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15 Attorneys for Plaintiffs and the Proposed Class

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 Donald Lollock, by and through his Guardian
19 ad Litem, Kathleen Lollock; Zareen Khan as
20 Executor for the Estate of Abdulwafi Khan;
21 Frank Pearson; Jo Ella Nashadka, by and
22 through her Guardian ad Litem, Lance
23 Anderson; and Jane Burton-Whitaker; on their
24 own behalves, and on behalf of others
25 similarly situated,

26 Plaintiffs,

27 vs.

28 Oakmont Senior Living, LLC; Oakmont
Management Group, LLC; and Does 1 - 100,

Defendants.

CASE NO. RG17875110

ASSIGNED FOR ALL PURPOSES TO
HON. STEPHEN KAUS, DEPT. 19

INJUNCTION

Judge: Hon. Stephen Kaus
Dept: 19

1 Pursuant to the parties' stipulation, IT IS ORDERED, ADJUDGED AND DECREED AS
2 FOLLOWS:

3 As referenced herein, the term "Class Counsel" means and includes the Class Counsel as
4 defined in the Court's order granting final settlement approval in this action.

5 As referenced herein, the term "Defendants' Counsel" means the following entities: Gabe
6 P. Wright and Kyle T. Overs of Hahn Loeser & Parks LLP.

7 As referenced herein, the "Enjoined Parties" means and includes Oakmont Management
8 Group LLC and Oakmont Senior Living LLC (collectively, "Defendants"), and their agents,
9 subsidiaries and assigns.

10 As referenced herein, the term "Community" and "Communities" means any residential
11 care facility for the elderly (RCFE) that is owned or managed by the Enjoined Parties or the
12 facilities in which an Enjoined Party is named as a licensee by Community Care Licensing.

13 This Court has jurisdiction over the parties and the claims asserted by the Class Plaintiffs
14 in this action. The following injunction ("Injunction") shall be entered against each and every
15 Enjoined Party:

16 **COMPLIANCE WITH LAW**

17 1. At all times, the Enjoined Parties shall comply with 22 CCR 87411(a) by
18 providing daily community resident care personnel, sufficient in numbers and competent, to
19 provide the services necessary to meet the resident needs.

20 2. At all times, the Enjoined Parties shall comply with 22 CCR 87608(a) by
21 providing sufficient resident care staff necessary to provide the assistance and care to each
22 resident in those activities of daily living which the resident is unable to do for himself/herself, as
23 determined by their most recent resident assessment.

24 3. At all times, the Enjoined Parties shall comply with 22 CCR 87705(c)(4) by
25 providing an adequate number of direct care staff to support each memory care resident's
26 physical, social, emotional, safety and health care needs as identified in his/her current
27 assessment.

28 4. For purposes of this Injunction only, the parties stipulate that the minimum

1 resident care personnel necessary to meet each of the resident’s daily care needs at the
2 Communities, including those necessary to provide the assistance and care to each Community
3 resident in those activities of daily living which the resident is unable to independently do for
4 himself/herself, shall be determined by each resident’s most recent assessment and calculated as
5 follows:

6 a. Each resident of the Communities shall have daily personal care minutes assigned
7 to them as part of Defendants’ resident assessment process. The daily personal care minutes
8 assigned to each resident shall be determined by the number of minutes Defendants determine are
9 necessary to perform each assessed care task (“Assessed Minutes”). The parties stipulate that
10 Defendants’ RealPage assessment software program will be used to calculate Assessed Minutes
11 during the period of this Injunction. The parties further stipulate that during any period in which
12 a competent resident, or in the alternative, their guardian or receiver, notifies the Enjoined Parties
13 in writing that such resident refuses certain assessed services or directs Enjoined Parties that such
14 resident refuses assessed services, or directs Enjoined Parties to provide a resident with a lesser
15 quantity or level of assessed services, then the number of minutes associated with the level of care
16 for that resident shall be reduced accordingly when calculating the amount of Required Resident
17 Care Personnel Minutes that the Enjoined Parties are to meet and not the higher assessed level
18 that was declined by the resident or their guardian or receiver.

