

1 James R. Gillen, P.C.
A Professional Law Corporation
2 State Bar No. 68137
4300 Promenade Way, Suite 118
3 Marina del Rey, California 90292-6279
(310) 827-2001
4 Fax (310) 827-4293

5 Attorney for Plaintiffs
ADELE FRANZ, MELISSA FRANZ and GINA MARTENSON
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES, NORTHWEST – VAN NUYS**

9 ADELE FRANZ, an individual; MELISSA)
FRANZ, an individual; and GINA)
10 MARTENSON, an individual,)

11 Plaintiff,)

12 v.)

13 MOTION PICTURE & TELEVISION)
FUND, a business entity, form unknown;)
14 SAEED HUMAYUN, M.D., an individual;)
15 JOAN CAREY, R.N., an individual; and)
DOES 1 through 100, inclusive,)

16 Defendants.)
17)
18)

CASE NO.: LC076641

**PLAINTIFF’S THIRD AMENDED
COMPLAINT FOR DAMAGES:**

1. **Professional Negligence;**
2. **Willful Misconduct;**
3. **Elder Abuse [*California Welfare & Institutions Code §15600, et seq.*];**
4. **Intentional Infliction of Emotional Distress;**
5. **Fraud (Negligent Misrepresentation);**
6. **Negligent Infliction of Emotional Distress (by Plaintiffs MELISSA FRANZ and GINA FRANZ)**

JURY TRIAL DEMANDED

19 COMES NOW Plaintiffs ADELE FRANZ, MELISSA FRANZ and GINA MARTENSON and
20 allege against Defendants MOTION PICTURE & TELEVISION FUND, a business entity, form
21 unknown; SAEED HUMAYUN, M.D., an individual, JOAN CAREY, R.N., an individual, and each of
22 them, as follows:

23 **GENERAL ALLEGATIONS**

- 24 1. Plaintiff ADELE FRANZ is an individual residing in New Mexico.
- 25 2. Plaintiff MELISSA FRANZ is an individual residing in New Mexico.
- 26 3. Plaintiff GINA MARTENSON is an individual residing in New Mexico.
- 27 4. Defendant MOTION PICTURE & TELEVISION FUND is a business entity, form unknown,
- 28

1 which is allegedly licensed or unlicensed by the State of California as a residential care facility,
2 long-term care facility, nursing home facility and/or a skilled nursing facility, and which is
3 located and doing business in Los Angeles County, California, at 23388 Mulholland Drive
4 Woodland Hills, CA 91364-2792.

5 5. Defendant SAEED HUMAYUN, M.D., is an individual, business form unknown, who is
6 allegedly licensed by the State of California to practice medicine, and who is located and doing
7 business in Los Angeles County, California. At all times during which the incidents alleged
8 herein took place, Defendant HUMAYUN was either an employee or agent of Defendant
9 MOTION PICTURE & TELEVISION FUND and/or DOES 1 through 100, and each of them,
10 and/or was otherwise responsible for the medical care and treatment of Plaintiff ADELE FRANZ
11 in his capacity as a medical doctor.

12 6. Defendant JOAN CAREY, R.N., is an individual, business form unknown, who is allegedly
13 licensed by the State of California as a Registered Nurse, and who is located and doing business
14 in Los Angeles County, California. At all times during which the incidents alleged herein took
15 place, Defendant CAREY was either an employee or agent of Defendant MOTION PICTURE
16 & TELEVISION FUND and/or DOES 1 through 100, and each of them, in the capacity of
17 Patient Care Services Manager, and/or was otherwise responsible for the medical care and
18 treatment of Plaintiff ADELE FRANZ in CAREY'S capacity as either a Registered Nurse or
19 Patient Care Services Manager, or both.

20 7. Plaintiffs are presently unaware of the true names and capacities of the Defendants sued herein
21 as DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
22 Plaintiffs will amend this Complaint to allege their true names and capacities when the same
23 have been ascertained.

24 8. Plaintiffs are informed and believe and thereupon allege that each of the Defendants designated
25 herein as a DOE is legally responsible in some manner for the events and happenings referred
26 to herein which proximately caused injury to Plaintiffs as hereinafter alleged.

27 9. At all times herein mentioned, each of the Defendants named herein, including those Defendants
28 designed as DOES," was the agent, partner, joint venturer, servant, employee or employer of

1 each of the other Defendants, and was at all times mentioned herein acting within the course and
2 scope of such agency, partnership, joint venture, servitude and/or employment and each other,
3 and Defendants advised, encouraged, ratified, condoned, directed and commanded the conduct
4 herein complained of each and every other Defendant.

5 10. Plaintiffs use of the term "DEFENDANTS" herein shall be deemed to refer to Defendants
6 MOTION PICTURE & TELEVISION FUND, SAEED HUMAYUN, M.D., JOAN CAREY,
7 R.N, and DOES 1 through 100, inclusive, and each of them.

8 11. Pursuant to *California Code of Civil Procedure* §364, et seq, on August 22, 2006, Plaintiff
9 ADELE FRANZ served upon Defendants MOTION PICTURE & TELEVISION FUND, a
10 business entity, form unknown; SAEED HUMAYUN, M.D., an individual, and JOAN CAREY,
11 R.N., an individual, herein a Ninety (90) Notice of Intent to Sue, which served as formal notice
12 regarding Plaintiff's intention to commence certain causes of action contained within the herein
13 action.

14 12. The acts alleged in this Complaint occurred at Defendant MOTION PICTURE & TELEVISION
15 FUND, located in Los Angeles County, California, at 23388 Mulholland Drive Woodland Hills,
16 CA 91364-2792.

17 FACTUAL ALLEGATIONS

18 13. Plaintiff ADELE FRANZ was formerly a resident of Defendant MOTION PICTURE &
19 TELEVISION FUND [hereinafter "FUND"], including DOES 1 through 100, and each them,
20 located at 23388 Mulholland Drive, Woodland Hills, California 91364-2792.

21 14. Attached hereto as **Exhibit 1**, are true and correct copies of the California Standard Admission
22 Agreement for Skilled Nursing Facilities and Intermediate Care Facilities; Resident Bill of
23 Rights, including Attachments; Patient Rights; and Conditions of Admission Acute, which
24 Plaintiff ADELE FRANZ was required to enter into with Defendant FUND, and DOES 1-100,
25 each time during her residency at the FUND when she was readmitted to the FUND subsequent
26 to a trip to the hospital, which documents constitute the AGREEMENT entered into between
27 these parties.

28 15. Plaintiff ADELE FRANZ was admitted to the FUND on or about July 8, 2003, at which time she

1 was 85 years old, pursuant to the AGREEMENT, wherein DEFENDANTS promised Plaintiffs
2 they would provide Plaintiff ADELE FRANZ with such care as her condition reasonably
3 required. At that time, Plaintiff ADELE FRANZ was suffering from Osteoporosis; Osteoarthritis
4 with degenerative joint disease; Open reduction internal fixation right hip (May 2003); and T11
5 compression fracture, all of which were documented and otherwise well-known to
6 DEFENDANTS.

7 16. Following their acceptance of Plaintiff ADELE FRANZ as a patient, DEFENDANTS were under
8 a continuing duty both under the common law of California and by the terms of said admission
9 AGREEMENT and other related documents to exercise reasonable care in its treatment of
10 Plaintiff ADELE FRANZ in light of her known conditions.

11 17. Plaintiff ADELE FRANZ at all times performed all the stipulations, conditions and agreements
12 stated in the written admission AGREEMENT and other related documents to be performed by
13 her, at the time and manner stated, including tendering of payments to DEFENDANTS in
14 consideration for the care to be provided under the AGREEMENT.

15 18. At the time the injuries were sustained that are hereinafter complained of, including those that
16 occurred on or about December 25, 2005, Plaintiff ADELE FRANZ resided in Room #175 East.
17 As Plaintiff ADELE FRANZ was a resident and patient, DEFENDANTS were responsible for
18 her healthcare and well-being, especially in light of the fact that Plaintiff ADELE FRANZ
19 suffered from Osteoporosis; Osteoarthritis with degenerative joint disease; Open reduction
20 internal fixation right hip (May 2003); and T11 compression fracture, all of which were
21 documented in the medical records of the FUND, dated July 23, 2004.

22 19. Said medical records of the FUND also document that Plaintiff ADELE FRANZ had sustained
23 falls while under the care of DEFENDANTS and/or was at risk for falls. For example, on
24 November 29, 2003, Plaintiff ADELE FRANZ fell out of her wheelchair, which was noted in
25 FUND medical records, dated November 30, 2003, by Defendant SAEED HUMAYUN, M.D.
26 [hereinafter "HUMAYUN"].

