gives  
15 no instruction regarding concurrent changes in staffing levels. Similarly, Atria’s policy regarding  
16 changes in care levels indicates numerous steps particular staff members must take as a matter of  
17 procedure, but staffing level changes are not mentioned.

18           62.     Each time an Atria employee performs a reassessment that results in an increased  
19 Personal Care Level, the resident and/or his or her family members receive a letter from Atria  
20 indicating that the resident’s Personal Care Fee has increased, frequently effective retrospectively.  
21 This standardized letter states:

22           The management and staff at [facility name] are committed to providing the appropriate  
23 level of assisted living services to our residents. This commitment includes providing  
24 personalized care plans for each resident, regular reviews of the care plan, and monitoring  
of each resident for any changes of condition.

25           We have completed an assessment of your assisted living needs and determined that you  
26 now require a change in the assisted living services you receive.

27           The letter indicates the change in care level and associated fee. Again, Atria does not disclose to  
28 the resident or family members that it does not and will not adjust facility staffing levels to



1 account for increases residents' Personal Care Levels.

2 63. Atria thereby unjustly continues to profit from the original fraud by perpetuating its  
3 misrepresentations and failures to disclose.

4 **Thomas Carnes**

5 64. Thomas Carnes resided at Atria Hillsdale in San Mateo, California from  
6 approximately July 26, 2012 through approximately January 19, 2015. When Mr. Carnes moved  
7 to Atria on or around July 26, 2012, Atria provided his daughter, Juliana Christine Clegg, who  
8 holds a durable power of attorney, with a standard contract under which it promised to provide  
9 certain core services in exchange for a monthly base rate. Additionally, the contract stated that  
10 Atria would be responsible for providing any additional "assisted living" services indicated by  
11 Mr. Carnes' resident evaluation and assigned Personal Care Level. The contract specifically  
12 stated that each resident's care level was associated with the amount of time spent by Atria staff  
13 performing the necessary services as determined by his initial resident evaluation and any  
14 subsequent determinations by Atria staff that his Personal Care Level had changed. However,  
15 Atria failed to disclose and concealed from Mr. Carnes and his daughter that Atria does not  
16 consider the amount of time dictated by resident assessments when it budgets for and provides  
17 staff at its facilities.

18 65. Mr. Carnes, through his representative and power of attorney, Juliana Clegg,  
19 reasonably understood Atria's representations in the contract as statements that Atria used its  
20 resident evaluation system and personal care levels to determine necessary staffing levels for its  
21 facilities and that the staff determined to be necessary through that system would be provided.  
22 Through Ms. Clegg, Mr. Carnes read and relied on the representations made in the contract in  
23 making the decision to enter Atria Hillsdale. As Mr. Carnes' durable power of attorney and  
24 representative, Ms. Clegg signed the agreement acknowledging that she had read the agreement  
25 and its attachments.

26 66. Prior to entering Atria Hillsdale, Mr. Carnes paid Defendant a New Resident  
27 Services Fee of \$2,000. Additionally, he paid the basic monthly rate of \$4,100 plus a monthly  
28 personal care fee of \$345 and a monthly medication program fee of \$250.

1           67.       During his stay at Atria Hillsdale, Mr. Carnes' Personal Care Level increased from  
2 a 1 to a 4, representing a monthly personal care fee increase from approximately \$345 to \$1,400.  
3 Atria purported to be implementing a new care plan with each increase in Mr. Carnes' Personal  
4 Care Level. Atria, however, did not make corresponding adjustments to and increases in the staff  
5 time devoted to Mr. Carnes' care or adjust its facility staff levels as it increased Ms. Carnes'  
6 Personal Care Level. Mr. Carnes did not receive the care Atria promised him in his contract and  
7 for which he paid Atria. Ms. Clegg repeatedly advised Atria staff that Mr. Carnes was not getting  
8 his promised care, and on many occasions, Atria staff admitted that the reason was lack of  
9 sufficient staffing.

