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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF KERN – METROPOLITAN DIVISION**  
19

20 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

21 Plaintiff,

22 v.

23 **BROOKDALE SENIOR LIVING, INC.,** a Delaware  
24 corporation, and  
25 **DOES 1 THROUGH 100,** inclusive,

26 Defendants.  
27  
28

*EXEMPT FROM FEES (GOVT CODE § 6103)*

**ELECTRONICALLY FILED**  
**3/15/2021 8:00 AM**  
**Kern County Superior Court**  
**By Sophia Munoz Alvarez, Deputy**

Case No. BCV-21-100539

**COMPLAINT FOR PERMANENT  
INJUNCTION, CIVIL PENALTIES,  
RESTITUTION, AND OTHER  
EQUITABLE RELIEF**

[Verified answer required per C.C.P. § 446  
unless exception applies]

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1 Plaintiff, the People of the State of California (“Plaintiff” or the “People”), by and through  
2 the Attorney General of the State of California, the District Attorneys of the Counties of Kern,  
3 Alameda, Santa Cruz, and San Diego, and the City Attorney of Los Angeles, allege the following  
4 upon information and belief:

### 5 INTRODUCTION

6 1. Brookdale Senior Living, Inc. (“Brookdale” or “Defendant”) is the nation’s largest  
7 senior living facilities owner and operator and has at relevant times operated, owned, and  
8 managed ten skilled nursing facilities (“SNFs” or “facilities”) in California.

9 2. Brookdale has systematically violated numerous laws that protect senior and disabled  
10 Californians who need the highest levels of skilled nursing care. Brookdale has increased its  
11 profits at the expense of the care and rights of its residents, by (1) abruptly discharging residents  
12 without adequate notice and without preparing them to be discharged safely, and (2) falsely  
13 advertising its quality of care to lure prospective patients and their families to its facilities.

14 3. Brookdale has transferred or discharged residents without giving them reasonable  
15 notice or adequate preparation. Brookdale does this so it can fill its beds with residents who will  
16 bring in more money. Facilities typically are paid substantially more by Medicare than from  
17 other sources, such as Medi-Cal. This creates an incentive for Brookdale to discharge residents  
18 when their Medicare coverage ends regardless of the care and treatment needs of the residents.  
19 Residents, however, have many legal protections to prevent this type of illegal discharge, which  
20 Brookdale has systematically disregarded. Where Brookdale is allowed to discharge residents, it  
21 is required to, among other things, give residents reasonable notice in writing in the language  
22 spoken by the resident, provide a copy to the local ombudsman, and prepare a plan so that they  
23 can be discharged safely; Brookdale ignored these requirements.

24 4. Brookdale has also falsely advertised its quality of care. It provides false data to the  
25 Centers for Medicare & Medicaid Services (“CMS”), which uses this data to rate the quality of  
26 nursing homes. CMS rates each facility on various categories on a five-star scale. These star  
27 ratings are based on a variety of measures, including indicators of patient care such as staffing  
28 levels, pressure ulcers, weight loss and falls. The ratings are published on the “Nursing Home

1 Compare” section of the CMS website, and are republished elsewhere, so that prospective  
2 patients and their families can compare facilities on objective standards of quality. Brookdale has  
3 provided false information to CMS to receive higher star ratings than it deserves, and to attract  
4 potential patients to its facilities with false representations about its quality of care.