27 20. On January 15, 2004, a "fall precautions" notation was made in Plaintiff ADELE FRANZ'
28 Physical Therapy Evaluation. Further, DEFENDANTS had been informed and, in fact, had

1 documented Plaintiff ADELE FRANZ' falls that occurred prior to her admission, which had
2 taken place on or about May of 2003 and June of 2003, as well as falls occurring throughout
3 2004, subsequent to her admission at the FUND, in the FUND'S medical records, dated July 23,
4 2004.

5 21. Furthermore, eleven (11) months prior to the final, devastating fall suffered by Plaintiff ADELE
6 FRANZ, the DEFENDANTS specifically noted, on February 2, 2005, the following in its
7 medical records: "The patient [Plaintiff ADELE FRANZ] has had several falls in the last week,
8 two within the last week, two within the last 24 hours. These appear to happen when she
9 attempts to get herself out of bed."

10 22. Then, on or about December 25, 2005 and December 26, 2005, between the hours of 11:30 p.m.
11 and 12:30 a.m., DEFENDANTS and DEFENDANTS' staff, including DOES 1 through 100, and
12 each of them, in violation of DEFENDANTS' duty to exercise reasonable care toward Plaintiff
13 ADELE FRANZ, left her unattended and unrestrained in her bed, specifically, DEFENDANTS
14 failed to raise the bed rails. During said time, Plaintiff ADELE FRANZ fell from her bed onto
15 the floor and broke both of her femurs. Notably, Plaintiff could not have fallen from her bed had
16 she been properly restrained due to her known fall risk when attempting to exit bed, and in
17 accordance with DEFENDANTS' documentation regarding same.

18 23. Upon falling from her bed, Plaintiff ADELE FRANZ was unable to move and in a completely
19 helpless state, so she was forced to lie there in her own excrement for a significant duration of
20 time before she was found by DEFENDANTS' staff, including DOES 1 through 100, and each
21 them. Plaintiff ADELE FRANZ "saw stars" when she fell, and even though she was able to ring
22 for assistance, DEFENDANTS failed to immediately respond, or to otherwise respond within
23 a reasonably timely manner.

24 24. Subsequent to Plaintiff ADELE FRANZ' fall, a physician was not summoned to aid Plaintiff
25 ADELE FRANZ, as DEFENDANTS wrongly determined that Plaintiff ADELE FRANZ was
26 not hurt. Notably, the fact that a physician was not requested to come examine Plaintiff ADELE
27 FRANZ is noted in DEFENDANTS' medical records, dated December 27, 2005.

28 25. Despite Plaintiff ADELE FRANZ' history and symptoms, DEFENDANTS failed to obtain any

1 medical assistance for Plaintiff ADELE FRANZ, and thereby failed to properly diagnose and
2 administer treatment, when, in fact, Plaintiff ADELE FRANZ had sustained two broken femurs.
3 Rather, Plaintiff ADELE FRANZ was given Tylenol by DEFENDANTS. In fact, the
4 DEFENDANTS did not provide Plaintiff ADELE FRANZ with any pain medication until ten
5 (10) hours after her fall.

6 26. Furthermore, DEFENDANTS failed to contact Plaintiff ADELE FRANZ' daughters, Plaintiffs
7 MELISSA FRANZ and/or GINA MARTENSON, both of whom only learned of the incident
8 when they independently telephoned DEFENDANTS. The fact that Plaintiffs MELISSA
9 FRANZ and GINA MARTENSON were not notified regarding their mother's fall is documented
10 by Defendant HUMAYUN in DEFENDANTS' medical records, dated December 27, 2005.

11 27. Importantly, DEFENDANTS were charged with creating, then being aware of, Plaintiff ADELE
12 FRANZ' care plan, which plan included appropriate interventions to ensure Plaintiff ADELE
13 FRANZ did not fall out of bed during the night by ensuring the bed rails were up, the bed
14 lowered, and otherwise attending to and assisting her, since Plaintiff's known physical condition
15 required such actions. In fact, Plaintiff ADELE FRANZ' family, which included Plaintiffs
16 MELISSA FRANZ and GINA MARTENSON, had insisted that all bed rails, including the side
17 rails, be raised at night. Additionally, the bed was to be lowered at night, so that if Plaintiff
18 ADELE FRANZ did fall out of bed, she would fall only a short distance, which is documented
19 in DEFENDANTS' medical records, dated February 2, 2005.

20 28. However, DEFENDANTS failed to create or adhere to Plaintiff ADELE FRANZ' care plan in
21 ensuring these interventions were in place on December 25, 2005, and thereby deviated from the
22 standard of care and breached their duty to Plaintiff ADELE FRANZ, resulting in Plaintiff
23 ADELE FRANZ falling and physically injuring herself, in addition to suffering emotional
24 distress at being forced to lay in her excrement and not receiving immediate assistance.

25 29. DEFENDANTS further deviated from the standard of care and breached their duty to Plaintiff
26 ADELE FRANZ, when they failed to properly observe her condition following the fall of
27 December 25, 2005, so as to determine if further medication attention was necessary; in that, the
28 regularity with which pain medication was being administered, coupled with swelling in

1 Plaintiffs' legs, should have alerted DEFENDANTS' attending staff to the need for immediate
2 medical attention.

3 30. After Plaintiff ADELE FRANZ' fall, it was again noted by DEFENDANTS, on December 27,
4 2005, that Plaintiff ADELE FRANZ had previously been documented to be non-ambulatory,
5 with chronic malnutrition and known osteoporosis, thus making Plaintiff ADELE FRANZ a fall
6 risk.

7 31. The injuries sustained during the evening of December 25, 2005, thereafter caused Plaintiff
8 ADELE FRANZ to be forced to wear very uncomfortable bi-lateral leg braces, as noted in
9 DEFENDANTS' medical records, dated February 13, 2006, and also caused her to endure
10 significant knee and leg pain, as noted in DEFENDANTS' medical records, dated December 26,
11 2005.

12 32. In addition, and as a further result of the injuries sustained during the evening of December 25,
13 2005, Plaintiff ADELE FRANZ had to undergo a Tendonectomy. This incident also caused
14 Plaintiff ADELE FRANZ to suffer pain, as well as exacerbation of Dementia, Insomnia,
15 Depression, and emotional distress.

16 33. Notably, the immediate cause of Plaintiff ADELE FRANZ' injuries was due to a condition under
17 the DEFENDANTS' control and/or resulting from the DEFENDANTS' agency.

18 34. Plaintiff ADELE FRANZ alleges that DEFENDANTS have a history of inadequate care,
19 inadequate staffing and a failure to follow and implement physician orders and care plans. In
20 fact, Plaintiff ADELE FRANZ had, prior to December 25, 2005, fallen out of bed several times;
21 such that, DEFENDANTS were aware of Plaintiff ADELE FRANZ' history. In addition,
22 Plaintiff ADELE FRANZ' daughters, Plaintiffs MELISSA FRANZ and GINA MARTENSON,
23 had previously found Plaintiff ADELE FRANZ on the floor, when DEFENDANTS had failed
24 to strap Plaintiff ADELE FRANZ into her wheelchair, which was a known and specific part of
25 Plaintiff ADELE FRANZ' care plan and intervention requirement. Further, Plaintiff ADELE
26 FRANZ' daughters, Plaintiffs MELISSA FRANZ and GINA MARTENSON, also had found
27 Plaintiff ADELE FRANZ alone in the bathroom on the toilet, which was also contrary to
28 Plaintiff ADELE FRANZ' care plan and intervention requirements.

- 1 35. On numerous occasions, Plaintiffs MELISSA FRANZ and GINA MARTENSON notified
2 DEFENDANTS of DEFENDANTS' acts and omissions that were violative of Plaintiff ADELE
3 FRANZ' care plan and intervention requirements.
- 4 36. DEFENDANTS' actions further damaged Plaintiff ADELE FRANZ; in that, due to the injuries
5 sustained by DEFENDANTS' wrongful conduct, Plaintiff ADELE FRANZ, who was supposed
6 to be moved to New Mexico in order to be near her daughters, Plaintiffs MELISSA FRANZ and
7 GINA MARTENSON, at the beginning of 2006, was forced to stay at the FUND, and as a result,
8 lost her reserved bed at the New Mexico facility, because she could not thereafter be moved for
9 twelve (12) weeks due to injuries sustained on or about December 25, 2005.
- 10 37. DEFENDANTS' negligent or reckless care is further demonstrated by the manner in which
11 Plaintiff ADELE FRANZ was catheterized upon discharge from the FUND on or about April
12 5, 2006. In fact, the rough and negligent or reckless manner in which Plaintiff ADELE FRANZ
13 was catheterized at said time caused her to experience a severe and life-threatening case of
14 Septicemia approximately five (5) days after she arrived in New Mexico.
- 15 38. Plaintiffs allege that DEFENDANTS failed to use reasonable care in furnishing Plaintiff ADELE
16 FRANZ the care, attention and protection reasonably required by her known physical condition
17 and failed to use reasonable care in selecting a competent staff and/or periodically reviewing the
18 competency of its staff, which staff included Defendants HUMAYEN and CAREY, as well as
19 DOES 1 through 100, and each them. Such that, DEFENDANTS' failure to exercise reasonable
20 care leading up to and resulting in the incident of December 25, 2005 caused and culminated in
21 Plaintiff ADELE FRANZ' physical harm and disability. Furthermore, DEFENDANTS were in
22 the best position to evaluate the competence of physicians and other staff, in order to allow said
23 staff, in its discretion, to practice and perform both medical and non-medical treatment and
24 services within its premises. Thus, DEFENDANTS negligently, carelessly and tortiously
25 screened the competency of its physicians and other staff, including HUMAYEN and CAREY,
26 as well as DOES 1 through 100, and each of them, which was a necessity in order to ensure the
27 adequacy of care rendered to Plaintiff ADELE FRANZ at its facilities, all of which culminated
28 in the negligent, improper, inadequate, below standard, care rendered to Plaintiff ADELE

1 FRANZ during her residency at the FUND through and including to her discharge, which
2 occurred on or about March 31, 2006.

