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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 Audrey Heredia as successor-in-interest to
the Estate of Carlos Heredia; Amy Fearn, as
19 successor-in-interest to the Estate of Edith
Zack, and Helen Ganz, by and through her
Guardian ad Litem, Elise Ganz, on behalf of
20 themselves and all others similarly situated,

21 Plaintiffs,

22 vs.

23 Sunrise Senior Living, LLC; Sunrise Senior
Living Management, Inc.; and Does 2
24 Through 100,

25 Defendants.
26

CASE NO. 8:18-CV-01974-JLS-JDF

**SECOND 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. Plaintiff Amy Fearn, as successor-in-interest to the Estate of Edith Zack, and Plaintiff Helen Ganz, by and through her Guardian ad Litem Elise Ganz, on behalf of themselves and all others similarly situated (collectively “Plaintiffs”) bring this action for injunctive relief and damages to stop the unlawful and fraudulent practices of Sunrise Senior Living, LLC (“Sunrise LLC”) and Sunrise Senior Management Living, Inc. (“Sunrise Management”), collectively “Sunrise” or “Defendants”.

2. Sunrise has engaged in a scheme to defraud seniors, persons with disabilities, and their family members at its assisted living facilities in California by falsely representing to all residents in its admission contracts that each resident will be provided the care services (through facility staff) that the resident needs as determined by a resident assessment conducted by facility personnel. This is false and misleading because as Sunrise has a corporate policy and practice of failing to provide sufficient numbers of properly trained staff to meet the aggregate assessed needs of all facility residents, as determined by Sunrise's own resident evaluation and service level system. As a result of Sunrise’s staffing policies and procedures, residents do not receive the services they need and pay Sunrise to provide, or are placed at substantial risk that they will not receive such services. Sunrise is aware of the consequences its staffing policies and practices have on its residents, but it has not disclosed them to current or prospective residents or their family members.

3. In its form admission agreements, Sunrise uniformly represents to each new resident that (a) each resident will receive the care that he/she requires; (b) the facility's professional staff will determine the care required for each resident through the resident assessment process; and (c) the amount of care identified in the resident assessment process as needed by the resident will be translated into a “score” and specific “Service Level” for which the resident will be charged on a daily basis. The reasonable consumer understands these representations to mean that, as a matter of policy and practice, Sunrise will provide sufficient staff at each facility to deliver to all facility residents the amount and type of care that Sunrise has

1 identified as necessary based on resident assessments and overall census.

2 4. Sunrise's misrepresentations, misleading statements, and failures to disclose about
3 the manner in which its facilities are staffed are material to the reasonable consumer. Seniors
4 and/or their family members choose an *assisted* living facility based on the expectation that they
5 will receive the quantity and quality of care that they need. Sunrise's corporate policies and
6 practices result in facility staffing levels that are much lower than necessary to meet the needs
7 identified in residents' assessments, such that residents either do not receive promised care and/or
8 face a substantial risk that such care will not be provided in the future. It is therefore a matter of
9 fundamental importance to the reasonable consumer that Sunrise does not have the systems in
10 place to ensure that sufficient numbers of trained staff are available to provide the levels of care
11 that Sunrise has determined are necessary, promised to provide, and for which it is charging its
12 residents.

13 5. Through its representations and nondisclosures, Sunrise dupes residents and family
14 members into paying large sums in the form of new resident fees and initial monthly payments.

15 6. Sunrise's staffing policies and practices that fail to ensure adequate staffing levels
16 place all residents at an unnecessary risk of harm. That risk is particularly acute, given the
17 vulnerable nature of the targeted population of seniors and residents with disabilities.

18 7. Sunrise's promotion of its system of comprehensive resident assessments and
19 corresponding Service Levels in its form contract and marketing materials contributes to its
20 competitiveness in the marketplace of assisted living facilities and is a factor in its pricing
21 structure. Its purported use of such a system to accurately assess the needs of residents and
22 provide sufficient staffing to meet those needs enables it to charge more for residency and services
23 at its facilities than it otherwise could. In effect, residents pay a premium for a system that Sunrise
24 misrepresents will result in comprehensive resident needs assessments and the staff necessary to
25 provide the promised care.

26 8. If Plaintiffs and the putative class members had known that Sunrise has not
27 implemented the systems necessary to ensure that sufficient numbers of trained staff are available
28 to meet residents' assessed needs, they would not have agreed to enter Sunrise or paid Sunrise

1 significant amounts of money in new resident fees and monthly charges.

2 9. This action seeks to require Sunrise to cease and desist its ongoing violations of
3 law. In addition, Plaintiffs seek an order requiring Sunrise to disclose to prospective and current
4 residents, their family members, and/or responsible parties that its facilities are not staffed to meet
5 the assessed needs of residents. Plaintiffs further seek an order prohibiting Sunrise from charging
6 fees based on resident assessments, when Sunrise does not, as a matter of corporate policy and
7 practice, staff its facilities to meet the assessed needs of its residents. In addition to injunctive
8 relief, this action seeks class wide damages based on Sunrise's misrepresentations and misleading
9 statements and failures to disclose alleged herein. This action does not seek recovery for personal
10 injuries, emotional distress, or bodily harm that may have been caused by Sunrise's conduct
11 alleged herein.

12 PARTIES

13 **Plaintiffs**

14 10. Plaintiff Amy Fearn is a daughter of decedent Edith Zack, a resident of Sunrise of
15 San Mateo, in San Mateo, California from September 2016 to November 2016. She is a
16 successor-in-interest to the Estate of Edith Zack pursuant to California Code of Civil Procedure
17 sections 377.11 and 377.32. At all times relevant to this complaint, Edith Zack was an elder as
18 defined under California Welfare & Institutions Code section 15610.27 and a senior citizen as
19 defined under California Civil Code section 1761(f). Edith Zack was at all times herein
20 mentioned a resident of the State of California. Plaintiff Amy Fearn brings this action on behalf of
21 decedent Edith Zack and all others similarly situated.

22 11. Plaintiff Helen Ganz is a current resident of Sunrise of San Rafael, in San Rafael,
23 California who moved into the facility on September 30, 2016. At all times relevant to this
24 complaint, Ms. Ganz is and was an elder as defined under Cal. Welf. & Inst. Code § 15610.27 and
25 a senior citizen as defined under Cal. Civ. Code § 1761(f). Elise Ganz is her daughter. The
26 Court appointed Elise Ganz to be her mother's guardian ad litem for the purpose of prosecuting
27 this action on June 7, 2018. Helen Ganz is and was at all times herein mentioned a resident of the
28 State of California. She brings this action on behalf of herself and all others similarly situated.

1 **Defendants**

2 12. Defendant Sunrise Senior Living, LLC (“Sunrise LLC”) is a Delaware limited
3 liability company with its principal place of business at 7902 Westpark Drive, McClean, Virginia.
4 The residences of its members are unknown.

5 13. Defendant Sunrise Senior Living Management, Inc. (“Sunrise Management”) is
6 substituted in as Doe 1. Sunrise Management is a Virginia corporation with its principal place of
7 business at 7902 Westpark Drive, McClean, Virginia.

8 14. According to declarations filed in other court cases involving Sunrise, Sunrise LLC
9 is the parent company of Sunrise Management.

10 15. Sunrise Management holds the licenses for approximately 50 assisted living
11 facilities in California under the Sunrise name. In its filings and papers served in this case,
12 Sunrise LLC asserts that Sunrise Management operates and manages those facilities.

13 16. Plaintiffs named only Sunrise LLC in their original complaint and their First
14 Amended Complaint. However, Sunrise Management has been on notice of the allegations in the
15 original and First Amended Complaints since the date of the service of those complaints on
16 Sunrise LLC. Further, Sunrise’s counsel has stated that Sunrise Management is a proper
17 defendant in this lawsuit.

18 17. In its initial disclosures pursuant to Fed.R.Civ.P. 26, Sunrise LLC stated that
19 “Sunrise has repeatedly noted, Plaintiffs should have named Sunrise Senior Living Management,
20 Inc., not Sunrise Senior Living LLC, as the defendant in this action. If Plaintiffs do not agree to
21 substitute Sunrise Senior Living Management, Inc., Sunrise Senior Living, LLC reserves its right
22 to seek relief from the Court.”

23 18. In its Objections and Responses to Plaintiffs’ Requests for Production of
24 Documents (Set Two), Defendant Sunrise LLC stated: “As Sunrise Senior Living, LLC has
25 notified named Plaintiffs on multiple occasions, Sunrise Senior Living LLC is not the proper
26 defendant in this case. Sunrise Senior Living Management, Inc. is the proper defendant because it
27 is the manager of the named Plaintiffs’ communities and signatory to the named Plaintiffs’
28 Residency Agreements.” Sunrise reiterated that statement later in the document, stating that

1 despite Plaintiff's error, "Sunrise will respond on behalf of Sunrise Senior Living, LLC solely
2 because it was named as defendant and on behalf of Sunrise Senior Management, Inc., the entity
3 that is the proper defendant."

