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5 Attorneys for Defendants:
6 VARENNA ASSISTED LIVING, LLC dba VILLA CAPRI
(erroneously sued and served as OAKMONT
7 OF VARENNA, LLC D/B/A VILLA CAPRI);
OAKMONT SENIOR LIVING, LLC and
8 OAKMONT MANAGEMENT GROUP, LLC

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SONOMA**
12

13 SHERRY MINSON, Individually and as) Case No.: SCV-261552
Successor-in-Interest to the Estate of)
14 ELIZABETH BUDOW; ALICE) ANSWER TO PLAINTIFFS' UNVERIFIED
EUROTAS; ELIZABETH EUROTAS;) FIRST AMENDED COMPLAINT BY
15 HELEN ALLEN; MARK ALLEN; RUTH) DEFENDANTS VARENNA ASSISTED
CALLEN; LEONARD KULWIEC;) LIVING, LLC dba VILLA CAPRI
16 NOELLA MAGNUSON; JOHN) (ERRONEOUSLY SUED AND SERVED AS
MAGNUSON; and CECILIA SANCHEZ,) OAKMONT OF VARENNA, LLC D/B/A
17 MELISSA LANGHALS, PAUL) VILLA CAPRI); OAKMONT SENIOR
LANGHALS, and KARL LANGHALS,) LIVING, LLC; AND OAKMONT
18 Individually and as Successors-in-Interest to) MANAGEMENT GROUP, LLC
the Estate of VIRGINIA GUNN,)

19 Plaintiffs,

20 vs.

21 OAKMONT SENIOR LIVING, LLC;)
22 OAKMONT MANAGEMENT GROUP,)
LLC; OAKMONT OF VARENNA, LLC) JUDGE: Hon. Arthur A. Wick
23 D/B/A VILLA CAPRI, and Does 1-50,)
Inclusive,) Complaint filed January 18, 2018

24 Defendants.)
25 Trial scheduled: None

26 COME NOW Defendants VARENNA ASSISTED LIVING, LLC dba VILLA CAPRI
27 (erroneously sued and served as OAKMONT OF VARENNA, LLC D/B/A VILLA CAPRI);
28 OAKMONT SENIOR LIVING, LLC and OAKMONT MANAGEMENT GROUP, LLC

1 (hereinafter, collectively referred to as “Defendants”) in answer to the unverified Complaint by
2 SHERRY MINSON, Individually and as Successor-in-Interest to the Estate of ELIZABETH
3 BUDOW; ALICE EUROTAS; ELIZABETH EUROTAS; HELEN ALLEN; MARK ALLEN;
4 RUTH CALLEN; LEONARD KULWIEC; NOELLA MAGNUSON; JOHN MAGNUSON;
5 and CECILIA SANCHEZ, MELISSA LANGHALS, PAUL LANGHALS, and KARL
6 LANGHALS, Individually and as Successors-in-Interest to the Estate of VIRGINIA GUNN
7 (hereinafter, collectively referred to as “Plaintiffs”) on file herein, for themselves and for no
8 others admit, deny, and allege as follows:

9 GENERAL DENIAL

10 1. That Plaintiffs’ Complaint being unverified, Defendants, pursuant to Code of
11 Civil Procedure (hereinafter referred to as “C.C.P.”) §431.30, deny, generally and specifically,
12 each and every allegation contained in the Complaint and the whole thereof, and further deny
13 that Plaintiffs have been damaged in the sums alleged or any sum or sums at all.

14 FIRST AFFIRMATIVE DEFENSE

15 (Failure to State a Cause of Action)

16 2. The Complaint, and each cause of action therein, fail to state facts sufficient to
17 constitute a cause of action against Defendants.

18 SECOND AFFIRMATIVE DEFENSE

19 (Statute of Limitations)

20 3. The Complaint is barred by the applicable Statute of Limitations including, but
21 not limited to, the Statute of Limitations set forth in C.C.P. §335.1, §338, §340.5 and/or any
22 other statute of limitations applicable to the present action.

