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FILED
Superior Court of California
County of Los Angeles

MAY 08 2017

Sherri R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES -- CENTRAL DISTRICT

13 PATRICIA MELTON,
14
15 Plaintiff,

16 v.

17 CHA HEALTH SYSTEMS, INC. dba Hollywood
18 Presbyterian Medical Center;
19 FAROUGH KERENDI, M.D.;
20 CHA HOLLYWOOD MEDICAL CENTER, L.P.
(formerly Doe 1)
and DOES 2 – 10, inclusive,

21 Defendants.
22
23
24

Case No. BC 601 979
Date Filed: November 20, 2015
Assigned to Hon. Randolph M. Hammock
Dept. 47

SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF:

1. Reckless
2. Fraud – Concealment
3. Fraud – Misrepresentation
4. Battery
5. Intentional Infliction of Emotional Distress
6. Negligent Infliction of Emotional Distress
7. Elder Abuse – Neglect
(Welf. & Inst. Code 15610.57; 15610.63; 15657) [demurrer sustained without leave to amend]
8. Financial Elder Abuse
(Welf. & Inst. Code §§15610.30; 15657.5)
9. Violation of Patient Rights
(Health & Safety Code §1430(b))
10. Unfair Business Practices
(Business & Prof. Code §17200)

1 Comes now, Plaintiff Patricia Melton, who for a Second Amended Complaint for general
2 damages on behalf of Dennis Lipscomb, Decedent, by his successor in interest Patricia Melton, and
3 also for damages by Patricia Melton as an individual. General damages for Decedents are generally
4 prohibited by the provisions of C.C.P. §377.34, but an exception to that general rule is stated in the
5 Elder Abuse Act (Welfare & Institutions Code §15657 and 15657.5). Welfare and Institutions Code
6 §15657 provides in part:

7 **§ 15657. Defendant liable for physical abuse or neglect; attorney's fees and costs;**
8 **limits on damages; punitive damages**

9 Where it is proven by clear and convincing evidence that a defendant is liable for
10 physical abuse as defined in Section 15610.63, or neglect as defined in Section 15610.57,
11 and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the
12 commission of this abuse, the following shall apply, *in addition to all other remedies*
13 *otherwise provided by law:*

14 (a) The court shall award to the plaintiff reasonable attorney's fees and
15 costs. The term "costs" includes, but is not limited to, reasonable fees for the
16 services of a conservator, if any, devoted to the litigation of a claim brought under
17 this article.

18 (b) **The limitations imposed by Section 377.34 of the Code of Civil**
19 **Procedure on the damages recoverable shall not apply.**

20 Likewise, Welfare & Institutions Code §15657.5(b) provides for general damages
21 notwithstanding death of the victim.

22
23 **Preliminary Allegations**

24 1. At the time of the death of Dennis Lipscomb ("Lipscomb") he and Plaintiff Patricia
25 Melton ("Patricia") had been together exclusively for 25 years, and Lipscomb and Patricia married in
26 2003. Plaintiff has or will file an affidavit of successor in interest to Lipscomb per the provisions of
27 C.C.P. §377.32 and thereby qualifies to bring this survival action for injuries to Lipscomb. Patricia
28 also states her own claim for Financial Abuse and for Negligent Infliction of Emotional Distress.

1 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
2 breathing. Lipscomb's MD reached the stage which confined him to a wheelchair for the last two
3 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,
4 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
5 major stroke or similar catastrophic neurological event and was admitted to Defendant's Hollywood
6 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
7 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
8 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.
9 By March 11, 2014. Lipscomb's condition was stabilized and he was transferred from Hollywood
10 Presbyterian Hospital acute facility to its "distinct part" skilled nursing facility referred to hereinafter
11 as the "Chalet."

12 7. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
13 Patricia for instructions as Lipscomb's recognized surrogate decision maker. The question posed by
14 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
15 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
16 few days Lipscomb was retransferred to Chalet and continued a course of general physical
17 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
18 was observed to be able to recognize family and friends, he was now entirely unable perceive his
19 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
20 had no cognitive function as evidenced by the fact that a "psyche evaluation" by a staff
21 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
22 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

23 8. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
24 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
25 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb's attending physician Kerendi
26 that Lipscomb be removed from life support and that his body be allowed to die.

27 9. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
28 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is

1 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
2 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
3 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for
4 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, and although staff at the Chalet
5 and the acute care facility had previously recognized Patricia's power and right to make health care
6 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia's
7 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb's power of
8 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb's
9 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
10 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
11 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
12 (which was not the last page of the power of attorney).

13 10. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
14 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
15 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
16 healthcare, showing Mr. Lipscomb's notarized signature.

17 11. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
18 valid demand that her husband be removed from life support, and instead stated that he would review
19 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
20 department."

21 12. Following the June 1 meeting, there was no communication with Patricia on behalf of
22 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
23 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
24 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
25 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
26 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
27 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
28 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi

1 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
2 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
3 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
4 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
5 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
6 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
7 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
8 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
9 itself pre-textual.

10 13. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi
11 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
12 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
13 Code 4658 ("*attending physician*" to make determination that a patient lacks capacity to make a health
14 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
15 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,
16 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
17 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
18 function, and unable to engage in even the most basic test of cognitive function. This interview and
19 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
20 further action taken with respect to Patricia's demand that life support be removed until one day after
21 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
22 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
23 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
24 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
25 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
26 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
27 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
28 any sort which would have prevented Chalet staff from withdrawing life support. And during this

1 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an “unarousable
2 sleep” or an “induced coma.”

3 14. At all times during Patricia’s visits to her dying husband, Chalet staff arranged for a
4 security guard to be present to oversee and intrude while Patricia grieved, during what should have
5 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
6 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
7 emotional distress stemming from having to seek to enforce her and Lipscomb’s wish to terminate his
8 life.

9 15. The motive for Defendants’ (including Kerendi’s) failure to respond promptly to
10 Patricia’s demand that Lipscomb be taken off life support was purely financial. Lipscomb was
11 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants
12 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
13 rate of approximately \$35,460.00 per month, or more. Only when Medicare benefits had been
14 exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with Patricia’s proper
15 demand. In fact, Defendants miscalculated the sums they would be paid by Medicare for Lipscomb’s
16 care, and having failed to receive payments from Medicare, Patricia as the wife of Lipscomb has
17 allegedly (according to Chalet) incurred a community property debt to Defendants in the sum of
18 \$17,772.30 after credit for payments from Medicare for Lipscomb’s care and treatment. In other
19 words, although the responsibility for payment of Lipscomb’s medical expenses was Lipscomb’s and
20 his estate, bills for his care were sent by Defendants to Patricia as Lipscomb’s wife for payment.

21 16. In his conduct as alleged herein, Kerendi and Does 1 – 20 acted as managing agent for
22 CHA and acted to further CHA’s interest in increasing revenue from Medicare by such conduct as
23 keeping patients alive even when to do so contravenes valid directives from CHA’s patients acting on
24 their own or through surrogate decision makers such as the patient’s next of kin of the patient’s agent
25 pursuant to a durable power of attorney. CHA knew of Kerendi’s conduct and the conduct of Does 1 –
26 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
27 in various ways, ratified said conduct.

28 17. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the

1 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
2 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
3 physical condition was unable to make healthcare decisions on his own.

4 18. Defendants and each of them knew that at all times following his admission to the
5 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
6 durable power of attorney was valid.

7 19. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
8 support, Defendants and each of them initially altered Patricia's form durable power of attorney
9 simply by removing the signature page, and then through one pretext after another, causing a sequence
10 of delays, simply managed to refuse to comply with Patricia's directive.

11 20. As a direct result of the conduct of each defendant, Lipscomb sustained personal injury
12 in a sum according to proof at trial.

13 21. Defendants and each of them knew or should have known that by failing to comply
14 with Lipscomb's directive to disconnect his ventilator, as expressed through his duly appointed agent
15 pursuant to a valid durable power of attorney, and as expressed through is wife, who was his nearest
16 next of kin, said defendants created the danger that Lipscomb would suffer injury, pain and mental
17 distress.

18 22. Said Defendants and each of them knew or should have known that their the danger
19 they created posed the probability of serious injury and harm to Lipscomb, in that he would be kept
20 alive and in pain contrary to his expressed wishes and contrary to his right to control his life during its
21 final stages.

22 23. Said Defendants and each of them knowingly and consciously disregard the said peril
23 and danger for the sake of their own profit.