4 19. As noted below, Sunrise LLC's and Sunrise Management's roles, responsibilities
5 and relationships to the facilities are not clearly delineated. Indeed, publicly available
6 information—such as Sunrise's filings with the Security and Exchange Commission and its filings
7 with courts and administrative agencies—contain conflicting representations regarding the roles
8 and relationships of Sunrise LLC and Sunrise Management. This lack of consistency in
9 documents created, approved, and/or submitted by Sunrise to courts, administrative agencies and
10 other governmental entities has created confusion which Plaintiffs have attempted to resolve via
11 discovery. However, Sunrise has refused to provide information and/or documents to clarify the
12 roles of each Defendant. For example, in response to Plaintiffs' request for management
13 agreements, operating agreements, and any similar documents regarding the operation and/or
14 management of Sunrise's assisted living facilities in California, Sunrise objected and refused to
15 produce the documents on numerous grounds, including an assertion that the documents are not
16 relevant to this case.

17 20. Pursuant to Sunrise LLC's representations that Sunrise Management is responsible
18 for the actions described in Plaintiffs' original and First Amended Complaints, Plaintiffs now
19 name Sunrise Management as an additional Defendant. However, Plaintiffs continue to name
20 Sunrise LLC as a Defendant. Despite Sunrise LLC's representations to the contrary, publicly
21 available documents demonstrate that Sunrise LLC exercises an extraordinary amount of control
22 over the operations of the California assisted living facilities operating under the Sunrise name, as
23 described below. In fact, based on the representations Sunrise LLC and related parties have made
24 to the public via its website, SEC filings, and filings in this and other courts, Sunrise LLC is the
25 actual manager and operator of the assisted living facilities at issue. With the exception of holding
26 the licenses to the individual facilities, Sunrise Management appears to be a shell corporation.

27 **Defendants Are Each Directly and Vicariously Liable**

28 21. Defendants are each directly liable for their actions. Additionally, they are liable

1 for the actions of one another as joint venturers, because the actions alleged herein were taken in
2 furtherance of their joint venture of owning and operating assisted living facilities throughout
3 California and profiting from such ownership and operation. Moreover, Sunrise Management is
4 liable for the actions of Sunrise LLC as its agent, because the actions alleged herein were taken at
5 the direction and under the scope of its agency as the purported “management company” and
6 operator of Sunrise’s assisted living facilities in California.

7 22. Sunrise Management is directly liable for the actions alleged herein because it
8 holds the licenses for each of the assisted living facilities operating under the Sunrise name in
9 California. Moreover, as Sunrise LLC has stated in its responses to written discovery, Sunrise
10 Management is the manager of Sunrise’s assisted living communities in California and signatory
11 to the Residency Agreements of the Plaintiffs and the proposed class members.

12 23. Sunrise LLC is directly liable for the actions alleged herein as owner and manager
13 in fact of Sunrise’s assisted living facilities in California. Sunrise LLC exercises an extraordinary
14 amount control over the daily operations of Sunrise’s California facilities and is the actual operator
15 of the facilities, providing direct and detailed instruction regarding budgets, staffing, residency
16 agreements and billing, communications with regulatory agencies, and other critical policies and
17 procedures.

18 24. Moreover, although Sunrise Management holds the licenses of those facilities and
19 is a party to the proposed class members’ residency agreements, it does so as an agent and joint
20 venturer of Sunrise LLC. Supporting facts include, but are not limited to, the following:

- 21 a. The website www.sunriseseniorliving.com, which provides information for the
22 California facilities at issue (and other facilities operated under the “Sunrise Senior
23 Living” name throughout the U.S.), lists the company’s “Corporate Headquarters”
24 as Sunrise Senior Living, LLC, 7902 Westpark Drive, McLean, VA 22102.
- 25 b. Under the link titled “Sunrise Leadership,” the website lists Chris Winkle as the
26 CEO of the company operating the Sunrise Senior Living facilities. According to
27 filings with the California Secretary of State, Chris Winkle is the CEO of Sunrise
28 LLC. Filings with the California Secretary of State list Mark Roder as the CEO of

1 Sunrise Management. The website’s “Sunrise Leadership” page lists Mr. Roder as
2 the Chief Accounting Officer of the company operating Sunrise’s facilities—not
3 under the “Operations and Care” section, but under “Business Development and
4 Finance”.

5 c. A “Sunrise Company Fact Sheet” provided on the website and purportedly current
6 as of January 23, 2019, refers to Sunrise Senior Living, LLC as the “Company” and
7 lists important factors of “The Sunrise Experience,” such as the Individualized
8 Service Plan, Programming & Activities, Designated Care Managers, the
9 Reminiscence Program, and Personalized Nutrition. These features, which Sunrise
10 LLC purports to manage on its website, constitute daily operations of the facilities
11 at issue. Nowhere on this fact sheet is Sunrise Management listed. In fact, the
12 company is referred to as Sunrise Senior Living, not Sunrise Senior Living
13 Management, throughout the website.

14 d. Throughout the Sunrise Senior Living website, residents and prospective residents
15 are directed to contact the corporate offices of Sunrise Senior Living, LLC with
16 questions and concerns. For example, on the link regarding privacy practices, the
17 page states that “Sunrise Senior Living, LLC is strongly committed to protecting
18 your health information.” It continues:

19 If you have a question about our Notice of Privacy Practices or would like further
20 information, please contact your Executive Director or the Corporate Privacy
Officer at the address listed below:

21 Sunrise Senior Living
22 Attn: Corporate Privacy Officer

23 e. In its initial disclosures pursuant to Fed. R. Civ. P. 26, Defendant notes that it will
24 use “Sunrise” to refer to Sunrise Senior Living, LLC. It subsequently states that
25 “[s]taff members at Sunrise’s Community Support Office in McLean, Virginia and
26 regional-level staff likely have discoverable information regarding staffing, move-
27 ins, and residency agreements, including policies, practices, and procedures (or the
28 lack thereof).” The disclosures list current and former executive directors as

1 persons with “discoverable information regarding the staffing as well as the
2 services and care provided to residents at Sunrise” facilities listed in the Complaint.
3 The disclosures indicate that the executive directors of these facilities can be
4 contacted through counsel for Sunrise LLC.

5 f. The initial disclosures also state that “[c]ertain documents relating to individual
6 residents are stored in paper format at Sunrise’s individual California communities
7 or, for some records pertaining to former residents, in long-term storage facilities.
8 More recent records may be stored electronically. Documents relating to general
9 policies, practices, and procedures, as well as staffing and financial information,
10 may be stored at individual California communities, or at Sunrise’s Community
11 Support Office in McLean, Virginia.” According to Sunrise LLC, these documents
12 include, among others, Residency Agreements; resident files; resident assessments;
13 service and care documents; individual service plans and care records; and
14 documents and data regarding staffing levels at individual facilities.

15 g. A 2018 Form 10-K Final filing with the Securities and Exchange Commission
16 (“SEC”) by Welltower, Inc., which owns an interest in the assisted living facilities
17 operated under the Sunrise name, states that the properties are managed by Sunrise
18 LLC:

19 The properties managed by Sunrise Senior Living, LLC (“Sunrise”) account for a
20 significant portion of our revenues and net operating income and any adverse
21 developments in its business or financial condition could adversely affect us.

22 As of December 31, 2018, Sunrise managed 161 of our seniors housing operating
23 properties. These properties account for a significant portion of our revenues, and
24 we rely on Sunrise to manage these properties efficiently and effectively. We also
25 rely on Sunrise to set appropriate resident fees, to provide accurate property-level
26 financial results for our properties in a timely manner and to otherwise operate
27 them in compliance with the terms of our management agreements and all
28

1 applicable laws and regulations.

2 h. The same 2018 Form 10-K filing describes the role of Sunrise Management as
3 follows:

4 During the year ended December 31, 2017, we increased our ownership in Sunrise
5 Senior Living Management, Inc. (“Sunrise”) from 24% to 34%. Sunrise provides
6 comprehensive property management and accounting services with respect to
7 certain of our seniors housing operating properties that Sunrise operates, for which
8 we pay annual management fees pursuant to long-term management agreements.

9 i. All of the facilities share the same logo, the trademark for which is held by Sunrise
10 LLC.

11 j. Sunrise LLC and Sunrise Management share the same address.

12 k. In a lawsuit alleging trademark infringement, *Sunrise Living LLC. V Sunrise Adult*
13 *Daycare LLC*, S.D. Fla. Case No. 9:16-cv-81811, the complaint filed by Sunrise
14 LLC alleged that Sunrise LLC “operates approximately 250 SUNRISE branded
15 facilities throughout the United States.”