10           68.       On numerous occasions, Ms. Clegg voiced concerns to Atria Hillsdale's various  
11 executive directors and resident care directors that her father was not receiving the care Atria  
12 promised and for which he paid Atria. She noted that although his Personal Care Levels and  
13 corresponding fees increased, the amount of care her father received did not. She also inquired  
14 about whether the facility had enough staff, as she had observed that the facility did not appear to  
15 have the staffing sufficient to provide the care her father or other residents had been promised.

16           69.       For example, in 2013 Mr. Carnes' care plan promised him three showers per week.  
17 Yet Ms. Clegg noticed that her father often smelled of urine and body odor, and his hair was  
18 filthy and matted. Asked about this, a med tech told Ms. Clegg that her father was "actually"  
19 receiving about one shower weekly. This was confirmed by one of Mr. Carnes' caregivers. On  
20 another occasion, Ms. Clegg heard a caregiver, when asked whether Mr. Carnes had received a  
21 shower the previous night, reply, "No, we only had two caregivers." Sometimes Mr. Carnes  
22 would go eight days or more without getting a shower. Asked about records indicating that  
23 showers have been given despite Mr. Carnes' odor and dirty appearance, the former resident  
24 services director acknowledged it was possible that caregivers were recording care that did not  
25 actually occur. Ms. Clegg believes that this happens frequently because staff are trying to hide  
26 that they are overworked and unable to perform all of their duties without more assistance.

27           70.       Although Mr. Carnes paid for other grooming assistance, such as shaving prompts,  
28 hair combing and dressing, it became clear to Ms. Clegg from his appearance that he rarely

1 received these paid-for services.

2 71. Mr. Carnes could walk to the dining room with his walker, but rushed and  
3 overworked caregivers often transported him by wheelchair in order to “speed things up.” Ms.  
4 Clegg asked the facility to stop this practice as she feared it would lead to a decline in Mr.  
5 Carnes’ mobility, yet the facility did not have enough caregivers to provide him the needed  
6 assistance so that he could walk to lunch.

7 72. Mr. Carnes’ room often smelled, his bathroom was found covered with fecal  
8 matter, and his clothes were often not laundered as scheduled.

9 73. Staff did not assist Mr. Carnes with his toileting needs as promised. Although Mr.  
10 Carnes was promised and paid for toileting assistance six times per day in the fall of 2013, senior  
11 caregivers reported to Ms. Clegg in October 2013 that they rarely, if ever, assisted him with  
12 toileting needs, saying that they arrived at the wrong time or were unable to stop by because the  
13 facility was understaffed and they needed to address the care needs of other residents. Atria’s  
14 solution was to put two adult briefs on him at once. Ms. Clegg discovered this in October 2014  
15 when urine soaked through her father’s clothes while they were out at a restaurant, soaking the  
16 restaurant seating and Ms. Clegg’s car. When Ms. Clegg helped her father undress and prepare  
17 for bed that night, as there were no caregivers to assist, she found two briefs on him, both full of  
18 urine and obviously unchanged for hours. These types of incidents not only damaged Mr.  
19 Carnes’ dignity but also created significant risks to his health as they increased the possibility of  
20 urinary tract infections and skin breakdown.

21 74. Ms. Clegg had to re-schedule surgery for Mr. Carnes because, despite requests  
22 from Ms. Clegg and reassurances from Atria, the staff failed to remind him not to eat on the  
23 morning of the surgery. In or about June 2013, Mr. Carnes was prescribed antibiotics. Ms. Clegg  
24 discovered in July that rather than administer his 10-day course of antibiotics as prescribed by  
25 Mr. Carnes’ physician, the med tech had given Mr. Carnes the medication sporadically for a  
26 month.

27 75. Ms. Clegg repeatedly and in vain asked Atria Hillsdale management why Atria  
28 raised her father’s care levels and monthly charges without also increasing the amount of care

1 time he received or providing the additional care.

2 **CLASS ALLEGATIONS**

3 76. The Named Plaintiff brings this action as a class action pursuant to Federal Rule of  
4 Civil Procedure 23(b)(3) as set forth below.