5 5. Residents illegally discharged from Brookdale facilities face a range of harm, from  
6 stress and uncertainty in arranging alternate suitable care to life-threatening health crises. For  
7 example, Brookdale discharged a resident with little notice, no notice to the ombudsman, and no  
8 discharge planning. The resident’s family members repeatedly asked Brookdale for help, but  
9 were given none. The family finally located a facility on their own on the Internet. Another  
10 Brookdale resident who was discharged without the required notice or discharge planning  
11 was an 80-year-old man suffering from Alzheimer’s disease, congestive heart failure, chronic  
12 atrial fibrillation, chronic obstructive pulmonary disease, diabetes mellitus, and gastro esophageal  
13 reflux. Had Brookdale provided a discharge plan, it would have evaluated provision for his  
14 ongoing care, including catheterization, careful feeding to prevent aspiration, and treatment of a  
15 stage 3 pressure ulcer. Within a week of discharge, he was admitted to an acute care hospital. In  
16 another case, Brookdale discharged a 78-year-old resident with impaired ambulation, heart  
17 disease and kidney disease, and who was recovering from pneumonia. This resident was also  
18 discharged without required notice to the resident, the family, or the ombudsman, and without a  
19 discharge plan. His family members were given no explanation about his medications, and were  
20 not trained to administer his oxygen. The resident was discharged with a Peripherally Inserted  
21 Central Catheter (“PICC line”), a catheter used for intravenous medications, still attached to his  
22 body.

23 6. These business practices violate California’s Unfair Competition Law (Business and  
24 Professions Code section 17200 et seq.) and the False Advertising Law (Business and Professions  
25 Code section 17500 et seq.).

#### 26 **DEFENDANTS**

27 7. Defendant Brookdale Senior Living, Inc. is a Delaware corporation with its principal  
28 place of business in Brentwood, Tennessee. Brookdale determines, controls and directs the

1 operations of its California skilled nursing facilities through its employees and through a web of  
2 companies, which are Brookdale affiliates acting as their agents. At all relevant times, Brookdale  
3 has transacted business in the County of Kern and elsewhere within the State of California.

4 Brookdale operates its largest California skilled nursing facility (SNF) in Kern County.

5 8. Plaintiff is unaware of the true names and capacities of defendants sued herein as  
6 DOES 1 through 100, inclusive, and, therefore, sues these defendants by such fictitious names.  
7 Each fictitiously named defendant is responsible in some manner for the violations of law alleged.  
8 Plaintiff will amend this Complaint to add the true names and capacities of the fictitiously named  
9 defendants once they are determined. Whenever reference is made in this Complaint to  
10 "Defendants," such reference shall include DOES 1 through 100 as well as the named defendants.

11 9. At all relevant times, each Defendant acted individually and jointly with every other  
12 named Defendant in committing all acts alleged in this Complaint.

13 10. At all relevant times, each Defendant acted: (a) as a principal; (b) under express or  
14 implied agency; and/or (c) with actual or ostensible authority to perform the acts alleged in this  
15 Complaint on behalf of every other named Defendant.

16 11. At all relevant times, some or all Defendants acted as the agent of the others, and all  
17 Defendants acted within the scope of their agency if acting as an agent of another.

18 12. At all relevant times, each Defendant knew or realized, or should have known or  
19 realized, that the other Defendants were engaging in or planned to engage in the violations of law  
20 alleged in this Complaint. Knowing or realizing that the other Defendants were engaging in such  
21 unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts.  
22 Each Defendant intended to and did encourage, facilitate, or assist, including by engaging in overt  
23 acts, in the commission of the unlawful acts, and thereby aided and abetted the other Defendants  
24 and other third parties in the unlawful conduct.

25 13. Defendants have engaged in a conspiracy, common enterprise, and common course of  
26 conduct, which include overt acts, the purpose of which is and was to engage in the violations of  
27 law alleged in this Complaint. The conspiracy, common enterprise, and common course of  
28 conduct continue to the present.

1 14. Defendants are alter-egos of each other. There is a unity of interest and ownership  
2 between and among Defendants, such that in reality they have no separate personalities.  
3 Defendants have used the corporate form to perpetrate fraud and accomplish other wrongful and  
4 inequitable acts, including those alleged in this Complaint. Failure to hold Defendants liable for  
5 the wrongful acts of their alter egos would lead to an inequitable and unjust result.

