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ESTATE OF ALBERT C. ROBERTS BY
BRIAN ROBERTS, ADMINISTRATOR AD
PROSEQUENDUM,

Plaintiffs,

v.

ANDOVER SUBACUTE REHABILITATION
CENTER I, ANDOVER SUBACUTE
REHABILITATION CENTER II, ALTITUDE
INVESTMENTS, LTD, ALLIANCE
HEALTHCARE, HEALTHCARE SERVICES
GROUP, LOUIS SCHWARTZ, CHAIM
SCHEINBAUM, JOHN DOES 1 through 100,
said names being fictitious and unknown
persons, and ABC CORPORATIONS 1 through
100, said names being fictitious and unknown
entities,

Defendant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: SUSSEX COUNTY

Docket No.:

Civil Action

**COMPLAINT
(CLASS ACTION)**

This action is commenced by Plaintiff, ESTATE OF ALBERT C. ROBERTS BY BRIAN ROBERTS, ADMINISTRATOR AD PROSEQUENDUM, individually and on behalf of the class of all persons who were residents and/or patients of ANDOVER SUBACUTE REHABILITATION CENTER I and ANDOVER SUBACUTE REHABILITATION CENTER II (collectively, the "Facilities") who died as a result of contracting COVID-19 at either facility (hereinafter, the "Class") pursuant to R. 4:32, by and through their undersigned attorneys, Habba Madaio & Associates LLP, and who alleges as follows:

PARTIES

1. Brian Roberts (“Roberts”), a resident of the State of New Jersey, is the nephew of the decedent, Albert C. Roberts, (“Decedent”), and the administrator ad prosquendum for Decedent’s estate. Roberts brings this action on behalf of plaintiff, ESTATE OF ALBERT C. ROBERTS BY BRIAN ROBERTS, ADMINISTRATOR AD PROSQUENDOM (“Plaintiff”), and on behalf of all members of the Class who are similarly situated, including decedents, administrators, next of kin, heirs, etc.

2. Defendant, ANDOVER SUBACUTE REHABILITATION CENTER I (“Andover I”) is a New Jersey domiciled long-term care facility doing business at 1 Obrien Lane, Lafayette Township, New Jersey 07848.

3. Defendant, ANDOVER SUBACUTE REHABILITATION CENTER II (“Andover II”) is a New Jersey domiciled long-term care facility doing business at 99 Mulford Road, Lafayette Township, New Jersey 07848.

4. Defendant, ALTITUDE INVESTMENTS, LTD (“Altitude”), is an entity doing business in the State of New Jersey and the owner of Andover Subacute and/or the lessor of the building where the facility is located, with a business address of 2201 Main Street, Evanston, Illinois 60202.

5. Defendant, ALLIANCE HEALTHCARE (“Alliance”), is a New Jersey business entity which oversees and/or manages the operations of Andover Subacute, with a business address of 1382 Lanes Mill Road, Lakewood, New Jersey 08701.

6. Defendant, HEALTHCARE SERVICES GROUP (“HSG”), is a New Jersey business entity with a business address of 261 Terhune Drive, Wayne, New Jersey 07470.

7. Defendant, LOUIS SCHWARTZ (“Schwartz”), is an owner of the Facilities and/or Alliance, a Brooklyn based insurance broker, and a resident of the State of New Jersey.

8. Defendant, CHAIM SCHEINBAUM (“Scheinbaum”), is an owner of the Facilities and/or Alliance and a resident of the State of New Jersey.¹

9. Defendants, JOHN DOES 1 through 100, are individuals whose identities are unknown to the plaintiff, including, but not limited to, licensed health care professionals, employees, agents, administrators, aides, officers, managers, sanitation workers, orderlies, security officers and/or other duly authorized individuals who caused, contributed to, or are otherwise liable for the damages which are the subject of this action.

10. Defendants, ABC CORPORATIONS 1 through 100, are corporate entities are currently unknown to the plaintiff, including, but not limited to, healthcare facilities, management companies, owners, operators and/or other entities that caused, contributed to, or are otherwise liable for the damages which are the subject of this action.

FACTS COMMON TO ALL COUNTS

11. In the years leading up to the COVID-19 pandemic, the Centers for Medicare & Medicaid Services (“CMS”), which is responsible for overseeing, regulating and monitoring long-term care facilities, performed numerous inspections of Andover I and Andover II and uncovered a litany of systemic issues with each facility.

