

1 Monrae L. English (SBN 237163)
2 **WILD, CARTER & TIPTON**
3 A Professional Corporation
4 246 West Shaw Avenue
5 Fresno, California 93704
6 Telephone: (559) 224-2131
7 Facsimile: (559) 224-8462
8 E-mail: menglish@wctlaw.com

9 Attorneys for Plaintiffs

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

11 **CENTRAL DIVISION**

12 TERRY ANDERSON, as an individual,)
13 RANDY ANDERSON, as an individual,)
14 MICHAEL ANDERSON, as an)
15 individual; BARBARA GRIFFIS as an)
16 individual and HARRIET RANDEL,)
17 DECEDENT.)

18 Plaintiffs,)

19 v.)

20 PALM VILLAGE RETIREMENT)
21 COMMUNITY; AGNES JAYMALIN,)
22 R.N. as an and individual and DOES 1)
23 through 100, inclusive,)

24 Defendants.)

Case Number:

COMPLAINT FOR DAMAGES

1. **WRONGFUL DEATH**
[Medical Malpractice]
2. **ELDER ABUSE**
[Welfare & Inst. Code 15600, *et seq.*]

25 COMES NOW Plaintiffs in their complaint for damages.

PARTY ALLEGATIONS

26 1. At all times herein mentioned, Plaintiffs TERRY ANDERSON, RANDY
27 ANDERSON, MICHAEL ANDERSON and BARBARA GRIFFIS are the adult children of
28 decedent, HARRIET RANDEL, who was a resident at PALM VILLAGE RETIREMENT
COMMUNITY. Plaintiffs, TERRY ANDERSON, RANDY ANDERSON, MICHAEL
ANDERSON and BARBARA GRIFFIS are persons "who would be entitled to the
property of the decedent by intestate success, thereby they are proper successors in
interest under CCP § 377.32.

1 2. At all times herein mentioned, each of the Defendants was the agent and
2 employee of each of the remaining Defendants and was at all times herein mentioned
3 acting within the scope of said agency and employment.

4 3. Plaintiffs are informed and believe, and thereon allege, that defendant,
5 PALM VILLAGE RETIREMENT COMMUNITY, and DOES 1 through 100, was a
6 corporation with their principal place of business operating in the City of Reedley,
7 Fresno County, California.

8 4. Defendant, PALM VILLAGE RETIREMENT COMMUNITY, and DOES 1
9 through 100, were in the business of providing residential support care to dependent
10 adult residents.

11 5. Defendant, AGNES JAYMALIN, at all times relevant herein is a Registered
12 Nurse employed at PALM VILLAGE RETIREMENT COMMUNITY as the Supervising
13 Night Nurse and is a resident of Fresno County.

14 6. At all times relevant to this action, resident and decedent ,HARRIET
15 RANDEL ("HARRIET") was a resident of the State of California, County of Fresno, and a
16 dependent adult as defined in Welf. & Inst. Code § 15610.23. HARRIET was born on
17 September 25, 1921.

18 7. HARRIET was a resident at PALM VILLAGE RETIREMENT
19 COMMUNITY facility located at 703 West Herbert Avenue, Reedley, California 93654
20 and was in the care and custody of Defendants until on or about November 22, 2014.

21 8. To the extent any entity, person or company other than the named
22 Defendants owned, operated, managed, supervised, controlled, maintained or was
23 otherwise responsible for the business activities of PALM VILLAGE RETIREMENT
24 COMMUNITY, the identity of such persons are unknown to Plaintiffs, and Plaintiffs will
25 seek leave to amend when those identities are ascertained. Plaintiffs sues those
26 persons/entities as DOES 1 through 100. Plaintiffs are informed and believe, and
27 thereon alleges, that each of the Defendants designated as a DOES 1 through 49 are
28 responsible in some manner for the events and happenings herein referred to and
thereby legally caused the injuries and damages herein alleged.

1 Such DOES may include officers, directors, controlling shareholders, partners, parent
2 and/or sister companies, governing board members, and persons in de facto control of
3 PALM VILLAGE.

4 9. On information and belief, DOES 51 through 100 may be staff or
5 contracted personnel of the care center, including physicians, licensed nurses, aides,
6 social workers, business office personnel, or other clinical, or administrative personnel
7 including without limitation persons directly or indirectly responsible for providing
8 patient care, persons having made representations or warranties to Plaintiffs, and
9 persons acting in concert with other Defendants. The identities of such persons or
10 entities are presently unknown and Plaintiffs will seek leave to amend when those
11 identities are ascertained. Plaintiffs are informed and believe, and thereon alleges, that
12 each of the Defendants designated as a DOE is responsible in some manner for the acts,
13 omissions, events and happenings herein referred to, and, thereby, legally caused the
14 injuries and damages herein alleged.