24 24. Accordingly, Defendants and each of them acted with recklessness, oppression and
25 malice, and an award of statutory damages for Lipscomb's pain and suffering under the Elder Abuse
26 Act (Welfare & Institutions Code §15657) and an assessment of punitive damages in a sum according
27 to proof at trial against each defendant is justified, warranted and appropriate.
28

1 **SECOND CAUSE OF ACTION**

2 (Fraud – concealment v. all health care provider defendants)

3 25. Plaintiff repeats and incorporates the allegations at paragraphs 1 – 4, inclusive.

4 26. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
5 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
6 developed Muscular Dystrophy (“MD”) a severe progressive neurological muscular degenerative
7 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
8 breathing. Lipscomb’s MD reached the stage which confined him to a wheelchair for the last two
9 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,
10 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
11 major stroke or similar catastrophic neurological event and was admitted to Defendant’s Hollywood
12 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
13 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
14 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.
15 By March 11, 2014. Lipscomb’s condition was stabilized and he was transferred from Hollywood
16 Presbyterian Hospital acute facility to its “distinct part” skilled nursing facility referred to hereinafter
17 as the “Chalet.”

18 27. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
19 Patricia for instructions as Lipscomb’s recognized surrogate decision maker. The question posed by
20 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
21 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
22 few days Lipscomb was retransferred to Chalet and continued a course of general physical
23 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
24 was observed to be able to recognize family and friends, he was now entirely unable perceive his
25 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
26 had no cognitive function as evidenced by the fact that a “psyche evaluation” by a staff
27 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
28 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

1 28. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
2 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
3 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb's attending physician Kerendi
4 that Lipscomb be removed from life support and that his body be allowed to die.

5 29. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
6 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
7 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
8 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
9 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for
10 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, and although staff at the Chalet
11 and the acute care facility had previously recognized Patricia's power and right to make health care
12 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia's
13 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb's power of
14 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb's
15 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
16 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
17 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
18 (which was not the last page of the power of attorney).

19 30. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
20 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
21 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
22 healthcare, showing Mr. Lipscomb's notarized signature.

23 31. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
24 valid demand that her husband be removed from life support, and instead stated that he would review
25 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
26 department."

27 32. Following the June 1 meeting, there was no communication with Patricia on behalf of
28 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between

1 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
2 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
3 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
4 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
5 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
6 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
7 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
8 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
9 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
10 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
11 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
12 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
13 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
14 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
15 itself pre-textual.

16 33. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi
17 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
18 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
19 Code 4658 ("attending physician" to make determination that a patient lacks capacity to make a health
20 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
21 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,
22 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
23 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
24 function, and unable to engage in even the most basic test of cognitive function. This interview and
25 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
26 further action taken with respect to Patricia's demand that life support be removed until one day after
27 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
28 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from

1 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
2 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
3 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
4 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
5 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
6 any sort which would have prevented Chalet staff from withdrawing life support. And during this
7 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an "unarousable
8 sleep" or an "induced coma."

9 34. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a
10 security guard to be present to oversee and intrude while Patricia grieved, during what should have
11 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
12 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
13 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
14 life.

15 35. The motive for Defendants' (including Kerendi's) failure to respond promptly to
16 Patricia's demand that Lipscomb be taken off life support was purely financial. Lipscomb was
17 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants
18 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
19 rate of approximately \$35,460.00 per month, or more. Only when Medicare benefits had been
20 exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with Patricia's proper
21 demand. In fact, Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's
22 care, and having failed to receive payments from Medicare, Patricia as the wife of Lipscomb has
23 allegedly (according to Chalet) incurred a community property debt to Defendants in the sum of
24 \$17,772.30 after credit for payments from Medicare for Lipscomb's care and treatment. In other
25 words, although the responsibility for payment of Lipscomb's medical expenses was Lipscomb's and
26 his estate, bills for his care were sent by Defendants to Patricia as Lipscomb's wife for payment.

27 36. In his conduct as alleged herein, Kerendi and Does 1 - 20 acted as managing agent for
28 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as

1 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
2 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
3 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
4 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
5 in various ways, ratified said conduct.

6 37. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
7 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
8 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
9 physical condition was unable to make healthcare decisions on his own.

10 38. Defendants and each of them knew that at all times following his admission to the
11 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
12 durable power of attorney was valid.

13 39. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
14 support, Defendants and each of them initially altered Patricia's form durable power of attorney
15 simply by removing the signature page, and then through one pretext after another, causing a sequence
16 of delays, simply managed to refuse to comply with Patricia's directive.

17 40. As a direct result of the conduct of each defendant, Lipscomb sustained personal injury
18 in a sum according to proof at trial.

19 41. By virtue of their status as health care providers, Defendants CHA, Kerendi and Does 2
20 – 20, and each of them had a fiduciary duty to Lipscomb. This fiduciary duty included the duties, inter
21 alia, of disclosing adverse financial conflicts of interest, and the further duty to disclose to Lipscomb
22 through his agent Patricia, that said defendants were actually acting on their adverse financial conflict
23 of interest when treating, planning, consulting and counseling with Lipscomb and Patricia, who was
24 Lipscomb's agent pursuant to Lipscomb's valid durable power of attorney and as Lipscomb's next of
25 kin. See *McCall v. PacifiCare* (2004) 25 Cal. 4th 412, 426.

26 42. Each said health care defendant breached the aforesaid fiduciary duty of disclosure, and
27 in particular failed to disclose their adverse financial conflict of interest and the fact that they were
28 acting intentionally and dishonestly for their own benefit in service to their own interest and not in

1 accord with their duty at all times to at in Lipscomb's interest.

2 43. Lipscomb was misled by the aforesaid failure of disclosure and as a result, failed to
3 take legal and other action to compel the withdrawal of Lipscomb's ventilator so that he might be
4 allowed to die.

5 44. As a direct result of the conduct of each defendant, Lipscomb sustained personal
6 injury in that for approximately 60 days, Lipscomb's life was maintained artificially against his
7 expressed wishes and causing unnecessary Lipscomb pain, anguish and suffering, in a sum according
8 to proof.

9 45. By virtue of the foregoing, each said defendant has acted with intent to injure Lipscomb
10 and despicably, in conscious disregard of the probability of injury to Lipscomb, and subjected
11 Lipscomb to cruel and unjust hardship.

12 46. By virtue of the foregoing each said defendant has been guilty of oppression, fraud and
13 malice, and an assessment of punitive damages in a sum according to proof at trial is justified and
14 appropriate.

15 **THIRD CAUSE OF ACTION**

16 (Fraud – Misrepresentation v. all defendants)

17 47. Plaintiff repeats and incorporates the allegations at paragraphs 1 – 4, inclusive.

18 48. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
19 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
20 developed Muscular Dystrophy ("MD") a severe progressive neurological muscular degenerative
21 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
22 breathing. Lipscomb's MD reached the stage which confined him to a wheelchair for the last two
23 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,
24 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
25 major stroke or similar catastrophic neurological event and was admitted to Defendant's Hollywood
26 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
27 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
28 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.

1 By March 11, 2014. Lipscomb's condition was stabilized and he was transferred from Hollywood
2 Presbyterian Hospital acute facility to its "distinct part" skilled nursing facility referred to hereinafter
3 as the "Chalet."

4 49. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
5 Patricia for instructions as Lipscomb's recognized surrogate decision maker. The question posed by
6 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
7 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
8 few days Lipscomb was retransferred to Chalet and continued a course of general physical
9 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
10 was observed to be able to recognize family and friends, he was now entirely unable perceive his
11 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
12 had no cognitive function as evidenced by the fact that a "psyche evaluation" by a staff
13 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
14 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

15 50. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
16 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
17 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb's attending physician Kerendi
18 that Lipscomb be removed from life support and that his body be allowed to die.

19 51. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
20 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
21 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
22 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
23 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for
24 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, and although staff at the Chalet
25 and the acute care facility had previously recognized Patricia's power and right to make health care
26 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia's
27 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb's power of
28 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb's

1 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
2 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
3 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
4 (which was not the last page of the power of attorney).

5 52. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
6 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
7 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
8 healthcare, showing Mr. Lipscomb's notarized signature.

9 53. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
10 valid demand that her husband be removed from life support, and instead stated that he would review
11 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
12 department."

13 54. Following the June 1 meeting, there was no communication with Patricia on behalf of
14 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
15 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
16 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
17 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
18 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
19 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
20 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
21 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
22 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
23 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
24 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
25 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
26 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
27 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
28 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was

1 itself pre-textual.