12. In assessing Andover I, CMS has performed twelve (12) inspections since 2015 and has cited the facility for twenty-four (24) regulatory violations.

13. As for Andover II, CMS has performed twenty-seven (27) inspections since 2015 and has cited the facility for forty-eight (48) regulatory violations. In addition, CMS graded the

¹ In early 2020, Scheinbaum’s application to take over the operation of an upstate New York nursing home was rejected due to “character and competence” concerns.

“scope and severity” of Andover II’s deficiencies as level ‘K,’ the second-worst rating on a scale of A-L, which is indicative of a “pattern” of deficiencies that creates an “[i]mmediate jeopardy to resident health or safety.”

14. Among the many issues cited, one of the consistent findings was that the Facilities had continuously failed to meet the requisite safety and sanitary standards needed to protect against the spread of infection and communicable disease among its residents and patients.

15. In fact, CMS specifically directed the Facilities to implement adequate infection prevention and control programs on numerous occasions: Andover I was directed to do so at least once in 2015²; Andover II was directed to do so at least five times between 2015 and 2020.³

16. Despite CMS’s instruction, Defendants failed to implement any such measures and the Facilities continued to operate without satisfactory infection prevention and control programs in place.

17. During that time, CMS, which provides assessment ratings for long-term care facilities, rated on a scale of one to five (five being the highest score), provided scores for each of the Facilities. Andover I was given a ‘three star’ rating, which is classified as “average.” Andover

² A CMS report dated 8/24/15 directed Andover I to “establish and maintain an Infection Control Program designed to provide a safe, sanitary and comfortable environment and to help prevent the development and transmission of disease and infection.”

³ A CMS report dated 3/5/20 directed Andover II to “[h]onor the resident’s rights to a safe, clean, comfortable and homelike environment” and “[p]rovide and implement an infection prevention and control program based on findings that “the facility failed to, among other things, “use the required personal protective equipment (PPE) and perform handwashing to prevent the spread of infection...”; a CMS report dated 11/26/19 found that “the facility failed to ensure that the residents’ physical environment was maintained in a clean and sanitary condition for 12 of 19 residents rooms...”; a CMS report dated 10/29/18 directed Andover II to “[p]rovide and implement an infection prevention and control program” based on findings that “the facility staff failed to follow infection control guidelines, for [h]andwashing, to prevent infection...”; a CMS report dated 11/29/16 directed Andover II to “[h]ave a program that investigates, controls and keeps infection from spreading” based on findings that “the facility failed to maintain a safe and sanitary environment to prevent the spread of infection”; a CMS report dated 1/7/16 directed Andover II to “establish and maintain an Infection Control Program designed to provide a safe, sanitary and comfortable environment to help prevent the development and transmission of disease and infection” based on findings that “the facility staff failed to provide a safe environment to prevent the potential spread of Communicable Disease, the Norovirus, to all facility residents by not following the CDC guidelines...”

II was given a ‘one star’ rating, the lowest possible score, which is classified as “much below average.”

18. Despite the extensive history of regulatory violations and poor assessment ratings, Defendants attempted to mislead consumers by holding out the Facilities as high-quality, regulatory-compliant facilities with adequate systems and protections in place to provide proper care for its residents.

19. For example, since at least August 15, 2014 through the present, the Facilities’ combined website (www.andoverrehab.com) has stated that the Facilities have an “excellent reputation with regulatory agencies and comply with stringent local, state and federal standards.”

20. In addition, since at least October 2015 through the present, the Andover II-specific website (www.asrctwo.com) has stated that the facility “[p]rovides a physical safe and therapeutic environment.”

21. Roberts, Decedent, and the Class Members chose the Facilities for their nursing home and/or rehabilitations needs based on Defendants’ representations that the Facilities were high quality and regulatory-compliant. Were it not for the representations made by Defendants that Roberts and the Decedent relied upon, they would not have chosen the Facilities. For the reasons discussed *infra*, the Facilities failed to meet Defendants’ promises that they would provide high-quality and regulatory compliant care to Decedent.

22. Through their misrepresentations Defendants were able to charge a premium for their nursing home/rehabilitation services over what they would have been able to charge had they not misled Roberts, the Decedent, and the Class.