3 39. DEFENDANTS who treated Plaintiff ADELE FRANZ at any time during her residency, and
4 specifically including the period December 25, 2005 to December 26, 2005, whose names are
5 unknown to Plaintiff, but known to DEFENDANTS, also negligently or recklessly failed to
6 properly diagnose, treat, perform surgical procedures, provide medical care and provide non-
7 medical, routine care on Plaintiff ADELE FRANZ, including, but not limited to, deviations from
8 the standard of care, failure to diagnose, and failure to follow established protocols and standards
9 in the medical and non-medical, routine care and treatment of Plaintiff ADELE FRANZ, all
10 which caused and culminated in Plaintiff ADELE FRANZ' physical harm and disability while
11 she was in the exclusive care, management and control of the DEFENDANTS.

12 40. DEFENDANTS accepted and admitted Plaintiff ADELE FRANZ to the FUND on or about July
13 8, 2003 as a resident/patient, and thereby agreed to provide care to Plaintiff ADELE FRANZ.
14 Attached hereto as **Exhibit 1**, are true and correct copies of the California Standard Admission
15 Agreement for Skilled Nursing Facilities and Intermediate Care Facilities; Resident Bill of
16 Rights, including Attachments; Patient Rights; and Conditions of Admission Acute, which
17 Plaintiff ADELE FRANZ was required to enter into with Defendant FUND, and DOES 1-100,
18 each time during her residency at the FUND when she was readmitted to the FUND subsequent
19 to a trip to the hospital, which documents constitute the AGREEMENT entered into between
20 these parties.

21 41. At all times while Plaintiff ADELE FRANZ was a resident/patient of DEFENDANTS and in
22 their care and custody, she was an "elder," pursuant to *California Welfare & Institutions Code*
23 §15610.27, which fact was, at all relevant times, known to said DEFENDANTS.

24 42. In addition, DEFENDANTS, who are, and/or are employed by or agents of, a residential care
25 facility, long-term care facility, nursing home facility and/or licensed skilled nursing facility,
26 violated certain regulations, including, but not limited to those referred to in previous and
27 subsequent paragraphs, as well as *California Code of Regulations*, Title 22.

28 43. Specifically, and in addition to the acts and omissions of DEFENDANTS as contained in the

1 preceding paragraphs, DEFENDANTS failed, pursuant to 22 *California Code of Regulations*,
2 including but not limited to, the following Sections, 72301(f)(g), 72303(b)(7), 72307(b),
3 72311(a)(1)(2)(3)(b), 72313(a)(c), 72315(a)(b)(e)(f)(g)(7)(k)(l), 72319(b), 72501(e), regulatory
4 Patients' Bill of Rights, commencing with 72527, et al., 72543, 72545, 72547, and regulatory
5 Patients' Bill of Rights, commencing with 73523, to do the following:

- 6 a. follow, implement and adhere to their own policies and procedures;
- 7 b. follow, implement and adhere to physicians' orders;
- 8 c. follow, implement and adhere to Plaintiff ADELE FRANZ' care plan;
- 9 d. follow and adhere to government rules, regulations, standards and/or laws;
- 10 e. accurately monitor Plaintiff ADELE FRANZ' in light of her care plan;
- 11 f. monitor and record Plaintiff ADELE FRANZ' condition and report meaningful changes
12 to the attending physician;
- 13 g. maintain accurate records of Plaintiff ADELE FRANZ' condition and activity;
- 14 h. accurately attend to or restrain Plaintiff ADELE FRANZ, especially at night while she
15 was in bed;
- 16 i. note and properly react to the emergency condition DEFENDANTS created on or about
17 December 25, 2005, when Plaintiff ADELE FRANZ fell out of bed;
- 18 j. treat Plaintiff ADELE FRANZ as an individual with respect and without abuse;
- 19 k. maintain nursing and other staffing at levels adequate to meet the needs of Plaintiff
20 ADELE FRANZ.

21 44. Further, protection of a resident/patient, such as Plaintiff ADELE FRANZ, from the risk of
22 falling and suffering injuries is included within said *California Code of Regulations*' general
23 purpose of protecting the residents'/patients' health and safety. Since Plaintiff ADELE FRANZ
24 suffered injuries from falling out of bed due to DEFENDANTS' failure to ensure the bed rails
25 were raised and the bed was lowered, which was a known risk for Plaintiff, her injuries resulted
26 from an occurrence of the nature that the *California Code of Regulations*, including Title 22,
27 were designed to prevent.

28 45. *California Code of Regulations*, including Title 22, is applicable to residential care facilities,

1 long-term care facilities, nursing home facilities and/or licensed skilled nursing facilities and
2 define those facilities' duties of care owed to their residents/patients, such as Plaintiff ADELE
3 FRANZ, and therefore define duties of care applicable to Elder Abuse of those residents. Said
4 *California Code of Regulations* Title section includes numerous, specific examples of what
5 constitutes neglect in the treatment and care of residents/patients of residential care facilities,
6 long-term care facilities, nursing home facilities and/or licensed skilled nursing facilities.

7 46. Hence, DEFENDANTS were required by law to monitor the health and well-being of Plaintiff
8 ADELE FRANZ; to inform certain persons of changes in her condition, and to determine
9 whether DEFENDANTS would be able to continue to care for her in the event of any changes,
10 among other things. The obligations imposed on DEFENDANT were obviously designed to
11 prevent Plaintiff's mental and physical problems from going unnoticed and untreated, so that
12 harm to her could be avoided.

13 47. Plaintiff ADELE FRANZ was a member of the class of persons designed to be protected by said
14 *California Code of Regulations* Title section, which was designed to protect residents/patients,
15 such as Plaintiff ADELE FRANZ, of residential care facilities, long-term care facilities, nursing
16 home facilities and/or licensed skilled nursing facilities for the elderly from, among other things,
17 the harm such as experienced by Plaintiff. Plaintiff's harm resulted from an occurrence of the
18 nature which the *California Code of Regulations* was designed to prevent. By accepting and
19 admitting Plaintiff ADELE FRANZ as a resident/patient at its care facility, DEFENDANTS
20 agreed, for her benefit, to abide by said *California Code of Regulations*, and thus, they had the
21 duty to exercise the care called for in said *California Code of Regulations*.

22 48. DEFENDANTS' breach of their duty of care and their statutory violations as alleged were a
23 substantial factor in causing Plaintiff ADELE FRANZ' injuries and damages; and
24 DEFENDANTS' breach of those duties of care constituted the negligent failure to exercise that
25 degree of care that a reasonable person in a like position would exercise.

26 49. DEFENDANTS' violations of said *California Code of Regulations* were the direct and
27 proximate cause of Plaintiff ADELE FRANZ' damages. Pursuant to *California Evidence Code*
28 §669, DEFENDANTS are thus presumed to be negligent.

1 50. Further, all damages herein-above listed were reasonably foreseeable consequences of the
2 statutory violations and of the AGREEMENT by and between DEFENDANTS and Plaintiff
3 ADELE FRANZ, including pain and suffering, as same promises to provide for the personal
4 comfort of Plaintiff ADELE FRANZ, which DEFENDANTS failed to do

5 51. Further, DEFENDANTS, who are, and/or are employed by or agents of, a residential care
6 facility, long-term care facility, nursing home facility and/or licensed skilled nursing facility,
7 violated certain statutes, including, but not limited to those referred to in previous and
8 subsequent paragraphs, as well as *California Health & Safety Code* §1599, et al. (statutory
9 Patients' Bill of Rights).

10 52. Specifically, and in addition to the acts and omissions of DEFENDANTS as contained in the
11 preceding paragraphs, DEFENDANTS failed to adhere to the statutory Patients' Bill of Rights,
12 as provided in *California Health & Safety Code*, commencing with Section 1599, including:

- 13 a. employ an adequate number of qualified personnel to carry out functions of the facility;
- 14 b. maintain a nurses' call system in operating order in all nursing units and provide visible
15 and audible signal communication between nursing personnel and patients.