15 10. Upon information and belief, Plaintiffs allege that Defendants and each of
16 them were the agents, servants, employees, joint venturers and/or partners of each
17 other, and at all times acted within the course and scope of said agency, employment,
18 venture, and/or partnership, pursuant to standard policies, practices, procedures,
19 written or otherwise, and with the advance knowledge, acquiescence, or subsequent
20 ratification of each co-Defendant.

21 GENERAL FACTS

22 11. Plaintiffs incorporates by reference each allegations 1 through 10 as set
23 forth above, and each and every part thereof with the same force and effect as through
24 set out at length herein.

25 12. HARRIET at all relevant times, was over the age of 65 and thus
26 an "elder" as that term is defined in Welfare & Institutions Code § 15610.27

27 13. While HARRIET was a resident at PALM VILLAGE RETIREMENT
28 COMMUNITY, Defendants, and each of them, had a duty to provide and were
responsible for her care and custody.

1 **SECOND CAUSE OF ACTION**

2 (As to All Defendants)

3 **[Elder Abuse under Welf. & Inst. Code § 15610.07]**

4 20. Plaintiffs incorporates by reference *1 through 10; 12 through 16; 18 & 19* as
5 though set forth fully in this place.

6 21. HARRIET, at all relevant times, was over the age of 65 and thus an “elder”
7 as that term is defined in Welfare & Institutions Code Section 15610.27.

8 22. While HARRIET was a resident at PALM VILLAGE RETIREMENT
9 COMMUNITY, Defendants, and each of them, were responsible for her care and
10 custody.

11 23. By virtue of her residency at PALM VILLAGE RETIREMENT
12 COMMUNITY, Defendants, and each of them, owed a duty of care to HARRIET under
13 state and federal laws designed and implemented for the protection and benefit of
14 residents of such as HARRIET.

15 24. On November 22, 2014, AGNES JAYMALIN RN, who was specifically
16 charged during the shift shift at PALM VILLAGE RETIREMENT COMMUNITY with
17 HARRIET’s care, refused to care and assess HARRIET for a period of almost six hours in
18 which HARRIET suffered extreme pain and discomfort.

19 25. Specifically, the refusal by the registered nurse, AGNES JAYMALIN RN to
20 tend to HARRIET’s needs in terms of pain and medical assessment amounts to
21 intentional withholding of basic care. Indeed, Welfare and Institutions Code section
22 15610.07 defines “abuse of an elder or a dependent adult” as “(b) The deprivation by a
23 care custodian of goods and services that are necessary to avoid physical harm or mental
24 suffering.”

25 26. In addition, by virtue of their status as HARRIET’s care custodians, and
26 pursuant to state and federal laws and regulations, Defendants and their employees and
27 managing agents owed a specific duty of care to HARRIET to assess her care needs and
28 to provide her medical care, pursuant to her wishes and intentions, which met her
physical and mental health needs.

1 27. Defendants, and each of them, breached the aforementioned duties to
2 HARRIET. These breaches were in reckless disregard of the dire consequences
3 HARRIET would suffer if her needs were not assessed and care was purposely withheld.
4 Defendants knew or should have known that there was a probability that severe pain
5 and suffering would result from the failure to adhere to their duties.

6 28. Defendants' omissions as alleged herein constitute physical abuse and
7 neglect as defined in Welf. & Inst. Code §§ 15610.63 and 15610.57, done with malice,
8 oppression, fraud, and recklessness within the meaning of Welf. & Inst. Code § 15657.

9 29. Welf. & Inst. Code § 15610.07 specifically defines "abuse of an elder and
10 dependent adult" to mean either (a) physical abuse, neglect, financial abuse,
11 abandonment, isolation, abduction, or other treatment with resulting physical harm or
12 pain or mental suffering or (b) the deprivation by a care custodian of goods or services
13 that are necessary to avoid physical harm or mental suffering.

14 30. Welf. & Inst. Code § 15610.57 specifically defines "neglect" to include the
15 negligent failure of any person having the care or custody of an elder or a dependent
16 adult to exercise the degree of care that a reasonable person in a like position would
17 exercise, including the failure to provide medical care for physical and mental needs.

18 31. Defendants, and each of them, recklessly and intentionally neglected and
19 abused HARRIET because they knew if they failed in their fundamental duty to provide
20 for her medical needs, she would suffer grave personal pain and suffering.

