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8 Successor in interest of Donna Marie Githens, deceased

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
7/31/2020 11:57 AM

Arlene D. Junior, Clerk of the Court
By: Janie Dorman, Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SONOMA

11 UNLIMITED CIVIL JURISDICTION

12 MICHAEL POTTS, successor in interest of
13 Donna Marie Githens, deceased,

14 Plaintiff,

15 vs.

16 SAN RAFAEL OPERATING COMPANY
17 LP, dba PINE RIDGE CARE CENTER, a
18 California Limited Partnership,
19 FERDINAND BUOT, JR., an individual,
20 LINDA TAETZ, an individual, HENRY
21 BRUMLEY, an individual, and DOES One
22 through One Hundred Fifty, inclusive,

23 Defendants.

Case No. SCV-266808

**VERIFIED COMPLAINT OF
PLAINTIFF MICHAEL POTTS FOR
DAMAGES AGAINST DEFENDANTS
SAN RAFAEL OPERATING
COMPANY, LP, dba PINE RIDGE
CARE CENTER, FERDINAND BUOT,
JR., LINDA TAETZ, HENRY
BRUMLEY, AND ADAN MELIJOY**

- 1. Violation of Uniform Health Care Decisions Act (Prob. Code, § 4742)
- 2. Violation of Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code § 15657)
- 3. Intentional Misrepresentation (Civ. Code, § 1710)
- 4. Fraudulent Concealment (Civ. Code, § 1710)
- 5. Breach of Fiduciary Duty
- 6. Negligence Per Se (Civ. Code, § 1714(a); Prob. Code, § 4742)

24 Plaintiff Michael Potts, successor in interest of Donna Marie Githens, deceased,
25 complains against Defendants San Rafael Operating Company LP, dba Pine Ridge Care Center, a
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1 California Limited Partnership, Ferdinand Buot, Jr., an individual, Linda Taetz, an individual,
2 Harry Brumley, an individual, and Does One through Fifty, inclusive, and alleges in his
3 Complaint for Damages (“Complaint”) as follows:

4 **THE PARTIES**

5 1. Plaintiff Michael Potts, successor in interest of Donna Marie Githens, deceased,
6 (“Plaintiff” or “Mr. Potts”) brings this action on behalf of his deceased mother, Donna Marie
7 Githens (“Ms. Githens” or “Decedent”). Mr. Potts is the successor in interest of Ms. Githens,
8 pursuant to Code of Civil Procedure Section 377.11. Further, Mr. Potts brings this Complaint as
9 surviving causes of action, pursuant to Code of Civil Procedure Section 377.30 and seeks all
10 recoverable damages, pursuant to Code of Civil Procedure Section 377.34. Finally, Mr. Potts
11 brings this Complaint following the death of Ms. Githens, pursuant to Welfare and Institutions
12 Code Section 15657.3. Concurrently with the filing of this Complaint, Mr. Potts is filing a
13 “Declaration of Michael Potts as the Successor in Interest of Donna Marie Githens.”

14 2. Defendant San Rafael Operating Company LP, dba Pine Ridge Care Center,
15 (“Pine Ridge Care Center”), is a California Limited Partnership, which is headquartered at 45
16 Professional Center Parkway, San Rafael, California. At all relevant times, Pine Ridge Care
17 Center owned and operated a Skilled Nursing Facility, as defined by Probate Code Section 4639,
18 located at 45 Professional Center Parkway, San Rafael, California.

19 3. At all relevant times, Defendant Ferdinand Buot, Jr. (“Mr. Buot”) was an officer
20 and board member of Pine Ridge Care Center with a principal place of residence in Rohnert Park
21 located in Sonoma County. Mr. Potts sues Mr. Buot individually and in his corporate capacity.

22 4. At all relevant times, Defendant Linda Taetz (Ms. Taetz”) was an officer and
23 board member of Pine Ridge Care Center with a principal place of residence in Oxnard located
24 in Ventura County. Mr. Potts sues Ms. Taetz individually and in her corporate capacity.

25 5. At all relevant times, Defendant Henry Brumley (“Mr. Brumley”) was a Nursing
26 Home Administrator, licensed by the State of California, Department of Healthcare Services, and
27 acting in this capacity for Pine Ridge Care Center with a principal place of residence in
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1 Sacramento located in Sacramento County. Mr. Potts sues Mr. Brumley individually and in his
2 corporate capacity.

3 6. At all relevant times, Defendant Adan Melijoy (“Mr. Melijoy”) was the Director
4 of Nursing for Pine Ridge Care Center with a principal place of residence in San Rafael located
5 in Marin County. Mr. Potts sues Mr. Belijoy individually and in his corporate capacity.