2 55. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi
3 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
4 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
5 Code 4658 ("attending physician" to make determination that a patient lacks capacity to make a health
6 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
7 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,
8 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
9 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
10 function, and unable to engage in even the most basic test of cognitive function. This interview and
11 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
12 further action taken with respect to Patricia's demand that life support be removed until one day after
13 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
14 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
15 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
16 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
17 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
18 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
19 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
20 any sort which would have prevented Chalet staff from withdrawing life support. And during this
21 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an "unarousable
22 sleep" or an "induced coma."

23 56. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a
24 security guard to be present to oversee and intrude while Patricia grieved, during what should have
25 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
26 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
27 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
28 life.

1 57. The motive for Defendants' (including Kerendi's) failure to respond promptly to
2 Patricia's demand that Lipscomb be taken off life support was purely financial. Lipscomb was
3 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants
4 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
5 rate of approximately \$35,460.00 per month, or more. Only when Medicare benefits had been
6 exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with Patricia's proper
7 demand. In fact, Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's
8 care, and having failed to receive payments from Medicare, Patricia as the wife of Lipscomb has
9 allegedly (according to Chalet) incurred a community property debt to Defendants in the sum of
10 \$17,772.30 after credit for payments from Medicare for Lipscomb's care and treatment. In other
11 words, although the responsibility for payment of Lipscomb's medical expenses was Lipscomb's and
12 his estate, bills for his care were sent by Defendants to Patricia as Lipscomb's wife for payment.

13 58. In his conduct as alleged herein, Kerendi and Does 1 – 20 acted as managing agent for
14 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
15 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
16 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
17 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
18 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
19 in various ways, ratified said conduct.

20 59. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
21 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
22 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
23 physical condition was unable to make healthcare decisions on his own.

24 60. Defendants and each of them knew that at all times following his admission to the
25 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
26 durable power of attorney was valid.

27 61. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
28 support, Defendants and each of them initially altered Patricia's form durable power of attorney

1 simply by removing the signature page, and then through one pretext after another, causing a sequence
2 of delays, simply managed to refuse to comply with Patricia's directive.

3 62. As alleged, on each occasion when Patricia sought to have Lipscomb's life support
4 terminated, Kerendi, acting for himself and as agent for CHA, CHA HOLLYWOOD, and Does 2 - 5
5 represented to Patricia that he could not for one or another of a sequence or reasons, comply with her
6 request, beginning with his simple representation that the power of attorney which she had provided to
7 him and Chalet more than a month earlier, and which had previously been observed and found to be
8 valid and effective by other care providers employed by Kerendi, CHA, CHA HOLLYWOOD and
9 Does 2 - 5, was missing a signature page. Patricia relied on the aforementioned representations as
10 true, and as a consequence did not immediately seek legal assistance, nor take any other action to
11 enforce her statement demand that the ventilator be withdrawn from Lipscomb, at the time she first
12 made that demand.

13 63. Defendant's misrepresentations were intentional and designed to deceive Patricia and to
14 prevent the termination of Lipscomb's life until his entitlement to Medicare benefits had been
15 exhausted. The motive for Defendants' failure to respond promptly to Patricia's demand that
16 Lipscomb be taken off life support was financial. Lipscomb was admitted to Chalet after a period of
17 hospitalization lasting more than 3 days. Accordingly, Defendants could expect Medicare authorities
18 to pay Chalet for up to 100 days of subacute care at the Chalet at a rate of approximately \$35,460.00
19 per month, or more. Only when Medicare benefits had been exhausted (i.e., after 100 days) would
20 Kerendi and his co-defendants comply with Patricia's proper demand. In fact, Defendants
21 miscalculated the sums they would be paid by Medicare for Lipscomb's care, and having failed to
22 receive payments from Medicare, Patricia incurred a debt to Defendants in the sum of \$17,772.30 after
23 credit for payments from Medicare for Lipscomb's care and treatment.

24 64. As a direct result of the misrepresentations by Defendants and each of them, Lipscomb
25 sustained personal injury in a sum according to proof at trial.

26 65. By virtue of the foregoing, Defendants and each of them have acted with oppression,
27 fraud and malice, and an assessment of punitive damages in a sum according to proof at trial is
28 justified and appropriate.

1 few days Lipscomb was retransferred to Chalet and continued a course of general physical
2 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
3 was observed to be able to recognize family and friends, he was now entirely unable perceive his
4 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
5 had no cognitive function as evidenced by the fact that a "psyche evaluation" by a staff
6 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
7 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

8 71. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
9 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
10 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb's attending physician Kerendi
11 that Lipscomb be removed from life support and that his body be allowed to die.

12 72. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
13 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
14 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
15 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
16 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for
17 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, and although staff at the Chalet
18 and the acute care facility had previously recognized Patricia's power and right to make health care
19 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia's
20 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb's power of
21 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb's
22 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
23 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
24 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
25 (which was not the last page of the power of attorney).

26 73. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
27 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
28 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for

1 healthcare, showing Mr. Lipscomb's notarized signature.

2 74. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
3 valid demand that her husband be removed from life support, and instead stated that he would review
4 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
5 department."

6 75. Following the June 1 meeting, there was no communication with Patricia on behalf of
7 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
8 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
9 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
10 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
11 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
12 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
13 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
14 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
15 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
16 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
17 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
18 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
19 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
20 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
21 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
22 itself pre-textual.

23 76. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi
24 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
25 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
26 Code 4658 ("attending physician" to make determination that a patient lacks capacity to make a health
27 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
28 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,

1 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
2 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
3 function, and unable to engage in even the most basic test of cognitive function. This interview and
4 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
5 further action taken with respect to Patricia's demand that life support be removed until one day after
6 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
7 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
8 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
9 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
10 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
11 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
12 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
13 any sort which would have prevented Chalet staff from withdrawing life support. And during this
14 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an "unarousable
15 sleep" or an "induced coma."

16 77. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a
17 security guard to be present to oversee and intrude while Patricia grieved, during what should have
18 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
19 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
20 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
21 life.

22 78. The motive for Defendants' (including Kerendi's) failure to respond promptly to
23 Patricia's demand that Lipscomb be taken off life support was purely financial. Lipscomb was
24 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants
25 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
26 rate of approximately \$35,460.00 per month, or more. Only when Medicare benefits had been
27 exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with Patricia's proper
28 demand. In fact, Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's

1 care, and having failed to receive payments from Medicare, Patricia as the wife of Lipscomb has
2 allegedly (according to Chalet) incurred a community property debt to Defendants in the sum of
3 \$17,772.30 after credit for payments from Medicare for Lipscomb's care and treatment. In other
4 words, although the responsibility for payment of Lipscomb's medical expenses was Lipscomb's and
5 his estate, bills for his care were sent by Defendants to Patricia as Lipscomb's wife for payment.

6 79. In his conduct as alleged herein, Kerendi and Does 1 – 20 acted as managing agent for
7 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
8 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
9 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
10 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
11 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
12 in various ways, ratified said conduct.

13 80. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
14 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
15 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
16 physical condition was unable to make healthcare decisions on his own.

17 81. Defendants and each of them knew that at all times following his admission to the
18 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
19 durable power of attorney was valid.

20 82. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
21 support, Defendants and each of them initially altered Patricia's form durable power of attorney
22 simply by removing the signature page, and then through one pretext after another, causing a sequence
23 of delays, simply managed to refuse to comply with Patricia's directive.

24 83. As alleged, on each occasion when Patricia sought to have Lipscomb's life support
25 terminated, Kerendi, acting for himself and as agent for CHA, CHA HOLLYWOOD, and Does 2 – 5
26 represented to Patricia that he could not for one or another of a sequence or reasons, comply with her
27 request, beginning with his simple representation that the power of attorney which she had provided to
28 him and Chalet more than a month earlier, and which had previously been observed and found to be

1 valid and effective by other care providers employed by Kerendi, CHA, CHA HOLLYWOOD and
2 Does 2 – 5, was missing a signature page. Patricia relied on the aforementioned representations as
3 true, and as a consequence did not immediately seek legal assistance, nor take any other action to
4 enforce her statement demand that the ventilator be withdrawn from Lipscomb, at the time she first
5 made that demand.

6 84. At all times following a date prior to June 1, 2014, as the date when Patricia first made
7 a valid demand that life support in the form of a ventilator be withdrawn from Lipscomb, each
8 touching by Defendants and any of them was unpermitted and in contravention of Patricia's
9 instruction and Lipscomb's right to control the time and manner of his medical care. As a result each
10 such touching constituted a battery as a direct result of which, Lipscomb sustained personal injury in a
11 sum according to proof at trial.