6 **STANDING, JURISDICTION AND VENUE**

7 15. The People have standing to bring this action by direct statutory authorization  
8 pursuant to California Business and Professions Code sections 17204, 17206, 17206.1, 17535 and  
9 17536.

10 16. This Court has original jurisdiction over this action pursuant to California,  
11 Constitution article VI, section 10.

12 17. This Court has jurisdiction over Defendants because Defendants, by operating skilled  
13 nursing facilities in California, intentionally availed themselves of the California market so as to  
14 render the exercise of jurisdiction over Defendants by the California courts consistent with  
15 traditional notions of fair play and substantial justice.

16 18. The violations of law alleged in this Complaint occurred in the County of Kern  
17 and elsewhere throughout California, where Brookdale has facilities and which facilities accept  
18 and discharge patients from and to multiple counties in California.

19 19. Venue is proper in this Court pursuant to Code of Civil Procedure section 395.5  
20 because Defendants operate a skilled nursing facility in the County of Kern, specifically  
21 Brookdale Riverwalk Skilled Nursing Facility located at, 350 Calloway Drive, Building C,  
22 Bakersfield, and therefore Defendants' liability arises in part in the County of Kern.

23 20. Venue is also proper in this Court pursuant to Code of Civil Procedure section 393,  
24 subdivision (a) because violations of law that occurred in the County of Kern are a "part of the  
25 cause" upon which the Plaintiff seeks the recovery of penalties imposed by statute.

26 **TOLLING**

27 21. Pursuant to valid agreements between the People and Defendant, the People and  
28 Defendant have tolled all time limits and time-related defenses, either in law or in equity,

1 including but not limited to the statute of limitations, statute of repose, and the doctrine of laches,  
2 relating to claims that the People might bring against Defendant pertaining to their business  
3 operations and practices.

4 22. An initial tolling agreement became effective on June 27, 2018, and tolled all such  
5 claims not then expired until the filing of this Complaint.

6 23. All causes of action are also tolled by the order of the Governor of California  
7 pursuant to Executive Order N-38-20, and by Judicial Council Emergency Rule 9.

### 8 BROOKDALE'S BUSINESS PRACTICES

#### 9 **Brookdale Does Not Prepare Its Residents for Transfer or Discharge, in Violation of the** 10 **Law and to the Detriment of its Residents' Health and Safety**

11 24. California has long recognized nursing care residents as one of the most  
12 vulnerable segments of our population. These residents are entitled to enjoy the  
13 "fundamental human rights" set out in California's Patients' Bill of Rights. (Cal. Code of  
14 Regs. ("C.C.R."), tit 22, § 72527.) Among them is the right to be transferred or discharged  
15 only for specified reasons, with reasonable advance notice to ensure orderly transfer or discharge,  
16 and with such actions documented in the patient's health record. (22 C.C.R. §72527(a)(6); 42  
17 C.F.R. § 483.15(c)(1).)

18 25. To protect this fundamental patient right, the law sets out detailed requirements  
19 that govern skilled nursing facilities' transfer and discharge practices. For example, a skilled  
20 nursing facility is permitted to initiate a resident's transfer or discharge, after giving the  
21 required advance notice to the resident, in limited circumstances. (California Standard  
22 Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities ("Cal.  
23 Standard Admission Agreement"), Chapter VI, Transfers and Discharge; Cal. Health &  
24 Safety Code § 1599.76; Cal. Health & Safety Code § 1599.78; 42 C.F.R. § 483.15(c)(1).)  
25 Upon initiating a legally permissible transfer or discharge, the facility must provide 30 days'  
26 written notice or, if that is not possible, for example if the stay is under 30 days, it must  
27 provide notice as soon as practicable. The contents of this written notice of transfer or  
28 discharge ("TOD Notice") are also dictated by law. It must inform the resident of their right

1 to appeal. (42 C.F.R. § 483.15(c)(3)-(4).) The TOD Notice must also provide residents and  
2 their families with such important information as: the specific reason for the transfer or  
3 discharge, the location to which the resident is being transferred or discharged; a statement of  
4 the resident's appeal rights including where to file an appeal; and contact information for the  
5 ombudsman. (42 C.F.R. § 483.15(c)(5).)