6 7. Plaintiff is informed, believes, and alleges that, at all relevant times, Does 1
7 through 50, inclusive, were and are now physicians, nurses, medical personnel or other health
8 care professionals, duly licensed to practice their profession, or engaged in the practice of their
9 profession, in the State of California and were employees, agents, servants, and/or affiliated with
10 the other Defendants, and each of them. At all relevant time, Does 1 through 50 were acting
11 within the course and scope of their employment, agency, service, and/or affiliation with each of
12 the remaining Defendants.

13 8. Plaintiff is informed, believes, and alleges that, at all relevant times, Does 51
14 through 100, inclusive, were and now are corporations, partnerships, sole proprietorships, joint
15 ventures, unincorporated associations or some other business entities doing business in the State
16 of California and duly organized and existing under, and by virtue of the laws of the State of
17 California, each of which in some way contracted to provide, and/or in some other manner
18 provided, medical care and treatment or ancillary services to the general public, including Ms.
19 Githens.

20 9. Plaintiff is informed, believes, and alleges that, at all relevant times, Does 101
21 through 125, inclusive, were and now are corporations, partnerships, sole proprietorships, joint
22 ventures, unincorporated associations or some other business entities doing business in the State
23 of California and duly organized and existing under, and by virtue of the laws of the State of
24 California, each of which in some way contracted to provide, and/or in some other manner
25 provided, non-medical care and treatment or ancillary services to the general public, including
26 Ms. Githens.

27 10. Plaintiff is informed and alleges that, at all relevant times, Does 126 through 150,
28 inclusive, are individuals who agreed to perform and undertook to perform for Ms. Githens all

1 non-medical services necessary to the care of Ms. Githens, which included, but were not limited
2 to, observation, attention, examination, evaluation, diagnosis, care and treatment of the Ms.
3 Githens, as well as proper administrative and clerical management of her health care and
4 custodial care needs. In so doing, Does 126 through 150, inclusive, established a relationship
5 with Ms. Githens, giving rise to the duty of Does 126 through 150, inclusive, to provide skillful
6 management of the health conditions and custodial, clerical and administrative needs of Ms.
7 Githens and were and are the owners, operators, and managers of the remaining Defendants and
8 participated in, authorized, and/or directed the conduct of such Defendants, and their respective
9 employees, agents, servants and/or affiliates. Does 126 through 150, inclusive, are therefore
10 liable for the acts and omissions of the remaining Defendants, their employees, agents, servants
11 and/or affiliates, as is more fully herein alleged.

12 11. The true names or capacities, whether individual, corporate, associate or
13 otherwise, of DOES 1 through 150, inclusive, are unknown to Plaintiff, who therefore sues these
14 Defendants by such fictitious names. Plaintiff will seek leave of court to amend this complaint to
15 show their true names or capacities when the same have been ascertained.

16 12. Plaintiff is informed, believes, and alleges that at all times herein mentioned,
17 Defendants, and each of them, were the agents, servants, employees, joint venturers, ostensible
18 agents and/or contractors of each of the remaining Defendants, and were, at all times, acting
19 within the course and scope of such agency, service, employment, contract, and/or joint venture.
20 Plaintiff is informed and believes and alleges that at all times herein, each of the Defendants,
21 hired and employed agents, servants, staff members, employees, and/or joint venturers. Each
22 Defendant has also given prior approval and subsequent ratification for the conduct, acts, and/or
23 omissions of the other Defendants, and each of them.

24 13. At all times herein, Defendants, and each of them, operated, managed,
25 maintained, oversaw and controlled the activities of all co-Defendants, and DOES 1 through 150,
26 inclusive, and each of them, so that the conduct, acts, and omissions of each co-Defendant and
27 DOES 1-150, inclusive, and each of them, were the conduct, acts and omissions of the other
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1 Defendants, and at all relevant times, said co-Defendants, were then acting as the actual or
2 ostensible agents of the remaining Defendants, and DOES 1 through 150, inclusive.

3 14. At all times herein mentioned, Defendants, and each of them, when acting as a
4 principal, was negligent in the selection and hiring of each and every other co-Defendants as an
5 employee, agent, servant and, expressly directed, consented to, approved, affirmed, and ratified
6 each and every action taken by the co-Defendants, and each of them.

7 15. Plaintiff believes and alleges that the Defendants, and each of them, operated in
8 such a way as to make their individual identities indistinguishable, and are, therefore, the mere
9 alter egos of one another.

10 16. Plaintiff believes and alleges that DOES 1 through 150, inclusive, and each of
11 them, through their managers, directors, officers, and other agents, directly oversaw, managed,
12 and/or controlled all aspects of the operation and management of the remaining Defendants,
13 including ,but not limited to, the budget, staffing, staff training, policy and procedures manuals,
14 accounts payable, accounts receivable, facility development and leasing, general accounting,
15 cash management, pricing, reimbursement, capitalization, and profit and loss margins and
16 created budgets, policies, and procedures which their employees were required to implement and
17 follow.