5 77. **Class Definition:** This action is brought on behalf of the named Plaintiff and all  
6 similarly situated persons who resided or reside at one of the California assisted living facilities  
7 owned and/or operated by Atria under the Atria name from June 12, 2010 through the present (the  
8 “Class Period”), and who contracted with Atria for services for which Atria was paid money.

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

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

19 80. **Impracticability of Joinder (Numerosity of the Class).** Impracticability of  
20 Joinder (Numerosity of the Class). Members of the class are so numerous that their individual  
21 joinder herein is impracticable. Defendant currently owns and/or operates approximately 35  
22 assisted living facilities in California. The number of residents at those facilities during the class  
23 period likely exceeds 13,000 individuals. The precise number of persons in the class and their  
24 identities and addresses may be ascertained from Defendant’s records.

25 81. **Questions of Fact and Law Common to the Class.** Numerous important  
26 common questions of law and fact exist as to all members of the class and predominate over the  
27 questions affecting only individual members of the class. These common legal and factual  
28 questions include without limitation:

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

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

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

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

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

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

24 (g) whether Defendant had exclusive knowledge of material facts not known or  
25 reasonably accessible to the Plaintiff and the class;

26 (h) whether the Plaintiff, the class and the consuming public were likely to be  
27 deceived by the foregoing concealment and omission;

28 (i) whether the Plaintiff, the class and the consuming public have a reasonable

1 expectation that Defendant will use its resident evaluation system to determine and provide  
2 staffing at its facilities;

3 (j) whether the Plaintiff, the class and the consuming public have a reasonable  
4 expectation that Defendant will provide staffing at its facilities to meet the aggregate care needs  
5 as determined by Defendant's resident evaluation system;

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

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

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

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

17 (o) whether Plaintiff and the members of the Class have sustained injury;

18 (p) whether Plaintiff and the members of the Class are entitled to damages, and  
19 the nature of such damages; and,

20 (q) whether Plaintiff and the members of the Class are entitled to restitution,  
21 declaratory and injunctive relief and/or other relief, and the nature of such relief.

22 82. **Typicality.** The claims of the Plaintiff are typical of the claims of the Class. As  
23 alleged above, Defendant misrepresented to Plaintiff and the class members and/or their family  
24 members that Defendant uses its resident evaluation system and the Personal Care Levels  
25 generated by it when determining staffing levels at its facilities. The resident evaluation system  
26 allows Defendant to determine and provide the aggregate staffing Defendant has determined is  
27 necessary to meet the assessed needs of its residents, but in fact, Defendant does not use this  
28 critical information in budgeting for or employing staff at its California facilities. Rather,

1 Defendant has a policy of fixed staffing, regardless of facility occupancy and the assessed  
2 personal care levels of its residents, which results in residents' not receiving all of the care they  
3 have paid for and the inherent risk to all residents that on any given day they will not receive their  
4 promised care. Further, as alleged above, Defendant has failed to disclose and concealed this  
5 material fact from Plaintiff and the class. Plaintiff's claims are typical of the claims of the  
6 proposed class in the following ways: 1) Plaintiff is a member of the proposed class; 2) Plaintiff's  
7 claims arise from the same uniform corporate policies, procedures, practices and course of  
8 conduct on the part of Defendant; 3) Plaintiff's claims are based on the same legal and remedial  
9 theories as those of the proposed class and involve similar factual circumstances; 4) the injuries  
10 suffered by the Plaintiff are similar to the injuries suffered by the proposed class members; and 5)  
11 Plaintiff seeks a common form of relief for herself and the members of the class.

12 83. **Adequacy**. Asserting the above-referenced claims of Plaintiff, Named Plaintiff is  
13 an adequate representative of the class on whose behalf this action is prosecuted. There is no  
14 conflict with the interests of the class. Named Plaintiff has retained competent counsel with  
15 extensive experience in class action and senior care litigation and who will prosecute this action  
16 vigorously.

