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The People of the State of California

EXEMPT FROM FILING FEES  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF KERN - METROPOLITAN DIVISION**

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THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

BROOKDALE SENIOR LIVING, INC., a  
Delaware corporation,

Defendant.

Case No. BCV-21-100539 TSC

**[PROPOSED] FINAL JUDGMENT  
AND INJUNCTION**

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1 Plaintiff, the People of the State of California, through its attorneys, Rob Bonta, Attorney  
2 General of the State of California, by Supervising Deputy Attorney General Michele Van Gelderen and  
3 Deputy Attorneys General Bryan Kao and Kevin Reyes; Cynthia Zimmer, District Attorney for the  
4 County of Kern, by Deputy District Attorney John Ohanesian; Summer Stephan, District Attorney for  
5 the County of San Diego, by Head Deputy District Attorney Thomas Papageorge and Deputy District  
6 Attorney Colleen E. Huschke; Jeffrey S. Rosell, District Attorney for the County of Santa Cruz, by  
7 Assistant District Attorney Douglas Allen; Mike Feuer, City Attorney of the City of Los Angeles, by  
8 Christina Tusan, Supervising Deputy City Attorney; Nancy O'Malley, District Attorney of Alameda  
9 County, by Deputy District Attorney Lori Schnall (the "People" or "Plaintiff"), and Defendant  
10 Brookdale Senior Living, Inc., a Delaware corporation, appearing through its attorneys, Hooper, Lundy  
11 & Bookman, P.C., by Scott Kiepen, Katrina Pagonis, and Matthew I. Lahana ("Brookdale" or  
12 "Defendant"), have stipulated that this Final Judgment and Injunction ("Judgment") may be entered as  
13 a compromise of disputed claims and defenses, without trial or adjudication of any issue of fact or law,  
14 and without Defendant admitting any liability or wrongdoing, and with Plaintiff and Defendant  
15 (collectively, the "Parties") having waived their right to appeal any issue of fact or law arising from the  
16 allegations addressed by this Judgment. The Court having considered the matter and the attached  
17 Stipulation, and good cause appearing:

18 IT IS HEREBY ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

19 1. This Court has jurisdiction over the subject matter of the People's complaint filed in this  
20 action and the Parties; this is a proper venue for this action; and the Court has jurisdiction to enter this  
21 Judgment.

22 2. This Judgment is applicable to Defendant and to each of its subsidiaries and agents  
23 (other than natural persons); successors and assigns; and any corporation, limited liability company,  
24 partnership, or any other legal entity or organization which is controlled, owned, managed, licensed,  
25 operated, or administered by Defendant, which is acting on behalf of Defendant, and which, directly or  
26 indirectly, controls, manages and/or owns any skilled nursing facility in California.

27 3. This Judgment does not apply to other types of facilities that are not skilled nursing  
28 facilities in California, including but not limited to, independent living communities, assisted living

1 communities, and residential care facilities for the elderly located in California or elsewhere that  
2 Defendant owns, manages, and/or controls.

### 3 INJUNCTION

4 4. Under Business and Professions Code sections 17203 and 17535, Defendant is hereby  
5 enjoined from the following:

6 A. Discharging or transferring a resident without providing to the resident and the  
7 resident's representative (as defined by 42 C.F.R. section 483.5, Health and Safety Code section  
8 1599.3 or 22 C.C.R. 72527[d]) the preparation and orientation required by law, including 42  
9 U.S.C. section 1396r(c)(2), and 42 C.F.R. section 483.15(c)(7);

10 B. Discharging or transferring a resident without developing and implementing a  
11 transfer or discharge plan as required by law, including 42 C.F.R. section 483.15(c) and 42  
12 C.F.R. section 483.21(c);

13 C. Failing to document the discharge or transfer and maintain the documentation,  
14 including the discharge summary, in the resident's medical record, as required by in 42 C.F.R.  
15 section 483.15(c)(2) and section 483.21(c);

16 D. Failing to have documentation made and placed in the resident's medical record  
17 by the resident's attending physician when transfer or discharge is allowed under 22 C.C.R.  
18 section 72527(a)(6) and 42 C.F.R. section 483.15(c)(1), or by another physician when transfer or  
19 discharge is allowed under 22 C.C.R. section 72527(a)(6) and 42 C.F.R. section 483.15(c)(1), as  
20 required by 42 C.F.R. section 483.15(c)(2);

21 E. Discharging or transferring a resident unless: (1) the transfer or discharge is  
22 necessary to meet the resident's welfare and the resident's needs cannot be met in the facility;  
23 (2) the transfer or discharge is appropriate because the resident's health has improved  
24 sufficiently so the resident no longer needs the services provided by the facility; (3) the safety of  
25 individuals in the facility is endangered due to the resident's clinical or behavioral status; (4) the  
26 health of the individuals in the facility would otherwise be endangered; (5) the resident has  
27 failed, after reasonable and appropriate notice, to pay for his or her stay; or (6) the facility  
28 ceases to operate, as required by 42 U.S.C. section 1396r(c)(2), 42 C.F.R. section 483.15(c)(1),

1 and 22 C.C.R. section 72527(a)(6).