23. Roberts and the Decedent would not have chosen the Facilities for Decedent’s nursing home/rehabilitation services, or would not have paid what they did had they known

Defendants' representations regarding the quality and safety of the Facilities were false and deceptive.

24. In or around late 2019, a deadly virus known as COVID-19 began spreading across the globe.

25. COVID-19 causes severe respiratory illness in infected individuals and can cause complications such as pneumonia, acute respiratory distress syndrome, septic shock, and multi-organ failure.

26. COVID-19 is highly contagious and can spread rapidly as a result of person-to-person contact, especially in contained, indoor environments.

27. Elderly persons and persons with chronic underlying medical conditions are believed to be particularly vulnerable to the effects of COVID-19 and at greater risk of serious bodily injury or death if exposed to the virus.

28. In or around January 2020, the first known COVID-19 cases were documented in the United States of America.

29. In February 2020, it became widely reported that numerous outbreaks were occurring in long-term care facilities across the nation, resulting in a catastrophic loss of life at those facilities.

30. On March 9, 2020, Governor Phillip D. Murphy issued Executive Order No. 103, officially declaring a Public Health Emergency in the State of New Jersey due to the COVID-19 pandemic.

31. Despite the very serious risk of an outbreak at the Facilities, and the dire consequences that would result if one were to occur, Defendants failed to take reasonable or

adequate precautions to protect their residents and/or patients against the potential spread of COVID-19.

32. As a direct result of Defendants' inaction, an outbreak of COVID-19 occurred in both Facilities in or around mid-to-late March 2020.

33. At all relevant times herein, Decedent was a resident of Andover II and was under the exclusive care, custody, control and management of Defendants.

34. As a result of the COVID-19 outbreak at the Facilities, Decedent contracted COVID-19 and suffered severe respiratory illness and other injuries.

35. On April 1, 2020, Decedent died while in the care of Defendants.

36. On or about April 11, in the midst of the outbreak, the Andover Police Department received a request to deliver twenty-five (25) body bags to the Facilities.

37. On or about April 12, 2020, Andover Police Department officers reported to the Facilities and discovered five (5) dead bodies being stored in a small holding room in Andover II.

38. On or about April 13, 2020, the officers returned, based on an anonymous tip that a body was being stored in a shed, and discovered an additional twelve (12) bodies being held in the small holding room in Andover II.

39. Upon information and belief, none of the seventeen (17) resident deaths had been reported to relevant authorities, family members, authorized representatives, and/or insurance companies prior to the police's discovery.

40. It has been widely reported that, at or around that time, many family members and other authorized representatives of residents were unable to get in contact with staff or personnel of the Facilities; in many cases, family members went multiple weeks without receiving any update as to the status of their loved ones.

41. It has been reported that, to date, at least 94 residents and/or patients of the Facilities have died from COVID-19.

42. A CMS inspection report dated April 21, 2020, investigating the outbreak at Andover II, found that the facility was “not following infection control safety practices and guidance recommended by CMS and the Centers for Disease Control and Prevention (CDC), during a COVID-19 pandemic.”

43. In particular, the report found that “the facility failed to ensure: 1) appropriate transmission based precautions were ordered and implemented (immediate isolation from asymptomatic roommates) for suspected COVID-19 residents...2) a system of surveillance to prevent the spread of infection (screening, tracking, monitoring and/or reporting of fever and other signs/symptoms of COVID-19)...3) staff properly used personal protective equipment (PPE) when caring for COVID-19 positive or COVID-19 suspected residents, 4) staff were properly trained to use the infrared forehead thermometer on staff, visitors and residents, 5) implementation of hand washing practices consistent with CDC (Center for Disease Control and Prevention) guidelines to reduce the spread of infections and prevent cross-contamination during the COVID-19 pandemic, and 6) posting of contact/droplet precaution signage throughout the facility.”

44. The report concluded that “these failures in proper infection control practices had the potential to affect all residents in the facility through the development and transmission of COVID-19 and other communicable diseases” and that “the provider’s non-compliance with one or more requirements of participation has caused, or was likely to cause, serious injury, harm, impairment or death to residents.”

45. Currently, the Andover II-specific website states that the facility “offer[s] the most qualified health care professionals, who are dedicated to providing the highest quality of care to all our residents...” and that the facility is “COVID 19 FREE.”