18 17. Plaintiff believes and alleges that DOES 1 through 150, inclusive, and each of
19 them, through their managers, directors, officers, and other agents ratified all conduct of the
20 employees, servants and agents of each of the remaining Defendants.

21 18. Each reference in this complaint to “defendant,” “defendants,” “Defendants,” or a
22 specifically named defendant also refers to all “Doe” defendants.

23 19. Plaintiff believes and alleges that the tortious acts and omissions of all
24 Defendants, and each of them, were done in concert with each other and pursuant to a common
25 design and agreement to accomplish a particular result, namely maximizing profits by
26 discharging DECEDENT from hospice to Marin General Hospital. Moreover, said Defendants,
27 and each of them, enabled, aided and abetted each other in accomplishing the acts and omissions
28 alleged herein.

1 the result of an irreversible condition, even if that life support might prolong
2 my life for a sustained period. Therefore, I do not want efforts made to
3 prolong my life and I do not want life-sustaining treatment to be provided or
4 continued: (1) if I am in an irreversible coma or persistent vegetative state;
5 or (2) if I am terminally ill and the use of life-sustaining procedures would
6 serve only to artificially delay the moment of my death; or (3) under any
7 other circumstances in which the burdens of treatment outweigh the
8 expected benefits.

5 2.2 Relief from Pain and Palliative Care

6 I direct that treatment for alleviation of pain or discomfort be
7 provided at all times, even if it hastens my death. I wish to receive any other
8 forms of palliative care that may ease my suffering.

8 27. On January 9, 2018, Ms. Githens was admitted to Pine Ridge Care Center from
9 Sutter Santa Rosa Regional Hospital. Upon admission, Pine Ridge Care Center noted the
10 Directive “Do Not Resuscitate (DNR).” Upon admission, Pine Ridge Care Center further noted
11 Mr. Potts as “Emergency contact resident representative responsible party Durable POA – Health
12 Care POA – Health Care.”

13 28. On April 4, 2018, Pine Ridge Care Center entered a progress note for Ms. Githens
14 that provided in pertinent part: Called son, Michael Potts, and left voice mail to call back
15 regarding mother’s weight loss.

16 29. On April 8, 2018, Pine Ridge Care Center entered a progress note for Ms. Githens
17 that provided in pertinent part: Resident [Ms. Githens] has significant weight loss related to oral
18 intake.

19 30. On Wednesday, April 18, 2018 at 10:55am, Pine Ridge Care Center entered a
20 progress note for Ms. Githens that provided in pertinent part: Resident [Ms. Githens] with
21 significant weight loss related to oral intake and declining clinical condition. Resident’s diet was
22 recently downgraded to puree. Resident recently started on Remeron as an appetite stimulant.
23 Weight loss is likely unavoidable due to condition.

24 31. On Wednesday, April 18, 2018 at 4:28pm, Pine Ridge Care Center entered a
25 progress note for Ms. Githens that provided in pertinent part: Discussed with Dr. [Basil] Hamblin
26 for a recommendation of an IV fluid therapy for extra supplements because Resident [Ms.
27 Githens] continues with the decrease oral intake to refusal with meals. Per MD [Dr. Hamblin], he
28 spoke with Michael Potts, the DPOA, and the DPOA verbalized that he only wants comfort

1 focused treatment. No IV fluids or tube feeding at this time. Just continue to offer and encourage
2 oral fluid intake as tolerated.

3 32. On Thursday, April 19, 2018 at 7:37am, Pine Ridge Care Center entered a
4 progress note for Ms. Githens that provided in pertinent part: Resident [Ms. Githens] in bed, alert
5 and responsive. No shortness of breath and no signs and symptoms of discomfort noted. No
6 facial grimacing noted. Fall risk equipment in place. On one on one supervision. Safety
7 precaution in effect. Will continue to monitor.

8 33. On Thursday, April 19, 2018 at 9:39am, Pine Ridge Care Center entered a
9 progress note for Ms. Githens that provided in pertinent part: With noted poor intake. Fluids
10 offered as tolerated. Able to take meds. Denies pain. Able to follow simple commands. Kept
11 clean and dry. Will continue to monitor.

12 34. On Thursday, April 19, 2018 at 12:40pm, Pine Ridge Care Center entered a
13 progress note for Ms. Githens that provided in pertinent part: Resident [Ms. Githens] with noted
14 poor intake. Encouraged and assisted with meals. Fluids offered as tolerated. Refused to drink
15 meds. Offered three times. No respiratory distress noted. No complaints of pain. No signs and
16 symptoms discomfort. Safety ensured. Will continue to monitor.

17 35. On Thursday, April 19, 2018 at 1:15pm, Pine Ridge Care Center entered a
18 progress note for Ms. Githens that provided in pertinent part: Called and left a voicemail to
19 Michael Potts DPOA at (707) 595-3464 to give the facility a call back for an update of the
20 current status of the resident [Ms. Githens]. Resident continues with the decrease oral intake to
21 refusal. Continue to offer fluid intake as tolerated. Res is afebrile. Will continue to monitor.