16 25. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of the designated herein as Does 2 through 100, inclusive, are presently unknown to
18 Plaintiff and thus sued by such fictitious names. On information and belief, each of the
19 Defendants designated herein as “Doe” is legally responsible for the events and actions alleged
20 herein, and proximately caused or contributed to the injuries and damages as hereinafter described.
21 Plaintiffs will seek leave to amend this Complaint, in order to show the true names and capacities
22 of such parties, when the same has been ascertained.

23 **JURISDICTION AND VENUE**

24 26. This lawsuit was initially filed in the California Superior Court (Alameda County)
25 and was removed by Defendant Sunrise LLC on January 30, 2018. This Court has jurisdiction
26 under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). Plaintiffs and Defendants are
27 residents and citizens of different states. The class size is greater than 100. According to
28 Sunrise's removal papers, its records indicate that approximately 12,740 individuals lived in

1 Sunrise facilities in California from the start of the Class Period through the date of removal. The
2 aggregate amount in controversy, based on damages in the form of monthly charges averaging an
3 estimated \$4,000 to \$10,000 per class member over a period of four years is greatly in excess of
4 \$5,000,000.

5 27. This Court has jurisdiction over all of the claims alleged herein. Defendants are
6 subject to the personal jurisdiction of this Court because they have sufficient minimum contacts in
7 California, or otherwise intentionally avail themselves of the California market through ownership
8 and management of approximately 50 assisted living facilities located in California, derivation of
9 substantial revenues from California, and other activities, so as to render the exercise of
10 jurisdiction over Defendants by the California courts consistent with traditional notions of fair
11 play and substantial justice.

12 28. Defendants have asserted that venue is proper in the Southern District of California.
13 In an order dated October 31, 2018, U.S. District Court Judge Haywood Gilliam Jr. of the
14 Northern District of California agreed and transferred this case to the Southern District.

15 **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

16 29. Sunrise provides assisted living and memory care for senior citizens and persons
17 with disabilities at facilities nationwide, including 50 facilities that it owns and/or operates in
18 California.

19 30. Assisted living facilities, also called Residential Care Facilities for the Elderly
20 (“RCFEs”), offer room, board, and daily assistance for seniors in certain activities of daily living
21 (“ADLs”), such as preparing meals, shopping, transportation, preparing and taking medication,
22 using the telephone, paying bills, housekeeping, and others.

23 31. Assisted living facilities are intended to provide a level of care appropriate for
24 those who are unable to live by themselves, but who do not have medical conditions requiring
25 more extensive nursing care and significant assistance with most of their ADLs. Sunrise’s assisted
26 living facilities also have Memory Care units, which serve individuals with dementia and other
27 cognitive disorders.

28 32. In recent years, Sunrise has increasingly been accepting and retaining more

1 residents with conditions and care needs that were once handled almost exclusively in skilled
2 nursing facilities. Sunrise has acknowledged in public statements:

3 What we've seen over the years is that, we've gone from caring for a more
4 independent senior who may have needed some assistance with activities of daily
5 living (ADLs), to those who have more complex health needs requiring
6 coordination of care and services.

7 Industry-wide, we are taking care of folks who are frailer, needing more assistance with
8 ADLs and chronic disease management, such as diabetes. Also, people are living longer.
9 As the average lifespan has increased, so has the average age of Sunrise residents.

10 [https://www.sunrise seniorliving.com/blog/december-2016/the-evolution-of-care-in-assisted-
12 living.aspx](https://www.sunrise seniorliving.com/blog/december-2016/the-evolution-of-care-in-assisted-
11 living.aspx) (last visited February 22, 2018). Sunrise's practice of accepting and retaining

13 residents with "more complex health needs" has allowed it to increase not only the potential
14 resident pool but also the amounts of money charged to residents and/or their family members.

15 33. At Sunrise facilities, residents are charged a base rate, which includes room, board,
16 and basic maintenance, cleaning and laundry. Sunrise assesses each resident before admission and
17 then periodically, including whenever there is a change of the resident's condition. By performing
18 these assessments, Sunrise determines what additional services a resident needs, such as assistance
19 with ADLs. Each additional need correlates to a numerical score and "Service Level," which
20 determines how much more time Sunrise staff must spend caring for the resident. The Service
21 Level also determines the amount charged per-day for fees. Thus, the higher the Service Level
22 assessed the more money Sunrise charges the resident.

23 **Uniform Representations in Sunrise's Standardized Contracts and Other Corporate
24 Materials**

25 34. Sunrise represents that it will use its resident assessment system to identify the
26 level of care necessary to ensure that residents receive the services they require and to identify the
27 amount Sunrise will charge them for services.

28 35. Sunrise clearly represents in its standardized contracts that there is a connection
between the services they will receive and the level of care assessed as needed in the resident
assessment system. At or before the time of move-in, Sunrise requires all residents to sign a
"Residency Agreement." Section I.D. of the Residency Agreement describes the Assessment

1 process:

2 The level of assisted living services required by the Resident is determined through
3 an assessment (“Assessment”) of the Resident. The Assessment is performed by
4 designated team members and includes an evaluation of each Resident’s specific
5 needs. It covers areas such as: mobility, skin care, eating habits, oral hygiene,
6 continence, cognitive behavior, and medication. This Assessment, along with the
7 Physician’s Report, provides the basis for identifying the Resident’s Service Level.

8 36. Section I.E. describes the “Resident Service Plan” that is developed based on the
9 Assessment. It provides, “The service plan will outline the services the Resident is to receive.”

10 37. Section I.F. provides:

11 If the Resident’s condition changes so that the previously assessed level of services
12 is no longer appropriate, the Community will reevaluate the Resident’s needs to
13 determine which level of service is appropriate and notify the Resident/Responsible
14 Party of such reevaluation. The rate charged will vary according to the level of
15 service provided.

16 38. Section III.F. emphasizes that residents who require more services will be charged
17 higher fees. “A change in the level of service is not considered a change of fees or charges.
18 Rather, it is an increase in services which are subject to the higher fees corresponding to those
19 services.”

20 39. The Residency Agreement includes a “Schedule of Community Fees.” It lists
21 “Service Level Fees” including “Assisted Living Select,” “Assisted Living Plus,” “Assisted Living
22 Plus Plus,” “Reminiscence Program Fee,” “Reminiscence Plus Plus,” etc., with corresponding
23 daily rates ranging from \$18 to \$98. The same page indicates that residents’ assessments result in
24 a numerical value: “Enhanced Care fees are variable, **depending on the needs of the resident as
25 determined by the resident’s assessment score.**” (emphasis added).

26 40. In the Agreement, Sunrise describes the various service levels, which vary by
27 resident based on the “nature and extent of services provided.” Likewise, the Individualized
28 Service Plan prepared for each resident describes the “level of assistance” required from staff to
provide the services Sunrise has determined are necessary to meet the resident’s needs. For
example, under the category “Bathing,” a service plan might list the following:

“Needs step-by-step cuing while bathing, Needs standby assistance while bathing.
... Be sure bathroom is warmed up prior to shower time, all needed supplies,
towels, shampoo, lotions are ready for her. ... [O]ffer her privacy but stay stand by
[sic] to keep her safe and be sure to cue her for full cleaning. Give simple step by

1 step instruction if she appears confused on the process and assist as needed.”

2 41. The Residency Agreement and Individualized Service Plans highlight the
3 obvious—care can only be provided by people/staff, and the reasonable consumer understands that
4 a resident who has additional needs requires additional staff time. Thus, a reasonable consumer
5 would interpret Sunrise’s promise of increased services as residents’ needs increase, and the
6 corresponding increase in fees, to include additional staff time to provide those services. The
7 reasonable consumer would not agree to pay increased fees if she knew that Sunrise facilities did
8 not in fact have staff sufficient in numbers and training to deliver services that Sunrise itself
9 determined were necessary and promised to provide.

10 42. Sunrise’s website and a standardized brochure provided to prospective residents
11 explicitly links staffing levels to the assessed needs of its residents. A brochure states, “We adjust
12 staffing 365 days a year based on the number of residents and the care they need.” The website
13 lists “Frequently Asked Questions”, including “What is your staff to resident ratio?”

14 A: Our staffing ration is variable and adjusted constantly based on the needs of our
15 residents at each community. Every resident’s Individualized Service Plan (ISP)
16 outlines the type of care they need, which is delivered by a team of Designated
17 Care Managers who also learn each resident’s likes, dislikes and preferences,
18 helping to anticipate a resident’s needs before they arise. Our residents and their
19 care managers build very strong bonds.”

20 The website further provides, “Team members are available 24-hours a day for help with bathing,
21 dressing, medication reminders, or other daily activities, relieving residents of the stress of day-to-
22 day chores and giving them more time to focus on choosing activities to participate in, meal
23 selection, and more.”