12 85. By virtue of the foregoing, each said defendant has acted with intent to injure Lipscomb
13 and despicably, in conscious disregard of the probability of injury to Lipscomb, and subjected
14 Lipscomb to cruel and unjust hardship.

15 86. By virtue of the foregoing each said defendant has been guilty of oppression, fraud and
16 malice; and an assessment of punitive damages in a sum according to proof at trial is justified and
17 appropriate.

18
19 **FIFTH CAUSE OF ACTION**

20 (Intentional Infliction of Emotional Distress

21 v. all defendants)

22 87. Plaintiff repeats and incorporates the allegations at paragraphs 1 – 4, inclusive.

23 88. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
24 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
25 developed Muscular Dystrophy ("MD") a severe progressive neurological muscular degenerative
26 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
27 breathing. Lipscomb's MD reached the stage which confined him to a wheelchair for the last two
28 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,

1 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
2 major stroke or similar catastrophic neurological event and was admitted to Defendant's Hollywood
3 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
4 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
5 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.
6 By March 11, 2014. Lipscomb's condition was stabilized and he was transferred from Hollywood
7 Presbyterian Hospital acute facility to its "distinct part" skilled nursing facility referred to hereinafter
8 as the "Chalet."

9 89. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
10 Patricia for instructions as Lipscomb's recognized surrogate decision maker. The question posed by
11 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
12 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
13 few days Lipscomb was retransferred to Chalet and continued a course of general physical
14 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
15 was observed to be able to recognize family and friends, he was now entirely unable perceive his
16 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
17 had no cognitive function as evidenced by the fact that a "psyche evaluation" by a staff
18 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
19 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

20 90. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
21 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
22 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb's attending physician Kerendi
23 that Lipscomb be removed from life support and that his body be allowed to die.

24 91. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
25 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
26 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
27 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
28 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for

1 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, and although staff at the Chalet
2 and the acute care facility had previously recognized Patricia's power and right to make health care
3 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia's
4 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb's power of
5 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb's
6 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
7 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
8 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
9 (which was not the last page of the power of attorney).

10 92. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
11 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
12 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
13 healthcare, showing Mr. Lipscomb's notarized signature.

14 93. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
15 valid demand that her husband be removed from life support, and instead stated that he would review
16 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
17 department."

18 94. Following the June 1 meeting, there was no communication with Patricia on behalf of
19 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
20 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
21 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
22 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
23 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
24 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
25 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
26 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
27 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
28 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with

1 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
2 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
3 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
4 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
5 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
6 itself pre-textual.

7 95. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi
8 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
9 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
10 Code 4658 ("attending physician" to make determination that a patient lacks capacity to make a health
11 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
12 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,
13 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
14 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
15 function, and unable to engage in even the most basic test of cognitive function. This interview and
16 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
17 further action taken with respect to Patricia's demand that life support be removed until one day after
18 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
19 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
20 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
21 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
22 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
23 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
24 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
25 any sort which would have prevented Chalet staff from withdrawing life support. And during this
26 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an "unarousable
27 sleep" or an "induced coma."

28 96. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a

1 security guard to be present to oversee and intrude while Patricia grieved, during what should have
2 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
3 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
4 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
5 life.

6 97. The motive for Defendants' (including Kerendi's) failure to respond promptly to
7 Patricia's demand that Lipscomb be taken off life support was purely financial. Lipscomb was
8 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants
9 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
10 rate of approximately \$35,460.00 per month, or more. Only when Medicare benefits had been
11 exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with Patricia's proper
12 demand. In fact, Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's
13 care, and having failed to receive payments from Medicare, Patricia as the wife of Lipscomb has
14 allegedly (according to Chalet) incurred a community property debt to Defendants in the sum of
15 \$17,772.30 after credit for payments from Medicare for Lipscomb's care and treatment. In other
16 words, although the responsibility for payment of Lipscomb's medical expenses was Lipscomb's and
17 his estate, bills for his care were sent by Defendants to Patricia as Lipscomb's wife for payment.

18 98. In his conduct as alleged herein, Kerendi and Does 1 – 20 acted as managing agent for
19 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
20 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
21 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
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23 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
24 in various ways, ratified said conduct.

25 99. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
26 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
27 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
28 physical condition was unable to make healthcare decisions on his own.

1 100. Defendants and each of them knew that at all times following his admission to the
2 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
3 durable power of attorney was valid.

4 101. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
5 support, Defendants and each of them initially altered Patricia's form durable power of attorney
6 simply by removing the signature page, and then through one pretext after another, causing a sequence
7 of delays, simply managed to refuse to comply with Patricia's directive.

8 102. As alleged, on each occasion when Patricia sought to have Lipscomb's life support
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10 represented to Patricia that he could not for one or another of a sequence or reasons, comply with her
11 request, beginning with his simple representation that the power of attorney which she had provided to
12 him and Chalet more than a month earlier, and which had previously been observed and found to be
13 valid and effective by other care providers employed by Kerendi, CHA, CHA HOLLYWOOD and
14 Does 2 – 5, was missing a signature page. Patricia relied on the aforementioned representations as
15 true, and as a consequence did not immediately seek legal assistance, nor take any other action to
16 enforce her statement demand that the ventilator be withdrawn from Lipscomb, at the time she first
17 made that demand.

18 103. At all times following a date prior to June 1, 2014, as the date when Patricia first made
19 a valid demand that life support in the form of a ventilator be withdrawn from Lipscomb, each
20 touching by Defendants and any of them was unpermitted and in contravention of Patricia's
21 instruction and Lipscomb's right to control the time and manner of his medical care. As a result
22 during this period of time Lipscomb suffered severe emotional distress, to her general damage in a
23 sum according to proof at trial.

24 104. By virtue of the foregoing, each said defendant has acted with intent to injure Lipscomb
25 and despicably, in conscious disregard of the probability of injury to Lipscomb, and subjected
26 Lipscomb to cruel and unjust hardship.

27 105. By virtue of the foregoing each said defendant has been guilty of oppression, fraud and
28 malice, and an assessment of punitive damages in a sum according to proof at trial is justified and

1 appropriate.

2
3 **SIXTH CAUSE OF ACTION**

4 (Negligent Infliction of Emotional Distress

5 By Patricia as an individual v. all defendants)

6 106. Plaintiff repeats and incorporates the allegations at paragraphs 2 – 4, inclusive.

7 107. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
8 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
9 developed Muscular Dystrophy (“MD”) a severe progressive neurological muscular degenerative
10 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
11 breathing. Lipscomb’s MD reached the stage which confined him to a wheelchair for the last two
12 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,
13 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
14 major stroke or similar catastrophic neurological event and was admitted to Defendant’s Hollywood
15 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
16 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
17 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.
18 By March 11, 2014. Lipscomb’s condition was stabilized and he was transferred from Hollywood
19 Presbyterian Hospital acute facility to its “distinct part” skilled nursing facility referred to hereinafter
20 as the “Chalet.”

21 108. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
22 Patricia for instructions as Lipscomb’s recognized surrogate decision maker. The question posed by
23 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
24 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
25 few days Lipscomb was retransferred to Chalet and continued a course of general physical
26 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
27 was observed to be able to recognize family and friends, he was now entirely unable perceive his
28 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He

1 had no cognitive function as evidenced by the fact that a “psyche evaluation” by a staff
2 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
3 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

4 109. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
5 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
6 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb’s attending physician Kerendi
7 that Lipscomb be removed from life support and that his body be allowed to die. As of the date when
8 Patricia demanded that her husband be removed from life support and that his body be allowed to die,
9 it was foreseeable that the failure to follow Patricia’s instruction would cause emotional distress, and
10 that any interference with her normal grieving process would likewise cause and compound her
11 emotional distress. Then and thereafter, all Defendants including Kerendi had a duty to act reasonably
12 and responsibly in regard to Patricia and her demand that her requests and demands that her husband’s
13 body be removed from life support.

14 110. Said defendants negligently and intentionally disregarded and refused to follow
15 Patricia’s instruction, as set forth above as follows.

16 111. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
17 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
18 presently unsure which) named “Pinky.” The purpose of the meeting was to respond to Patricia’s
19 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
20 Chalet staff and Kerendi with Lipscomb’s a duly executed and valid durable power of attorney for
21 healthcare appointing her as Lipscomb’s agent, at the June 1 meeting, and although staff at the Chalet
22 and the acute care facility had previously recognized Patricia’s power and right to make health care
23 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia’s
24 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb’s power of
25 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb’s
26 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
27 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
28 attorney in the Chalet or Kerendi’s file had apparently been altered by removing the signature page

1 (which was not the last page of the power of attorney).