17 84. **Predominance**. With respect to Plaintiff's claims under the CLRA, the UCL and  
18 the Elder Abuse Act, class certification is appropriate under Federal Rule of Civil Procedure  
19 23(b)(3) because questions of law or fact common to class members predominate over any  
20 questions affecting only individual members of the proposed class.

21 85. **Superiority**. Moreover, a class action is superior to other methods for the fair and  
22 efficient adjudication of the controversies raised in this Complaint because:

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

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

28 (c) the concentration of litigation of these claims in one forum will achieve

1 efficiency and promote judicial economy;

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

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

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

10 86. Without a class action, Defendant will likely retain the benefit of its wrongdoing  
11 and will continue in its illegal course of conduct which will result in further damages to Plaintiff  
12 and the proposed class.

13 **FIRST CLAIM**

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

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

16 88. Plaintiff and the class members are "senior citizens" and/or "disabled persons" as  
17 defined in California Civil Code § 1761(f) and (g). They are also "consumers" as defined in  
18 California Civil Code § 1761(d).

19 89. Defendant is a "person" as defined under California Civil Code § 1761(c). The  
20 assisted living and memory care services provided by Defendant constitute "services" under  
21 California Civil Code § 1761(b). The agreement by Plaintiff and the putative class members to  
22 provide new resident services fees and monthly payments to Defendant in exchange for assisted  
23 living and memory care services constitute a "transaction" under California Civil Code § 1761(e).

24 90. In its uniform resident contracts presented to prospective residents and their family  
25 members, Defendant represented and continues to represent that Atria uses its resident evaluation  
26 system and the Personal Care Levels generated by it in determining and providing facility  
27 staffing. That same representation is made in Atria's re-evaluations of residents, corporate  
28 website statements and other standardized corporate promotional materials. As alleged herein,



1 these uniform corporate representations are false, and are likely to deceive the reasonable  
2 consumer.

3 91. Contrary to Atria's uniform misrepresentations and misleading statements, Atria  
4 does not use its resident evaluation system or consider the personal care levels of its residents in  
5 setting or providing facility staffing, but instead uses predetermined labor budgets designed to  
6 meet corporate profit goals. Atria facilities use a predetermined staffing schedule that rarely, if  
7 ever, changes, despite changes in occupancy levels and the assessed personal care levels of the  
8 current residents. Atria does not disclose and actively conceals this corporate policy and  
9 procedure from current and prospective residents and their family members.

10 92. Plaintiff, through his daughter as his legal representative and power of attorney,  
11 and the putative class members considered material Atria's representations that it uses its resident  
12 evaluation system to set and provide facility staffing based on the amount of time Defendant has  
13 itself determined is necessary to provide the Personal Care Levels established by its resident  
14 assessments. If Plaintiff and his daughter had known the true facts, they would not have agreed to  
15 place him in an Atria facility. If the putative class members had known the true facts, they would  
16 in all reasonable probability not have agreed to enter Atria.

17 93. The facts that Atria misrepresents, fails to disclose and actively conceals are  
18 material and are likely to deceive the reasonable consumer. Consumers choose an assisted living  
19 facility because they need care and/or wish to age in place as their care needs change. Residents  
20 and their family members consider of great importance the overall staffing levels provided by the  
21 assisted living facility they select. The use of a system such as the one Atria represents it uses,  
22 which ensures adequate staffing at the facilities by basing staffing decisions on resident  
23 evaluations and personal care needs, is also, therefore, of great importance to residents and their  
24 family members and is a material factor in their decision to choose Atria and to pay Atria the  
25 amounts of money that it charges for occupancy and services.

26 94. Residents and their family members would consider material Defendant's uniform  
27 corporate policy and procedure of not using its resident evaluation system and the staffing  
28 numbers generated by it to set and provide staffing its facilities. They would consider material

1 Defendant's policy and practice of maintaining predetermined staffing schedules regardless of  
2 increases in facility occupancy or the assessed personal care levels of current residents. They  
3 could not reasonably have been expected to learn or discover these non-disclosed facts, and in  
4 fact, Atria affirmatively concealed them.