46. As set forth below, the individual and class claims asserted herein are premised on Defendants’ unlawful conduct in misleading and deceiving the members of the Class and Plaintiff by way of omitting pertinent information and/or making misrepresentations in falsely advertising the adequacy of the Facilities. The injuries sustained by the members of the Class and Plaintiff were the direct, proximate, and foreseeable result of Defendants’ aforementioned conduct.

CLASS ALLEGATIONS

47. This action is properly brought as a Class Action pursuant to R. 4:32 of Rules Governing the Courts of the State of New Jersey.

48. Plaintiff seeks certification of a class initially defined as:

All persons who, were residents and/or patients of Andover Subacute Rehabilitation I or Andover Subacute Rehabilitation II, during the applicable statute of limitations period.

49. The Class, of which Plaintiff is a member, is readily identifiable.

50. The members of the Class are so numerous that joinder of the members of the Class would be impracticable. The precise number of members of the Class and their addresses are presently unknown to Plaintiff but may be ascertained from Defendant’s records. If deemed necessary by the Court, members of the Class may be notified of the pendency of this action by mail, supplemented by published notice.

51. This action involves common questions of law and fact which predominate over any questions affecting individual members of the Class, including, without limitation:

- a. Whether Defendants violated applicable state nursing home laws, including, but not limited to, in N.J.S.A. 30:13-1, et seq. and N.J.S.A. 8:39-4, et seq.
- b. Whether Defendants violated applicable federal nursing home laws, including, but not limited to, 42 C.F.R. § 483.1, et seq. and 42 U.S.C.A. § 1395(i)-1, et seq.
- c. Whether Defendants engaged in unfair, unlawful, deceptive, unconscionable commercial business practices in advertising the Facilities to customers;
- d. Whether Defendants made false representations and/or purposefully failed to disclose pertinent information regarding the Facilities' compliance with applicable laws, codes and regulations;
- e. Whether Defendants made false representations and/or purposefully failed to disclose pertinent information regarding the quality, safety and/or adequacy of the Facilities' services;
- f. Whether Defendants' unlawful, unfair and deceptive practices harmed the members of the Class and Plaintiff;
- g. Whether the members of the Class and Plaintiff are entitled to actual, statutory, or other damages and/or monetary relief;

52. Plaintiff's claims are typical of the claims of the Class because, among other things, Plaintiff and the Class were injured through the substantially uniform misconduct described above. Plaintiff is advancing the same claims and legal theories on behalf of themselves and all members of the Class.

53. In addition, there are no defenses available to Defendants that are unique to Plaintiff and Plaintiff's interest are the same as those of the Class as a whole. Plaintiff does not have any interests antagonistic to those of the members of the Class.

54. Plaintiff will fairly and adequately protect the interests of the Class because his interests are aligned with the members of the Class that he seeks to represent. In addition, Plaintiff has retained competent counsel with significant experience in prosecuting complex and sophisticated civil litigations and class actions in the State of New Jersey.

55. A class action is superior to any other form of adjudicating the subject claims and no unusual difficulties are likely to be encountered in the management of this action. A class action will allow for efficient, orderly and expeditious resolution of the claims of the Class and will foster the economies of time, effort and expense. The adjudication of numerous individual actions by members of the Class would pose a significant risk of inconsistent and varying results. Moreover, given the identical nature of the members of the Class's claims and the absence of material or dispositive difference in the law upon which the claims are based, adjudication of this action will be easily manageable for the parties and the Court.

COUNT I
(VIOLATION OF STATE NURSING HOME LAWS)

56. Plaintiff re-asserts and re-alleges the allegations contained within the preceding paragraphs as if set forth at length herein.

57. At all relevant times herein, Defendants failed to comply with the requisite, minimum standards of care set forth in N.J.S.A. 30:13-1, et seq. and N.J.S.A. 8:39-4, et seq.

