


FILED
ALAMEDA COUNTY

AUG 28 2023

CLERK OF THE SUPERIOR COURT
By  Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
MARINER HEALTH CARE INC., a Delaware
corporation; *et. al.*
Defendants.

Case No.: RG21095881

~~PROPOSED~~
**FIRST MODIFIED PRELIMINARY
INJUNCTION**

GOOD CAUSE APPEARING, THE COURT hereby orders a preliminary injunction as follows pending final judgment:

PARTIES AND APPLICATION

1. Except as stated below, the parties enjoined by this preliminary injunction are Defendants ALMADEN OPERATING COMPANY LP, AUTUMN HILLS OPERATING COMPANY LP, CREEKSIDE OPERATING COMPANY LP, DRIFTWOOD HAYWARD OPERATING COMPANY LP, DRIFTWOOD SANTA CRUZ OPERATING COMPANY LP, FREMONT HEALTHCARE OPERATING COMPANY LP, FRUITVALE LONG TERM CARE, LLC, HAYWARD HILLS OPERATING COMPANY LP, INGLEWOOD OPERATING COMPANY LP, VERDUGO VISTA OPERATING COMPANY LP, MONTEREY PALMS

1 OPERATING COMPANY LP, PARKVIEW OPERATING COMPANY LP, SAN RAFAEL
2 OPERATING COMPANY LP, PALM SPRINGS OPERATING COMPANY LP,
3 REHABILITATION CENTER OF SANTA MONICA OPERATING COMPANY LP, SANTA
4 MONICA OPERATING COMPANY LP, SKYLINE SAN JOSE OPERATING COMPANY LP,
5 VALE OPERATING COMPANY LP, SAN MARCOS OPERATING COMPANY LP, and to
6 each of their agents, servants, employees, representatives, officers, directors, managers,
7 successors in interest, affiliates, assigns, and subsidiaries, aiders and abettors, as well as any
8 corporation, limited liability company, partnership, or any other legal entity or organization which
9 are controlled, owned, managed, licensed, operated, administered by them and which directly or
10 indirectly controls the operations of the skilled nursing facilities in California (as defined under
11 California Health and Safety Code section 1250(c) and 22 CCR 72103), including those known as
12 Almaden Care and Rehabilitation Center, Autumn Hills Healthcare Center, Creekside Healthcare
13 Center, Driftwood Healthcare Center-Hayward, Driftwood Healthcare Center-Santa Cruz,
14 Fremont Healthcare Center, Fruitvale Healthcare Center, Hayward Hills Healthcare Center,
15 Inglewood Healthcare Center, La Crescenta Healthcare Center, Monterey Palms Healthcare
16 Center, Parkview Healthcare Center, Pineridge Care Center, Palm Springs Healthcare Center, The
17 Rehabilitation Center of Santa Monica, Santa Monica Healthcare Center, Skyline Healthcare
18 Center-San Jose, Vale Healthcare Center, and Village Square Healthcare Center (hereinafter
19 collectively referred to as “Mariner” or “Defendants”).

20
21 **INJUNCTION APPLICABLE TO ALL PARTIES**

- 22 2. Pursuant to Business and Professions Code sections 17203 and 17535, all
23 Defendants are hereby enjoined and precluded from improperly discharging a resident in
24 violation of Federal or California laws and regulations, including but not limited to the following:
- 25 a. Discharging or transferring a resident without giving the resident or
26 resident's representative timely prior written notice in a language and
27 manner they understand, including but not limited to,

- i. violating 42 U.S.C. section 1395i-3(c), 42 U.S.C. section 1396r(c), and 42 C.F.R. section 483.15(c), 483.10(g); and 22 C.C.R. section 72520(a);
- ii. discharging or transferring a resident without sending a copy of the written notice of transfer or discharge to the local Long-Term Care Ombudsman within the time required by Cal. Health and Safety Code section 1439.6 and 42 C.F.R. section 483.15(c);
- iii. providing written notice to the resident and the resident's representative **for all transfers or discharges**;
- iv. complying with 42 CFR 483.15, except as specified in paragraphs (c)(4)(ii) and (8): the notice of transfer or discharge for **all discharges** must be in writing in a form in compliance with 42 CFR 483.15(c)(5), and made by the facility at least 30 days before the resident is transferred or discharged, with a contemporaneous copy of the notice to the local Long-Term Care Ombudsman within the time required by Cal. Health and Safety Code section 1439.6 and 42 C.F.R. section 483.15(c)(3)(i);
- v. further providing a copy of the notice of transfer or discharge to the Compliance Monitor (as defined in paragraph 5, below), by email or facsimile transmission as directed by the Compliance Monitor at the same time as the notice to the Ombudsman;

3. All Defendants are enjoined from failing to employ an adequate number of qualified personnel to carry out all of the functions of the facility as required by Health & Safety Code §1599.1(a); 22 Cal. Code of Regs §72501(e), and Compliance, at all times, with all applicable state and federal regulatory and statutory requirements regarding the levels at which a skilled nursing facility must provide staffing, including but not limited to, California Health & Safety Code sections 1599.1 and 1276.65; 22 C.C.R. sections 72329, 72329.2, 72501(e) and (g) and 22

1 C.C.R. section 72527(a)(24); 42 C.F.R. section 483.35; and 42 U.S.C. section 1396r(b)(2), and as
2 required by 42 C.F.R. section 483.70(f).