22 36. On Thursday, April 19, 2018 at 1:55pm, Pine Ridge Care Center entered a
23 progress note for Ms. Githens that provided in pertinent part: Spoke with Dr. Hamblin regarding
24 resident [Ms. Githens] current condition. MD ordered morphine – Schedule II solution; 100 mg/5
25 mL 0.25 mL for pain. Every hour as needed. Noted and carried out. Called and left a voicemail
26 to Michael Potts to give a call to the facility for an update regarding resident. Will continue to
27 monitor.

1 37. On Thursday, April 19, 2018 at 3:00pm, Pine Ridge Care Center entered a
2 progress note for Ms. Githens that provided in pertinent part: Had a care conference with the
3 DPOA, Michael Potts, regarding plan of care. Speech Therapist had recommended for a possible
4 GI endoscopy. Per son, it is a possibility that could happen. MD notified of the care conference.
5 Will continue to monitor.

6 38. On Thursday, April 19, 2018 at 3:06pm, Pine Ridge Care Center entered a
7 progress note for Ms. Githens that provided as follows: "Called Norcal Ambulance for
8 Transport. Confirmed time of pickup. Will continue to monitor."

9 39. On Thursday, April 19, 2018, Dr. Hamblin entered a progress note for Ms.
10 Githens that provided in pertinent part: Saw patient [Ms. Githens] on April 13, 2018 and clarified
11 physician's orders on life sustaining treatment and advance directive and conference with son.
12 Here for follow-up. Patient is refusing fluids and medications. She is deteriorating rapidly.
13 Called Michael again today and discussed options: ER/hospital vs. comfort care. Michael stated
14 going to ER would cause undue stress. I agree. Patient with clear "awareness" of her chronic
15 medical conditions. Has refused 1:1 feeds. Patient will likely pass in next few days to week
16 based on her current decline. Have made this clear to her son and he wants to appropriately focus
17 on her comfort. Will start oral morphine sulfate as needed for shortness of breath or pain or
18 distress. Have relayed care plan to nursing.

19 40. On Thursday, April 19, 2018 at 3:07pm, Pine Ridge Care Center entered a
20 progress note for Ms. Githens that provided as follows: "Dr. Hamblin called the facility and
21 spoke with Michael. Potts. Michael Potts verbalized his concerns that he does not want his mom
22 to go through anything invasive and had requested to cancel the transportation and to not send
23 her to the emergency room because according to the son 'this will just stress her out and I do not
24 want her to be stress.' He said that he just wants her to continue current plan of care here at the
25 facility. Michael Potts declined the recommendation for GI consult and also declined sending
26 [Ms. Githens] to the emergency for further evaluation. Explained risks vs benefits. Still the son
27 declined further recommendation.
28

1 41. On Thursday, April 19, 2018 at 5:51pm, Pine Ridge Care Center entered a
2 progress note for Ms. Githens that provided in pertinent part: Safety ensured. Alert and
3 responsive. No shortness of breath nor pain noted. Still with noted poor intake. Assisted and
4 encouraged. Fluids offered. Supervision in place. Kept clean and dry.

5 42. On Thursday, April 19, 2018 at 10:05pm, Pine Ridge Care Center entered a
6 progress note for Ms. Githens that provided in pertinent part: Refused due meds. Offered three
7 times. Risk and benefits explained. Pharmacist and Dr. Hamblin aware. Fluids offered. Safety
8 precaution in place. Will continue to monitor.

9 43. On Friday, April 20, 2018 at 8:00am, Pine Ridge Care Center entered a progress
10 note for Ms. Githens that provided in pertinent part: Resident [Ms. Githens] was offered food
11 and liquid per breakfast meal. Resident refuses even with encouragement from both nurse and
12 Certified Nursing Assistant. Asked for any food preference but resident declines offer. 1:1
13 monitoring sitter is present at bed side and safety protocol measures are initiated.

14 44. On Friday, April 20, 2018 at 9:34am, Pine Ridge Care Center entered a progress
15 note for Ms. Githens that provided in pertinent part: Clarification of order: purplish discoloration
16 on left wrist: Monitor for signs and symptoms of infection, increase in size, signs and symptoms
17 of skin breakdown every day for 21 days then re-assess. Noted and carried out. Plan of care
18 updated.

19 45. On Friday, April 20, 2018 at 12:00pm, Pine Ridge Care Center entered a progress
20 note for Ms. Githens that provided as follows: "Called the son and left a voicemail to update him
21 for the current status of the resident [Ms. Githens]. Resident continues to refuse fluid intake.
22 Continue to encourage resident and offer fluid intake as tolerated. MD made aware. Will
23 continue to monitor."