23 THIRD AFFIRMATIVE DEFENSE

24 (Laches)

25 4. Plaintiffs delayed and waited an unreasonable period in commencing this action,
26 which has unduly prejudiced Defendants.

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1 FOURTH AFFIRMATIVE DEFENSE

2 (Estoppel)

3 5. By virtue of her own conduct, Plaintiffs are estopped from recovering from
4 Defendants for the claims in the Complaint.

5 FIFTH AFFIRMATIVE DEFENSE

6 (Waiver)

7 6. Plaintiffs waived any right to recovery from Defendants for the claims in the
8 Complaint.

9 SIXTH AFFIRMATIVE DEFENSE

10 (Failure to Mitigate)

11 7. All damages sustained by Plaintiffs, if any, were the direct and proximate cause
12 of Plaintiffs' failure to mitigate damages.

13 SEVENTH AFFIRMATIVE DEFENSE

14 (Failure to Take Adequate Precautions)

15 8. Plaintiffs failed to take adequate precautions that would have avoided and/or
16 diminished her injuries and damages, if any.

17 EIGHTH AFFIRMATIVE DEFENSE

18 (Comparative Negligence of Third Parties)

19 9. The damages sustained by Plaintiffs, if any, were caused by the acts of others,
20 which bar and/or diminish Plaintiffs' recovery, if any, against Defendants.

21 NINTH AFFIRMATIVE DEFENSE

22 (Comparative Negligence)

23 10. The damages sustained by Plaintiffs, if any, were caused by acts of Plaintiffs,
24 which bar and/or diminish Plaintiffs' recovery, if any, against Defendants.

25 TENTH AFFIRMATIVE DEFENSE

26 (Intervening/Superseding Cause)

27 11. The damages sustained by Plaintiffs, if any, were proximately caused by the
28 intervening and superseding acts of Plaintiffs and/or others, which bar and/or diminish

1 Plaintiffs' recovery, if any, against Defendants.

2 ELEVENTH AFFIRMATIVE DEFENSE

3 (Liability of Third Parties)

4 12. Should it be found that Defendants are in any manner legally responsible for
5 damages sustained by Plaintiffs, which Defendants specifically deny, such damages were
6 proximately caused and contributed to by other parties in this case, whether served or not
7 served, and/or by other persons or entities not presently parties to this action, and it is necessary
8 that the proportion of degree of negligence, fault and/or other responsibility of each and every
9 person and entity be determined and prorated.

10 TWELFTH AFFIRMATIVE DEFENSE

11 (Offset)

12 13. Defendants are entitled to an offset in an amount equal to the amount of monies
13 which Plaintiffs' health care providers received, or would have received had a claim been made,
14 from any insurer(s) affording coverage for Plaintiffs, and for monies Plaintiffs received from
15 Defendants or on behalf of Defendants.

16 THIRTEENTH AFFIRMATIVE DEFENSE

17 (Non-joint Liability for Non Economic Damages Civil Code §1431.2)

18 14. Should it be found that Defendants are in any manner legally responsible for any
19 damages sustained by Plaintiffs, which Defendants specifically deny, Defendants' liability for
20 non-economic damages shall be several only and not joint, such that Defendants shall be liable
21 only for the amount of non-economic damages allocated to Defendants in direct proportion to
22 their percentage of fault.

23 FOURTEENTH AFFIRMATIVE DEFENSE

24 (Vicarious Comparative Negligence)

25 15. The damages referred to in the Complaint were proximately caused by Plaintiffs
26 and/or others in some manner with Plaintiffs, and at all times relevant herein, Plaintiffs failed to
27 use and exercise, for her own protection, the proper care and precautions which a reasonable
28 prudent person under the same or similar circumstances would have exercised, and if answering

1 Defendants committed any wrongful act at all, which supposition is made for the purpose of this
2 defense (without admitting such to be fact), the aforesaid conduct by Plaintiffs and/or entities or
3 persons associated with her contributed to Plaintiffs' alleged damages, if any, against
4 Defendants.