24 43. In another standardized brochure entitled, “Senior Living: A Resource Guide,” that
25 is provided to prospective residents, Sunrise lists “important questions” that prospective residents
26 should ask “when researching and visiting senior living communities.” The list of questions
27 includes, “How does the community meet residents’ needs as they change over time? Is staffing
28 adjusted to ensure that quality of care remains consistent through such changes?”

44. The reasonable consumer expects from all of Sunrise’s representations that Sunrise
will ensure adequate staffing levels to provide the services identified through its resident

1 assessment system. Sunrise's clear message to the consuming public, including Plaintiff and the
2 putative class, through all of its corporate materials is that staffing levels matter and are part of the
3 value they will receive in exchange for their fees at Sunrise facilities.

4 45. Because these representations are presented through form contracts and other
5 standardized corporate materials, potential and current residents of Sunrise facilities reasonably
6 expect that they are the policies and procedures followed by Sunrise both for determining the
7 needs of facility residents and for setting staffing levels at each of its California facilities.

8 46. Based on these representations, Plaintiffs, the putative class members and the
9 general consuming public reasonably expect that Sunrise uses its resident assessment system to
10 ensure adequate staffing and meet all current residents' needs.

11 **Sunrise's Non-Disclosure**

12 47. Contrary to the express and implied representations in the Sunrise standardized
13 contract and other uniform written statements, Sunrise facilities are not sufficiently staffed to meet
14 the aggregate assessed needs of all facility residents. Sunrise does not disclose this material fact
15 from the residents, their family members, and the general public.

16 48. Plaintiffs are informed and believe, and on that basis allege, that Sunrise has the
17 capability to determine the facility staffing levels required to meet the aggregate care scores
18 promised to residents. With its resident assessment system, Sunrise can calculate the amount and
19 type of staff needed by a facility for the population or group of residents therein viewed as a whole
20 on any given shift based on the evaluated needs and assessed scores of residents. However, while
21 Sunrise uses this resident assessment system to assign Service Levels and charge the
22 corresponding daily rates, as a matter of corporate policy and practice, Sunrise has failed to ensure
23 sufficient staffing is provided to meet assessed resident needs. For example, in job descriptions
24 for Executive Directors of its facilities, Sunrise instructs that meeting labor budgets and operating
25 income targets is a paramount concern, stating among other things, that EDs should "meet[]
26 financial targets with the goal to maximize the owners return." On information and belief, these
27 and other corporate directives discourage facilities from providing compensation and benefits
28 sufficient to attract and retain sufficient numbers of qualified staff.

1 49. As a result of Sunrise’s failure to ensure that its facilities are staffed to meet
2 residents’ assessed needs, staffing is substantially lower than what Sunrise itself has determined is
3 necessary. As a further result, the residents of Sunrise’s facilities run the continuing risk of not
4 having their care needs met and of suffering injury from the lack of care or from other residents
5 who are insufficiently supervised or cared for.

6 50. The consequences of Sunrise’s common policy and standard corporate procedure of
7 allowing facilities to operate with insufficient staffing levels are significant. They include, but are
8 not limited to: resident falls, injured or sick residents left unattended, elopements, urinary tract
9 infections, slow or no responses to resident call buttons, inconsistent incontinence care resulting in
10 residents sitting in soiled and/or wet briefs for long periods of time, failures to assist with toileting
11 resulting in incontinence, decubitus ulcers, medication errors, and inadequate grooming and
12 hygiene assistance.

13 **The Misrepresented and Non-Disclosed Facts Are Material**

14 51. Sunrise’s misrepresentations and the facts it does not disclose are material to the
15 reasonable consumer. An important and significant factor in choosing to move oneself or one’s
16 relative to a Sunrise facility is the provision of staffing that the facility itself has determined is
17 necessary to meet the assessed needs of all facility residents.

18 52. Sunrise’s promise to provide the care services (through facility staff) that each
19 resident requires as calculated by the resident assessments conducted by Sunrise is material to
20 prospective residents and their family members. Further, residents (and their family members)
21 reasonably expect that Sunrise will provide staffing at levels sufficient to meet the assessed needs
22 of facility residents. Staffing at levels sufficient to provide the care necessary to meet assessed
23 resident needs is a substantial factor (and indeed often the most important factor) in deciding to
24 enter an assisted living facility. Plaintiffs would not have admitted their family members to
25 Sunrise if they had known that Sunrise facilities are not staffed to meet residents’ assessed needs.
26 Likewise, members of the putative class would in all reasonable probability not have entered
27 Sunrise’s facilities if they had known that Sunrise does not have systems in place to ensure
28 sufficient numbers of appropriately trained staff are available at its facilities.

1 53. 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.” Sunrise specifically markets
4 to those individuals on its website by stating it “encourag[es] to age in place.”
5 [https://www.sunriseseniorliving.com/care-and-services/memory-care/sunrise-reminiscence-](https://www.sunriseseniorliving.com/care-and-services/memory-care/sunrise-reminiscence-program/terrace-club.aspx)
6 [program/terrace-club.aspx](https://www.sunriseseniorliving.com/care-and-services/memory-care/sunrise-reminiscence-program/terrace-club.aspx) (last visited on February 22, 2018). Residents who wish to “age in
7 place” may not need significant assistance with their activities of daily living initially upon
8 admission, but they expect to (and will) become more dependent as they age and do not want to
9 move yet again when that happens.

10 54. A key factor for these residents in selecting Sunrise is that the facility will provide
11 the staffing sufficient to provide the care services that Sunrise itself has determined are necessary
12 to meet assessed residents’ needs, both now and as those needs, and corresponding care services
13 fees, increase.

14 55. Sunrise has a duty to disclose to the consuming public that its facilities are not
15 staffed to meet the assessed needs of residents because of, among other things, the inherent and
16 substantial safety risk to current and future residents from Sunrise’s conduct, particularly as
17 Sunrise serves a vulnerable population that needs assistance. The non-disclosure is material
18 because Sunrise knows that its conduct risks the safety of its residents. Yet, Sunrise has failed to
19 disclose to residents, prospective residents and their family members the true facts about how it
20 sets staffing at its facilities.

21 **Barriers to Moving Out**

22 56. Sunrise’s misrepresentations affect not only the decision of residents to enter a
23 Sunrise facility, but also the decision to stay there.

24 57. In choosing assisted living in general and a Sunrise facility in particular, the
25 resident forgoes other options such as his or her former home, a senior community, or other
26 facilities where the resident can try to build a new community. Once in a facility, there are
27 significant physical, emotional and other burdens for the residents that are triggered if they
28 terminate residency, including impacts such as “transfer trauma.” Sunrise is aware of these

1 burdens, and makes the representations described herein with the knowledge that it will be
2 difficult for residents to leave its facilities once they are enticed to enter based on its
3 misrepresentations.

4 58. Sunrise also repeats its misrepresentations when it conducts periodic re-
5 assessments of residents. Often, the facility discovers additional care services needed by the
6 resident that Sunrise uses as a basis for a Service Fee increase.

7 59. Sunrise thereby unjustly continues to profit from the original fraud by perpetuating
8 its misrepresentations and failures to disclose.

9 **Plaintiffs' Experiences At Sunrise Facilities**

10 **Edith Zack**

11 60. Edith Zack ("Ms. Zack") had dementia and lived at Sunrise of San Mateo from
12 approximately September 29, 2016 until November 2, 2016. She died on February 9, 2017, in
13 another facility. Her daughter, Amy Fearn ("Ms. Fearn") was appointed as Ms. Zack's attorney-
14 in-fact in an advanced health care directive, and made healthcare decisions for her mother.

15 61. In April 2016, Ms. Zack toured and considered moving into Sunrise of Belmont.
16 She paid Sunrise a Move-In Fee of \$5,000. However, Ms. Zack decided that she was not ready to
17 enter an assisted living facility at that time and did not move in. Sunrise refunded only \$2,500 of
18 her Move-In Fee even though under the terms of the admission contract it should have refunded
19 Ms. Zack \$3,600.

20 62. In September 2016, Ms. Zack's dementia was progressing and she was hospitalized
21 while Ms. Fearn was on vacation. When Ms. Fearn returned from her vacation, she needed to
22 quickly find a dementia care unit for her mother to live upon discharge from the hospital. Ms.
23 Zack's first choice was Sunrise of Belmont, but there were no beds available. Ms. Fearn toured
24 Sunrise of San Mateo and reviewed its marketing materials. She chose Sunrise of San Mateo
25 because the marketing staff represented that all of Ms. Zack's needs would be met. Ms. Zack
26 moved into the facility on or around September 29, 2016. She did not pay Sunrise a Move-In Fee
27 a second time.