24 46. On Friday, April 20, 2018 at 1:00pm, Pine Ridge Care Center entered a progress
25 note for Ms. Githens that provided in pertinent part: Resident [Ms. Githens] was offered food
26 and liquid per breakfast meal. Resident refuses even with encouragement from both nurse and
27 Certified Nursing Assistant. Asked for any food preference but resident declines offer. 1:1
28 monitoring sitter is present at bed side and safety protocol measures are initiated

1 47. On Friday, April 20, 2018 at 2:30pm, Pine Ridge Care Center entered a progress
2 note for Ms. Githens that provided in pertinent part: Called and left a voicemail to Michael Potts
3 regarding resident [Ms. Githens] being send to the emergency department for further evaluation.
4 Unable to get a call back from son. Dispatcher is aware that no respond [sic] was gotten back
5 from the son. MD made aware.

6 48. On Friday, April 20, 2018 at 3:04pm, Pine Ridge Care Center entered a progress
7 note for Ms. Githens that provided in pertinent part: Called Marin General Hospital to give report
8 that resident [Ms. Githens] was noted with decrease intake to refusal of oral intake. That a care
9 conference was held 4/19/18 with the [interdisciplinary team] along with Michael Potts.
10 Verbalized that the DPOA had declined to send resident [Ms. Githens] to the hospital to get
11 further evaluated because per son “he does not want to have his mom go through any invasive
12 treatment, and especially, to not put her in any stress.” Also verbalized that staff has been trying
13 to call him, but no respond is heard back from him today. MD is made aware.

14 49. On Friday, April 20, 2018, Mr. Potts never authorized Defendants, and each of
15 them, to call for an ambulance to take Ms. Githens to the Emergency Department of Marin
16 General Hospital, or any local emergency department, for further evaluation. Instead, on
17 Thursday, April 19, 2018, Mr. Potts specifically refused to authorize Defendants, and each of
18 them, to call for an ambulance to take Ms. Githens to the Emergency Department of Marin
19 General Hospital for further evaluation. Mr. Potts never rescinded his refusal on April 19, 2018
20 to authorize Defendants, and each of them, to call for an ambulance to take Ms. Githens to the
21 Emergency Department of Marin General Hospital for further evaluation.

22 50. On Friday, April 20, 2018, Mr. Potts never called 911 to request that Ms. Githens
23 be taken to the Emergency Department of Marin General Hospital for further evaluation.

24 51. Mr. Potts is informed and believes and based on such information and belief
25 alleges that on Friday, April 20, 2018, Defendants, and each of them, called for an ambulance to
26 take Ms. Githens to the Emergency Department of Marin General Hospital for further evaluation.

27 52. Mr. Potts is informed and believes and based on such information and belief
28 alleges that in the alternative, on Friday, April 20, 2018, Defendants, and each of them, directed

1 and/or instructed a presently unknown agent or employee of Defendant Pine Ridge Care Center
2 to call for an ambulance to take Ms. Githens to Marin General Hospital for further evaluation.

3 53. Mr. Potts is informed and believes and based on such information and belief
4 alleges that in the alternative, on or about Friday, April 20, 2018, Defendants, and each of them,
5 learned that a presently unknown agent or employee of Defendant Pine Ridge Care Center called
6 for an ambulance to take Ms. Githens to Marin General Hospital for further evaluation, and
7 Defendants, and each of them, ratified the decision by a presently unknown agent or employee of
8 Defendant Pine Ridge Care Center to call for an ambulance to take Ms. Githens to Marin
9 General Hospital for further evaluation.

10 54. On April 20, 2018, (1) an ambulance unit arrived at Defendant Pine Ridge Care
11 Center, (2) the members of the ambulance unit – with the assistance of Defendants and each of
12 them – physically took custody of Ms. Githens, and (3) the ambulance transferred her to the to
13 the Emergency Department of Marin General Hospital for further evaluation in direct
14 contravention of the specific instructions given by Mr. Potts on April 19, 2018 to Defendants,
15 and each of them, not to transfer Ms. Githens to the Emergency Department of Marin General
16 Hospital or any local emergency department.

17 55. Mr. Potts is informed and believes and based on such information and belief
18 alleges that on April 20, 2018, Defendants and each of them never informed the members of the
19 ambulance unit that Mr. Potts (1) was authorized to act on behalf of Ms. Githens pursuant to her
20 Advanced Health Care Directive; (2) that on April 19, 2018, Mr. Potts refused to authorize
21 Defendants, and each of them, to call for an ambulance to take Ms. Githens to the Emergency
22 Department of Marin General Hospital for further evaluation; and (3) Mr. Potts never rescinded
23 his refusal on April 19, 2018 to authorize Defendants, and each of them, to call for an ambulance
24 to take Ms. Githens to the Emergency Department of Marin General Hospital for further
25 evaluation.