2 112. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
3 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
4 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
5 healthcare, showing Mr. Lipscomb's notarized signature.

6 113. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
7 valid demand that her husband be removed from life support, and instead stated that he would review
8 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
9 department."

10 114. Following the June 1 meeting, there was no communication with Patricia on behalf of
11 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
12 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
13 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
14 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
15 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
16 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
17 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
18 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
19 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
20 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
21 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
22 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
23 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
24 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
25 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
26 itself pre-textual.

27 115. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi
28 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care

1 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
2 Code 4658 ("attending physician" to make determination that a patient lacks capacity to make a health
3 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
4 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,
5 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
6 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
7 function, and unable to engage in even the most basic test of cognitive function. This interview and
8 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
9 further action taken with respect to Patricia's demand that life support be removed until one day after
10 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
11 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
12 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
13 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
14 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
15 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
16 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
17 any sort which would have prevented Chalet staff from withdrawing life support. And during this
18 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an "unarousable
19 sleep" or an "induced coma."

20 116. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a
21 security guard to be present to oversee and intrude while Patricia grieved, during what should have
22 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
23 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
24 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
25 life.

26 117. The motive for Defendants' (including Kerendi's) failure to respond promptly to
27 Patricia's demand that Lipscomb be taken off life support was purely financial. Lipscomb was
28 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants

1 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
2 rate of approximately \$35,460.00 per month, or more. Only when Medicare benefits had been
3 exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with Patricia's proper
4 demand. In fact, Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's
5 care, and having failed to receive payments from Medicare, Patricia as the wife of Lipscomb has
6 allegedly (according to Chalet) incurred a community property debt to Defendants in the sum of
7 \$17,772.30 after credit for payments from Medicare for Lipscomb's care and treatment. In other
8 words, although the responsibility for payment of Lipscomb's medical expenses was Lipscomb's and
9 his estate, bills for his care were sent by Defendants to Patricia as Lipscomb's wife for payment.

10 118. In his conduct as alleged herein, Kerendi and Does 1 – 20 acted as managing agent for
11 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
12 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
13 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
14 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
15 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
16 in various ways, ratified said conduct.

17 119. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
18 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
19 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
20 physical condition was unable to make healthcare decisions on his own.

21 120. Defendants and each of them knew that at all times following his admission to the
22 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
23 durable power of attorney was valid.

24 121. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
25 support, Defendants and each of them initially altered Patricia's form durable power of attorney
26 simply by removing the signature page, and then through one pretext after another, causing a sequence
27 of delays, simply managed to refuse to comply with Patricia's directive.

28 122. As alleged, on each occasion when Patricia sought to have Lipscomb's life support

1 terminated, Kerendi, acting for himself and as agent for CHA, CHA HOLLYWOOD, and Does 2 – 5
2 represented to Patricia that he could not for one or another of a sequence or reasons, comply with her
3 request, beginning with his simple representation that the power of attorney which she had provided to
4 him and Chalet more than a month earlier, and which had previously been observed and found to be
5 valid and effective by other care providers employed by Kerendi, CHA, CHA HOLLYWOOD and
6 Does 2 – 5, was missing a signature page. Patricia relied on the aforementioned representations as
7 true, and as a consequence did not immediately seek legal assistance, nor take any other action to
8 enforce her statement demand that the ventilator be withdrawn from Lipscomb, at the time she first
9 made that demand.

10 123. As a direct and proximate result of the foregoing each Defendant has negligently and
11 intentionally breached their duty of ordinary care to Patricia, in reckless and conscious disregard of the
12 probability of her injury, and has acted despicably, and subjected Patricia to cruel and unjust hardship.

13 124. By virtue of the foregoing each said defendant has been guilty of oppression, fraud and
14 malice, and an assessment of punitive damages in a sum according to proof at trial is justified and
15 appropriate.

16
17 **SEVENTH CAUSE OF ACTION**

18 (Elder abuse for neglect and physical abuse v. all defendants

19 **The demurrer by CHA Defendants has been sustained**

20 **Without leave to amend as to this cause of action which is**

21 **Now stated only as to CHA defendants' co-defendants)**

22 125. Plaintiff repeats and incorporates the allegations at paragraphs 1 – 4, inclusive.

23 126. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
24 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
25 developed ALS (or "Lou Gehrig's Disease") a severe progressive neurological degenerative disease
26 leads to muscle weakness, then paralysis including paralysis of the muscles which allow for breathing.
27 When disease progression reaches that point, some patients elect to go on a ventilator, and others elect
28 to let the progression of the disease take its course. Lipscomb's ALS reached the stage which

1 confined him to a wheelchair for the last two years of his life. As his disease continued to progress
2 Lipscomb still maintained some quality of life, and was able to enjoy the company of Patricia and
3 friends. In February 2014, however, he suffered a major stroke or similar catastrophic neurological
4 event and was admitted to Defendant's Hollywood Presbyterian Hospital, placed on life support
5 including a ventilator, a g-tube for liquid nutrition, an IV line for necessary medication, and a Foley
6 catheter to drain urine. Mr. Lipscomb was dysfunctional, and made to wear constrictive mittens as he
7 occasionally tried to pull out tubes when left on his own. By March 11, 2014. Lipscomb's condition
8 was stabilized and he was transferred from Hollywood Presbyterian Hospital to Chalet.

9 127. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
10 Patricia who authorized his transfer back to Hollywood Presbyterian Hospital. Within a few days
11 Lipscomb was retransferred to Chalet and continued a course of general deterioration. He was now
12 unable to communicate or to breathe without a ventilator, was confused and unable to make decisions
13 or understand others; he had no quality of life.

14 128. Sometime prior to June 1, 2014, Patricia had demanded of Lipscomb's attending
15 physician Kerendi that Lipscomb be removed from life support and allowed to die.

16 129. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
17 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
18 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
19 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
20 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for
21 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, Kerendi nevertheless stated his
22 refusal to comply with Patricia's demand. During the meeting, when confronted by Patricia with the
23 fact that Lipscomb's power of attorney had been previously furnished to Kerendi, clearly entitling
24 Patricia to direct Lipscomb's healthcare, including the direction to remove life support, Kerendi
25 falsely stated (and knowingly falsely stated) that the power of attorney was invalid because it was
26 unsigned. The form power of attorney in Kerendi's file had apparently been altered by removing the
27 signature page (which was not the last page of the power of attorney).

28 130. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in

1 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
2 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
3 healthcare, showing Mr. Lipscomb's notarized signature.

4 131. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
5 valid demand that her husband be removed from life support, and instead stated that he would review
6 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
7 department."

8 132. Following the June 1 meeting, there was no communication with Patricia on behalf of
9 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
10 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
11 removed from life support. Kerendi did not dispute her or Lipscomb's right to terminate life support,
12 but nevertheless continued to refuse to comply with her valid directive. Instead, for the first time,
13 Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to determine whether
14 Lipscomb was really unable to make decisions for himself. This explanation was pre-textual: Kerendi
15 was easily qualified to make such a determination himself, Kerendi could himself determine that
16 Lipscomb was in a state that prevented Lipscomb from making decisions of any kind, that Kerendi and
17 Chalet nursing staff, including its social workers had long since treated Mr. Lipscomb as unable to
18 meaningfully respond to them or make decisions for himself, and had, with respect to other health care
19 decisions, sought instruction and followed instructions from Patricia. In short, no "psych eval" was
20 necessary in order to comply with Patricia's valid demands regarding her husband as his legal
21 representative. Moreover, even in the absence of a power of attorney, Patricia had the right as
22 Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of life support
23 from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was itself pre-
24 textual.

25 133. A Dr. Kenneth M. Karotkin ("Karotkin") was the psychologist tasked by Kerendi to
26 interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care decisions
27 on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate Code 4658
28 and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of deferring compliance

1 with Patricia's directive to allow her husband to die. After a brief examination, Karotkin reported to
2 Kerendi that Lipscomb's condition was what it appears to everyone else including Kerendi to be:
3 Lipscomb was found to be unable to communicate, confused and unable to make decisions of any
4 kind, secondary to his "cerebral vascular accident" (stroke). This interview and determination was on
5 June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no further action taken
6 with respect to Patricia's demand that life support be removed until one day after Lipscomb's
7 Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was not until
8 the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from Kerendi to
9 start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's ventilator.
10 Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of Patricia's
11 demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally withdraw
12 ventilator support. Lipscomb promptly stopped breathing and died. During the period from July 17
13 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of any sort
14 which would have prevented Chalet staff from withdrawing life support. And during this period
15 Lipscomb was in a state which Chalet staff described to Patricia as an "unarousable sleep" or an
16 "induced coma."