3 **DEFENDANTS REPORTS ON COMPLIANCE**

4 4. Not less than quarterly, commencing on April 1, 2023, and continuing unless
5 modified by the Court, Defendants shall prepare a report reflecting the Defendants' compliance
6 with the requirements of this injunction.

7 **MONITORING COMPLIANCE**

8 5. Pending trial or further order of this Court, Compliance Monitor (hereinafter
9 whether singular or plural referred to as "Monitor") David Ferrell has been appointed pursuant to
10 California Business & Professions Code § 17203, and Code Civil Procedure § 639; to determine
11 and report on compliance with the terms of this injunction to the People and this Court as directed.
12 The purpose of the Monitor is to determine compliance with the injunctive terms of this Judgment
13 and to protect the personal and property rights of the residents in the skilled nursing facilities
14 operated by Defendants. Any replacement of a Monitor shall follow the same procedure.

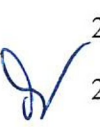
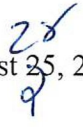
15 6. The Monitor shall have access to all records of Defendants' California Nursing Facilities
16 as well as those of defendant Mariner Health Central, Inc. that pertain to the enjoined defendants,
17 including, but not limited to, *Matrix*® or other *cloud-based* or electronic patient records and
18 Defendants shall provide passwords and other required credentials to enable remote access to
19 patient records, including, but not limited to patient/resident charts, medical records, and
20 specifically discharge notices and planning records. The Monitor shall also have access to records
21 related to staffing, including but not limited to the general ledger of the relevant operating
22 companies. Defendants shall provide reasonable access to the facilities, residents and resident's
23 representatives. The Monitor shall be copied on all reports and notices as required herein and as
24 required to be submitted to any public agency or non-profit by law or regulation regarding the
25 conduct of skilled nursing activities in California. On a periodic basis, to be determined by the
26 Monitor, the defendants shall provide a Report to the Monitor detailing defendants' efforts to
27 comply with this Injunction. The Monitor shall determine the scope and content of this Report after
28 conferring with the parties.

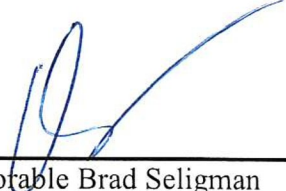
1 testimony regarding the Monitor's observations and opinions.


2 10. The Monitor and the Monitor's staff shall document their activities on an hourly basis
3 and will prepare invoices that segregate costs according to each respective facility of Defendants
4 commensurate with the time allocated to perform duties for the respective skilled nursing facilities.
5 Any dispute in the billing shall first be presented to the Monitor and counsel for the People for the
6 purpose of meeting and conferring upon resolution, and if not resolved, may be presented to this
7 Court upon noticed motion. Pending resolution of the dispute by this Court, the Defendants shall
8 continue to make payments for the services of the Monitor. The Monitor's rate shall not exceed
9 her/his customary rate and shall be consistent with the rate charged by other professionals with
10 similar experience performing such oversight services. The Monitor shall create an annual budget
11 for each calendar year of monitoring for the projected cost of monitoring all facilities as directed
12 by the Court for Monitoring. The Monitor shall not exceed the total budgeted amount without first
13 meeting and conferring with Defendants and Plaintiff and then only with approval by this Court.
14 The reasonable cost of the Monitor shall be borne by Defendants, the Monitor shall be paid by
15 Defendants upon presentment of invoices no more frequent than monthly.

16 11. Any dispute regarding any issue with the Monitor, including but not limited to, the
17 cost, scope or activities of the Monitor will be presented to this Court for resolution following
18 meeting and conferring between parties.

19 12. Either party may for good cause shown, move to modify, add injunctive terms or
20 vacate all or any part of this order upon noticed motion.

21 Dated: August 25, 2023
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27 The Honorable Brad Seligman
28 JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 09/01/2023
PLAINTIFF/PETITIONER: The People of the State of California et al	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: National Senior Care, INC., a Delaware Corporation et al	A. Hewitt
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: RG21095881

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the **FIRST MODIFIED PRELIMINARY** entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Darryl Alan Ross
Mariner Health Care, Inc.
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Scott Jason Kiepen
Hooper Lundy & Bookman, Inc
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TRACY D. FORBATH
LEWIS BRISBOIS BISGAARD & SMITH LLP
tracy.forbath@lewisbrisbois.com


Dated: 09/01/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Hewitt, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 09/01/2023
PLAINTIFF/PETITIONER: The People of the State of California et al	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: National Senior Care, INC., a Delaware Corporation et al	A. Hewitt
CERTIFICATE OF MAILING	CASE NUMBER: RG21095881

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Luke VanderDrift
N/A
2329 Gateway Oaks Drive
Suite 200
Sacramento, CA 95833-4252

Mariner Health Central INC, a Delaware Corporation
44 Montgomery St., Ste. 3500
San Francisco, CA 94104

Chad Finke, Executive Officer / Clerk of the Court

Dated: 09/01/2023

By:



A. Hewitt, Deputy Clerk

CERTIFICATE OF MAILING