26 56. Ms. Githens died on May 14, 2018.

27 57. Mr. Potts is informed and believes and based on such information and belief
28 alleges that the transfer of Ms. Githens to Marin General Hospital on April 20, 2018 prolonged

1 her physical pain and emotional suffering during the 24 days between April 20, 2018 and May
2 14, 2018 had she not been transferred to Marin General Hospital.

3 **FIRST CAUSE OF ACTION FOR VIOLATION OF UNIFORM HEALTH CARE**

4 **DECISIONS ACT (Prob. Code, § 4742)**

5 **(As to All Defendants)**

6 58. Plaintiff incorporates by reference paragraphs One through 57 above as if set forth
7 in full.

8 59. At all relevant times, Defendants, and each of them, had a duty to comply with all
9 health care decisions made by Mr. Potts, who was authorized to make health care decisions for
10 his mother, Ms. Githens, to the same extent as if the health care decisions were made by Ms.
11 Githens while she had capacity.

12 60. At all relevant times, Defendants, and each of them, never informed Mr. Potts that
13 they were declining to comply with all health care decisions made by Mr. Potts, who was
14 authorized to make health care decisions for his mother, Ms. Githens, to the same extent as if the
15 health care decisions were made by Ms. Githens while she had capacity.

16 61. Instead, at all relevant times, Defendants, and each of them, intentionally failed to
17 comply with the decision of Mr. Potts to refuse to authorize Defendants, and each of them, to call
18 for an ambulance to take Ms. Githens to the Emergency Department of Marin General Hospital
19 for further evaluation.

20 62. Further, on April 20, 2018, Defendants, and each of them, intentionally falsified,
21 forged, concealed, defaced, or obliterated the Advanced Health Care Directive of Ms. Githens;
22 namely, the authority granted to Mr. Potts to make health care decision on behalf of Ms. Githens;
23 and the specific refusal of Mr. Potts to authorize Defendants, and each of them, to call for an
24 ambulance to take Ms. Githens to the Emergency Department of Marin General Hospital for
25 further evaluation at the time that Defendants, and each of them, called for an ambulance to take
26 Ms. Githens to Marin General Hospital for further evaluation, or Defendants, and each of them,
27 directed and/or instructed a presently unknown agent or employee of Defendant Pine Ridge Care
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1 Center to call for an ambulance to take Ms. Githens to the Emergency Department of Marin
2 General Hospital for further evaluation.

3 WHEREFORE, Plaintiff prays for judgment as set forth below.

4 **SECOND CAUSE OF ACTION FOR VIOLATION OF ELDER ABUSE AND**
5 **DEPENDENT ADULT CIVIL PROTECTION ACT (Welf. & Inst. Code § 15657)**

6 **(As to All Defendants)**

7 63. Plaintiff incorporates by reference paragraphs One through 62 above as if set forth
8 in full.

9 64. Defendants, and each of them, physically abused Ms. Githens by their willful and
10 unlawful use of force when the members of the ambulance unit – with the assistance of
11 Defendants and each of them – physically took custody of Ms. Githens and transferred Ms.
12 Githens to the Emergency Department of Marin General Hospital for further evaluation.

13 65. On April 20, 2018, Ms. Githens was 65 years of age or older.

14 66. At all relevant times, Ms. Githens was harmed by the actions and inactions of
15 Defendants and each of them.

16 67. At all relevant times, the conduct of Defendants and each of them was a
17 substantial factor in causing harm to Ms. Githens.

18 68. At all relevant times, Defendants and each of them acted with recklessness,
19 oppression, fraud, or malice in physically abusing Ms. Githens.

20 WHEREFORE, Plaintiff prays for judgment as set forth below.

21 **THIRD CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION (Civ.**
22 **Code, § 1710)**

23 **(As to All Defendants)**

24 69. Plaintiff incorporates by reference paragraphs One through 68 above as if set forth
25 in full.

26 70. On April 20, 2018, Defendants, and each of them, represented to the members of
27 the ambulance unit that Mr. Potts had been to Defendant Pine Ridge Care Center earlier on April
28 20, 2018 to visit Ms. Githens and was concerned so he called 911 after he left and wanted to

1 have Ms. Githens taken to the Emergency Department of Marin General Hospital for further
2 evaluation.

3 71. The representation on April 20, 2018 by Defendants and each of them to the
4 members of the ambulance unit that Mr. Potts had been to Defendant Pine Ridge Care Center
5 earlier on April 20, 2018 to visit Ms. Githens and was concerned so he called 911 after he left
6 and wanted to have Ms. Githens taken to the Emergency Department of Marin General Hospital
7 for further evaluation was false.