16 53. Further, protection of a resident/patient, such as Plaintiff ADELE FRANZ, from the risk of
17 falling and suffering injuries is included within the general purpose of *California Health &*
18 *Safety Code*, commencing with Section 1599, to protect the residents'/patients' health and safety.
19 Since Plaintiff ADELE FRANZ suffered injuries from falling out of bed due to DEFENDANTS'
20 failure to ensure the bed rails were raised and the bed lowered, which was a known risk for
21 Plaintiff, her injuries resulted from an occurrence of the nature that *California Health & Safety*
22 *Code*, Section 1599, et al., was designed to prevent.

23 54. *California Health & Safety Code* Section 1599, et al., is applicable to residential care facilities,
24 long-term care facilities, nursing home facilities and/or licensed skilled nursing facilities and
25 defines those facilities' duties of care owed to their residents/patients, such as Plaintiff ADELE
26 FRANZ, and therefore defines duties of care applicable to avoid Elder Abuse of those residents.
27 Said *California Health & Safety Code* Sections include numerous, specific examples of what
28 constitutes neglect in the treatment and care of residents/patients of residential care facilities,

1 long-term care facilities, nursing home facilities and/or licensed skilled nursing facilities.
2 55. Hence, DEFENDANTS were required by law to monitor the health and well-being of Plaintiff
3 ADELE FRANZ; to employ an adequate number of qualified personnel to carry out all of the
4 functions of the facility; and to maintain a nurses' call system in operating order in all nursing
5 units and provide visible and audible signal communication between nursing personnel and
6 patients, among other things. The obligations imposed on DEFENDANT were obviously
7 designed to prevent Plaintiff's mental and physical problems from going unnoticed and
8 untreated, so that harm to her could be avoided.

9 56. Plaintiff ADELE FRANZ was a member of the class of persons designed to be protected by said
10 *California Health & Safety Code* Section 1599, et al., which was designed to protect
11 residents/patients, such as Plaintiff ADELE FRANZ, of is applicable to residential care facilities,
12 long-term care facilities, nursing home facilities and/or licensed skilled nursing facilities for the
13 elderly from, among other things, the harm such as experienced by Plaintiff. Plaintiff's harm
14 resulted from an occurrence of the nature which the *California Health & Safety Code* was
15 designed to prevent. By accepting and admitting Plaintiff ADELE FRANZ as a resident/patient
16 at its care facility, DEFENDANTS agreed, for her benefit, to abide by said *California Health &*
17 *Safety Code*, and thus, they had the duty to exercise the care called for in said *California Health*
18 *& Safety Code*.

19 57. Plaintiffs allege that DEFENDANTS failed to use reasonable care in furnishing Plaintiff ADELE
20 FRANZ the care, attention and protection reasonably required by her known physical condition
21 and failed to use reasonable care in selecting a competent staff and/or periodically reviewing the
22 competency of its staff, which staff included Defendants HUMAYEN and CAREY, as well as
23 DOES 1 through 100, and each them. Such that, DEFENDANTS' failure to exercise reasonable
24 care leading up to and resulting in the incident of December 25, 2005 caused and culminated in
25 Plaintiff ADELE FRANZ' physical harm and disability. Furthermore, DEFENDANTS were in
26 the best position to evaluate the competence of physicians and other staff, in order to allow said
27 staff, in its discretion, to practice and perform both medical and non-medical treatment and
28 services within its premises. Thus, DEFENDANTS negligently, carelessly and tortiously

1 screened the competency of its physicians and other staff, including HUMAYEN and CAREY,
2 as well as DOES 1 through 100, and each of them, which was a necessity in order to ensure the
3 adequacy of care rendered to Plaintiff ADELE FRANZ at its facilities, all of which culminated
4 in the negligent, improper, inadequate, below standard, care rendered to Plaintiff ADELE
5 FRANZ during her residency at the FUND through and including to her discharge, which
6 occurred on or about March 31, 2006.

7 58. Plaintiff fully performed any and all conditions and obligations required of her by virtue of the
8 AGREEMENT (including **Exhibit 1**); albeit Defendant FUND and DOES 1-100, failed to
9 perform according to the terms of the AGREEMENT, which reiterated, in many respects, the
10 Statutory Patients' Bill of Rights of *California Health & Safety Code* §1599, et al., as well as 22
11 *California Code of Regulations*, cited above. For example, Defendant FUND and DOES 1-100
12 failed to provide, including but not necessarily limited to, the following, as required of them via
13 the AGREEMENT:

- 14 a. "Considerate and respectful care, and to be made comfortable" [**Exhibit 1**, Residents'
15 Bill of Rights, No. 1 and Patient Rights, No. 1.];
- 16 b. "Appropriate assessment and management of your pain" [**Exhibit 1**, Residents' Bill
17 of Rights, No. 9. and Patient Rights, No. 9.];
- 18 c. "Receive care in a safe setting" [**Exhibit 1**, Residents' Bill of Rights, No. 13 and
19 Patient Rights, No. 13];
- 20 d. "Reasonable continuity of care" [**Exhibit 1**, Residents' Bill of Rights, No. 15 and
21 Patient Rights, No. 15.]; and
- 22 e. proper maintenance of, and response to the "patient's bedside [] signal system."
23 [**Exhibit 1**, Conditions of Admission Acute ¶3.]

24 59. DEFENDANTS' breach of their duty of care, their statutory violations as alleged and their
25 reckless acts and omissions were a substantial factor in causing Plaintiff ADELE FRANZ'
26 injuries and damages; and DEFENDANTS' breach of those duties of care constituted a failure
27 to exercise that degree of care that a reasonable person in a like position would exercise.

28 60. DEFENDANTS' violations of said *California Health & Safety Code* Sections were the direct

1 and proximate cause of Plaintiff ADELE FRANZ' damages. Pursuant to *California Evidence*
2 *Code* §669, DEFENDANTS are thus presumed to be negligent.

3 61. Further, all damages herein-above listed were reasonably foreseeable consequences of the
4 violation of the Statutory Patients' Bill of Rights and of the AGREEMENT by and between
5 DEFENDANTS and Plaintiff ADELE FRANZ, including pain and suffering, as same promises
6 to provide for the personal comfort of Plaintiff ADELE FRANZ, which DEFENDANTS failed
7 to do.

8 **FIRST CAUSE OF ACTION**

9 **(Professional Negligence As Against All DEFENDANTS and DOES 1 - 100 by Plaintiff**
10 **ADELE FRANZ)**

11 62. Plaintiffs incorporate each and every allegation set forth in the prior and subsequent paragraphs
12 with the same force and effect as though more fully set forth at length herein.

13 63. At the time the injuries were sustained that are hereinafter complained of, that is, on or about
14 December 25, 2005, Plaintiff ADELE FRANZ resided in Room #175 East. As Plaintiff ADELE
15 FRANZ was a resident and patient, DEFENDANTS were responsible for her healthcare and
16 well-being, especially in light of the fact that Plaintiff ADELE FRANZ suffered from
17 Osteoporosis; Osteoarthritis with degenerative joint disease; Open reduction internal fixation
18 right hip (May 2003); and T11 compression fracture, all of which were documented in the
19 medical records of the FUND, dated July 23, 2004.

20 64. Said medical records of the FUND also document that Plaintiff ADELE FRANZ had sustained
21 falls while under the care of DEFENDANTS and/or was at risk for falls. For example, on
22 November 29, 2003, Plaintiff ADELE FRANZ fell out of her wheelchair, which was noted in
23 FUND medical records, dated November 30, 2003, by Defendant SAEED HUMAYUN, M.D.
24 [hereinafter "HUMAYUN"].

25 65. On January 15, 2004, a "fall precautions" notation was made in Plaintiff ADELE FRANZ'
26 Physical Therapy Evaluation. Further, DEFENDANTS had been informed and, in fact, had
27 documented Plaintiff ADELE FRANZ' falls that occurred prior to her admission, which had
28 taken place on or about May of 2003 and June of 2003, as well as falls occurring throughout

1 2004, subsequent to her admission at the FUND, in the FUND'S medical records, dated July 23,
2 2004.

3 66. Furthermore, eleven (11) months prior to the final, devastating fall suffered by Plaintiff ADELE
4 FRANZ, the DEFENDANTS specifically noted, on February 2, 2005, the following in its
5 medical records: "The patient [Plaintiff ADELE FRANZ] has had several falls in the last week,
6 two within the last week, two within the last 24 hours. These appear to happen when she
7 attempts to get herself out of bed."