19 b. For each two week period during the time period the Injunction is in force and
20 effect, for each Community, the total hours worked during the preceding two week period by each
21 Community’s resident care personnel shall be equal to, or greater than the “Required Resident
22 Care Personnel Minutes” for the same two week period, which is defined as and shall be
23 calculated as follows: (i) the daily aggregated Assessed Minutes of all residents of the
24 Community during the preceding two week period (“Care Hours ”), as reflected in Resident
25 Hours and Minutes Report available to the Enjoined Parties thru their RealPage software program
26 and taking into consideration any refusal of services by a resident or their guardian or receiver as
27 set forth more fully in Section 4a, above, plus (ii) additional daily resident care personnel minutes
28 in an amount equal to twenty (20) percent of the above-described Care Hours. The parties

1 stipulate that the purpose for requiring the additional 20% in Care Hours is to account for the time
2 required for Community resident care personnel to perform tasks that are not directly associated
3 with providing assessed care services to residents, including but not limited to, charting,
4 communicating with supervisors, co-workers, residents and family members, and other non-care
5 tasks. In carrying out this provision, a Resident Minutes and Hours Report run on the 15th day of
6 any month will be used to determine whether the staffing of the Required Resident Care
7 Personnel Minutes delivered at the facility on the preceding fourteen (14) days were sufficient for
8 purposes of compliance with the Injunction.

9 The Enjoined Parties' first compliance analysis date under this provision shall be
10 performed on the date that is three (3) weeks after the date this Injunction is signed by the Court.
11 That is, the Enjoined Parties shall comply with this provision by running a Resident Minutes and
12 Hours Report for each community, adding additional Resident Care Personnel Minutes equal to
13 twenty percent (20%) of the total, and comparing said Resident Care Personnel Minutes against
14 the payroll labor reports for the prior two week period. For purposes of this injunction, the term
15 "Resident Care Personnel" shall mean the following job categories: Care Provider, Health
16 Services Director, Med Tech, Wellness Nurse, Medication Nurse, Traditions Director, Resident
17 Care Coordinator, and Assisted Living Coordinator. For the purposes of this Injunction, "Care
18 Hours" and "Required Resident Care Personnel Minutes" shall mean the hours worked by the
19 following staff positions: Care Providers, Health Services Director, Med Techs, Medication
20 Nurses and Wellness Nurses. For the purposes of this stipulated injunction, the parties further
21 agree that the "Required Resident Care Personnel Minutes" shall also include 25% (twenty five
22 percent) of the hours worked by the Assisted Living Coordinator, and 50% (fifty percent) of the
23 hours worked by the Traditions Coordinator (also referred to as Traditions Director) and Resident
24 Care Coordinator.

25 c. Exception Circumstances. It shall not constitute a violation of the provisions of
26 this Section 4, or the timely reporting requirements of Section 5 below, for any period during
27 which the following circumstance exists as to any specific community: during any period of force
28 majeure at the geographic location in which the applicable Community resident resides, including,

1 but not limited to, fire, flood, earthquake, natural disaster, weather condition, acts of terrorism,
2 federal, state or local government order, epidemic, pandemic or other contagious disease
3 outbreak; or other cause beyond the control of the Enjoined Parties.

4 **COMPLIANCE REPORTS AND MONITORING**

5 5. Six months from the date this order is signed by the Court, and continuing semi-
6 annually thereafter for as long as this Injunction is in effect, Enjoined Parties shall file with the
7 Court an affidavit which states that each of the Communities are in substantial compliance with
8 the staffing levels described in and required by paragraph 4 and verifying their compliance with
9 this Injunction. In verifying their compliance with this Injunction, the Enjoined Parties shall
10 confirm in their Compliance Report that the Resident Minutes and Hours Reports contain the
11 Care Hours of each resident of that Community as determined by their most recent resident
12 assessment as of the time the Resident Minutes and Hours Report was run, that the Payroll
13 Reports relied upon contain only hours worked by the specific care staff (as defined in Paragraph
14 4b) at each Community for that Community, and that the invoices for any registry and/or contract
15 staff hours accurately reflect the facility, job position, day and hours worked by Resident Care
16 Personnel. The Compliance Report shall be signed under penalty of perjury under the laws of the
17 State of California by an OMG Regional Vice-President or more senior-level executive position.