8 72. On April 20, 2018, Defendants, and each of them, knew that the representation to
9 the members of the ambulance unit that Mr. Potts had been to Defendant Pine Ridge Care Center
10 earlier on April 20, 2018 to visit Ms. Githens and was concerned so he called 911 after he left
11 and wanted to have Ms. Githens taken to the Emergency Department of Marin General Hospital
12 for further evaluation was false at the time that Defendants and each of them made the
13 representation; and Defendants and each of them made the representation recklessly and without
14 regard for its truth.

15 73. On April 20, 2018, Defendants, and each of them, intended that the members of
16 the ambulance unit rely on the representation by Defendants and each of them that Mr. Potts had
17 been to Defendant Pine Ridge Care Center earlier on April 20, 2018 to visit Ms. Githens and was
18 concerned so he called 911 after he left and wanted to have Ms. Githens taken to the Emergency
19 Department of Marin General Hospital for further evaluation.

20 74. On April 20, 2018, the members of the ambulance unit reasonably relied on the
21 representation by Defendants and each of them that Mr. Potts had been to Defendant Pine Ridge
22 Care Center earlier on April 20, 2018 to visit Ms. Githens and was concerned so he called 911
23 after he left and wanted to have Ms. Githens taken to the Emergency Department of Marin
24 General Hospital for further evaluation.

25 75. At all relevant times, Ms. Githens was harmed by the intentional
26 misrepresentations of Defendants and each of them.

27 76. At all relevant times, Ms. Githens relied on Defendants and each of them to care
28 for her and accurately uphold her Advanced Health Care Directive, including the interactions on

1 April 20, 2018 of Defendants and each of them with the members of the ambulance unit and, as
2 such; the reliance by Ms. Githens on the representation by Defendants and each of them that Mr.
3 Potts had been to Defendant Pine Ridge Care Center earlier on April 20, 2018 to visit Ms.
4 Githens and was concerned so he called 911 after he left and wanted to have Ms. Githens taken
5 to the Emergency Department of Marin General Hospital for further evaluation was a substantial
6 factor in causing her harm.

7 77. At all relevant times, Defendants and each of them acted with recklessness,
8 oppression, fraud, or malice in intentionally misrepresenting facts regarding Ms. Githens.

9 WHEREFORE, Plaintiff prays for judgment as set forth below.

10 **FOURTH CAUSE OF ACTION FOR FRAUDULENT CONCEALMENT (Civ. Code, §**
11 **1710)**

12 **(As to All Defendants)**

13 78. Plaintiff incorporates by reference paragraphs One through 77 above as if set forth
14 in full.

15 79. Defendants and each of them and Ms. Githens were in a fiduciary relationship in
16 that Defendant Pine Ridge Care Center was a Skilled Nursing Facility and, as such, Ms. Githens
17 entrusted and relied on Defendants and each of them to care for her and accurately uphold her
18 Advanced Health Care Directive; and Defendants and each of them intentionally failed to
19 disclose to Ms. Githens on April 20, 2018 that they falsely told the members of the ambulance
20 unit that Mr. Potts had been to Defendant Pine Ridge Care Center earlier on April 20, 2018 to
21 visit Ms. Githens and was concerned so he called 911 after he left and wanted to have Ms.
22 Githens taken to the Emergency Department of Marin General Hospital for further evaluation.

23 80. Defendants and each of them prevented Ms. Githens from discovering the false
24 representations made by Defendants and each of them on April 20, 2018 to members of the
25 ambulance unit.

26 81. Neither Ms. Githens nor Mr. Potts knew of the false representations made by
27 Defendants and each of them on April 20, 2018 to the members of the ambulance unit.

1 82. Defendants and each of them intended to deceive Ms. Githens and/or Mr. Potts by
2 concealing the false representations made by Defendants and each of them on April 20, 2018 to
3 members of the ambulance unit.

4 83. Had Defendants and each of them disclosed to the members of the ambulance unit
5 on April 20, 2018 that Mr. Potts never called 911 and requested that Ms. Githens be taken to the
6 Emergency Department of Marin General Hospital for further evaluation, the members of the
7 ambulance unit – acting on behalf of Ms. Githens – would have behaved differently.

8 84. At all relevant times, Ms. Githens was harmed by the fraudulent concealment of
9 Defendants and each of them.

10 85. At all relevant times, Ms. Githens and Mr. Potts who was acting on behalf of Ms.
11 Githens relied on Defendants and each of them to care for her and accurately uphold her
12 Advanced Health Care Directive, including the interactions on April 20, 2018 of Defendants and
13 each of them with the members of the ambulance unit and, as such; the fraudulent concealment
14 by Defendants and each of them that Mr. Potts never had been to Defendant Pine Ridge Care
15 Center on April 20, 2018 to visit Ms. Githens and never called 911 on April 20, 2018 and never
16 wanted to have Ms. Githens taken to the Emergency Department of Marin General Hospital for
17 further evaluation was a substantial factor in causing her harm.

18 86. At all relevant times, Defendants and each of them acted with recklessness,
19 oppression, fraud, or malice in fraudulently concealing facts regarding Ms. Githens.