17 134. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a
18 security guard to be present to oversee and intrude while Patricia grieved, during what should have
19 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
20 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
21 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
22 life.

23 135. The motive for Defendants' failure to respond promptly to Patricia's demand that
24 Lipscomb be taken off life support was purely financial. Lipscomb was admitted to Chalet after a
25 period of hospitalization lasting more than 3 days. Accordingly, Defendants could expect Medicare
26 authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a rate of approximately
27 \$35,460.00 per month, or more. Only when Medicare benefits had been exhausted (i.e., after 100
28 days) would Kerendi and his co-defendants comply with Patricia's proper demand. In fact,

1 Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's care, and having
2 failed to receive payments from Medicare, Patricia has allegedly (according to Chalet) incurred a debt
3 to Defendants in the sum of \$17,772.30 after credit for payments from Medicare for Lipscomb's care
4 and treatment.

5 136. In his conduct as alleged herein, Kerendi and Does 2 – 20 acted as managing agent for
6 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
7 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
8 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
9 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
10 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
11 in various ways, ratified said conduct.

12 137. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
13 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
14 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
15 physical condition was unable to make healthcare decisions on his own.

16 138. Defendants and each of them knew that at all times following his admission to the
17 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
18 durable power of attorney was valid.

19 139. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
20 support, Defendants and each of them initially altered Patricia's form durable power of attorney
21 simply by removing the signature page, and then through one pretext after another, causing a sequence
22 of delays, simply managed to refuse to comply with Patricia's directive.

23 140. The conduct of defendants and each of them denied to Lipscomb care as he had
24 directed.

25 141. As a direct result of the misrepresentations by Defendants and each of them, Lipscomb
26 sustained personal injury in a sum according to proof at trial.

27 142. By virtue of the foregoing, Defendants and each of them have acted with oppression
28 fraud and malice, and an assessment of punitive damages in a sum according to proof at trial is

1 justified and appropriate.

2
3 **EIGHTH CAUSE OF ACTION**

4 **FINANCIAL ABUSE**

5 (by Patricia as successor in interest

6 v. all defendants)

7 143. Plaintiff repeats and incorporates the allegations at paragraphs 1 – 4, inclusive.

8 144. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
9 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
10 developed Muscular Dystrophy (“MD”) a severe progressive neurological muscular degenerative
11 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
12 breathing. Lipscomb’s MD reached the stage which confined him to a wheelchair for the last two
13 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,
14 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
15 major stroke or similar catastrophic neurological event and was admitted to Defendant’s Hollywood
16 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
17 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
18 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.
19 By March 11, 2014. Lipscomb’s condition was stabilized and he was transferred from Hollywood
20 Presbyterian Hospital acute facility to its “distinct part” skilled nursing facility referred to hereinafter
21 as the “Chalet.”

22 145. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
23 Patricia for instructions as Lipscomb’s recognized surrogate decision maker. The question posed by
24 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
25 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
26 few days Lipscomb was retransferred to Chalet and continued a course of general physical
27 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
28 was observed to be able to recognize family and friends, he was now entirely unable perceive his

1 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
2 had no cognitive function as evidenced by the fact that a “psyche evaluation” by a staff
3 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
4 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

5 146. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
6 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
7 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb’s attending physician Kerendi
8 that Lipscomb be removed from life support and that his body be allowed to die. As of the date when
9 Patricia demanded that her husband be removed from life support and that his body be allowed to die,
10 it was foreseeable that the failure to follow Patricia’s instruction would cause emotional distress, and
11 that any interference with her normal grieving process would likewise cause and compound her
12 emotional distress. Then and thereafter, all Defendants including Kerendi had a duty to act reasonably
13 and responsibly in regard to Patricia and her demand that her requests and demands that her husband’s
14 body be removed from life support.

15 147. Said defendants negligently and intentionally disregarded and refused to follow
16 Patricia’s instruction, as set forth above as follows.

17 148. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
18 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
19 presently unsure which) named “Pinky.” The purpose of the meeting was to respond to Patricia’s
20 demand that Lipscomb be allowed to die. Although Patricia had previously to the meeting provided
21 Chalet staff and Kerendi with Lipscomb’s a duly executed and valid durable power of attorney for
22 healthcare appointing her as Lipscomb’s agent, at the June 1 meeting, and although staff at the Chalet
23 and the acute care facility had previously recognized Patricia’s power and right to make health care
24 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia’s
25 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb’s power of
26 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb’s
27 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly
28 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of

1 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
2 (which was not the last page of the power of attorney).

3 149. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
4 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
5 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
6 healthcare, showing Mr. Lipscomb's notarized signature.

7 150. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
8 valid demand that her husband be removed from life support, and instead stated that he would review
9 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
10 department."

11 151. Following the June 1 meeting, there was no communication with Patricia on behalf of
12 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
13 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
14 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
15 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
16 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
17 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
18 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
19 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
20 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
21 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
22 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
23 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
24 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
25 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
26 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
27 itself pre-textual.

28 152. A Dr. Kenneth M. Karotkin ("Karotkin") was the neuropsychologist tasked by Kerendi

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25
26
27

1 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
2 decisions on his own. Kerendi's delegation to Karotkin was unnecessary given the terms of Probate
3 Code 4658 ("attending physician" to make determination that a patient lacks capacity to make a health
4 care instruction) and as stated, Kerendi's referral to Karotkin was pre-textual for the purpose of
5 deferring compliance with Patricia's directive to allow her husband to die. After a brief examination,
6 Karotkin reported to Kerendi that Lipscomb's condition was what it appears to everyone else
7 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
8 function, and unable to engage in even the most basic test of cognitive function. This interview and
9 determination was on June 29, 2014. Nonetheless, even following Karotkin's "interview" there is no
10 further action taken with respect to Patricia's demand that life support be removed until one day after
11 Lipscomb's Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
12 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
13 Kerendi to start a "morphine drip" into Lipscomb's vein as a first step in disconnecting Lipscomb's
14 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
15 Patricia's demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
16 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
17 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
18 any sort which would have prevented Chalet staff from withdrawing life support. And during this
19 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an "unarousable
20 sleep" or an "induced coma."

21 153. At all times during Patricia's visits to her dying husband, Chalet staff arranged for a
22 security guard to be present to oversee and intrude while Patricia grieved, during what should have
23 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
24 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
25 emotional distress stemming from having to seek to enforce her and Lipscomb's wish to terminate his
26 life.

27 154. The motive for Defendants' (including Kerendi's) failure to respond promptly to
28 Patricia's demand that Lipscomb be taken off life support was purely financial. Lipscomb was

1 admitted to Chalet after a period of hospitalization lasting more than 3 days. Accordingly, Defendants
2 could expect Medicare authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a
3 rate of approximately \$35,460.00 per month, or more. Lipscomb's share of expense (his copayment)
4 amounted to approximately \$50,000.00 which Patricia paid on his behalf. Only when Medicare
5 benefits had been exhausted (i.e., after 100 days) would Kerendi and his co-defendants comply with
6 Patricia's proper demand. In fact, Defendants miscalculated the sums they would be paid by Medicare
7 for Lipscomb's care, and having failed to receive payments from Medicare, Patricia as the wife of
8 Lipscomb has allegedly (according to Chalet) incurred a community property debt to Defendants in
9 the sum of \$17,772.30 after credit for payments from Medicare for Lipscomb's care and treatment. In
10 other words, although the responsibility for payment of Lipscomb's medical expenses was Lipscomb's
11 and his estate, bills for his care were sent by Defendants to Patricia as Lipscomb's wife for payment.

12 155. In his conduct as alleged herein, Kerendi and Does 1 – 20 acted as managing agent for
13 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
14 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
15 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
16 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
17 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
18 in various ways, ratified said conduct.

19 156. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
20 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
21 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
22 physical condition was unable to make healthcare decisions on his own.

23 157. Defendants and each of them knew that at all times following his admission to the
24 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
25 durable power of attorney was valid.

26 158. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
27 support, Defendants and each of them initially altered Patricia's form durable power of attorney
28 simply by removing the signature page, and then through one pretext after another, causing a sequence

1 of delays, simply managed to refuse to comply with Patricia's directive.