2 F. Discharging or transferring a resident without giving the resident and the  
3 resident's representative timely prior written notice in a language and manner they understand in  
4 violation of 42 U.S.C. section 1396r(c)(2), 42 C.F.R. section 483.15(c)(3)-(4), and 22 C.C.R.  
5 section 72527(a)(6);

6 G. Discharging or transferring a resident without sending a copy of the written  
7 notice of transfer or discharge to the local Long-Term Care Ombudsman within the time  
8 required by Health and Safety Code section 1439.6 and 42 C.F.R. section 483.15(c)(3);

9 a. Except as specified in 42 C.F.R. 483.15(c)(4), for all transfers or  
10 discharges, Defendant must provide the resident and the resident's representative a  
11 written notice of transfer or discharge in a form in compliance with 42 C.F.R.  
12 483.15(c)(5) at least 30 days before the resident is transferred or discharged, with a  
13 contemporaneous copy of the notice to the local Long-Term Care Ombudsman as  
14 required by Cal. Health and Safety Code section 1439.6 and 42 C.F.R. section  
15 483.15(c)(3)-(4);

16 b. A copy of the notice of transfer or discharge must be provided to the  
17 Quality Compliance Specialist as set forth below by email, facsimile transmission or any  
18 other means as directed by the Quality Compliance Specialist, at the same time as the  
19 notice is provided to the Ombudsman.

20 H. Making, or causing to be made, false or misleading statements to the Centers for  
21 Medicare & Medicaid Services ("CMS") concerning such skilled nursing facility(ies),  
22 including, but not limited to, providing, or causing to be provided, false or misleading  
23 information that is used for the formulation or calculation of CMS's Five-Star Quality Ratings.

#### 24 **COMPLIANCE**

25 5. By agreement of the Parties, the Office of the District Attorney for the County of Santa  
26 Cruz ("Santa Cruz District Attorney") and Defendant mutually select Professor Christopher Cherney of  
27 Skilled Review Consulting LLC to act as Quality Compliance Specialist ("Specialist") to oversee  
28 compliance with the injunctive provisions of this Judgment that apply to Defendant's California skilled

1 nursing facility(ies). The Specialist's assignment is limited to the scope of this Injunction, but he may  
2 suggest recommendations outside of the scope of this Injunction to the Santa Cruz District Attorney and  
3 Brookdale that may, in his opinion, improve the quality of care. If the Specialist exceeds his authority  
4 or fails to faithfully carry out his duties, either party may apply to the Court to seek dismissal and/or  
5 replacement of the Specialist. Except as set forth in this Judgment or when acting as a witness on  
6 behalf of the People, the Specialist is strictly prohibited from using any information he obtains during  
7 the course of his assignment against Defendant or any of its affiliates or subsidiaries in any future third-  
8 party assignment he may receive or obtain as an expert witness or otherwise. Except as provided herein  
9 or as required by law, the Specialist shall keep his findings and conclusions confidential and may not  
10 disclose them to any third-party.

11         6.       The cost of the Specialist shall be borne by Defendant, which shall pay the Specialist's  
12 invoice within forty-five days of presentment by the Specialist. If there is a dispute concerning the  
13 Specialist's invoice, Defendant shall pay the undisputed sum to the Specialist and shall deposit the  
14 disputed sum with the Santa Cruz District Attorney. Defendant and the Specialist, in consultation with  
15 the Santa Cruz District Attorney, shall meet and confer in good faith in an attempt to resolve the  
16 dispute. If the dispute is not resolved, it may be presented to this Court upon ex parte application or  
17 noticed motion for resolution. The Specialist's rate shall not exceed his customary rate and shall be  
18 consistent with the rate charged by other professionals with similar experience performing such  
19 oversight services.