20 WHEREFORE, Plaintiff prays for judgment as set forth below.

21 **FIFTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

22 **(As to All Defendants)**

23 87. Plaintiff incorporates by reference paragraphs One through 86 above as if set forth
24 in full.

25 88. Defendants and each of them, owed a fiduciary duty to Ms. Githens, specifically
26 upon her admission to Defendant Pine Ridge Care Center, which was a Skilled Nursing Facility,
27 Defendant and each of them were obligated to care for her and accurately uphold her Advanced
28

1 Health Care Directive, including the interactions on April 20, 2018 of Defendants and each of
2 them with the members of the ambulance unit.

3 89. At all relevant times, Defendants and each of them acted on behalf of Ms. Githens
4 for purposes of providing for her care and accurately uphold her Advanced Health Care
5 Directive, including the interactions on April 20, 2018 of Defendants and each of them with the
6 members of the ambulance unit.

7 90. Defendants and each of them failed to act as a reasonably careful fiduciary would
8 have acted under the same or similar circumstances.

9 91. At all relevant times, Ms. Githens was harmed by the actions and inactions of
10 Defendants and each of them who were acting as her fiduciary.

11 92. At all relevant times, the conduct of Defendants and each of them was a
12 substantial factor in causing harm to Ms. Githens.

13 WHEREFORE, Plaintiff prays for judgment as set forth below.

14 **SIXTH CAUSE OF ACTION FOR NEGLIGENCE PER SE (Civ. Code, § 1714(a); Prob.**
15 **Code, § 4742)**

16 **(As to All Defendants)**

17 93. Plaintiff incorporates by reference paragraphs One through 92 above as if set forth
18 in full.

19 94. Defendants and each of them were negligent in that they violated Probate Code
20 Section 4742.

21 95. At all relevant times, Ms. Githens was harmed by the negligence of Defendants
22 and each of them.

23 96. At all relevant times, the negligence of Defendants and each of them was a
24 substantial factor in causing harm to Ms. Githens.

25 WHEREFORE, Plaintiff prays for judgment as set forth below.
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1 **PRAYER FOR RELIEF**

2 On the First Cause of Action:

3 1. \$2,500 or actual damages for the acts of intentionally violating Ms. Githens'
4 Advanced Heath Care Directive;

5 2. \$10,000 or actual damages for the acts of falsifying, forging, concealing,
6 defacing, or obliterating Ms. Githens' Advanced Health Care Directive;

7 3. For reasonable attorney's fees;

8 On the Second Cause of Action:

9 4. Past economic damages;

10 5. Past non-economic damages;

11 6. For reasonable attorney's fees and costs;

12 7. For punitive damages;

13 On the Third Cause of Action:

14 8. Past economic damages;

15 9. Past non-economic damages;

16 10. For punitive damages;

17 On the Fourth Cause of Action:

18 11. Past economic damages;

19 12. Past non-economic damages;

20 13. For punitive damages;

21 On the Fifth Cause of Action:

22 14. Past economic damages;

23 On the Sixth Cause of Action:

24 15. Past economic damages;

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1 On All Causes of Action

2 16. For costs of this suit;

3 17. For prejudgment interest as permitted by law, including in accordance with Civil
4 Code sections 3287, 3288 and 3291; and

5 18. For such other and further relief as the Court deems proper.

6 Dated: July 30, 2020

GEARINGER LAW GROUP

7
8 By: Brian Gearinger
9 BRIAN GEARINGER
10 Attorneys for Plaintiff MICHAEL POTTS,
11 Successor in interest of Donna Marie Githens,
12 deceased

VERIFICATION

1
2 I am a party to this action, and I have read the foregoing VERIFIED COMPLAINT OF
3 PLAINTIFF MICHAEL POTTS FOR DAMAGES AGAINST DEFENDANTS SAN RAFAEL
4 OPERATING COMPANY, LP, dba PINE RIDGE CARE CENTER, FERDINAND BUOT, JR.,
5 LINDA TAETZ, HENRY BRUMLEY, AND ADAN MELIJOY and know its contents. The
6 matters stated in the VERIFIED COMPLAINT OF PLAINTIFF MICHAEL POTTS FOR
7 DAMAGES AGAINST DEFENDANTS SAN RAFAEL OPERATING COMPANY, LP, dba
8 PINE RIDGE CARE CENTER, FERDINAND BUOT, JR., LINDA TAETZ, HENRY
9 BRUMLEY, AND ADAN MELIJOY are true based on my own personal knowledge, except as
10 to those matters stated on information and belief, and as to those matters, I am informed and
11 believe that they are true.

12 I declare under penalty of perjury under the laws of the State of California that the above
13 statements are true. Executed on July 30, 2020 in Santa Rosa, California

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15 MICHAEL POTTS
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