5 95. Atria has violated and continue to violate the Consumers Legal Remedies Act,  
6 California Civil Code §§ 1750 *et seq.* ("CLRA") in at least the following respects: (a) in violation  
7 of section 1770(a)(5), Atria has misrepresented, failed to disclose and concealed the true  
8 characteristics and/or quantities of services provided at its California facilities; (b) in violation of  
9 section 1770(a)(7), Defendant has misrepresented, failed to disclose and concealed the true  
10 standard, quality and/or grade of services provided at its California facilities; (c) in violation of  
11 section 1770(a)(9), Defendant has falsely advertised that it will provide staffing based on resident  
12 evaluations and the personal care levels generated by those evaluations, knowing that it does not  
13 intend to provide the services as advertised; and (d) in violation of section 1770(a)(14), Defendant  
14 has represented that the agreement signed by residents and/or their representatives, and under  
15 which they pay their monthly rate, confers on residents the right to reside in a facility that  
16 provides staffing based on the amount of time its own resident evaluation system has determined  
17 is necessary to provide the services for which residents are charged, when in fact, Defendant does  
18 not use its resident evaluation system and the Personal Care Levels generated by it when  
19 determining and providing facility staffing.

20 96. These misrepresentations, misleading statements, acts, practices, and omissions by  
21 Defendant are and were intended to induce and lure elderly and dependent adult residents and  
22 their family members into agreeing to be admitted to Defendant's facilities and to pay new  
23 resident services fees and monthly rates based on Defendant's resident evaluation system and  
24 assessed Personal Care Levels.

25 97. Defendant made the written misrepresentations and misleading statements alleged  
26 herein through various uniform means of communication, including without limitation, the  
27 admission agreement, subsequent agreements based on re-evaluations of the resident, letters to  
28 residents regarding rate increases, standardized corporate marketing and promotional materials,

1 Defendant's website, and other written corporate materials disseminated to the public in  
2 connection with Defendant's services. These representations were made directly to the Plaintiff,  
3 putative class members and their family members and/or representatives by Atria in its standard  
4 resident admission contract and reinforced by the uniform means of communication listed above.

5 98. In addition to its affirmative misrepresentations that Atria uses its resident  
6 evaluation system and the personal care levels generated by it to provide facility staffing,  
7 Defendant failed to disclose and concealed from Plaintiff, the putative class members, and their  
8 family members that it does not use its resident evaluation system to determine or provide  
9 aggregate staffing at its facilities but maintains predetermined levels of staffing, regardless of  
10 changes in occupancy or personal care levels of facility residents and regardless of whether the  
11 residents' assessed care needs are being met.

12 99. Atria had exclusive and superior knowledge of material facts not known to the  
13 named Plaintiff, class members or the general public at the time of the subject transactions and  
14 actively concealed these material facts.

15 100. Atria had exclusive and superior knowledge of its corporate policy and procedure  
16 of ignoring its resident evaluation system and the personal care levels generated by it in setting  
17 staffing levels. Further, Plaintiff alleges on information and belief that Defendant's officers,  
18 directors and managers were repeatedly advised by its own staff that Atria facilities were not  
19 adequately staffed to meet resident needs. Atria also knew that its failure to provide staffing based  
20 on the amount of time that Atria had itself determined was necessary to provide the care and  
21 services for it charged its residents posed a health and safety risk to the Plaintiff and class  
22 members. Atria intentionally concealed, suppressed and/or failed to disclose the true facts with  
23 the intent to defraud the Plaintiff and putative class members. The Plaintiff and the putative class  
24 members did not know these material undisclosed facts and could not reasonably have been  
25 expected to discover them.