6 26. Re-enforcing the importance of the provision of a TOD Notice to ensure the  
7 resident's continuity of care and to protect residents against unlawful and unsafe discharges,  
8 a skilled nursing facility must provide a copy of the TOD Notice to the California Long Term  
9 Care Ombudsman. (Cal. Health & Safety Code § 1439.6(a); 42 C.F.R. § 483.15(c)(3)(i).)  
10 The Ombudsman is authorized to "[p]rovide services to assist residents in the protection of  
11 their health, safety, welfare and rights" (Cal. Wel. & Inst. Code § 9712.5(b)) and to  
12 "[r]epresent the interests of the residents before governmental agencies and seek  
13 administrative, legal, and other remedies to protect the health, safety, welfare, and rights of  
14 the residents." (Cal. Wel. & Inst. Code § 9712.5(e).)

15 27. Brookdale violated state and federal law and regulations, specifically the  
16 requirements of 22 C.C.R. section 72527, 42 U.S.C.S. section 1396r (c)[2], and 42 C.F.R.  
17 section 483.15(c), by failing to provide the required advance written notices of transfer or  
18 discharge to residents, their representatives and the Ombudsman. It further violated the law  
19 by failing to have and implement a transfer and discharge policy which conformed with these  
20 legal requirements. (C.C.R. § 72527(a)(6); C.C.R. § 72523; 42 C.F.R. § 483.70(b); 42 C.F.R.  
21 § 483.70(d)(1).)

22 28. Brookdale initiated tens of thousands of transfers and discharges without  
23 providing the required TOD Notices to the resident or the Ombudsman. For other  
24 transfers or discharges that Brookdale initiated, it provided a TOD Notice just a day or  
25 two before the resident was forced to leave the facility. For still others, it provided a TOD  
26 Notice that did not comply with the law.

27 29. By failing to provide TOD Notices to these residents, by providing TOD Notices at  
28 the last minute, or by providing defective TOD Notices, Brookdale deprived residents and their

1 families of vital information and time to find another placement or to arrange for continuing care.  
2 By failing to provide copies of the TOD Notices to the Ombudsman, Brookdale deprived  
3 residents of the opportunity to have the Ombudsman advocate for them, and act to protect  
4 their rights, during the transfer or discharge process.

5 30. Moreover, Brookdale has not provided the TOD Notice in the language spoken  
6 by the resident as required by 42 C.F.R. section 483.15(c)(3)(i). A TOD Notice in a language  
7 the resident does not understand is, effectively, no notice at all.

8 31. Brookdale's failure to properly and timely inform residents of their impending  
9 transfer or discharge necessarily led to failure to conduct legally compliant and contractually and  
10 statutorily required discharge preparation. (Cal. Standard Admission Agreement, Chapter VI  
11 Transfers and Discharges; Cal. Health & Safety Code § 1599.78; 42. C.F.R. § 483.15 (c)(7); 42  
12 C.F.R. § 483.21(c)(1)-(2).)

13 32. Brookdale further violated the law by failing to establish and implement a transition  
14 of care and discharge summary policy and attendant procedures. (C.C.R. § 72527(a)(6); C.C.R.  
15 § 72523; 42 C.F.R. § 483.70(b); 42 C.F.R. § 483.70(d)(1).) By failing to provide legally  
16 compliant discharge plans, Brookdale deprived its residents of medical and care instructions  
17 that would have helped them to continue their recovery or to maintain their health.