18 6. Six months from the date this order is signed by the Court, and continuing semi-
19 annually thereafter for as long as this Injunction is in effect, Class Counsel and the Enjoined
20 Parties' Counsel shall, after meet and confer, randomly select two Communities to confirm
21 compliance with this Order. Class Counsel and the Enjoined Parties' Counsel shall also, after
22 meet and confer, randomly select a thirty (30) day time period within the prior six month time
23 period within which to confirm compliance for the two selected communities. Thirty (30) days
24 after the selection of the two Communities and corresponding thirty (30) day time periods, the
25 Enjoined Parties shall provide the designated Class Counsel with the following materials covering
26 the selected thirty day time period for each of the two Communities: (a) The Resident Minutes
27 and Hours Reports; (b) Payroll Report ; and (c) any and all invoices for any registry or contract
28 care staff employed at the Community during the selected thirty day time period which reflect the

1 hours worked daily to the extent necessary to show compliance with this Injunction. If Class
2 Counsel determine that there is a discrepancy of more than 5% between the two week total of
3 Resident Care Personnel staffing based upon the Resident Minutes and Hours Reports and the
4 actual total of Resident Care Personnel staffing worked during the same period, they shall, before
5 seeking relief from the Court, meet and confer in good faith with the Enjoined Parties in an
6 attempt to resolve and correct the discrepancy. As part of this meet and confer process, Class
7 Counsel shall be entitled to request reasonable additional writings or materials, if necessary, to
8 confirm the accuracy of the above materials. The information produced by Enjoined Parties in
9 furtherance of this Injunction may not be used by Class Counsel for any purpose other than to
10 verify compliance with this Injunction or to enforce Injunction and shall not be used or
11 disseminated to any other third party for any other purpose.

12 **OTHER PROVISIONS**

13 7. Nothing stated in this Injunction shall relieve the Enjoined Parties, or any of them,
14 from complying with any other applicable federal or state law or regulation.

15 8. The Enjoined Parties shall not reduce any of the time estimates for any of the care
16 services in the RealPage assessment software program while the Injunction is in effect without
17 prior notice to Class Counsel and Court approval.

18 9. This Injunction shall be effective as of the date this order is approved and signed
19 by the Court and shall remain in full force and effect for two years from that date. The Enjoined
20 Parties shall comply with the staffing requirements set forth in paragraph 4 for a period of two (2)
21 years, beginning with the date this order is signed. At the end of said two (2) year period, Class
22 Counsel shall be provided with the writings described in paragraphs 5 and 6 above for purposes
23 of verifying Enjoined Parties' compliance during the final 6 months of the two (2) year period.
24 The Court shall retain jurisdiction over the Enjoined Parties for the purposes of enforcing the final
25 compliance report for a period of six months following the end of the term of this Injunction. If
26 the Enjoined Parties violate the terms of this Injunction, however, Plaintiffs may seek a Court
27 order extending the Injunction duration, in addition to any other available remedy.

28 10. If Plaintiffs are required to seek Court relief to enforce the Injunction, or any term

1 herein, Class Counsel will petition the Court for reasonable attorneys' fees and reimbursement of
2 costs and Enjoined Parties will have the right to contest any such petition.

3 11. Pursuant to CCP section 664.6, the Court shall retain continuing jurisdiction over
4 all parties and over this action to enforce the terms of this Injunction.

5 12. If the Resident Care Personnel staffing requirements for RCFEs are modified by
6 statute or regulation, any Party may move the court for modification of this Injunction consistent
7 with such new statute and/or regulation.

8 IT IS SO ORDERED, ADJUDGED AND DECREED.

9
10 Dated: _____, 2020

11 _____
12 Hon. Stephen Kaus
13 Judge of the Superior Court