26 101. As a direct and proximate result of the Defendant's conduct, Plaintiff and the  
27 putative class members suffered actual damages. Specifically, Plaintiff and the class members  
28 paid money to Defendant, in the form of the new resident services fee and their initial monthly

1 fees, in exchange for residency and services in a facility that was falsely represented to be staffed  
2 based on Atria's residential assessment and personal care level system. Plaintiffs and the class  
3 members paid a premium for the misrepresented services, and would not have entered Atria's  
4 facilities and made payments to Atria had they known the truth about Atria's policies and  
5 practices for staffing its assisted living facilities.

6 102. As a further direct and proximate result of Defendant's failure to staff its facilities  
7 as represented, *i.e.* based on residents' needs as determined through its comprehensive  
8 assessments, Plaintiff and the class members have been forced to reside in facilities that have less  
9 staff than necessary to satisfy their care needs, as determined by Atria itself. As a result of Atria's  
10 policy of staffing its facilities according to pre-determined labor budgets which do not permit  
11 staffing increases, regardless of increases in census or the overall personal care levels of current  
12 residents, it is not possible for the needs of all residents to be met, and there is a likelihood that  
13 each resident, at various times, will not receive the care they have been determined to need and  
14 have been promised. The class members also face the substantial risk that they will suffer  
15 physical injuries from such lack of care and / or from other residents who are insufficiently  
16 supervised or cared for.

17 103. Plaintiff sent Defendant a notice to cure under California Civil Code § 1782(a),  
18 which was received by Defendant on June 17, 2014. More than 30 days has passed since  
19 Defendant's receipt, and Defendant has not replied to the notice nor has it corrected or remedied  
20 the violations alleged in the notice and herein.

21 104. Accordingly, Named Plaintiff and the class members are each entitled to no less  
22 than \$1,000 in statutory damages pursuant to California Civil Code § 1780(a). Named Plaintiff  
23 and the class members are also entitled to actual damages and restitution in an amount to be  
24 proven at trial.

25 105. Additionally, Plaintiff and each putative class member are entitled to damages of  
26 \$5,000 pursuant to California Civil Code § 1780(b). Plaintiff and each of the putative class  
27 members is a senior and/or disabled person as defined by California Civil Code § 1761(f) and (g).  
28 Plaintiff and the putative class members have each suffered substantial economic harm. Atria

1 knew that its conduct negatively impacted seniors and disabled persons. Atria's conduct caused  
2 the named Plaintiff and the putative class members to lose property set aside for personal care and  
3 maintenance and assets essential to their health and welfare. Further, Plaintiff and the putative  
4 class members are substantially more vulnerable than other members of the public to Defendant's  
5 conduct because of their age, poor health, impaired understanding, restricted mobility and/or  
6 disabilities.

7 106. Named Plaintiff additionally seeks treble damages under California Civil Code §  
8 3345, punitive damages, reasonable attorneys' fees and costs, and all other relief the Court deems  
9 just and proper. Excluded from Named Plaintiff's request are damages related to any personal  
10 injuries, emotional distress or wrongful death suffered by any member of the class.

11 107. Atria's conduct presents a continuing threat of substantial harm to the public in  
12 that, among other things, Atria continues to misrepresent how it uses its resident evaluation  
13 system and how it determines and provides staffing at its facilities. Despite the knowledge that  
14 Atria does not staff its facilities based on the resident evaluations and assessed Personal Care  
15 Levels, Defendant continues to induce elderly and vulnerable citizens to enter its facilities.  
16 Additionally, the risk of harm to the class members from Defendant's conduct is substantial.  
17 Accordingly, Named Plaintiff seeks an injunction that requires that Defendant immediately cease  
18 the CLRA violations alleged herein, and to enjoin it from continuing to engage in any such acts or  
19 practices in the future. Specifically, Named Plaintiff seeks an injunction requiring Defendant to  
20 disclose to Named Plaintiff, the putative class members and the consuming public that Atria does  
21 not staff its facilities based on the resident evaluations but instead maintains staffing levels based  
22 on pre-determined labor budgets, regardless of changes in facility occupancy or the overall  
23 personal care levels of current residents.