28 63. Prior to Ms. Zack's move into Sunrise of San Mateo, the Executive Director of the

1 facility provided Ms. Fearn with the standard contract quoted in detail, *supra*, in paragraphs 26-30.
2 In short, the contract promised that staff would provide an assessment of Ms. Zack that would be
3 used to develop a service plan and identify her specific needs. The contract included Sunrise's
4 promise to provide the services outlined in the service plan. The contract also stated that the
5 assessment would be used to identify Ms. Zack's service level, and that "[t]he rate charged will
6 vary according to the level of service provided." It explained that a change of level is an increase
7 in services "which are subject to the higher fees corresponding to those services." Exhibit 1 to the
8 contract provided that Ms. Zack would be charged a Base Fee of \$212 a day for a "Reminiscence
9 Suite," \$101 a day for the "Reminiscence Plus Plus" Service Level Fees, and \$23 a day for Level 2
10 Medication Management, for a Total Daily Fee of \$336.

11 64. Ms. Fearn reviewed the contract and reasonably understood and expected its
12 representations regarding the assessment, service level, service plan, and fee structure to mean that
13 staff would assess her mother, identify her needs, and provide the services necessary to meet her
14 needs. She further reasonably understood and expected that as Ms. Zack's needs and services
15 increased, she would require more staff time, and that Sunrise would provide the increased staff
16 time in exchange for more fees. Ms. Fearn signed the contract, but declined to consent to
17 arbitration. She relied on all of Sunrise's representations in making the final decision to admit Ms.
18 Zack into Sunrise of San Mateo, but she would not have made this decision if Sunrise had
19 disclosed that it fails to take necessary steps to ensure that its facilities are staffed at the levels
20 Sunrise itself determines are necessary to meet residents' assessed needs.

21 65. Ms. Zack discovered not long after her mother moved into the facility that there
22 was not enough staff to provide all of the services that Sunrise promised to provide. Ms. Zack's
23 Individualized Service Plan stated that she should be escorted "to/from the bathroom for
24 toileting." But Ms. Zack repeatedly called her daughter distressed and embarrassed because she
25 had soiled herself and needed help to change. Each time this happened, Ms. Fearn called staff and
26 urged them to help Ms. Zack with toileting and to investigate why she was soiling herself. These
27 calls were frustrating for Ms. Fearn because she had to speak with different staff each time, it did
28 not seem that staff was communicating with each other, and although they reassured her the

1 problem would be addressed, it was not. Ms. Zack was seldom showering because she required
2 help from staff, and she complained it was too uncomfortable because staff was rushed and rough
3 with her.

4 66. Ms. Zack's Individualized Service Plan stated that staff should "engage [Ms. Zack]
5 in activities." But Ms. Zack's cognitive impairments were not as significant as the other residents'
6 in the dementia care unit, and the activities, which did not include painting as Ms. Fearn was led to
7 believe, were not stimulating and failed to "engage" Ms. Zack. Ms. Fearn asked the Sunrise
8 managers if her mother could join the activities in the assisted living section of the facility, but
9 they refused because there was not enough staff to keep her safe outside of the dementia care unit
10 even for a short period of time.

11 67. Ms. Zack's Individualized Service Plan stated that staff should "encourage [Ms.
12 Zack] to eat." Although Ms. Fearn was at the facility at least several times a week, she did not
13 witness staff perform this service. Ms. Fearn stocked her mother's refrigerator with groceries that
14 were typically left untouched. Ms. Fearn also grew frustrated because even though her mother
15 was paying Sunrise \$11,000 a month for care and services, she repeatedly fielded her mother's
16 phone calls about problems with the television, remote control, telephone, and other technology,
17 and would have to come to the facility because staff was not available to help.

18 68. Ms. Zack required help with ambulation, and staff instructed Ms. Fearn that she
19 should not help her and instead allow staff to help. Ms. Fearn was concerned because it was often
20 difficult for her, while searching throughout the facility, to find staff to perform this service. Ms.
21 Fearn never witnessed staff take Ms. Zack's vitals as needed due to her chronic medical
22 conditions, and, on information and belief, staff did not perform this service. Ms. Zack was
23 becoming more and more unhappy because she felt confined due to minimal opportunities to go
24 outside and the lack of stimulation and engagement. Although staff always reassured Ms. Fearn
25 that her mother's needs and concerns would be addressed, they were not, and Ms. Zack moved out
26 of the facility on November 2, 2016.

27 **Elise Ganz**

28 69. Helen Ganz ("Ms. Ganz") has resided at Sunrise of San Rafael in San Rafael,

1 California since September 30, 2016. Elise Ganz (“Elise”) is her daughter and guardian ad litem
2 for the purposes of prosecuting this lawsuit. Before Ms. Ganz moved into Sunrise, she lived at
3 Drake Terrace, another assisted living facility in San Rafael, California. At Drake Terrace, Ms.
4 Ganz suffered an injury from a fall and was sent to a skilled nursing facility for rehabilitation.
5 Drake Terrace staff informed Elise that her mother could not return to their facility because they
6 could no longer meet her needs and Elise was forced to quickly find another facility for Ms. Ganz.
7 Elise toured Sunrise of San Rafael and met with the marketing director who assured her that Ms.
8 Ganz would receive the care she needed at Sunrise.

9 70. Sunrise provided Elise with the standard contract quoted in detail, *supra*, in
10 paragraphs 26-30. In short, the contract promised that staff would provide an assessment of Ms.
11 Ganz that would be used to develop a service plan and identify her specific needs. It promised to
12 provide the services outlined in the service plan. It also stated that the assessment would be used
13 to identify Ms. Ganz’s service level, and that “[t]he rate charged will vary according to the level of
14 service provided.” It explained that a change of level is an increase in services “which are subject
15 to the higher fees corresponding to those services.” Exhibit 1 of the contract provided that Ms.
16 Ganz’s service level was “Assisted Living Plus Plus” and that she would be charged \$64 a day for
17 this level of care, in addition to “Base Fees” and “Medication Management” fees, for a total of
18 \$236 a day.

19 71. Elise reviewed the contract and reasonably understood and expected its
20 representations regarding the assessment, service level, service plan, and fee structure to mean that
21 staff would provide the services they determined Ms. Ganz needed based on a comprehensive
22 assessment. She further understood and expected that Ms. Ganz would pay more for services as
23 her needs increased, and that there would be enough staff to meet her increasing needs.

24 72. Elise provided Sunrise with a copy of Ms. Ganz’s advanced health care directive
25 that appointed William Ganz and Steven Ganz as her agents for health care decisions.
26 Nonetheless, the Associate Executive Director, in the rush to admit Ms. Ganz, asked Elise to sign
27 the admission contract, which Ms. Ganz signed, and agreed to arbitration, even though she did not
28 have the authority to do on behalf of Ms. Ganz. Elise would not have signed the admission

1 contract and agreed to admit Ms. Ganz if Sunrise had disclosed that its facilities were not staffed at
2 levels that Sunrise itself determines are required to meet residents' needs. Ms. Ganz entered the
3 San Rafael facility on September 30, 2016 and paid a "Move-in Fee" of \$5,000.

4 73. Not long after Ms. Ganz moved into the facility, Elise began noticing problems
5 related to understaffing. Ms. Ganz was still recovering from her fall at Drake Terrace, and
6 required assistance using her walker to the dining room and other locations in the facility. Sunrise
7 staff told Elise they did not have time to help Ms. Ganz use her walker, and they discouraged her
8 from using it. As a result of not using her walker, Ms. Ganz is now dependent on her wheelchair
9 for mobility. Although Sunrise's initial assessment stated that Ms. Ganz required assistance with
10 transferring and that staff should check on her in "frequent intervals" to prevent falls, Ms. Ganz
11 transfers herself from her wheelchair to the toilet because staff does not regularly check on her to
12 see if she needs to use the toilet. Staff has found Ms. Ganz on the floor at least four times in
13 recent months. They gave Ms. Ganz a call-pendant to wear on her wrist, but she does not know
14 how to use it and, on information and belief, staff has not attempted to implement any other
15 interventions to prevent falls.

16 74. Ms. Ganz does not always receive showers twice a week, reportedly because she
17 refuses, but Elise is not aware of any interventions by staff to address such refusals, such as, for
18 example, attempting to shower Ms. Ganz at a different time.

19 75. There is not enough staff to engage Ms. Ganz in activities with meaningful human
20 interaction and socialization. Instead, most often the daily "activity" is watching television. Elise
21 discovered on a few occasions that staff failed to insert her mother's hearing aids, which further
22 isolated her from human interaction.

23 76. In September 2017, Elise arrived at the facility at around 11:00 a.m. to find that her
24 mother's bed was not made, had no top sheet, the disposable underpad on the bed was dirty, and
25 there were bits of toilet paper scattered on the floor in Ms. Ganz's room. Before she arrived at Ms.
26 Ganz's room that morning, Elise stopped to help another resident who was standing in the hallway
27 looking for staff because they had not responded to her call button. Although Elise complained
28 about the conditions she found in her mother's room that morning, she continues to discover her

1 mother's bed unmade and without sheets.