58. Defendants violations of N.J.S.A. 30:13-1, et seq. include, but are not limited to, the following:

- a. Defendants violated N.J.S.A. 30:13-3(c) by failing to admit “only that number of residents for which it reasonably believes it can safely and adequately provide nursing care.”
 - b. Defendants violated N.J.S.A. 30:13-3(h) by failing to comply with “all applicable State and federal statutes and rules and regulations.”
 - c. Defendants violated N.J.S.A. 30:13-5(j) by failing to provide to the members of the Class and Plaintiff a “safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident, including the right to expect and receive appropriate assessment, management and treatment of pain as an integral component of that person's care consistent with sound nursing and medical practices.”
 - d. Defendants violated N.J.S.A. 30:13-5(m) by depriving the members of the Class and Plaintiff of their “constitutional, civil or legal right[s].”
59. Defendants violations of N.J.S.A. 8:39-4, et seq. include, but are not limited to, the following:
- a. Defendants violated N.J.S.A. 8:39-4.1(5) by subjecting the members of the Class and Plaintiff to “physical and mental abuse and neglect.”
 - b. Defendants violated N.J.S.A. 8:39-4.1(a)(11) in preventing the members of the Class and Plaintiff from living in “safe, decent, and clean conditions in a nursing home that does not admit more residents than it can safely accommodate while providing adequate nursing care.”

- c. Defendants violated N.J.S.A. 8:39-4.1(a)(12) by failing to treat the members of the Class and Plaintiff with “courtesy, consideration, and respect for [his] dignity and individuality.”
- d. Defendants violated N.J.S.A. 8:39-4.1(a)(34) by violating preventing the members of the Class’ and Plaintiff’s “constitutional, civil, and legal rights” to which they are entitled by law.

60. As a direct, proximate and foreseeable result of Defendants’ failure to comply with state nursing home regulations, including, but not limited to, N.J.S.A. 30:13-1, et seq. and N.J.S.A. 8:39-4, et seq., the members of the Class and Plaintiff suffered injuries including, but not limited to becoming infected with COVID-19, undergoing medical treatment, incurring medical expenses, incurring economic loss, suffering disfigurement, disability, pain and suffering, mental anguish, loss and injury, loss of enjoyment of life, loss of dignity and death.

WHEREFORE, Plaintiff demands judgment for himself and the members of the Class as follows:

- a. The Court enter a determination that this action is a proper class action pursuant to R. 4:32; and
- b. The Court enter an order certifying the Class pursuant to R. 4:32 and appointing the undersigned counsel as the representative thereof;
- c. The Court enter an Order awarding declaratory and injunctive relief, as permitted by law, requiring Defendants to send formal notice to all members of the Class, advising them of the declaratory ruling, the pendency of the action, and of their respective rights;

- d. The Court enter an Order requiring Defendants to pay to the members of the Class and Plaintiff joint and several damages, economic, monetary and consequential damages, compensatory damages, punitive damages, treble damages and/or statutory damages;
- e. The Court enter an Order awarding to Plaintiff, individually and on behalf of the members of the Class, pre-judgment and post-judgment interest to the extent allowable by law;
- f. The Court enter an Order awarding to Plaintiff, individually and on behalf of the members of the Class, his expenses and costs of suit, including reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent allowable by law;
- g. For such other relief as the Court deems equitable, just and proper;

COUNT II
(VIOLATION OF FEDERAL NURSING HOME LAWS)

61. Plaintiff re-asserts and re-alleges the allegations contained within the preceding paragraphs as if set forth at length herein.

62. At all relevant times herein, Defendants failed to comply with the requisite, minimum standards of care set forth in 42 C.F.R. § 483.1, et seq. and 42 U.S.C.A. § 1395(i)-1, et seq.

63. Defendants violations of 42 C.F.R. § 483.1, et seq. include, but are not limited to, the following:

- a. Defendants violated 42 C.F.R. § 483.10(a) by failing to provide the members of the Class and Plaintiff with a “dignified existence.”

- b. Defendants violated 42 C.F.R. § 483.10(a)(1) by failing to treat the members of the Class and Plaintiff with “respect and dignity and care [...] in a manner and in an environment that promotes maintenance or enhancement of his [...] quality of life.”
- c. Defendants violated 42 C.F.R. § 483.10(a)(1)(i)(1) by failing to provide the members of the Class and Plaintiff with a “safe, clean, comfortable and homelike environment.”
- d. Defendants violated 42 C.F.R. § 483.10(a)(1)(i)(2) by failing to provide the members of the Class and Plaintiff with “[h]ousekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior.”
- e. Defendants violated 42 C.F.R. § 483.10(a)(1)(i)(3) by failing to provide the members of the Class and Plaintiff with “[c]lean bed and bath linens that are in good condition.”
- f. Defendants violated 42 C.F.R. § 483.25 by failing to provide ensure that the members of the Class and Plaintiff received “treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident’s choices.”
- g. Defendants violated 42 C.F.R. § 483.30 by failing to employ and/or supervise “sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain maintain the highest practicable physical, mental, and psychosocial well-being of each resident”

- h. Defendants violated 42 C.F.R. § 483.70 by failing to “operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.”