8 67. Then, on or about December 25, 2005 and December 26, 2005, between the hours of 11:30 p.m.
9 and 12:30 a.m., DEFENDANTS and DEFENDANTS' staff, including DOES 1 through 100, and
10 each of them, in violation of DEFENDANTS' duty to exercise reasonable care toward Plaintiff
11 ADELE FRANZ, left her unattended and unrestrained in her bed, specifically, DEFENDANTS
12 failed to raise the bed rails. During said time, Plaintiff ADELE FRANZ fell from her bed onto
13 the floor and broke both of her femurs. Notably, Plaintiff could not have fallen from her bed had
14 she been properly restrained due to her known fall risk when attempting to exit bed, and in
15 accordance with DEFENDANTS' documentation regarding same.

16 68. Upon falling from her bed, Plaintiff ADELE FRANZ was unable to move and in a completely
17 helpless state, so she was forced to lie there in her own excrement for a significant duration of
18 time before she was found by DEFENDANTS' staff, including DOES 1 through 100, and each
19 them. Plaintiff ADELE FRANZ "saw stars" when she fell, and even though she was able to ring
20 for assistance, DEFENDANTS failed to immediately respond, or to otherwise respond within
21 a reasonably timely manner.

22 69. Subsequent to Plaintiff ADELE FRANZ' fall, a physician was not summoned to aid Plaintiff
23 ADELE FRANZ, as DEFENDANTS wrongly determined that Plaintiff ADELE FRANZ was
24 not hurt. Notably, the fact that a physician was not requested to come examine Plaintiff ADELE
25 FRANZ is noted in DEFENDANTS' medical records, dated December 27, 2005.

26 70. Despite Plaintiff ADELE FRANZ' history and symptoms, DEFENDANTS failed to obtain any
27 medical assistance for Plaintiff ADELE FRANZ, and thereby failed to properly diagnose and
28 administer treatment, when, in fact, Plaintiff ADELE FRANZ had sustained two broken femurs.

1 Rather, Plaintiff ADELE FRANZ was given Tylenol by DEFENDANTS. In fact, the
2 DEFENDANTS did not provide Plaintiff ADELE FRANZ with any pain medication until ten
3 (10) hours after her fall.

4 71. Furthermore, DEFENDANTS failed to contact Plaintiff ADELE FRANZ' daughters, Plaintiffs
5 MELISSA FRANZ and/or GINA MARTENSON, both of whom only learned of the incident
6 when they independently telephoned DEFENDANTS. The fact that Plaintiffs MELISSA
7 FRANZ and GINA MARTENSON were not notified regarding their mother's fall is documented
8 by Defendant HUMAYUN in DEFENDANTS' medical records, dated December 27, 2005.

9 72. Importantly, DEFENDANTS were charged with being aware of Plaintiff ADELE FRANZ' care
10 plan, which plan included appropriate interventions to ensure Plaintiff ADELE FRANZ did not
11 fall out of bed during the night by ensuring the bed rails were up at night, the bed lowered, and
12 otherwise attending to and assisting her, since Plaintiff's known physical condition required such
13 actions. In fact, Plaintiff ADELE FRANZ' family, which included Plaintiffs MELISSA FRANZ
14 and GINA MARTENSON, had insisted that all bed rails, including the side rails, be raised at
15 night. Additionally, the bed was to be lowered at night, so that if Plaintiff ADELE FRANZ did
16 fall out of bed, she would fall only a short distance, which is documented in DEFENDANTS'
17 medical records, dated February 2, 2005.

18 73. However, DEFENDANTS failed to adhere to Plaintiff ADELE FRANZ' care plan in ensuring
19 these interventions were in place the evening of December 25, 2005, and thereby deviated from
20 the standard of care and breached their duty to Plaintiff ADELE FRANZ, resulting in Plaintiff
21 ADELE FRANZ falling and physically injuring herself, in addition to suffering emotional
22 distress at being forced to lay in her excrement and not receiving immediate assistance.

23 74. DEFENDANTS further deviated from the standard of care and breached their duty to Plaintiff
24 ADELE FRANZ, when they failed to properly observe her condition following the fall of
25 December 25, 2005, so as to determine if further medication attention was necessary; in that, the
26 regularity with which pain medication was being administered, coupled with swelling in
27 Plaintiffs' legs, should have alerted DEFENDANTS' attending staff to the need for immediate
28 medical attention.

- 1 75. After Plaintiff ADELE FRANZ' fall, it was again noted by DEFENDANTS, on December 27,
2 2005, that Plaintiff ADELE FRANZ had previously been documented to be non-ambulatory,
3 with chronic malnutrition and known osteoporosis, thus making Plaintiff ADELE FRANZ a fall
4 risk.
- 5 76. The injuries sustained during the evening of December 25, 2005, thereafter caused Plaintiff
6 ADELE FRANZ to be forced to wear very uncomfortable bi-lateral leg braces, as noted in
7 DEFENDANTS' medical records, dated February 13, 2006, and also caused her to endure
8 significant knee and leg pain, as noted in DEFENDANTS' medical records, dated December 26,
9 2005.
- 10 77. In addition, and as a further result of the injuries sustained during the evening of December 25,
11 2005, Plaintiff ADELE FRANZ had to undergo a Tendonectomy. This incident also caused
12 Plaintiff ADELE FRANZ to suffer pain, as well as exacerbation of Dementia, Insomnia,
13 Depression, and emotional distress.
- 14 78. Notably, the immediate cause of Plaintiff ADELE FRANZ' injuries was due to a condition under
15 the DEFENDANTS' control and/or resulting from the DEFENDANTS' agency.
- 16 79. Plaintiff ADELE FRANZ alleges that DEFENDANTS have a history of inadequate care,
17 inadequate staffing and a failure to follow and implement physician orders and care plans. In
18 fact, Plaintiff ADELE FRANZ had, prior to December 25, 2005, fallen out of bed several times;
19 such that, DEFENDANTS were aware of Plaintiff ADELE FRANZ' history. In addition,
20 Plaintiff ADELE FRANZ' daughters, Plaintiffs MELISSA FRANZ and GINA MARTENSON,
21 had previously found Plaintiff ADELE FRANZ on the floor, when DEFENDANTS had failed
22 to strap Plaintiff ADELE FRANZ into her wheelchair, which was a known and specific part of
23 Plaintiff ADELE FRANZ' care plan and intervention requirement. Further, Plaintiff ADELE
24 FRANZ' daughters, Plaintiffs MELISSA FRANZ and GINA MARTENSON, also had found
25 Plaintiff ADELE FRANZ alone in the bathroom on the toilet, which was also contrary to
26 Plaintiff ADELE FRANZ' care plan and intervention requirements.
- 27 80. On numerous occasions, Plaintiffs MELISSA FRANZ and GINA MARTENSON notified
28 DEFENDANTS of DEFENDANTS' acts and omissions that were violative of Plaintiff ADELE

1 FRANZ' care plan and intervention requirements.

2 81. DEFENDANTS' actions further damaged Plaintiff ADELE FRANZ; in that, due to the injuries
3 sustained by DEFENDANTS' wrongful conduct, Plaintiff ADELE FRANZ, who was supposed
4 to be moved to New Mexico in order to be near her daughters, Plaintiffs MELISSA FRANZ and
5 GINA MARTENSON, at the beginning of 2006, was forced to stay at the FUND, and as a result,
6 lost her reserved bed at the New Mexico facility, because she could not thereafter be moved for
7 twelve (12) weeks due to injuries sustained on or about December 25, 2005.

8 **SECOND CAUSE OF ACTION**

9 **(Willful Misconduct As Against All DEFENDANTS and DOES 1 - 100 by Plaintiff ADELE
10 FRANZ)**

11 82. Plaintiffs incorporate each and every allegation set forth in the prior and subsequent paragraphs
12 with the same force and effect as though more fully set forth at length herein.

13 83. Because Plaintiff ADELE FRANZ was a resident/patient of DEFENDANTS, including DOES
14 1-100, they had a duty to provide Plaintiff with reasonable continuity of care and comfort,
15 including medical care and treatment, in a safe setting. In addition, DEFENDANTS, including
16 DOES 1-100, also had specific duties, pursuant to government regulations, which were expressly
17 designed for the benefit of residents/patients such as Plaintiff ADELE FRANZ. Plaintiff has
18 specifically stated and alleged herein above and below those duties of DEFENDANTS, including
19 DOES 1-100.

20 84. During the period of her residence at the FUND, and specifically on or about December 25,
21 2005, and the period following, DEFENDANTS, including DOES 1-100, breached their duty
22 to Plaintiff ADELE FRANZ. These breaches were intentional and in reckless disregard for the
23 probability that severe injury would result from their failure to carefully adhere to their duties.
24 DEFENDANTS, including DOES 1-100, knew or should have known that there was a
25 probability that injury would result from the failure to adhere to their duties. In particular, and
26 without limiting the generality of the foregoing, DEFENDANTS, including DOES 1-100, and
27 each of them intentionally, consciously failed, and with deliberate indifference to Plaintiff
28 ADELE FRANZ' health and safety, to do all those things herein above and below alleged.