2 159. As alleged, on each occasion when Patricia sought to have Lipscomb's life support
3 terminated, Kerendi, acting for himself and as agent for CHA, CHA HOLLYWOOD, and Does 2 – 5
4 represented to Patricia that he could not for one or another of a sequence or reasons, comply with her
5 request, beginning with his simple representation that the power of attorney which she had provided to
6 him and Chalet more than a month earlier, and which had previously been observed and found to be
7 valid and effective by other care providers employed by Kerendi, CHA, CHA HOLLYWOOD and
8 Does 2 – 5, was missing a signature page. Patricia relied on the aforementioned representations as
9 true, and as a consequence did not immediately seek legal assistance, nor take any other action to
10 enforce her statement demand that the ventilator be withdrawn from Lipscomb, at the time she first
11 made that demand.

12 160. As a direct result of the misconduct of the defendants and each of them, Lipscomb (and
13 Patricia as his spouse) have incurred financial liability to CHA for healthcare expense in the
14 approximate sum of \$17,500 and other sums according to proof at trial.

15 161. By virtue of the foregoing, Defendants and each of them have acted with oppression
16 and malice, and an assessment of punitive damages in a sum according to proof at trial is justified and
17 appropriate.

18
19 **NINTH CAUSE OF ACTION**

20 (Violation of patient rights per

21 Health & Safety Code §1430(b)

22 On behalf of Lipscomb as a former resident of a

23 skilled nursing facility v. all defendants)

24 162. Plaintiff repeats and incorporates the allegations at paragraphs 1 – 4, inclusive.

25 163. Section 1430(b) of the Health & Safety Code provides a remedy to former residents of
26 skilled nursing facilities. As alleged, Patricia is the successor in interest to the claims of her husband
27 Dennis Lipscomb, deceased. As a resident of Chalet, Lipscomb was entitled to certain rights as set
28 forth at 22 Cal. Code Regs. §72527. Included in those rights is the right at §72527(a) (4), i.e., the right

1 to refuse any treatment or procedure.

2 164. Notwithstanding, when on June 1, 2014, Patricia and her brother Russell Curtis met
3 with staff at Chalet including Kerendi, together with one Eunice Lee, RN, and a social worker or
4 respiratory therapist (plaintiff is presently unsure which) named "Pinky" to discuss Patricia's demand
5 that her husband be allowed to die by the removal of his ventilator, and at all times thereafter,
6 defendants and each of them violated Lipscomb's rights under §72527(a) (4).

7 165. Plaintiff seeks damages in the sum of \$500 for this violation and an injunction per
8 Health & Safety Code §1430(b) enjoining defendants from refusing to honor patient requests to
9 discontinue treatment, including life sustaining treatment, and from erecting pretexts such as were
10 employed by defendants in their coordinated effort to resist Lipscomb's request that his ventilator be
11 disconnected.

12
13 **TENTH CAUSE OF ACTION**

14 (Unfair Bus. Practices under
15 Business & Prof. Code §17200, et seq.)

16 166. Plaintiff repeats and incorporates the allegations at paragraphs 1 -- 4, inclusive.

17 167. In the years prior to his death Lipscomb had first been a successful Shakespearean actor
18 and then a leading actor in Hollywood, appearing in many movies and television productions. He later
19 developed Muscular Dystrophy ("MD") a severe progressive neurological muscular degenerative
20 disease leads to muscle weakness, then paralysis including paralysis of the muscles which allow for
21 breathing. Lipscomb's MD reached the stage which confined him to a wheelchair for the last two
22 years of his life. As his disease continued to progress Lipscomb still maintained some quality of life,
23 and was able to enjoy the company of Patricia and friends. In February 2014, however, he suffered a
24 major stroke or similar catastrophic neurological event and was admitted to Defendant's Hollywood
25 Presbyterian Hospital, placed on life support including a ventilator, a g-tube for liquid nutrition, an IV
26 line for necessary medication, and a Foley catheter to drain urine. Mr. Lipscomb was dysfunctional,
27 and made to wear constrictive mittens as he occasionally tried to pull out tubes when left on his own.
28 By March 11, 2014. Lipscomb's condition was stabilized and he was transferred from Hollywood

1 Presbyterian Hospital acute facility to its "distinct part" skilled nursing facility referred to hereinafter
2 as the "Chalet."

3 168. On May 3, 2014, Lipscomb stopped breathing and staff at the Chalet telephoned
4 Patricia for instructions as Lipscomb's recognized surrogate decision maker. The question posed by
5 nursing staff at the Chalet was whether to allow Lipscomb to die or on the other hand to attempt to
6 resuscitate him. Patricia authorized staff to transfer her husband back to the acute facility. Within a
7 few days Lipscomb was retransferred to Chalet and continued a course of general physical
8 deterioration. In addition, his mental state was altered. Whereas before he had stopped breathing he
9 was observed to be able to recognize family and friends, he was now entirely unable perceive his
10 environment. He could not communicate, was vegetative and responsive only to painful stimuli. He
11 had no cognitive function as evidenced by the fact that a "psyche evaluation" by a staff
12 neuropsychologist Dr. Karotkin proved that Dennis was unable to engage in even the most basic of
13 cognitive tests. Lipscomb was observed to stare blankly into space, mouth open.

14 169. After Lipscomb was retransferred to the Chalet following the episode on May 3 when
15 he stopped breathing, Patricia became convinced that Lipscomb would not recover any meaningful
16 brain function. Prior to June 1, 2014, Patricia demanded of Lipscomb's attending physician Kerendi
17 that Lipscomb be removed from life support and that his body be allowed to die.

18 170. On June 1, 2014, Patricia and her brother Russell Curtis met with staff at Chalet
19 including Kerendi, one Eunice Lee, RN, and a social worker or respiratory therapist (plaintiff is
20 presently unsure which) named "Pinky." The purpose of the meeting was to respond to Patricia's
21 demand that Lipscomb be allowed to die. Although Patricia had previous to the meeting provided
22 Chalet staff and Kerendi with Lipscomb's a duly executed and valid durable power of attorney for
23 healthcare appointing her as Lipscomb's agent, at the June 1 meeting, and although staff at the Chalet
24 and the acute care facility had previously recognized Patricia's power and right to make health care
25 decisions on behalf of Lipscomb, Kerendi nevertheless stated his refusal to comply with Patricia's
26 demand. During the meeting, when confronted by Patricia with the fact that Lipscomb's power of
27 attorney had been previously furnished to Kerendi, clearly entitling Patricia to direct Lipscomb's
28 healthcare, including the direction to remove life support, Kerendi falsely stated (and knowingly

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1 falsely stated) that the power of attorney was invalid because it was unsigned. The form power of
2 attorney in the Chalet or Kerendi's file had apparently been altered by removing the signature page
3 (which was not the last page of the power of attorney).

4 171. On June 1, and upon hearing Kerendi's claim that the Lipscomb power of attorney in
5 Kerendi's file had no signature page, Patricia pulled a spare copy of the power of attorney from her
6 papers and provided Dr. Kerendi with another copy of the Lipscomb durable power of attorney for
7 healthcare, showing Mr. Lipscomb's notarized signature.

8 172. In response, Kerendi nonetheless continued in his refusal to comply with Patricia's
9 valid demand that her husband be removed from life support, and instead stated that he would review
10 the durable power of attorney with "staff," the "bio-ethics committee" and with "the risk management
11 department."

12 173. Following the June 1 meeting, there was no communication with Patricia on behalf of
13 Chalet, nor on behalf of Kerendi until approximately June 26, 2014. Another meeting between
14 Patricia and Kerendi occurred at that time, and Patricia once again demanded that Lipscomb be
15 removed from life support. At this time, however, Kerendi did not dispute her or Lipscomb's right to
16 terminate life support, but nevertheless continued to refuse to comply with her valid directive. Instead,
17 for the first time, Kerendi told Patricia that he wanted Lipscomb to have a "psyche evaluation" to
18 determine whether Lipscomb was really unable to make decisions for himself. This explanation was
19 false and pre-textual: Kerendi was easily qualified to make such a determination himself, Kerendi
20 could himself determine that Lipscomb was in a state that prevented Lipscomb from making decisions
21 of any kind, that Kerendi and Chalet nursing staff, including its social workers had long since treated
22 Mr. Lipscomb as unable to meaningfully respond to them or make decisions for himself, and had, with
23 respect to other health care decisions, sought instruction and followed instructions from Patricia. In
24 short, no "psych eval" was necessary in order to comply with Patricia's valid demands regarding her
25 husband as his legal representative. Moreover, even in the absence of a power of attorney, Patricia
26 had the right as Lipscomb's wife to act as his surrogate decision maker and to direct the withdrawal of
27 life support from Lipscomb; Kerendi's insistence on a power of attorney (signed or otherwise) was
28 itself pre-textual.