20         7.       The Specialist's rights and obligations shall continue for eighteen (18) months from the  
21 entry of Judgment. If the Specialist resigns or is removed for any reason, Defendant shall meet and  
22 confer with the People on the Santa Cruz District Attorney's retention of a replacement Specialist  
23 within fourteen (14) days of the Specialist's resignation or removal. If Defendant objects to the  
24 People's proposed Specialist, Defendant must present its objection to this Court by ex parte application  
25 or noticed motion to be heard by the Court within 30 days of the People's identification of the  
26 replacement Specialist, or as soon thereafter as the Court may hear the matter. The 18-month oversight  
27 period shall be tolled and extended pending the Court's resolution of the objection and until a  
28 replacement Specialist is retained and able to begin carrying out his or her duties pursuant to this

1 Judgment. Six months after entry of Judgment and every six months thereafter for the oversight period,  
2 the Specialist shall issue a written report to the Parties that reviews and analyzes Defendant's  
3 compliance. The reports shall detail the Specialist's findings and recommendations for corrective  
4 action, if any is required. The Specialist shall provide additional written or oral updates at the request  
5 of the People.

6 8. The Specialist shall have reasonable access to all records of such skilled nursing  
7 facility(ies) to perform his duties, access to such skilled nursing facility(ies) to perform his duties, and  
8 access to residents and residents' representatives to perform his duties. Defendant shall cooperate with  
9 the Specialist in order to allow the Specialist to carry out his or her duties pursuant to this Judgment.  
10 To the extent electronic records are available for such skilled nursing facility(ies), Defendant shall give  
11 the Specialist access credentials to allow the Specialist remote access to only those records that apply to  
12 this Judgment during the oversight period. The Specialist shall maintain confidentiality of records  
13 covered by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA),  
14 California medical privacy laws, and third-party privacy rights, such as employee records and non-  
15 public financial records, disclosing them only to Specialist's staff, facility staff, counsel for both parties  
16 and their employees, agents and experts, who shall also maintain such confidentiality. The Specialist  
17 shall enter into and comply with a HIPAA-compliant Business Associate Agreement with Defendant.

18 **MONETARY RELIEF**

19 9. Upon entry of this Judgment, Defendant shall pay:

- 20 a. Pursuant to Business and Professions Code sections 17206, 17206.1 and 17536, a  
21 penalty of \$2,400,000, which funds shall be divided equally between the  
22 agencies representing the People. Payment shall be made by cashier's check,  
23 wire transfer or other certified funds payable to Kern County District Attorney's  
24 Office, care of Deputy District Attorney John Ohanesian.
- 25 b. Pursuant to California Business & Professions Code sections 17203 and 17535,  
26 the sum of \$300,000 to "Greater Bakersfield Legal Assistance, Inc." for the  
27 benefit of the Kern County Long Term Care Ombudsman Program.  
28

1 c. The sum of \$550,000 as reimbursement for costs, to be distributed at the  
2 People's discretion. Payment shall be made by cashier's check, wire transfer or  
3 other certified funds payable to Kern County District Attorney's Office, care of  
4 Deputy District Attorney John Ohanesian.

5 **OTHER TERMS**

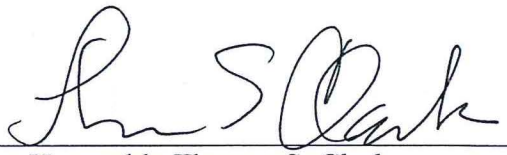
6 10. Nothing in the Judgment alters the requirements of federal or state law to the extent they  
7 offer greater protections to patients/residents.

8 11. Defendant shall cooperate with the People in any inquiry concerning compliance with  
9 this Judgment.

10 12. This Judgment does not apply to, resolve, estop, adjudicate, preclude or bar any claims  
11 for civil, criminal, or administrative liability that any person or entity, including Defendant, has or may  
12 have to the State's Medicaid Program (Cal. Welfare & Inst. Code §§ 14000, et seq., 14200 et seq.; 42  
13 U.S.C. Chapter 7 Subchapter XIX), including any such liability to the State's Medicaid Program arising  
14 from "managed care entities" as defined by 42 U.S.C. § 1396u-2(a)(1)(B).

15 13. This Court retains jurisdiction over this Judgment and the Parties hereto for the purpose  
16 of enabling the Parties to apply to the Court for such orders or directions as may be necessary or  
17 appropriate for the construction or modification of the injunctive provisions of this Judgment, and for  
18 the enforcement of this Judgment, and for any other purpose authorized by law.

19  
20 Dated: 3-11-22

21   
22 The Honorable Thomas S. Clark  
23 JUDGE OF THE SUPERIOR COURT  
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