1 85. As more fully described in the preceding paragraphs, DEFENDANTS made note of several fall
2 incidents involving Plaintiff ADELE FRANZ during her residency at the FUND, including falls
3 from her bed. Notwithstanding, DEFENDANTS, including DOES 1-100 and/or other persons
4 failed to use appropriate restraints, including proper utilization of bed rails, and/or left Plaintiff
5 ADELE FRANZ inappropriately unattended, despite the fact that Plaintiff was a known and
6 documented fall risk. At all times mentioned, DEFENDANTS, including DOES 1-100, knew
7 of the need for the herein-mentioned regulations and laws and knew that the lives and health of
8 their residents/patients were at risk whenever they failed to meet such duties. DEFENDANTS,
9 including DOES 1-100, knew that its routine and repeated failure to comply with such duties
10 would likely result in injuries to their residents/patients, including Plaintiff ADELE FRANZ.
11 In breaching their duties to Plaintiff ADELE FRANZ, DEFENDANTS, including DOES 1-100,
12 acted intentionally in conscious failure to avoid the perils to their residents/patients, including
13 Plaintiff ADELE FRANZ, all according to their plan of maintaining patient care expenses at
14 inadequate levels, thereby increasing the profitability of DEFENDANTS', including DOES 1-
15 100s', business operation. In doing so, DEFENDANTS, including DOES 1-100, breached
16 certain other duties that require DEFENDANTS, including and DOES 1-100, to devote their
17 resources to the care and treatment of residents/patients like Plaintiff ADELE FRANZ; to
18 maintain adequate staffing levels; and to not devote resources to maintaining or attaining profit
19 goals.

20 86. The breach of duty, as set forth above, was the legal result of the motive and plan set forth
21 herein, and DEFENDANTS including DOES 1-100, thereby have acted with malice and
22 oppression.

23 87. To the extent that the herein alleged willful acts and omissions were committed by
24 DEFENDANTS' employees and/or agents, it is herein alleged that Defendant FUND had
25 advance knowledge of the unfitness of Defendants DOES 1-100 and/or other persons, who were
26 acting as their employees and/or agents providing care for Plaintiff ADELE FRANZ, yet
27 Defendant FUND employed or otherwise contracted with said persons with a conscious disregard
28 of the rights or safety of others; and/or Defendant FUND learned of the acts and omissions of

1 Defendants DOES 1-100 and/or other persons, yet approved, authorized and/or ratified that
2 wrongful conduct; and/or Defendant FUND itself committed said acts of oppression, fraud or
3 malice by way of an officer, director or managing agent of the corporation, including, but not
4 limited to, Defendants HUMAYEN and CAREY.

5 88. In committing the acts alleged in this Complaint, DEFENDANTS, including and DOES 1 - 100,
6 acted recklessly and were grossly negligent. The conduct of DEFENDANTS, including and
7 DOES 1 - 100, was also despicable, oppressive and malicious, and was violative of *California*
8 *Penal Code* §368(b), since all DEFENDANTS knew or should reasonably have known that
9 Plaintiff ADELE FRANZ was/is an elder, and since DEFENDANTS:

- 10 a. Under circumstances or conditions likely to produce great bodily harm or death, willfully
11 caused or permitted Plaintiff ADELE FRANZ to suffer, or inflicted unjustifiable physical
12 pain or mental suffering upon her; or
13 b. Having the care or custody of Plaintiff ADELE FRANZ, willfully caused or permitted
14 her to be injured, or willfully caused or permitted her to be placed in a situation that
15 endangered her person or her health.

16 89. ***California Code of Civil Procedure §425.13 does not apply to the herein claim, since the***
17 ***gravaman of this specific Cause of Action is the California Elder Abuse and Dependent***
18 ***Adult Civil Protection Act (EADACPA); that is, California Welfare & Institutions Code***
19 ***§15600, et seq., and not the professional negligence of a health care provider, pursuant to***
20 ***Country Villa Claremont Healthcare Ctr., Inc. v. Superior Court, 120 Cal.App.4th 426, 15***
21 ***Cal.Rptr.3d 315 (2004).***

22 90. By virtue of the foregoing acts and omissions as alleged herein above and below,
23 DEFENDANTS, including and DOES 1 - 100, have violated *California Penal Code* §368, which
24 is a felony or a misdemeanor.

25 **THIRD CAUSE OF ACTION**

26 **(Elder Abuse [*California Welfare & Institutions Code* §15600, et seq.] As Against All**
27 **DEFENDANTS and DOES 1-100 by Plaintiff ADELE FRANZ)**

28 91. Plaintiffs incorporate each and every allegation set forth in the prior and subsequent paragraphs

1 with the same force and effect as though more fully set forth at length herein.

2 92. The herein-above stated conduct by DEFENDANTS, including DOES 1-100, was in violation
3 of the *California Elder Abuse and Dependent Adult Civil Protection Act (EADACPA)*; that is,
4 *California Welfare & Institutions Code* §15600, et seq. Specifically, DEFENDANTS, including
5 DOES 1-100, failed to ensure, among other things, that Plaintiff ADELE FRANZ was, among
6 other things, 1) free from mental and physical abuse; 2) free from chemical restraints; and 3)
7 treated with consideration, dignity and respect.

8 93. Plaintiff ADELE FRANZ was and is an “elder” within the meaning of *California Welfare &*
9 *Institutions Code* §15610.07, and was abused by DEFENDANTS, including DOES 1-100,
10 pursuant to that Statute, when said DEFENDANTS, including DOES 1-100, caused the
11 “deprivation by a custodian of goods or services that are necessary to avoid physical harm or
12 mental suffering.”

13 94. The purpose of the *California Elder Abuse Act* is to protect a particularly vulnerable portion of
14 the population, of which Plaintiff ADELE FRANZ was a member throughout the time the herein
15 alleged acts and omissions on the part of DEFENDANTS took place, from mistreatment in the
16 form of abuse and custodial neglect.

17 95. Neglect within the meaning of the *California Elder Abuse Act*, that is, *California Welfare and*
18 *Institutions Code* §15610.57, is the failure of those responsible for attending to the basic needs
19 and comforts of elderly or dependent adults, regardless of their professional standing, to carry
20 out their custodial obligations.

21 96. DEFENDANTS violated *California Welfare and Institutions Code* §15610.57, since they were
22 responsible for the care and custody of Plaintiff ADELE FRANZ, but failed to exercise that
23 degree of care that a reasonable person in a like position would exercise. Specifically, and in
24 addition to the acts and omissions herein alleged, DEFENDANTS, including DOES 1-100,
25 failed to protect Plaintiff ADELE FRANZ from health and safety hazards by not ensuring that
26 her bed rails were raised, so as to prevent her from falling out of her bed, which was a known,
27 documented risk for Plaintiff ADELE FRANZ. In addition, DEFENDANTS, including DOES
28 1-100, thereafter failed to provide medical care for the physical and mental health needs of

1 Plaintiff ADELE FRANZ that occurred as a result of her fall out of bed that occurred on or about
2 December 25, 2005 through December 26, 2005. As a result, Plaintiff was forced to lie in her
3 own excrement for an unreasonable period of time; received inadequate pain medication in light
4 of having broken two femurs in the December 25, 2005 incident; and did not receive appropriate
5 medical treatment in a reasonably timely manner given the severity of her injuries.

6 97. By virtue of the herein-above described acts and omissions, DEFENDANTS, including DOES
7 1-100, who were Plaintiff's care custodians, abused Plaintiff ADELE FRANZ, when they
8 neglected her and otherwise deprived her of goods or services that were necessary to avoid
9 physical harm or mental suffering.

10 98. By virtue of the herein-above described acts and omissions, DEFENDANTS, including DOES
11 1-100, acted with recklessness, oppression, fraud, and/or malice in the commission of this abuse
12 within the meaning of *California Welfare and Institutions Code* §15657.

13 99. DEFENDANTS had advance knowledge of the unfitness of Defendants DOES 1-100 and/or
14 other persons, who were acting as their employees and/or agents providing care for Plaintiff
15 ADELE FRANZ, yet DEFENDANTS employed or otherwise contacted with said persons with
16 a conscious disregard of the rights or safety of others; and/or DEFENDANTS learned of the acts
17 and omissions of Defendants DOES 1-100 and/or other persons, yet approved, authorized and/or
18 ratified that wrongful conduct; and/or DEFENDANTS itself committed said acts of oppression,
19 fraud or malice by way of an officer, director or managing agent of the corporation, including,
20 but not limited to, Defendants HUMAYEN and CAREY.