5 FIFTEENTH AFFIRMATIVE DEFENSE

6 (Plaintiffs Were Legal Cause of Own Injury)

7 16. Plaintiffs did not conduct herself in a reasonable manner or as a reasonable
8 person would have in like or similar circumstances, and, by such conduct, Plaintiffs legally
9 caused and/or contributed to her own damages and losses, if any, against Defendants.

10 SIXTEENTH AFFIRMATIVE DEFENSE

11 (Due Diligence)

12 17. Defendants exercised due diligence and relied in good faith on the
13 representations of others, and was not aware, nor had any way of becoming aware, of any
14 alleged wrongdoing or omissions.

15 SEVENTEENTH AFFIRMATIVE DEFENSE

16 (Avoidable Consequences)

17 18. Plaintiffs failed to take precautions, which would have avoided and/or
18 diminished the injuries and damages, if any, complained of in the Complaint.

19 EIGHTEENTH AFFIRMATIVE DEFENSE

20 (Periodic Payments)

21 19. Any recovery by the Plaintiffs, pursuant to the Complaint and each purported
22 cause of action therein, is controlled by provisions of C.C.P. §667.7.

23 NINETEENTH AFFIRMATIVE DEFENSE

24 (Collateral Sources)

25 20. The damages alleged in the Complaint, and each purported cause of action
26 contained or described in said Complaint, have been reimbursed to said Plaintiffs by collateral
27 sources according to the provisions of California Civil Code §3333.1.

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TWENTIETH AFFIRMATIVE DEFENSE

(Limitation on Recovery)

21. Any recovery of any general damages by Plaintiffs pursuant to the Complaint, and each purported cause of action contained therein, is limited to \$250,000 by the provisions of California Civil Code §3333.2 and California Welfare & Institutions Code §15657.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Medical Complications from Prior Care)

22. The Complaint, and each purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action in that the Complaint is barred by California Business and Professions Code §2396.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Natural Course of a Disease or Condition)

23. That the damages alleged in Plaintiffs' Complaint, and each purported cause of action contained therein, were the result of and/or were caused by the natural course or condition, or were the natural or expected result of reasonable treatment rendered for the disease or condition, and thus, these causes of action are barred pursuant to the provisions of California Civil Code §1714.8.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Compliance with Standard of Care)

24. That at all times relative to Plaintiffs' Complaint, the care and treatment rendered by Defendants and/or persons for whom Defendants are legally responsible, complied in all respects with the applicable and appropriate standard of care.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Rendering of Professional Care)

25. That at all times relative to Plaintiffs' Complaint, the care and treatment rendered by Defendants and/or persons for whom Defendants are legally responsible, constitute professional, medical care, and Defendants are not merely "care custodians."

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Join an Indispensable Party)

26. Plaintiffs' recovery is barred as it fails to comply with C.C.P. §389 wherein all persons necessary for just adjudication must be joined in litigation as necessary and indispensable. Plaintiffs' Complaint fails to state the names of all indispensable parties who are not joined, and the reasons why they are not joined.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

("Per Action" Rule)

27. Plaintiffs' causes of action are indivisible and cannot be litigated in separate suits. Should Defendants be found legally responsible in any manner for any damages sustained by Plaintiffs, Defendants' liability for damages shall be cumulative and, if applicable, shall not exceed \$250,000 total as to Plaintiffs pursuant to Civil Code §3333.2 and Welf. & Inst. Code §15657.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Consent)

28. Plaintiffs gave full and informed consent to the medical care, procedures and treatment given by Defendants after being fully advised of the risks and benefits of the proposed medical care, treatment and procedures. In so consenting, Plaintiffs voluntarily and knowingly assumed the risk of the medical care, procedures and treatment and is barred from seeking recovery for the injuries and damages alleged.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Notice of Intent)