21 32. Despite knowing the foregoing, Defendants, and their employees and
22 managing agents made a deliberate and conscious choice to:

- 23 a. Fail to provide a provide a safe environment under state and federal
24 laws and regulations in that extremely ill residents should be
25 monitored and assessed frequently.
- 26 b. Fail to fully assess HARRIET, especially as to the severity of her
27 symptoms and dire medical condition;
- 28 c. Fail to follow a care plan which reflected HARRIET's and her
family's goals and interventions, including (1) Interventions to
manage pain and symptoms; and (2) Drugs and treatment
necessary to meet the needs of the patient;

1 33. Despite knowing the foregoing, Defendants and their employees and
2 managing agents made a deliberate and conscious choice to fail to:

- 3 a. Fully assess HARRIET;
4 b. Monitor HARRIET when they had personal knowledge of her dire
5 medical condition and pain;
6 c. Create an adequate care plan for HARRIET;
7 d. Make appropriate orders and document reasons for the orders they
8 were making concerning HARRIET's care;
9 e. Provide necessary medical care and intervention, thereby failing to
10 respect HARRIET's dignity and well-being.

11 34. The abuse and neglect described in paragraphs were not merely negligent.
12 Rather, the facts of this case represent egregious misconduct of the highest order
13 because the conduct amounts to a conscious choice not to pursue their duty to
14 undertake a comprehensive assessment of HARRIET to determine the extent of the
15 medical care she needed. Defendants acts and omissions were in violation of laws well
16 known to Defendants relating to the provision of basic health care services, such as
17 performing accurate and timely assessments; maintaining an accurate and current
18 chart; according someone dignity and respect; and ensuring that a resident has access to
19 medical care. Defendants, and each of them, made a conscious choice to deprive
20 HARRIET of basic services merely for convenience, in the face of HARRIET's clear and
21 obvious suffering and is the very definition of oppression: despicable conduct that
22 subjects a person to cruel and unjust hardship in conscious disregard of that person's
23 rights.

24 35. Without limited the generality of the foregoing, Defendants, and each of
25 them, knew the following:

- 26 a. They had duties pursuant to federal and state laws and regulations,
27 as set forth in detail in the first cause of action, above;
28 b. The laws and regulations governing care facilities were designed to
protect elderly residents from abuse, neglect, and further to
promote the highest practicable well-being of residents.
 c. They could only meet HARRIET's predictable and reasonable basic
needs, including access to medical care, if they complied with state
laws and regulations governing care facilities.

1 36. Despite actual knowledge that ongoing failures to comply with state laws
2 and regulations would subject its resident population to actual serious harm,
3 Defendants, and each of them, continued to operate PALM VILLAGE RETIREMENT
4 COMMUNITY in such a manner that violations of state and federal laws and regulations
5 would be ongoing, predictable, and certain. In doing so, Defendants, and each of them,
6 acted recklessly, willfully, and with a deliberate indifference and conscious disregard for
7 the physical and mental comfort, safety and well-being of HARRIET.

8 37. PALM VILLAGE RETIREMENT COMMUNITY and AGNES JAYMALIN
9 RN are directly responsible for the neglect and abuse of HARRIET. PALM VILLAGE
10 RETIREMENT COMMUNITY through its managers, directors, officers and other agents
11 directly oversaw, managed and/or controlled all aspects of the operation and
12 management of the facility, including but not limited to its budgeting, staffing, staff
13 training, and policies and procedures regarding assessment and care plans, and change
14 of condition. PALM VILLAGE RETIREMENT COMMUNITY employees were required
15 to implement and follow the directives and policies of PALM VILLAGE RETIREMENT
16 COMMUNITY and its managing agents.

17 38. At all times relevant, the reference to “managing agent,” for purposes of
18 managing agent ratification is used as that term is defined in *California Approved Jury*
19 *Instructions (CACI) 3102B*. Pursuant to *CACI 3102B*, “an employee is a ‘managing
20 agent’ if he or she exercises substantial independent authority and judgment in his or
21 her corporate decision making so that his or her decisions ultimately determine
22 corporate policy.” The managing agents of the Defendants include, but are not limited
23 to: PALM VILLAGE RETIREMENT COMMUNITY Medical Director, Administrator,
24 Directors of Nursing, and Director of Staff Development, and all clinical nursing
25 personnel provided authority to exercise substantial professional judgment.

26 39. It is believed and therefore alleged that the SURRENDER KAUR, who is
27 the DIRECTOR OF NURSES for PALM VILLAGE specifically and historically ratified
28 AGNES JAYMALIN RN’s wrongful behavior not only in HARRIET’s case but with other
residents in the past.

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Fresno, California 93704

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DEMAND FOR JURY

Plaintiffs, TERRY ANDERSON, RANDY ANDERSON, MICHAEL ANDERSON and
BARBARA GRIFFIS, hereby demand a jury in the trial of this matter.

Dated: May 6, 2015

WILD, CARTER & TIPTON
A Professional Corporation

By Monrae L. English
MONRAE L. ENGLISH
Attorney for Plaintiffs