18 **By Providing False Information to CMS for Use in Calculating Star Ratings,**  
19 **Brookdale Falsely Advertises the Quality of Its Facilities**

20 33. Brookdale has provided CMS with false information that, as Brookdale knew or at a  
21 minimum should have known, CMS uses to assign "star ratings" of nursing home quality that are  
22 published to the public on the CMS website and republished elsewhere. As a result, Brookdale  
23 has been awarded higher star ratings than it deserved. This has allowed Brookdale to attract  
24 prospective patients and their families to its facilities by misleading them about its quality of care,  
25 defeating the purpose of the rating system to allow members of the public to make informed  
26 choices among facilities.

27 34. Brookdale has provided false information to CMS about, among other things, its  
28 staffing, particularly its registered nurse ("RN") staffing. Adequate staffing is a facility's

1 obligation and one of a patient’s “fundamental human rights” under California’s Patients’ Bill of  
2 Rights. (22 C.C.R. §72527(a)(25) incorporating Health & Safety Code § 1599.1(a) [“The facility  
3 shall employ an adequate number of qualified personnel to carry out all functions of the  
4 facility.”]) Adequate, competent nursing staff is particularly important to ensuring patients’ well-  
5 being. (42 C.F.R. § 483.70(e) [“The facility must have sufficient nursing staff with the  
6 appropriate competencies and skills sets to provide nursing and related services to assure resident  
7 safety and attain or maintain the highest practicable level of physical, mental, and psychosocial  
8 well-being of each resident . . .”])

9 35. Until April 2018, Brookdale provided false staffing information to CMS on the Form  
10 671. At their annual inspections, Brookdale’s facilities filled out and submitted the Form 671 to  
11 state regulators, who in turn submitted it to CMS.

12 36. CMS used the hours worked as reported on the Form 671 to calculate the facilities’  
13 star ratings, from one to five stars, in several categories. These star ratings appeared on the  
14 medicare.gov website, in the “Nursing Home Compare” section of the site.

15 37. Because Brookdale provided false information about hours worked, in particular by  
16 inflating RN hours, Brookdale’s facilities received undeserved higher star ratings in the “RN  
17 staffing,” “staffing” and “overall” categories on CMS’s website.

18 38. The falsity of Brookdale’s reports to CMS is evident by comparing the hours worked  
19 as reported on the Form 671 to the hours worked that Brookdale reported on other government  
20 forms or recorded in its internal records. These include cost reports submitted to CMS and  
21 California’s Office of Statewide Health Planning and Development, and Brookdale’s general  
22 ledgers and time clock records.

23 39. In 2018, CMS stopped using the Form 671 to gather data from facilities for use in its  
24 star ratings. Since then, CMS uses the data from facilities’ payroll-based journals. Brookdale,  
25 however, continues to provide misleading information to CMS and continues to manipulate its  
26 star ratings by falsifying its payroll-based journals.

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1 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE

3 SECTION 17500 ET SEQ.

4 (False or Misleading Statements)

5 40. The People reallege and incorporate by reference each of the paragraphs above as  
6 though fully set forth herein.

7 41. Defendants have violated, and continue to violate, Business and Professions Code  
8 section 17500 et seq. by making or disseminating, or causing to be made or disseminated, false or  
9 misleading statements with the intent to induce members of the public to choose a Brookdale  
10 facility for themselves or a family member, when Defendants knew, or by the exercise of  
11 reasonable care should have known, that the statements were false or misleading. Defendants'  
12 violations include, but are not limited to, the following:

- 13 a. Defendants have provided false information to CMS, which Brookdale knew or  
14 should have known would cause its facilities to be awarded higher star ratings  
15 than deserved and which Brookdale knew or should have known would be  
16 published to the public; and  
17 b. Defendants have advertised those star ratings, which they obtained by providing  
18 false information to CMS.

19  
20 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

21 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE

22 SECTION 17200 ET SEQ.

23 (Unlawful, Unfair, and/or Fraudulent Business Practices)

24 42. The People reallege and incorporate by reference each of the paragraphs above as  
25 though fully set forth herein.