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

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

26 108. Plaintiff refers to, and incorporates herein by this reference, all preceding  
27 paragraphs.  
28

1           109. Defendant has engaged in unlawful business acts and practices. Such acts and  
2 practices constitute unfair business practices in violation of California Business and Professions  
3 Code section 17200 *et seq.*

4           110. In particular, Defendant has engaged in unlawful business acts and practices by  
5 violating numerous laws, statutes and regulations including, without limitation:

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

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

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

19           112. The acts and practices of Defendant also constitute unfair business acts and  
20 practices within the meaning of Business & Professions Code section 17200, *et seq.*, in that the  
21 conduct alleged herein is immoral, unscrupulous and contrary to public policy, and the detriment  
22 and gravity of that conduct outweighs any benefits attributable to such conduct.

23           113. Defendant's misrepresentations, misleading statements, acts, practices, and  
24 omissions were intended to induce and lure elderly and dependent adult residents and their family  
25 members into agreeing to be admitted to Defendant's facilities and to pay a new resident services  
26 fee and monthly rates to live in an assisted living facility that determines and provides staffing  
27 according to the levels Defendant has determined are necessary to provide the services identified  
28 in resident assessments.

1           114. Defendant made these misrepresentations and misleading statements through  
2 various uniform means of written corporate communications, including without limitation, the  
3 admission agreement, subsequent agreements based on re-evaluations of the resident, letters to  
4 residents regarding rate increases, marketing and promotional materials, Defendant's corporate  
5 website and other materials disseminated to the public from its corporate headquarters in  
6 connection with Defendant's services. These representations were made directly to the named  
7 Plaintiff, class members and their family members and/or representatives by Defendant in its  
8 standard resident contracts and reinforced by the uniform means of communication listed above.

9           115. In addition to its affirmative misrepresentations that Atria uses its resident  
10 evaluation system to determine and provide facility staffing in accordance with residents'  
11 assessed needs, Defendant concealed from Plaintiff, the putative class members, and their family  
12 members that Defendant does not use its resident evaluation system to set or provide facility  
13 staffing but instead maintains predetermined facility staffing levels regardless of changes in  
14 occupancy or the overall personal care levels of current residents.

15           116. Defendant had exclusive and superior knowledge of material facts not known to  
16 the named Plaintiff, putative class members or the general public at the time of the subject  
17 transactions and actively concealed these material facts.

18           117. Atria had exclusive and superior knowledge of its corporate policy and procedure  
19 of ignoring the personal care levels and corresponding amounts of time generated by its resident  
20 evaluation system in setting staffing levels. Further, Plaintiff alleges on information and belief  
21 that Defendant's officers, directors and managers were repeatedly advised by its own staff that  
22 Atria facilities were not adequately staffed to meet resident needs. Atria also knew that its failure  
23 to provide staffing based on the amount of time that Atria had itself determined was necessary to  
24 provide the care and services for which residents were charged posed a health and safety risk to  
25 the Plaintiff and class members. Atria intentionally concealed, suppressed and/or failed to  
26 disclose the true facts with the intent to defraud the named plaintiffs and putative class members.  
27 The named Plaintiff and the putative class members did not know these material undisclosed facts  
28 and could not reasonably have been expected to discover them.

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

7           119. Additionally, Named Plaintiff seeks an injunction that requires that Defendant  
8 immediately cease acts of unlawful, unfair and fraudulent business acts or practices as alleged  
9 herein, and to enjoin Defendant from continuing to engage in any such acts or practices in the  
10 future. Named Plaintiff and the putative class members also seek restitution, reasonable  
11 attorneys' fees, costs and expenses, and all other remedies permitted by law.

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

13           120. Plaintiff refers to, and incorporates herein by this reference, all preceding  
14 paragraphs.

15           121. Plaintiff and the putative class members are and at all times were "elders" as  
16 defined under California W&I Code § 15610.27 and/or "dependent adults" as defined under  
17 California W&I Code § 15610.23.