2 77. Elise has complained to managers about problems with her mother's care, and they
3 always reassure her that the problems will be addressed and her mother's needs will be met.
4 Although most of these problems have not been addressed, Elise is reluctant to move her mother
5 out of Sunrise. If Ms. Ganz were to move again, it would be her fourth move since her husband
6 died in 2009. Elise fears yet another move would be too disruptive, disorienting, and possibly
7 even traumatizing for her mother.

8 **CLASS ALLEGATIONS**

9 78. Named Plaintiffs Edith Zack and Elise Ganz bring this action as a class action
10 pursuant to Federal Rule of Civil Procedure 23(b)(3) as set forth below.

11 79. **Class Definition.** This action is brought on behalf of the Named Plaintiffs and all
12 similarly situated persons who resided or reside at one of the California assisted living facilities
13 owned and/or operated by Defendants under the Sunrise name from June 27, 2013 through the
14 present (the "Class Period"), and who contracted with Sunrise for services for which Sunrise was
15 paid money.

16 80. Excluded from the above-referenced class are the officers, directors, and employees
17 of Sunrise, and any of Sunrise's shareholders or other persons who hold a financial interest in
18 Sunrise. Also excluded is any judge assigned to hear this case (or any spouse or family member of
19 any assigned judge) or any juror selected to hear this case.

20 81. This action is brought as a class action and may properly be so maintained pursuant
21 to Federal Rule of Civil Procedure 23(b)(3) and applicable case law. In addition to injunctive
22 relief, this action seeks class wide damages based on Sunrise's misrepresentations and misleading
23 statements and material omissions alleged herein. This action does not seek recovery for personal
24 injuries, emotional distress, or bodily harm that may have been caused by Sunrise's conduct
25 alleged herein.

26 82. **Ascertainability.** Members of the class are identifiable and ascertainable. Sunrise
27 retains admissions contracts, Individualized Service Plans, and billing statements for all persons
28 who currently reside or resided at Sunrise facilities during the class period. Thus, Sunrise's own

1 records will reliably identify class members.

2 83. **Impracticability of Joinder (Numerosity of the Class)**. Members of the class are
3 so numerous that their individual joinder herein is impracticable. The precise number of members
4 of the class and their addresses are presently unknown to Plaintiffs. Sunrise currently owns and/or
5 operates approximately 50 assisted living facilities in California. The precise number of persons
6 in the class and their identities and addresses may be ascertained from Sunrise's records.

7 84. **Questions of Fact and Law Common to the Class**. Numerous important
8 common questions of law and fact exist as to all members of the class and predominate over the
9 questions affecting only individual members of the class. These common legal and factual
10 questions include without limitation:

11 (a) whether Sunrise has violated and continues to violate the Consumer Legal
12 Remedies Act, California Civil Code section 1770 et seq. by promising residents that it will
13 provide care and services when Sunrise knows that its standard operating procedure and corporate
14 policy of failing to ensure sufficient staffing levels results in residents not receiving the services
15 they need and pay Sunrise to provide, or places them at substantial risk that they will not receive
16 such services.

17 (b) whether Sunrise's misrepresentations, misleading statements and failures to
18 disclose regarding the staffing of its facilities as alleged herein were and are material to the
19 reasonable consumer;

20 (c) whether a reasonable consumer would be likely to be deceived by Sunrise's
21 misrepresentations, misleading statements or failures to disclose;

22 (d) whether by making the misrepresentations, misleading statements, and
23 failures to disclose alleged in this Complaint, Sunrise has violated and continues to violate the
24 Consumer Legal Remedies Act;

25 (e) whether by making the misrepresentations, misleading statements, and
26 failures to disclose alleged in this Complaint Sunrise violated and continues to violate California
27 Business & Professions Code section 17200, et seq. ("UCL");

28 (f) whether Sunrise had exclusive knowledge of material facts not known or

1 reasonably accessible to the Plaintiffs and the class;

2 (g) whether the Plaintiffs, the class, and the consuming public were likely to be
3 deceived by the foregoing misrepresentations and failures to disclose;

4 (h) whether the Plaintiffs, the class, and the consuming public have a
5 reasonable expectation that Sunrise will ensure staffing sufficient in numbers and training to meet
6 the assessed needs of residents;

7 (i) whether the Plaintiffs, the Class and the consuming have a reasonable
8 expectation that Sunrise will provide staffing at its facilities to meet the aggregate care needs of
9 the residents in its facilities as determined by Sunrise's resident assessment system;

10 (j) whether Sunrise's misrepresentations, its misleading statements, and its
11 failures to disclose its true policies, procedures and practices regarding how its staffs its facilities
12 violated the CLRA and the UCL;

13 (k) whether Sunrise has engaged and continues to engage in a pattern and
14 practice of unfair and deceptive conduct in connection with the management, administration, and
15 operation of its California assisted living and memory care facilities;

16 (l) whether Sunrise has violated and continues to violate the UCL by violating
17 the CLRA and California W&I Code section 15610.30 during the Class Period;

18 (m) whether Sunrise has committed financial elder abuse under California W&I
19 Code section 15610.30 by taking, secreting, appropriating, obtaining, and/or retaining money from
20 elders and dependent adults for a wrongful use and/or with the intent to defraud them;

21 (n) whether Plaintiffs and the members of the Class have sustained injury;

22 (o) whether Plaintiffs and the members of the Class are entitled to damages,
23 and the nature of such damages; and,

24 (p) whether Plaintiffs and the members of the Class are entitled to restitution,
25 declaratory and injunctive relief and/or other relief, and the nature of such relief.

26 85. **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the
27 Class. As alleged above, Sunrise misrepresented to Plaintiffs and the class members and/or their
28 family members that Sunrise uses its resident assessment system to determine the care services to

1 be provided by facility staff and to assess and bill residents for corresponding Service Levels. The
2 resident assessment system, and the Service Levels generated by it, allow Sunrise to determine
3 and provide the aggregate staffing Sunrise has determined is necessary to meet the assessed needs
4 of its residents, but in fact, Sunrise's facilities do not have staff sufficient in training and numbers
5 to meet the assessed needs of its residents. Sunrise's staffing policies and practices result in
6 residents not receiving all of the care they have paid for and/or being subjected to the inherent risk
7 that, on any given day, facility staffing will be insufficient to provide the promised care for all
8 residents. Further, as alleged above, Sunrise has failed to disclose material fact from the Named
9 Plaintiffs and the class. Plaintiffs' claims are typical of the claims of the proposed class in the
10 following ways: 1) Plaintiffs are members of the proposed class; 2) Plaintiffs' claims arise from
11 the same uniform corporate policies, procedures, practices, and course of conduct on the part of
12 Sunrise; 3) Plaintiffs' claims are based on the same legal and remedial theories as those of the
13 proposed class and involve similar factual circumstances; 4) the injuries suffered by the Named
14 Plaintiffs are similar to the injuries suffered by the proposed class members; and 5) Plaintiffs seek
15 a common form of relief for themselves and the members of the class.

16 86. **Adequacy**. The Named Plaintiffs are adequate representatives of the class on
17 whose behalf this action is prosecuted. Their interests do not conflict with the interests of the
18 class. Also, they have retained competent counsel with extensive experience in class action and
19 senior care litigation and who will prosecute this action vigorously.

20 87. **Predominance**. With respect to Plaintiffs' claims under the CLRA, the UCL, and
21 the Elder Abuse Act, class certification is appropriate because significant questions of law or fact
22 common to class members, including but not limited to those set forth above, predominate over
23 any questions affecting only individual members of the proposed class.

24 88. **Superiority**. A class action is superior to other methods for the fair and efficient
25 adjudication of the controversies raised in this Complaint because:

- 26 (a) individual claims by the class members would be impracticable because the
27 costs of pursuing such claims would far exceed what any individual class member has at stake;
28 (b) relatively little individual litigation has been commenced over the

1 controversies alleged in this Complaint and individual class members are unlikely to have an
2 interest in separately prosecuting and controlling individual actions;

3 (c) the concentration of litigation of these claims in one forum will achieve
4 efficiency and promote judicial economy;

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

8 (e) the proposed class members are readily identifiable from Sunrise's own
9 records; and,

10 (f) prosecution of separate actions by individual members of the proposed class
11 would create the risk of inconsistent or varying adjudications with respect to individual members
12 of the proposed class that would establish incompatible standards of conduct for Sunrise.

13 89. Without a class action, Sunrise will likely retain the benefit of its wrongdoing and
14 will continue in its illegal course of conduct which will result in further damages to Plaintiffs and
15 the proposed class.

16 **FIRST CLAIM FOR VIOLATION OF CALIFORNIA CONSUMERS LEGAL**

17 **REMEDIES ACT (Cal. Civil Code § 1750 et seq.)**

18 90. Plaintiffs refer to, and incorporate herein by reference, all preceding paragraphs.