64. Defendants violations of 42 U.S.C.A. § 1395(i)-1, et seq. include, but are not limited to, the following:

- a. Defendants violated 42 U.S.C.A. § 1395(i)-3(b)(3) by failing to “establish and maintain an infection program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection” and “designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.”

65. As a direct, proximate and foreseeable result of Defendants’ failure to comply with state nursing home regulations, including, but not limited to, 42 C.F.R. § 483.1, et seq. and 42 U.S.C.A. § 1395(i)-1, et seq., the members of the Class and Plaintiff suffered injuries including, but not limited to becoming infected with COVID-19, undergoing medical treatment, incurring medical expenses, incurring economic loss, suffering disfigurement, disability, pain and suffering, mental anguish, loss and injury, loss of enjoyment of life, loss of dignity and death.

WHEREFORE, Plaintiff demands judgment for himself and the members of the Class as follows:

- a. The Court enter a determination that this action is a proper class action pursuant to R. 4:32; and

- b. The Court enter an order certifying the Class pursuant to pursuant to R. 4:32 and appointing the undersigned counsel as the representative thereof;
- c. The Court enter an Order awarding declaratory and injunctive relief, as permitted by law, requiring Defendants to send formal notice to all members of the Class, advising them of the declaratory ruling, the pendency of the action, and of their respective rights;
- d. The Court enter an Order requiring Defendants to pay to the members of the Class and Plaintiff joint and several damages, economic, monetary and consequential damages, compensatory damages, punitive damages, treble damages and/or statutory damages;
- e. The Court enter an Order awarding to Plaintiff, individually and on behalf of the members of the Class, pre-judgment and post-judgment interest to the extent allowable by law;
- f. The Court enter an Order awarding to Plaintiff, individually and on behalf of the members of the Class, his expenses and costs of suit, including reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent allowable by law;
- g. For such other relief as the Court deems equitable, just and proper;

COUNT III
(VIOLATION OF THE CONSUMER FRAUD ACT)

66. Plaintiff re-asserts and re-alleges the allegations contained within the preceding paragraphs as if set forth at length herein.

67. The Consumer Fraud Act (the "CFA"), N.J.S.A. 56:8-2, which provides broad legal protection to New Jersey consumers against deceptive commercial practices, states as follows:

Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented may bring an action or assert a counterclaim therefor in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section, including those brought by the Attorney General, the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.

N.J.S.A. § 56:8-19.

68. In particular, the CFA expressly prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice...

N.J.S.A. § 56:8-2.

69. The CFA also prohibits “[t]he advertisement of merchandise as part of a plan or scheme not to sell the item or service so advertised or not to sell the same at the advertised price.”

N.J.S.A. § 56:8-2.2.

70. The Facilities’ long-term care services are “merchandise” as defined by the CFA, as it was a “service...offered directly to the public for sale.” N.J.S.A. § 56:8-1(c).

71. Defendants have engaged in deceptive, misleading and unconscionable commercial practices through various acts and omissions in advertising and promoting the Facilities and the quality of the services they provide to consumers.

72. Defendants have made false promises, misrepresentations, and deceptive statements and knowingly concealed, suppressed or omitted pertinent information in an attempt to mislead consumers, including members of the Class and Plaintiff, into believing that the Facilities were compliant with all applicable statutes, codes, regulations and laws and that they provided high-quality services with preventative safety measures in place to adequately protect their residents and/or patients.