18           122. Defendant entered into a standard agreement with Plaintiff, by and through his  
19 power of attorney, the putative class members and/or their personal representatives whereby  
20 Defendant represented that Atria determines and provides staffing at its California assisted living  
21 facilities sufficient to address the needs of its residents as determined by their comprehensive  
22 evaluations and the personal care levels generated by those evaluations. Defendant made this  
23 promise in exchange for new resident services fees and monthly payments that it received from  
24 Plaintiff and the putative class members. Yet Defendant did not and had no intention of  
25 complying with its obligations under the contract. Defendant did not intend to and does not use  
26 its resident evaluation system to set or provide staffing at its facilities. Rather, it has a policy and  
27 practice of providing pre-determined facility staffing that does not change with resident  
28 occupancy or increases in resident care needs. This policy and practice precludes Atria from



1 providing facility residents with all of the care Atria has promised them and for which they are  
2 paying Atria.

3 123. Defendant knew or should have known that such conduct would likely be harmful  
4 to Plaintiff and the putative class members.

5 124. Defendant knew or should have known that Plaintiff and the putative class  
6 members had a right to the funds used to pay new resident services fees and monthly fees to  
7 Defendant.

8 125. As such, Defendant took, secreted, appropriated, obtained and retained the funds of  
9 Plaintiff and the putative class members for a wrongful use and/or with the intent to defraud.

10 126. Defendant's conduct was despicable, fraudulent, reckless and carried out with a  
11 willful and conscious disregard for the rights and safety of Plaintiff and the members of the  
12 putative class.

13 127. Accordingly, Named Plaintiff and the putative class seek an injunction requiring  
14 Defendant to disclose to them and to the consuming public that Atria does not use its resident  
15 evaluation or the personal care levels generated by it to set or provide staffing at its facilities, but  
16 instead maintains pre-determined staffing levels, based on fixed labor budgets, which do not  
17 change regardless of increases in occupancy and/or the overall assessed personal care levels of  
18 current residents. Named Plaintiff and the class also seek an injunction prohibiting Defendant  
19 from basing its Personal Care Level fees on the amount of staff time Defendant represents is  
20 necessary to provide the required services, when Defendant does not, as a matter of corporate  
21 policy and procedure, use those numbers in setting staffing levels at its facilities.

22 128. Named Plaintiff and the putative class members also seek compensatory damages,  
23 reasonable attorneys' fees, costs and expenses, punitive damages, treble damages pursuant to  
24 California Civil Code § 3345, and all other remedies permitted by law. Named Plaintiff does not  
25 seek certification of any claims for damages related to any personal injuries, emotional distress or  
26 wrongful death suffered by any member of the class.

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**PRAYER**

WHEREFORE, Named Plaintiff prays for judgment as follows:

1. For a Court order certifying that the action may be maintained as a class action;
2. For statutory damages;
3. For actual damages according to proof, excepting any damages for personal injury, emotional distress and/or wrongful death suffered by the Plaintiff or any class member;
4. For restitution and any other monetary relief permitted by law;
5. For reasonable attorneys’ fees, costs and expenses;
6. For treble damages pursuant to California Civil Code section 3345;
7. For punitive damages;
8. For pre-judgment and post-judgment interest, according to law;
9. For an order requiring that Defendant immediately cease acts that constitute unlawful, unfair and fraudulent business practices, false advertising and violations of the Consumer Legal Remedies Act, Business and Professions Code § 17200 *et seq.*, and the Elder Financial Abuse statute as alleged herein, and to enjoin Defendant from continuing to engage in any such acts or practices in the future;
10. Named Plaintiff and the class further seek an injunction requiring Defendant to disclose to them and to the consuming public that Atria does not use its resident evaluation or the personal care levels generated by it to set or provide staffing at its facilities and prohibiting Defendant from basing its Personal Care Level fees on the amount of staff time Defendant represents is necessary to provide the required services; and

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

2 **JURY TRIAL DEMANDED**

3 Named Plaintiff demands a jury trial on all issues so triable.

4 DATED: March 28, 2016

5 *s/Christopher J. Healey*

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