19 91. Plaintiffs and the class members are "senior citizens" and/or "disabled persons" as
20 defined in California Civil Code sections 1761(f) and (g). They are also "consumers" as defined
21 in California Civil Code section 1761(d).

22 92. Defendants Sunrise LLC and Sunrise Management are "persons" as defined under
23 California Civil Code section 1761(c). The assisted living and memory care services provided by
24 Defendants constitute "services" under California Civil Code section 1761(b). The agreement by
25 Plaintiffs and the putative class members to provide new resident services fees and monthly
26 payments to Sunrise in exchange for assisted living and memory care services constitute a
27 "transaction" under California Civil Code section 1761(e).

28 93. In its uniform resident contracts presented to prospective residents and their family

1 members, Sunrise represented and continues to represent that Sunrise will provide care services
2 (through its facility staff) that are sufficient to meet the needs of each resident, as determined by
3 Sunrise's resident assessment system and confirmed in the Service Levels assigned to each
4 resident. That same representation is made in Sunrise's Individualized Service Plans for residents
5 and other standardized corporate materials. As alleged herein, these uniform corporate
6 representations are false and misleading, and are likely to deceive the reasonable consumer.

7 94. Contrary to Sunrise's uniform misrepresentations and misleading statements,
8 Sunrise facilities are not staffed at levels sufficient to provide the services and care that Sunrise
9 itself has determined are necessary to meet residents' needs. Sunrise does not disclose its staffing
10 policies and practice from current and prospective residents and their family members.

11 95. Plaintiffs, through their representatives who reviewed the admission contracts on
12 their behalves, and the putative class members considered material Sunrise's promise to provide
13 care services (through its facility staff) that would be sufficient to meet the needs of each resident,
14 as determined by Sunrise's resident assessment system. If Plaintiffs and their representatives had
15 known the true facts, they would not have agreed to place them in a Sunrise facility. If the
16 putative class members had known the true facts, they would in all reasonable probability not have
17 agreed to enter Sunrise.

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

27 97. Residents and their family members would consider material Sunrise's uniform
28 corporate policy and practice of failing to ensure adequate staffing levels at its facilities to meet

1 residents' assessed needs. Plaintiffs and the putative class members could not reasonably have
2 been expected to learn or discover the non-disclosed facts, as alleged herein.

3 98. Sunrise has violated and continues to violate the Consumers Legal Remedies Act,
4 California Civil Code section 1750 *et seq.* ("CLRA") in at least the following respects: (a) in
5 violation of section 1770(a)(5), Sunrise has misrepresented, failed to disclose and concealed the
6 true characteristics and/or quantities of services provided at its California facilities; (b) in violation
7 of section 1770(a)(7), Sunrise has misrepresented, failed to disclose and concealed the true
8 standard, quality and/or grade of services provided at its California facilities; (c) in violation of
9 section 1770(a)(9), Sunrise has falsely advertised that it will provide staffing at sufficient levels to
10 meet assessed resident needs, knowing that it does not intend to provide the services as advertised;
11 and (d) in violation of section 1770(a)(14), Sunrise has represented that the agreement signed by
12 residents and/or their representatives, and under which they pay their monthly rate, confers on
13 residents the right to reside in a facility that provides staffing based on the level of care its own
14 resident assessment system has determined is necessary to provide the services each resident needs
15 and for which residents are charged, when in fact, Sunrise does not do so.

16 99. These misrepresentations, misleading statements, acts, practices, and omissions by
17 Sunrise are and were intended to induce and lure elderly and dependent adult residents and their
18 family members into agreeing to be admitted to Sunrise's facilities and to pay new resident
19 services fees and monthly rates based on Sunrise's resident assessment system and assessed
20 Service Levels.

21 100. Sunrise made the written misrepresentations and misleading statements alleged
22 herein through various uniform means of communication, including without limitation, the
23 admission agreement, service and health updates, individualized service plans, standardized
24 corporate marketing and promotional materials, and other written corporate materials disseminated
25 to the public in connection with Sunrise's services. These representations were made directly to
26 the Plaintiffs, putative class members and their family members and/or representatives by Sunrise
27 in its standard resident admission contract and reinforced by the uniform means of communication
28 listed above.

1 101. In addition to its affirmative misrepresentations, Sunrise failed to disclose and
2 concealed from Plaintiffs, the putative class members, and their family members that its facilities
3 are not staffed at levels sufficient to meet the assessed care needs of facility residents.

4 102. Sunrise had exclusive and superior knowledge of material facts not known to the
5 Plaintiffs, class members, or the general public at the time of the subject transactions and actively
6 concealed these material facts.

7 103. Sunrise had exclusive and superior knowledge of its corporate policy and practice
8 of allowing its facilities to operate with insufficient staffing levels. Sunrise knew that its failure to
9 ensure staffing based on the levels of care that Sunrise had itself determined was necessary to
10 provide the services for which it charged its residents posed a substantial health and safety risk to
11 the Plaintiffs and putative class members. Sunrise failed to disclose the true facts with the intent
12 to defraud Plaintiffs and the putative class members. Plaintiffs and the putative class members did
13 not know these material undisclosed facts and could not reasonably have been expected to
14 discover them.

15 104. As a direct and proximate result of the Sunrise's conduct, Plaintiffs and the putative
16 class members suffered actual damages. Specifically, Plaintiffs and the class members paid
17 money to Sunrise, in the form of the new resident fee (called a "Move-In Fee"), their initial
18 monthly fees, and additional monthly fees, paid in exchange for residency and services in a facility
19 that was falsely represented to be staffed based on Sunrise's residential assessment and care level
20 system. Plaintiffs and the class members paid a premium for the misrepresented services, and
21 would not have entered Sunrise's facilities and made payments to Sunrise had they known the
22 truth about Sunrise's policies and practices for staffing its assisted living facilities. Members of
23 the class continue to pay monthly fees based on their assessed Service Levels.

24 105. As a further direct and proximate result of Sunrise's conduct, Plaintiffs and the
25 class members have been forced to reside in facilities that have less staff than necessary to satisfy
26 their care needs, as determined by Sunrise itself and/or placed at substantial risk that such will
27 occur at some during their Sunrise residency. As a result of Sunrise's policies and procedures,
28 there is a substantial likelihood that each resident, at any time, will not receive the care Sunrise has

1 determined necessary and promised to provide. Plaintiffs and the class members also face the
2 substantial risk that they will suffer physical injuries from such lack of care and/or from other
3 residents who are insufficiently supervised or cared for.

4 106. Sunrise's conduct presents a continuing threat of substantial harm to the public in
5 that, among other things, Sunrise continues to misrepresent how it uses its resident assessment
6 system and how it determines and provides staffing at its facilities. Sunrise continues to induce
7 elderly and vulnerable citizens to enter its facilities. Additionally, the risk of harm to the class
8 members from Sunrise's conduct is substantial. Accordingly, Plaintiffs seek an injunction that
9 requires that Sunrise immediately cease the CLRA violations alleged herein, and to enjoin it from
10 continuing to engage in any such acts or practices in the future. Additionally, Plaintiffs seek an
11 injunction requiring that Sunrise:

- 12 a. disclose to Plaintiffs, the putative class members, and the consuming public that
13 Sunrise does not ensure that sufficient numbers of trained staff are available at
14 to meet the assessed needs of its current residents; and
15 b. stop charging its residents for monthly personal care fees based on their
16 assessed personal care levels until such time as it modifies its policies and
17 procedures regarding staffing at its assisted living facilities in California to
18 ensure that there is sufficient trained staff to provide for the assessed care needs
19 of all residents currently residing at each facility.

20 107. Accordingly, Plaintiffs and the class members are entitled to actual damages in an
21 amount to be proven at trial.

22 108. Plaintiffs and the proposed class members are also entitled to not less than \$1,000
23 in statutory damages pursuant to Cal. Civ. Code § 1780(a). Further, Plaintiffs and other class
24 members are also each entitled to statutory damages of up to \$5,000 pursuant to Cal. Civ. Code §
25 1780(b). Plaintiffs and many other class members are seniors and/or disabled persons as defined
26 by Cal. Civ. Code § 1761(f) and (g) and have sustained substantial economic harm as a result of
27 Sunrise's conduct. Sunrise knew that its conduct negatively impacted seniors and disabled
28 persons.

1 109. Plaintiffs additionally seek treble damages under Cal. Civ. Code § 3345, punitive
2 damages, reasonable attorneys' fees and costs, and all other relief the Court deems just and proper.
3 Excluded from Plaintiffs' request are damages related to any personal injuries, emotional distress,
4 or wrongful death suffered by any member of the class.