29. Plaintiffs' claims are barred by Plaintiffs' failure to give proper notice of the intent to commence a civil action against a healthcare provider pursuant to C.C.P. §364.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Standing)

30. Plaintiffs lack standing to sue.

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THIRTIETH AFFIRMATIVE DEFENSE

(No Subject Matter Jurisdiction)

31. This Court lacks subject matter jurisdiction over the claims raised by Plaintiffs' Complaint.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction pursuant to Existence of a Valid Arbitration Agreement)

32. Plaintiffs' Complaint is improperly filed in this Court in that there is a valid and enforceable arbitration agreement with controls this dispute, thus, this Court lacks subject matter jurisdiction over the matters complained of in Plaintiffs' Complaint.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Defendants Are Independent of Other Defendants)

33. The Defendants in this matter are separate distinct independent entities not in concert with any other defendant, are not agents of another defendant, not acting as a joint enterprise and not the alter egos of another defendant.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Defendants Are Subject to MICRA)

34. Defendants are subject to all the provisions, statutes and case authority relating to the California Medical Injury Compensation Reform Act or "MICRA."

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Heightened Standard)

35. Any claim for remedy sought by Plaintiffs are limited by the provisions of Welfare & Institutions Code §15657.

RESERVATION OF OTHER AFFIRMATIVE DEFENSES

36. Defendants reserve the right to allege other affirmative defenses, as they may become known through the course of discovery.

WHEREFORE, Defendants pray for judgment as follows:

- 1. That Plaintiffs take nothing by way of the Complaint;
- 2. For judgment in favor of Defendants, including costs of suit and reasonable

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attorney fees; and

3. For such other and further relief as this court deems just and proper.

Dated: February 20, 2018

GIOVANNIELLO LAW GROUP

By:


Alexander F. Giovanniello
Paul H. Kang
Attorneys for Defendants
VARENNA ASSISTED LIVING, LLC dba
VILLA CAPRI (erroneously sued and served as
OAKMONT OF VARENNA, LLC D/B/A VILLA
CAPRI); OAKMONT SENIOR LIVING, LLC and
OAKMONT MANAGEMENT GROUP, LLC

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PROOF OF SERVICE

I am employed in the county of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is One Pointe Drive, Suite 300 Brea, California 92821.

On **February 20, 2018** I served the foregoing document(s) described as, ANSWER TO PLAINTIFFS' UNVERIFIED FIRST AMENDED COMPLAINT BY DEFENDANTS VARENNA ASSISTED LIVING, LLC dba VILLA CAPRI (ERRONEOUSLY SUED AND SERVED AS OAKMONT OF VARENNA, LLC D/B/A VILLA CAPRI); OAKMONT SENIOR LIVING, LLC; AND OAKMONT MANAGEMENT GROUP, LLC, by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

(XX) BY U.S. MAIL: I am "readily familiar" with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice the envelope was sealed and placed for collection and mailing with the United States Postal Service on that same day with postage thereon fully prepaid at Brea, California following ordinary business practices.

() BY PERSONAL SERVICE: I caused the documents to be personally delivered to the person(s) at the address(es) listed above (or on the attached service list). (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

() BY OVERNIGHT DELIVERY: I placed said envelope(s) for collection and overnight delivery at a regularly utilized drop box of the overnight delivery carrier.

() BY FAX TRANSMISSION: I faxed said document(s) to the person(s) indicated on the service list.

() BY ELECTRONIC SERVICE: I caused the document(s) to be sent to the person(s) at the electronic notification addresses listed on the service list.

Executed on **February 20, 2018** at Brea, California.

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



Linda Song

1 **SERVICE LIST**

2 Sherry Minson, et al. v. Oakmont Senior Living, LLC, et al.
3 Case No.: SCV-261552

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