73. These false, misleading and/or deceptive statements include, without limitation:

- a. Despite the extensive and serious history of regulatory violations of both Facilities, and the ‘one star’ overall rating given by CMS to Andover II – the lowest possible score which is classified as “much below average” – the Facilities’ combined website (www.andoverrehab.com) has stated, since at least August 15, 2014 through the present, that the Facilities have an “excellent reputation with regulatory agencies and comply with stringent local, state and federal standards.”
- b. Despite CMS labeling the “scope and severity” of Andover II’s deficiencies as level ‘K,’ which is indicative of a “pattern” of deficiencies that creates an “[i]mmediate jeopardy to resident health and safety,” the Andover II-specific website (www.asrctwo.com) has stated, since at least October 2015 through the present, that the facility “[p]rovides a physically safe and therapeutic environment.”
- c. The Andover II-specific website states that the facility “offer[s] the most qualified health care professionals, who are dedicated to providing the highest quality of care to all our residents...”

- d. The Andover II website states “We are COVID 19 FREE,” while omitting reference to the recent outbreak in COVID-19 and the 94 reported deaths resulting therefrom.

74. Defendants also made similarly misleading and deceptive statements in print-ads, brochures, television commercials, and other marketing materials.

75. Defendants intended for consumers, including members of the Class and Plaintiff, to rely upon the aforementioned misstatements, omissions, false promises, and misrepresentations, in an attempt to fraudulently induce them into procuring the Facilities’ services, and the members of the Class and Plaintiff did reasonably rely on the same.

76. Defendants have also engaged in unconscionable consumer practices by intentionally suppressing or delaying the reporting of resident deaths to relevant authorities, family members, authorized representatives, and/or life insurance companies, intentionally withholding and refusing to disclose vital information to family members and other authorized representatives, and concealing bodies of recently deceased residents, with the intent that said third parties, including the members of the Class and Plaintiff, rely upon their deceptive and misleading conduct in connection with the promotion of the Facilities’ services.

77. In addition, Defendants’ violations of the aforementioned state nursing home laws, N.J.S.A. 30:13-1, et seq. and N.J.S.A. 8:39-4, et seq., federal nursing home laws, 42 C.F.R. § 483.1, et seq. and 42 U.S.C.A. § 1395(i)-1, et seq., and any other applicable statutes, regulations, codes, and/or laws, also constitute unconscionable commercial practices in violation of the CFA.

78. Defendants’ conduct constituted deception, fraud, unconscionable commercial practices, and unlawful conduct in violation of the CFA.

79. As a direct, proximate and foreseeable result of Defendants' violations of the CFA, the members of the Class and Plaintiff were misled and were caused to suffer ascertainable loss.

WHEREFORE, Plaintiff demands judgment for himself and the members of the Class as follows:

- a. The Court enter a determination that this action is a proper class action pursuant to R. 4:32; and
- b. The Court enter an order certifying the Class pursuant to R. 4:32 and appointing the undersigned counsel as the representative thereof;
- c. The Court enter an Order awarding declaratory and injunctive relief, as permitted by law, requiring Defendants to send formal notice to all members of the Class, advising them of the declaratory ruling, the pendency of the action, and of their respective rights;
- d. The Court enter an Order requiring Defendants to pay to the members of the Class and Plaintiff joint and several damages, economic, monetary and consequential damages, compensatory damages, punitive damages, treble damages and/or statutory damages;
- e. The Court enter an Order awarding to Plaintiff, individually and on behalf of the members of the Class, pre-judgment and post-judgment interest to the extent allowable by law;
- f. The Court enter an Order awarding to Plaintiff, individually and on behalf of the members of the Class, his expenses and costs of suit, including reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent allowable by law;

g. For such other relief as the Court deems equitable, just and proper;

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

The undersigned hereby designates Alina Habba, Esq. as Trial Counsel in the above-captioned matter for the firm of Habba Madaio & Associates LLP pursuant to R. 4:25 et seq.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned, Alina Habba, Esq., hereby certified on behalf of the plaintiff as follows:

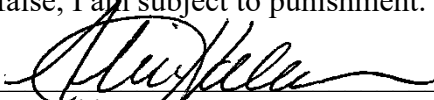
1. I am an attorney admitted to practice law in the State of New Jersey, and I am counsel for the above noted plaintiff(s) in the subject action.

2. The matter in controversy is not, to my knowledge, the subject of any other pending action in any Court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated at this time.

3. There are no other parties who should be joined in this action that I am aware of at the present time.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

Dated: September 8, 2020

By: 
Alina Habba, Esq.
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