21 100. **By virtue of the herein-above described acts and omissions, DEFENDANTS, including**
22 **DOES 1-100, acted with recklessness, oppression, fraud, and/or malice in the commission**
23 **of this abuse within the meaning of *California Civil Code* §3294, and Plaintiff ADELE**
24 **FRANZ is thereby entitled to recover punitive damages and treble punitive damages under**
25 ***California Civil Code* §3345.**

26 101. **Specifically, pursuant to *California Civil Code* §3345(b)(1), Plaintiff ADELE FRANZ**
27 **alleges that DEFENDANTS, including DOES 1-100, knew or should have known that their**
28 **conduct was directed to a senior citizen, that is, Plaintiff ADELE FRANZ. Further,**

1 pursuant to *California Civil Code* §3345(b)(3), Plaintiff ADELE FRANZ alleges that a
2 senior citizen residing at MOTION PICTURE & TELEVISION FUND, specifically,
3 ADELE FRANZ, was substantially more vulnerable than other members of the public to
4 said DEFENDANTS' conduct because of age, poor health or infirmity, impaired
5 understanding, restricted mobility or disability, and that ADELE FRANZ actually suffered
6 substantial physical and emotional damage resulting from said DEFENDANTS' conduct.
7 An affirmative finding in regard to either of these factors permits the imposition of
8 punitive and treble damages, according to *California Civil Code* §3345.

9 102. *California Code of Civil Procedure* §425.13 does not apply to the herein claim, since the
10 gravaman of this specific Cause of Action is the *California Elder Abuse and Dependent*
11 *Adult Civil Protection Act (EADACPA)*; that is, *California Welfare & Institutions Code*
12 *§15600, et seq.*, and not the professional negligence of a health care provider, pursuant to
13 *Country Villa Claremont Healthcare Ctr., Inc. v. Superior Court*, 120 Cal.App.4th 426, 15
14 Cal.Rptr.3d 315 (2004).

15 103. As a result of the alleged acts and omissions, Plaintiff ADELE FRANZ incurred damages for
16 pain and suffering.

17 104. The conduct of DEFENDANTS, including DOES 1-100, as alleged, is part of a general business
18 practice at the FUND. This practice exists, in part, because DEFENDANTS, including DOES
19 1-100, expect that few adverse consequences will flow from their mistreatment of their elderly
20 and vulnerable clientele, and because DEFENDANTS, including DOES 1-100, make a
21 considered decision to promote profit at the expense of their legal obligations to the FUND'S
22 residents/patients, which included Plaintiff ADELE FRANZ, as herein above alleged.

23 105. This practice constitutes an unfair and fraudulent business practice within the meaning of
24 *California Business and Professions Code* §17200, et seq.

25 **FOURTH CAUSE OF ACTION**

26 **(Intentional Infliction of Emotional Distress As Against All DEFENDANTS and DOES 1 - 100**
27 **by Plaintiff ADELE FRANZ)**

28 106. Plaintiffs incorporate each and every allegation set forth in the prior and subsequent paragraphs

- 1 with the same force and effect as though more fully set forth at length herein.
- 2 107. The conduct of DEFENDANTS and DOES 1-100 was outrageous; in that, Plaintiff ADELE
3 FRANZ was forced to endure great pain, mental anguish, humiliation, feelings of helplessness
4 and desperation. She was neglected and without care or attention, without assistance in getting
5 out of bed, and left to lie in her own excrement.
- 6 108. During this time, especially on or about December 25, 2005 and the period thereafter, Plaintiff
7 ADELE FRANZ' cries for help, which included ringing for assistance, prompted no response
8 from DEFENDANTS and DOES 1-100 for an unreasonable amount of time, since said
9 DEFENDANTS and DOES 1-100 had allocated inadequate resources to provide proper staffing
10 to care for Plaintiff ADELE FRANZ. Accordingly, DEFENDANTS and DOES 1-100 were
11 unwilling and unable to react to Plaintiff ADELE FRANZ' complaints.
- 12 109. The acts and omissions of DEFENDANTS and DOES 1-100 were committed with a reckless
13 disregard of the probability of causing emotional distress to Plaintiff ADELE FRANZ.
- 14 110. ***California Code of Civil Procedure §425.13 does not apply to the herein claim, since the***
15 ***gravaman of this specific Cause of Action is the California Elder Abuse and Dependent***
16 ***Adult Civil Protection Act (EADACPA); that is, California Welfare & Institutions Code***
17 ***§15600, et seq., and not the professional negligence of a health care provider, pursuant to***
18 ***Country Villa Claremont Healthcare Ctr., Inc. v. Superior Court, 120 Cal.App.4th 426, 15***
19 ***Cal.Rptr.3d 315 (2004).***
- 20 111. As a direct and proximate result of the acts and omissions of DEFENDANTS and DOES 1-100,
21 Plaintiff ADELE FRANZ suffered severe and extreme emotional distress, including anxiety;
22 diminished mental capacity; frustration at being completely immobilized and permanently
23 compromised due to the two broken femurs sustained in the fall from bed that occurred the
24 evening of December 25, 2005; depression due to her deteriorating physical condition brought
25 on by the seriousness of broken femurs in elders; shame; humiliation; and embarrassment. The
26 nature of the severe and extreme emotional distress caused noticeable and distinguishable
27 changes in Plaintiff ADELE FRANZ which continue to this day.

28 ///

FIFTH CAUSE OF ACTION

(Fraud (Negligent Misrepresentation) As Against All DEFENDANTS and DOES 1 - 100 By Plaintiff ADELE FRANZ)

112. Plaintiffs incorporate each and every allegation set forth in the prior and subsequent paragraphs with the same force and effect as though more fully set forth at length herein.

113. When Plaintiff ADELE FRANZ was admitted to the FUND, Defendant FUND and DOES 1 - 100 had assigned employees and/or agents to conduct intake interviews with prospective residents/patients and their families. On or about July 8, 2003, Naomi Rada, among others, who were authorized to act on behalf of the FUND, represented orally and in writing to Plaintiffs that during the convalescence of Plaintiff ADELE FRANZ, Defendant FUND would be alert to Plaintiff ADELE FRANZ' medical, physical, mental and emotional requirements and that she would be provided with care that met legal standards, and suggested as fact that she would be properly cared for, and further made all the representations included in **Exhibit 1**, California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities; Resident Bill of Rights, including Attachments; Patient Rights; and Conditions of Admission Acute. Further, Defendant FUND and DOES 1-100 must necessarily possess full information concerning the facts of the controversy.

114. During the course of Plaintiff ADELE FRANZ' residency at the FUND, Defendant FUND and DOES 1-100, by through their authorized employees and/or agents, Defendant JOAN CAREY, R.N. and Norine Jameson, LVN, among others, represented orally to Plaintiffs that Defendant FUND and DOES 1-100 would comply with Plaintiffs' request and the custodial necessity to ensure the bed rails were up at night to prevent Plaintiff ADELE FRANZ from falling. These representations occurred on or about November 29, 2003, January 15, 2004, July 23, 2004 and February 2, 2005, among other times, as well. Further, Defendant FUND and DOES 1-100 must necessarily possess full information concerning the facts of the controversy.

115. These representations were made at the direction of, and as a direct response to, instructions Defendant FUND had given directly, or that others, including their authorized employees and agents had given. Further, Defendant JOAN CAREY, R.N., Norine Jameson, LVN and Naomi

1 Rada, among others, were authorized and instructed to make such statements as were made to
2 Plaintiffs by Defendant FUND'S corporate officers, directors and/or managing agents, who
3 authorized, ratified and/or approved the representations, which were false and known, or
4 reasonably should have been known, by Defendant FUND and said third parties to be false when
5 made, or the representations were made recklessly and without regard for their truth. Said
6 representations were further made without a reasonable basis for believing them to be true.

7 116. These representations and suggestions were made and intended for the purpose of inducing
8 reliance by Plaintiff ADELE FRANZ so she would become, then remain, a resident/patient at
9 the FUND, so that Defendant FUND and DOES 1-100 could earn fees paid by or on behalf of
10 Plaintiff ADELE FRANZ for her care that purportedly complied with the legal standards
11 therefore.

12 117. Plaintiffs reasonably relied on these representations on the assumption that they were true and,
13 accordingly, Plaintiff ADELE FRANZ became, then remained, a resident/patient at FUND, to
14 her detriment. Plaintiff's reliance was a substantial factor in causing her harm.

15 118. ***California Code of Civil Procedure §425.13 does not apply to the herein claim, since the***
16 ***gravaman of this specific Cause of Action is the California Elder Abuse and Dependent***
17 ***Adult Civil Protection Act (EADACPA); that is, California Welfare & Institutions Code***
18 ***§15600, et seq., and not the professional negligence of a health care provider, pursuant to***
19 ***Country Villa Claremont Healthcare Ctr., Inc. v. Superior Court, 120 Cal.App.4th 426, 15***
20 ***Cal.Rptr.3d 315 (2004).***

21 119. As a direct and proximate result of the representation as alleged, Plaintiff ADELE FRANZ has
22 been damaged as alleged.

23 120. By virtue of the foregoing, Defendant FUND and DOES 1-100 have acted with malice, fraud and
24 oppression by way of the conduct of their officers, directors or managing agents.