5 110. In accordance with Civil Code section 1782(a), in June 2017, Plaintiffs sent Sunrise
6 LLC a notice to cure. Despite receiving the notice letter, Sunrise LLC has not corrected or
7 remedied the violations alleged in the notice. As such, this complaint seeks damages in addition
8 to all other relief against Sunrise LLC. By letter dated June 12, 2018, Plaintiffs have served
9 Sunrise Management with a section 1782(a) notice to cure as well. If Sunrise Management fails to
10 provide a cure within the 30-day response period, Plaintiffs will pursue damages claims against
11 Sunrise Management in addition to all other relief.

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

13 **PRACTICES (Cal. B&P Code Section 17200 et seq.)**

14 111. Plaintiffs refer to, and incorporate herein by this reference, all preceding
15 paragraphs.

16 112. Defendants have engaged in unlawful business acts and practices. Such acts and
17 practices constitute unfair business practices in violation of California Business and Professions
18 Code section 17200 *et seq.*

19 113. In particular, Sunrise has engaged in unlawful business acts and practices by
20 violating numerous laws, statutes and regulations including, without limitation:

21 (a) Systematically and uniformly representing to the residents of its assisted
22 living facilities in California, family members and the public that Sunrise uses its resident
23 assessment system and related Service Levels to determine and provide facility staffing, when in
24 fact, it has not implemented the systems necessary to ensure that sufficient numbers of trained
25 staff are available to meet residents' assessed needs, in violation of California Business &
26 Professions Code section 17500, *et seq.* and California Civil Code section 1770, *et seq.*; and

27 (b) Taking, secreting, appropriating, obtaining, and retaining the funds of elders
28

1 and dependent adults for a wrongful use and/or with the intent to defraud in violation of California
2 W&I Code section 15610.30.

3 114. By virtue of the conduct alleged herein, Sunrise has also engaged in fraudulent
4 business practices. Members of the general public (including without limitation persons admitted
5 to and/or residing in Sunrise's California assisted living and memory care facilities during the
6 Class Period, and their family members and/or representatives) have been and are likely to be
7 deceived by Sunrise's misrepresentations and failures to disclose as alleged herein.

8 115. The acts and practices of Sunrise also constitute unfair business acts and practices
9 within the meaning of California Business & Professions Code section 17200, *et seq.*, in that the
10 conduct alleged herein is immoral, unscrupulous, and contrary to public policy, and the detriment
11 and gravity of that conduct outweighs any benefits attributable to such conduct.

12 116. Sunrise's misrepresentations, misleading statements, acts, practices, and omissions
13 were intended to induce and lure elderly and dependent adult residents and their family members
14 into agreeing to be admitted to Sunrise's facilities and to pay a new resident services fee and
15 monthly rates to live in an assisted living facility that determines and provides staffing according
16 to the staff time and type of staff Sunrise has determined is necessary to provide the services
17 identified in its resident assessments.

18 117. Sunrise made these misrepresentations and misleading statements through various
19 uniform means of written corporate communications, including without limitation, the admission
20 agreement, service and health updates, individualized service plans, marketing and promotional
21 materials, Sunrise's corporate website, and other materials disseminated to the public from its
22 corporate headquarters in connection with Sunrise's services. These representations were made
23 directly to the Plaintiffs, class members and their family members and/or representatives by
24 Sunrise in its standard resident contracts and reinforced by the uniform means of communication
25 listed above.

26 118. In addition to its affirmative misrepresentations that Sunrise uses its resident
27 assessment system to determine and provide facility staffing in accordance with residents'
28 assessed needs, Sunrise failed to disclose to Plaintiffs, the putative class members, and their family

1 members that Sunrise does not ensure that its facilities are sufficiently staffed to provide the
2 services identified as needed in residents' assessments.

3 119. Sunrise had exclusive and superior knowledge of material facts not known to the
4 Plaintiffs, putative class members, or the general public at the time of the subject transactions and
5 actively concealed these material facts.

6 120. Sunrise had exclusive and superior knowledge of its corporate policy and procedure
7 of failing to ensure adequate staffing in its facilities. Sunrise also knew that its failure to provide
8 staffing based on the levels of care that Sunrise had itself determined as necessary to provide the
9 services for which it charged its residents posed a substantial health and safety risk to Plaintiffs
10 and the putative class members. Sunrise failed to disclose the true facts with the intent to defraud
11 Plaintiffs and the putative class members. Plaintiffs and the putative class members did not know
12 these material undisclosed facts and could not reasonably have been expected to discover them.

13 121. As a direct and proximate result of Sunrise's conduct, Plaintiffs, the class members,
14 and members of the general public (including without limitation persons admitted to and/or
15 residing in the facilities, and their family members and/or representatives) have been harmed and
16 continue to be harmed. Among other things, they paid money to Sunrise to enter the facility and
17 for services that were substandard to those promised by Sunrise. Accordingly, Plaintiffs and the
18 putative class members are entitled to restitution and other remedies under the UCL statute.

19 122. Additionally, Plaintiffs seek an injunction that requires that Sunrise immediately
20 cease acts of unlawful, unfair, and fraudulent business acts or practices as alleged herein, and to
21 enjoin Sunrise from continuing to engage in any such acts or practices in the future. Plaintiffs and
22 the putative class members also seek reasonable attorneys' fees, costs and expenses, and all other
23 remedies permitted by law.

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

25 123. Plaintiffs refer to, and incorporate herein by this reference, all preceding
26 paragraphs.

27 124. Plaintiffs and the putative class members are and at all times were "elders" as
28 defined under California W&I Code section 15610.27 and/or "dependent adults" as defined under

1 California W&I Code section 15610.23.

2 125. Sunrise entered into a standard agreement with the Plaintiffs, by and through their
3 power of attorneys, the putative class members and/or their personal representatives. In these
4 agreements, Sunrise represented that it determines and provides staffing at its assisted living
5 facilities sufficient to meet the needs of its residents as determined by its assessments and
6 confirmed in Service Levels used to calculate resident charges. Sunrise made this promise in
7 exchange for new resident services fees and monthly payments that it received from the Plaintiffs
8 and the putative class members. Yet Sunrise did not and had no intention of complying with its
9 obligations under the contract. Sunrise did not intend to and does not ensure that its facilities are
10 staffed at levels sufficient to meet residents' assessed needs. Rather, it has a policy and practice of
11 ignoring and/or failing to address staffing shortages in its facilities. This policy and practice
12 precludes Sunrise from providing facility residents with all of the care Sunrise has promised them
13 and for which they are paying Sunrise.

14 126. Sunrise knew or should have known that such conduct would likely be harmful to
15 Plaintiffs and the putative class members.

16 127. Sunrise knew or should have known that Plaintiffs and the putative class members
17 had a right to the funds used to pay new resident move-in fees and monthly fees to Sunrise.

18 128. As such, Sunrise took, secreted, appropriated, obtained, and retained the funds of
19 Plaintiffs and the putative class members for a wrongful use and/or with the intent to defraud.

20 129. Sunrise's conduct was despicable, fraudulent, reckless, and carried out with a
21 willful and conscious disregard for the rights and safety of Plaintiffs and the members of the
22 putative class.

23 **b)** Accordingly, Plaintiffs and the putative class seek an injunction requiring Sunrise to
24 disclose to Plaintiffs, the putative class members and the consuming public that Sunrise does not
25 ensure that sufficient numbers of trained staff are available at to meet the assessed needs of its
26 current residents and to stop charging its residents monthly personal care fees based on assessed
27 levels of care unless and until it provides sufficient numbers of trained staff to meet the assessed
28 needs of all current residents.

1 sufficient numbers of trained staff to meet the assessed needs of all current
2 residents.

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

4 **JURY TRIAL DEMANDED**

5 Plaintiffs demand a jury trial on all issues so triable.

6
7 DATED: June 21, 2019

/s/ Kathryn A. Stebner

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Attorneys for Plaintiffs and the Proposed Class

1 I, Christopher J. Healey, declare:

2 I am a partner at the law firm of Dentons US LLP, whose address is 4655
 3 Executive Drive, Suite 700, San Diego, CA 92121. I am over the age of eighteen
 4 years, and am not a party to this action.

5 On **June 21, 2019**, I caused to be served the following document(s) described
 6 as:

7 **1. SECOND AMENDED CLASS ACTION COMPLAINT**

8 on the interested parties in this action by filing of the above-described document(s)
 9 with the clerk of the United States District Court, Northern District of California,
 10 through the CM/ECF system. The CM/ECF system will send email notification of
 11 the filing to the parties and their counsel of record who are registered with the
 12 court's CM/ECF system at email address(es) provided as follows:

13 **Electronic Mail Notice List**

14 The following are those who are currently on the list to receive e-mail notices
 15 for this case.

16 **ATTORNEYS FOR DEFENDANTS SUNRISE SENIOR LIVING, LLC.:**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 21, 2019, at San Diego, California.

s/Christopher J. Healey

Christopher J. Healey

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