1 174. A Dr. Kenneth M. Karotkin (“Karotkin”) was the neuropsychologist tasked by Kerendi
2 to interview Lipscomb and to determine whether Lipscomb lacked capacity to make health care
3 decisions on his own. Kerendi’s delegation to Karotkin was unnecessary given the terms of Probate
4 Code 4658 (“attending physician” to make determination that a patient lacks capacity to make a health
5 care instruction) and as stated, Kerendi’s referral to Karotkin was pre-textual for the purpose of
6 deferring compliance with Patricia’s directive to allow her husband to die. After a brief examination,
7 Karotkin reported to Kerendi that Lipscomb’s condition was what it appears to everyone else
8 including Kerendi to be: Lipscomb was found to be unable to communicate, with no cognitive
9 function, and unable to engage in even the most basic test of cognitive function. This interview and
10 determination was on June 29, 2014. Nonetheless, even following Karotkin’s “interview” there is no
11 further action taken with respect to Patricia’s demand that life support be removed until one day after
12 Lipscomb’s Medicare benefit for his care at the Chalet was exhausted on July 16, 2014. That is, it was
13 not until the day following, or on July 17, 2014, that Chalet nursing staff responded to an order from
14 Kerendi to start a “morphine drip” into Lipscomb’s vein as a first step in disconnecting Lipscomb’s
15 ventilator. Otherwise, and until July 16, no action had been taken to allow Lipscomb to die in spite of
16 Patricia’s demand some 60-70 days earlier. On July 30, 2014, Kerendi ordered Chalet staff to finally
17 withdraw ventilator support. Lipscomb promptly stopped breathing and died. During the period from
18 July 17 until July 30, during which Lipscomb was on a morphine drip, there was no impediment of
19 any sort which would have prevented Chalet staff from withdrawing life support. And during this
20 period Lipscomb was in a state which Chalet nursing staff described to Patricia as an “unarousable
21 sleep” or an “induced coma.”

22 175. At all times during Patricia’s visits to her dying husband, Chalet staff arranged for a
23 security guard to be present to oversee and intrude while Patricia grieved, during what should have
24 been private time with Lipscomb. This conduct was carried out in reckless disregard of the probability
25 that Patricia would suffer extreme emotional distress from this intrusion while dealing with normal
26 emotional distress stemming from having to seek to enforce her and Lipscomb’s wish to terminate his
27 life.

28 176. The motive for Defendants’ failure to respond promptly to Patricia’s demand that

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1 Lipscomb be taken off life support was purely financial. Lipscomb was admitted to Chalet after a
2 period of hospitalization lasting more than 3 days. Accordingly, Defendants could expect Medicare
3 authorities to pay Chalet for up to 100 days of subacute care at the Chalet at a rate of approximately
4 \$35,460.00 per month, or more. Only when Medicare benefits had been exhausted (i.e., after 100
5 days) would Kerendi and his co-defendants comply with Patricia's proper demand. In fact,
6 Defendants miscalculated the sums they would be paid by Medicare for Lipscomb's care, and having
7 failed to receive payments from Medicare, Patricia has allegedly (according to Chalet) incurred a debt
8 to Defendants in the sum of \$17,772.30 after credit for payments from Medicare for Lipscomb's care
9 and treatment.

10 177. In his conduct as alleged herein, Kerendi and Does 2 – 20 acted as managing agent for
11 CHA and acted to further CHA's interest in increasing revenue from Medicare by such conduct as
12 keeping patients alive even when to do so contravenes valid directives from CHA's patients acting on
13 their own or through surrogate decision makers such as the patient's next of kin of the patient's agent
14 pursuant to a durable power of attorney. CHA knew of Kerendi's conduct and the conduct of Does 1 –
15 20, as alleged herein, and authorized such conduct, or learned about the conduct after it occurred and
16 in various ways, ratified said conduct.

17 178. Defendants and each of them had a duty to Lipscomb to affirmatively respond to the
18 directives of Patricia, who at all times following Lipscomb's admission to the Chalet, held a valid,
19 operative durable power of attorney for Lipscomb, who by virtue of his cognitive impairment and his
20 physical condition was unable to make healthcare decisions on his own.

21 179. Defendants and each of them knew that at all times following his admission to the
22 Chalet, Lipscomb was unable to make health care decision on his own, and knew that Patricia's
23 durable power of attorney was valid.

24 180. Rather than follow Patricia's direction that Lipscomb should be disconnected from life
25 support, Defendants and each of them initially altered Patricia's form durable power of attorney
26 simply by removing the signature page, and then through one pretext after another, causing a sequence
27 of delays, simply managed to refuse to comply with Patricia's directive.

28 181. The conduct of defendants and each of them denied to Lipscomb care as he had

1 directed.

2 182. The conduct of the defendants, and each of them amounted to an unfair, illegal and
3 fraudulent business practice.

4 143. As a direct result of the conduct by Defendants and each of them, Lipscomb is entitled to
5 restitution in the sum of \$17,500 together with interest as appropriate, and otherwise according to
6 proof at trial.

7 143. Defendants should be properly enjoined from destroying or altering records, including
8 powers of attorney entrusted to them, from falsely stating their inability to withdraw life support when
9 requested to do so by their patients, including requests from patient's surrogate decision makers such
10 as next of kin or agents pursuant to a durable power of attorney, where the patient, like Lipscomb, was
11 unable to make health care decisions for themselves, and from acting on their own conflicting
12 financial interests at the expense of their duties to at all times act for the benefit of their patients.

13
14 WHEREFORE, Plaintiff prays for relief as follows:

15 a. For general damages on behalf of Lipscomb, notwithstanding the death of Lipscomb,
16 according to proof.

17 b. For special damages in the sum of approximately \$17,500 and otherwise according to
18 proof at trial.

19 c. For punitive damages according to proof in respect to the conduct causing injury and
20 harm to Lipscomb.

21 d. For general damages according to proof on behalf of Patricia.

22 e. For punitive damages according to proof in respect to the conduct causing injury and
23 harm to Patricia.

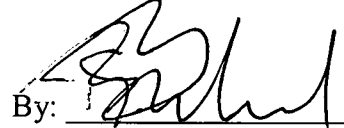
24 f. For restitution of the sum of \$17,500.

25 g. For an injunction precluding defendants from disregarding valid instructions from
26 patients or their surrogate decision makers to terminate medical treatment even if doing so may lead to
27 the death of incapacitated patients.

28 ///

1 h. For such other and further relief as the court may deem just and proper.

2
3 BALISOK & ASSOCIATES, INC.

4 

5 By: _____
6 RUSSELL S. BALISOK
7 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 330 North Brand Boulevard, Suite 702, Glendale, California 91203.

On **May 8, 2017** I served the document described as **SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** on all interested parties by enclosing copies thereof in sealed envelopes addressed as below:

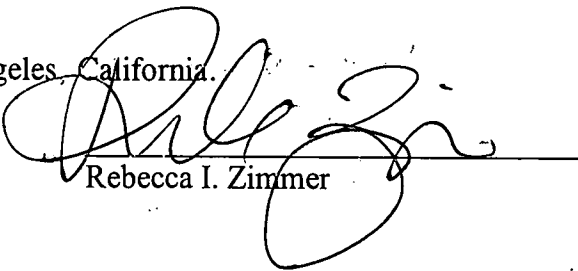
Kenneth R. Pedroza, Esq. E. Todd Chayet, Esq. Cole Pedroza LLP 2670 Mission St., Ste. 200 San Marino CA 91108 (626) 431-2787 (626) 431-2788 (fax)	Counsel for Defendant Farough Kerendi, M.D.
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Scott D. Buchholz, Esq. Victoria G. Stairs, Esq. Evan A. Kalooky, Esq. Dummit, Buckholz & Trapp 101 W. Broadway, Ste. 1400 San Diego CA 92101 (619) 231-7738 (619) 231-0886 (fax)	Counsel for Defendant CHA Health Systems, Inc. and CHA Hollywood Medical Center, L.P.
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(BY MAIL) I am readily familiar with the practice of Balisok & Associates, Inc. for collection and processing of correspondence for transmitting via next business day service through USPS. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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

Executed on **May 8, 2017** at Los Angeles, California.



Rebecca I. Zimmer

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