25 **SIXTH CAUSE OF ACTION**

26 **(Negligent Infliction of Emotional Distress As Against All DEFENDANTS and DOES 1-100 By**
27 **Plaintiffs MELISSA FRANZ and GINA MARTENSON)**

28 121. Plaintiffs incorporate each and every allegation set forth in the prior and subsequent paragraphs

- 1 with the same force and effect as though more fully set forth at length herein.
- 2 122. During a period of approximately fifteen (15) months in duration leading up to the removal of
3 their mother, Plaintiff ADELE FRANZ, from the FUND by Plaintiffs MELISSA FRANZ and
4 GINA MARTENSON, DEFENDANTS, including DOES 1-100, engaged in the conduct as
5 alleged herein, with the result that Plaintiff ADELE FRANZ was not properly restrained and/or
6 attended, especially at night, such that she was ultimately seriously injured when she fell out of
7 bed, and thereafter her legs were not properly attended to immediately after her fall, resulting in
8 painful treatment and a permanent condition.
- 9 123. In addition, Plaintiffs MELISSA FRANZ and GINA MARTENSON, had previously found their
10 mother, Plaintiff ADELE FRANZ on the floor, when DEFENDANTS had failed to strap
11 Plaintiff ADELE FRANZ into her wheelchair, which was a known and specific part of Plaintiff
12 ADELE FRANZ' care plan and intervention requirement. Further, Plaintiff ADELE FRANZ'
13 daughters, Plaintiffs MELISSA FRANZ and GINA MARTENSON, also had found Plaintiff
14 ADELE FRANZ alone in the bathroom on the toilet, which was also contrary to Plaintiff
15 ADELE FRANZ' care plan and intervention requirements.
- 16 124. Plaintiffs MELISSA FRANZ and GINA MARTENSON routinely informed and complained to
17 DEFENDANTS, including to Defendant CAREY, and other staff to whom Plaintiff ADELE
18 FRANZ' care had been delegated, regarding DEFENDANTS' acts and omissions that were
19 violative of Plaintiff ADELE FRANZ' care plan and intervention requirements and a breach of
20 Defendants' duty toward Plaintiff ADELE FRANZ.
- 21 125. In each case, Plaintiffs MELISSA FRANZ and GINA MARTENSON were assured that their
22 mother, ADELE FRANZ, would receive proper care and treatment.
- 23 126. Then, on April 5, 2006, when Plaintiff ADELE FRANZ was catheterized upon discharge from
24 the FUND, Plaintiffs MELISSA FRANZ and GINA MARTENSON were present and witnessed
25 the negligent and rough manner in which Plaintiff ADELE FRANZ was catheterized, and were
26 aware that ADELE FRANZ was being injured at the time. The negligence of DEFENDANTS,
27 including DOES 1-100, caused ADELE FRANZ to experience a severe and life-threatening case
28 of Septicemia approximately five (5) days after she arrived in New Mexico.

1 127. The conduct of DEFENDANTS, including DOES 1-100, as alleged, caused Plaintiffs MELISSA
2 FRANZ and GINA MARTENSON to suffer serious emotional distress, and severe mental and
3 physical pain and suffering, all to their damage.

4 128. The conduct of DEFENDANTS, including DOES 1-100, as alleged, was a substantial factor in
5 causing the serious emotional distress suffered by Plaintiffs MELISSA FRANZ and GINA
6 MARTENSON.

7
8 WHEREFORE, Plaintiff prays judgment against DEFENDANTS, including DOES 1-100, and
9 each of them, and the following damages, *according to proof at trial and as permitted by law, including*
10 *the following:*

11 **Cause of Action No. 1**
12 **Professional Negligence:**

- 13 1. For a sum of no less than the jurisdictional amount of unlimited jurisdiction;
- 14 2. For general and special compensatory damages, including incidental and consequential damages,
15 according to proof at trial;
- 16 3. For costs of suit;
- 17 4. For prejudgment interest, according to law;
- 18 5. For such other and further relief as the Court may deem just and proper.

19 **Cause of Action No. 2**
20 **Willful Misconduct:**

- 21 1. For a sum of no less than the jurisdictional amount of unlimited jurisdiction;
- 22 2. For general and special compensatory damages, including incidental and consequential damages,
23 according to proof at trial;
- 24 3. For punitive damages, according to proof;
- 25 4. For costs of suit;
- 26 5. For attorney fees;
- 27 6. For prejudgment interest, according to law;
- 28 7. For such other and further relief as the Court may deem just and proper.

Cause of Action No. 3

1 **Elder Abuse [*California Welfare & Institutions Code §15600, et seq.*]:**

- 2 1. For a sum of no less than the jurisdictional amount of unlimited jurisdiction;
- 3 2. For general and special compensatory damages, including incidental and consequential damages,
- 4 according to proof at trial;
- 5 3. For punitive damages, including treble punitive damages, according to proof;
- 6 4. For costs of suit;
- 7 5. For attorney fees;
- 8 6. For prejudgment interest, according to law;
- 9 7. For such other and further relief as the Court may deem just and proper.

10 **Cause of Action No. 4**
Intentional Infliction of Emotional Distress:

- 11 1. For a sum of no less than the jurisdictional amount of unlimited jurisdiction;
- 12 2. For general and special compensatory damages, including incidental and consequential damages,
- 13 according to proof at trial;
- 14 3. For punitive damages, according to proof;
- 15 4. For costs of suit;
- 16 5. For attorney fees;
- 17 6. For prejudgment interest, according to law;
- 18 7. For such other and further relief as the Court may deem just and proper.

19 **Cause of Action No. 5**
Fraud (Negligent Misrepresentation):

- 20 1. For a sum of no less than the jurisdictional amount of unlimited jurisdiction;
- 21 2. For general and special compensatory damages, including incidental and consequential damages,
- 22 according to proof at trial;
- 23 3. For punitive damages, according to proof;
- 24 4. Reliance damages;
- 25 5. For costs of suit;
- 26 6. For attorney fees;
- 27 7. For prejudgment interest, according to law;
- 28

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

2 **Cause of Action No. 6**
3 **Negligent Infliction of Emotional Distress (by Plaintiffs MELISSA FRANZ and GINA FRANZ:**

- 4 1. For a sum of no less than the jurisdictional amount of unlimited jurisdiction;
- 5 2. For general and special compensatory damages, including incidental and consequential damages,
- 6 according to proof at trial;
- 7 3. For costs of suit;
- 8 4. For attorney fees;
- 9 5. For prejudgment interest, according to law;
- 10 6. For such other and further relief as the Court may deem just and proper.

11 DATED: August 17, 2007

JAMES R. GILLEN
Attorney at Law

13 By _____
14 James R. Gillen
15 Attorney for Plaintiffs
16 ADELE FRANZ, MELISSA FRANZ and
17 GINA MARTENSON

1 PROOF OF SERVICE BY MAIL
2 (C.C.P. Sections 1013a and 2015.5)

3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

6 I am a resident of/employed in the aforesaid county, State of California; I am over the age of
7 eighteen years and not a party to the within action; my business address is 4300 Promenade Way, Suite
8 118, Marina del Rey, California 90292-6279.

9 On August 17, 2007, I served the foregoing **SUMMONS AND PLAINTIFF'S THIRD**
10 **AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action, by placing [X
11] a true copy [] the original thereof, enclosed in a sealed envelope, addressed as follows:

12 George E. Nowotny
13 Donna M. San Agustin
14 Peter C. Connor
15 LEWIS BRISBOI BISGAARD & SMITH, LLP
16 221 North Figueroa Street, Suite 1200
17 Los Angeles, California 90012
18 (213) 250-1800
19 Fax (213) 250-7900

[Attorneys for Defendants MOTION PICTURE & TELEVISION FUND, a business entity, form
unknown; and SAEED HUMAYUN, M.D., an individual]

20 Daniel Kenney, Esq.
21 HARRINGTON, FOXX, DUBROW &
22 CANTER, LLP
23 1055 W. Seventh Street, 29th Floor
24 Los Angeles, California 90017
25 Tel: (213) 489-3222
26 Fax: (213) 623-7929
27 dkenney@hfdclaw.com
28 [Attorneys for Defendant JOAN CAREY, R.N., an individual]

[X] (BY MAIL IN THE ORDINARY COURSE OF BUSINESS) I am readily familiar with the
business' practice for the collection and processing of correspondence for mailing with the United States
Postal Service and the fact that the correspondence would be deposited with the United States Postal
Service that same day in the ordinary course of business; On this date, the above-referenced
correspondence was placed for deposit at 4300 Promenade Way, Suite 118, Marina del Rey, California
and placed for collection and mailing following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that I am employed in the office of a member of the bar of this Court at whose
direction the service was made.

Executed on August 17, 2007, at Marina del Rey, California.

Barbara Sharp