26 43. Defendants have engaged, and continue to engage, in acts or practices that are  
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1 unlawful, unfair, or fraudulent, and which constitute unfair competition within the meaning of  
2 Section 17200 of the Business and Professions Code. These acts or practices include, but are not  
3 limited to, the following:

- 4 a. Defendants have failed to provide TOD Notice in compliance with state and  
5 federal law, including 22 C.C.R. section 72527(a)(6); 42 C.F.R. section  
6 483.15(c)(1);
  - 7 b. Defendants have failed to provide a copy of the TOD Notice to the California  
8 Long Term Care Ombudsman in compliance with state and federal law,  
9 including Cal. Health & Safety Code section 1439.6(a); 42 C.F.R. section  
10 483.15(c)(3)(i);
  - 11 c. Defendants have failed to provide TOD Notice in the language and manner the  
12 patient or representative understands as required by 42 C.F.R. section  
13 483.15(c)(3)(i);
  - 14 d. Defendants have failed to establish and/or implement written policies and  
15 procedures concerning TOD Notices in compliance with state and federal law,  
16 including C.C.R. section 72527(a)(6); C.C.R. section 72523; 42 C.F.R.  
17 section 483.70(b); 42 C.F.R. section 483.70(d)(1);
  - 18 e. Defendants have failed to conduct discharge preparation in compliance with  
19 state and federal law including 22 C.C.R. section 72527(a)(3); 42 C.F.R.  
20 section 483.15(c)(7); 42 C.F.R. section 483.21(c)(1)-(2);
  - 21 f. Defendants have failed to establish and implement written policies and  
22 procedures concerning discharge preparation in compliance with state and  
23 federal law including C.C.R. section 72527(a)(6); C.C.R. section 72523(a)-  
24 (c); 42 C.F.R. section 483.70(b); 42 C.F.R. section 483.70(d)(1); and
  - 25 g. Defendants have violated Business and Professions Code section 17500 et seq.  
26 as alleged in the First Cause of Action.
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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. Pursuant to Business and Professions Code section 17535, that the Court make such orders or judgments necessary to prevent the use or employment by Defendants, along with Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants, of any practice which violates Business and Professions Code section 17500 et seq., as proved at trial;

2. Pursuant to Business and Professions Code section 17203, that the Court make such orders or judgments necessary to prevent the use or employment by Defendants, along with Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants, of any practice which constitutes unfair competition, as proved at trial;

3. Pursuant to Business and Professions Code section 17535, that the Court make such orders or judgments necessary to restore to any person in interest any money or property which may have been acquired by means of any practice declared to be unlawful under Business and Professions Code section 17500 et seq., as proved at trial;

4. Pursuant to Business and Professions Code section 17203, that the Court enter all orders or judgments as may be necessary to restore to any person in interest any money or other property which may have acquired by means of unfair competition, as proved at trial;

5. Pursuant to Business and Professions Code section 17536, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17500 et seq., as proved at trial;

6. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17200, as proved at trial;

7. Pursuant to Business and Professions Code section 17206.1, subdivision (a), that the Court assess, in addition to any penalties assessed under Business and Professions Code sections 17206 and 17536, a civil penalty of two thousand five hundred dollars (\$2,500) against

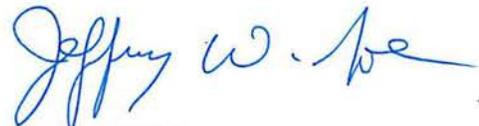
1 Defendants for each violation of Business and Professions Code section 17200 perpetrated  
2 against senior citizens or disabled persons, as proved at trial; and

3 8. For such other and further relief that the Court deems just and proper.  
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5 Dated: March 12, 2021

Respectfully Submitted,

6 CYNTHIA J. ZIMMER  
7 District Attorney, County of Kern

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9 JEFFREY W. NOE  
10 Deputy District Attorney  
11 *Attorneys for Plaintiff, the People of the*  
12 *State of California*

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